

A T. N. K. GOVINDARAJULU CHETTY

v.

COMMISSIONER OF INCOME-TAX, MADRAS

April 17, 1967

B [J. C. SHAH, S. M. SIKRI AND V. RAMASWAMI, JJ.]

Income-tax Act, 1922(11 of 1922)—Interest on compensation for property acquired—If taxable.

C The assessee was offered compensation and interest on the amount of compensation in respect of their property which was first requisitioned under r. 75A of the Defence of India Act, 1939 and later acquired by the State under s. 5 of the Requisitioned Land (Continuance of Powers) Act. The Requisition Act provided that compensation payable shall be determined in accordance with the provisions of s. 19 of the Defence of India Act and the rules thereunder, but neither s. 19 nor the Rules provided that interest shall be paid on the amount of compensation. The assessee demanded more compensation and interest, and, the High Court in appeal enhanced the compensation and awarded interest on it. The Revenue assessed to income-tax the amount of interest, which was upheld, in reference, by the High Court. In appeal, this Court.

D HELD : Interest received by the assessee was taxable.

E If the source of the obligation imposed by the statute to pay interest arises because the claimant is kept out of his money, the interest received is chargeable to tax as income. The same principle would apply if interest is payable under the terms of an agreement and the court or the arbitrator gives effect to the terms of the agreement—express or implied— and awards interest which has been agreed to be paid. Clauses (a) to (f) of s. 19(1) of the Defence of India Act are a Code relating to a arbitration in determining the compensation payable to a person deprived of his property. Provisions relating to payment of interest, are not, however, part of the law relating to arbitration and there is nothing in cl. (g) which excludes the application of the substantive law relating to payment of interest when the arbitration is determining the amount of compensation. In this case, the right to interest arose by virtue of the provisions of Ss. 28 and 34 of the Land Acquisition Act, 1894, and the arbitrator and the High Court merely gave effect to that right in awarding interest on the account of compensation. [658 E-F; 660 D-H]

F *Dr. Shamlal Narula v. Commissioner of Income-tax, Punjab, Jammu and Kashmir, Himachal Pradesh and Patiala*, 53 I.T.R. 151, and *Satinder Singh & Ors. v. Amrao Singh & Ors.* [1961] 3 S.C.R. 676, followed.

G *The Commissioners of Inland Revenue v. Bellantine*, 8 T.C. 595, and *Simpson (H. M. Inspector of Taxes) v. Executors of Bonner Maurice as Executor of Edward Kay*, 14 T.C. 580, distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1425 and 1426 of 1966.

H Appeals by special leave from the judgment and order dated October 29, 1962 of the Madras High Court in Tax Case No. 195 of 1960.

S. Swaminathan and R. Gopalakrishnan, for the appellant (in both the appeals).

T. V. Viswanatha Iyer, T. A. Ramachandran, S. P. Nayyar for *R. N. Sachthey*, for the respondent (in both the appeals).

The Judgment of the Court was delivered by

Shah, J. The Income-tax Appellate Tribunal submitted two questions for the opinion of the High Court of Madras :

“1. Whether the sum of Rs. 1,28,716/- is assessable as income under any of the provisions of the Act ?

2. If the answer is in the affirmative, the assessment years in which the amount falls to be assessed by suitable apportionment.”

The first question was answered by the High Court in the affirmative. The High Court declined to answer the second question because it did not, in their view, arise out of the order of the Tribunal. The assessees have appealed to this Court.

By order dated January 30, 1944, the Collector of Madras, exercising power under r. 75A of the Defence of India Rules, 1939, requisitioned a property known as “Lutterals Gardens” belonging to the assessees. The property continued to remain under requisition till it vested in the Government of Madras absolutely in consequence of an order made on May 24, 1949 by the Collector of Madras under s. 5 of the Requisitioned Land (Continuance of Powers) Act, 1947, declaring the intention of the Government of Madras to acquire that property. The assessees declined the offer made by the Collector to pay Rs. 2,40,000/- as compensation for acquisition of the property and interest at the rate of 6% thereon from the date of notification for acquisition, and the dispute relating to compensation payable to the assessees was referred to the Chief Judge of the Court of Small Causes, Madras. By order of the High Court of Madras in appeal from the order of the Chief Judge it was adjudged that the assessees be paid Rs. 5,00,000/- as compensation for the property. The High Court also awarded interest at the rate of 6% on the amount of compensation from the date of notification for acquisition.

During the two previous years corresponding to the assessment years 1955-56 and 1956-57 the assessees received, pursuant to the order of the High Court, a total sum of Rs. 6,28,716/-. In proceedings for assessment of tax for the assessment years 1955-56 and 1956-57, the Income-tax Officer apportioned the amount of Rs. 1,28,716/- on the basis of actual receipts in the two previous years and assessed the amounts so apportioned to income-tax. The Appellate Assistant Commissioner held that the apportioned amounts were of the nature of revenue and not capital receipts, but in his view the income received was liable to be calculated on accrual basis year after year from the date of the notification for ac-

Aquisition, and on that account the assessments of the previous years from 1950-51 to 1954-55 should be reopened and the interest which accrued in those years should be assessed.

The Commissioner of Income-tax and the assessee appealed to the Appellate Tribunal against the order of the Appellate Assistant Commissioner. The assessee submitted that Rs. 1,28,716/- received as interest being part of compensation were not assessable to tax, whereas the Commissioner claimed that the Income-tax Officer was justified in assessing the amounts in the years in which they were received. The Income-tax Appellate Tribunal accepted the contention of the assessee that the receipts were not assessable to tax because they were of the nature of capital receipts. At the instance of the Commissioner, the Tribunal referred the two questions set out here-in-before.

Section 5 of the Requisitioned Land (Continuance of Powers) Act, 1947 authorises the Government by which or under the authority of which land has been requisitioned, to acquire the land subject to requisition, by publishing a notice to the effect that the Government has decided to acquire such land. Section 6 of the Act provides, *inter alia*, that compensation payable to the owner of the land shall be determined in accordance with the provisions of s. 19 of the Defence of India Act, 1939, and the rules made thereunder. Section 19 of the Defence of India Act, 1939, sets out the principles for determining the compensation payable to a claimant. The amount of compensation may be fixed by agreement between the owner and the Government : where no such agreement is reached the Central Government is enjoined to appoint an arbitrator having the qualifications prescribed therein. Under s. 19(1) (e) the arbitrator in making his award must have regard, *inter alia*, to the provisions of sub-s. (1) of s. 23 of the Land Acquisition Act, 1894 in so far as the same can be made applicable. An appeal lies against the award of the arbitrator to the High Court. Sub-sections (2) and (3) of s. 19 confer upon the Central Government authority to frame rules for the purpose of carrying into effect the provisions of s. 19. In exercise of that power, the Government of India framed "The Defence of India (Payment of Compensation and Arbitration) Rules, 1943" which amongst other provisions directed that the Collector shall pay compensation as soon as may be practicable. But neither s. 19(1) of the Defence of India Act, nor the Rules framed under s. 19(2) and (3) provide that interest shall be paid on the amount of compensation. In the present case, interest was, however, offered to be paid by the Collector; and the High Court also awarded interest on the amount of compensation from the date of the notification of acquisition.

It was held by this Court in *Dr. Shamlal Narula v. Commissioner of Income-tax, Punjab, Jammu and Kashmir, Himachal*

Pradesh and Patiala⁽¹⁾ that the statutory interest paid under s. 34 of the Land Acquisition Act, 1894, on the amount of compensation awarded from the date on which the Collector has taken possession of land compulsorily acquired under the Land Acquisition Act, 1894, is interest paid for delayed payment of the compensation and is a revenue receipt liable to tax under the Income-tax Act. It was observed in that case at p. 156 :

“ . . . interest, whether it is statutory or contractual, represents the profit the creditor might have made if he had the use of the money or the loss he suffered because he had not that use. It is something in addition to the capital amount, though it arises out of it. Under section 34 of the Act when the legislature designedly used the word “interest” in contradistinction to the amount awarded, we do not see any reason why the expression should not be given the natural meaning it bears.

The scheme of the Act and the express provisions thereof establish that the statutory interest payable under section 34 is not compensation paid to the owner for depriving him of his right to possession of the land acquired, but that given to him for the deprivation of the use of the money representing the compensation for the land acquired.”

Counsel for the assessee however contended that the principle of *Dr. Shamlal Narula's* case⁽¹⁾ is not applicable to this case, since there is no provision in the Requisitioned Land (Continuance of Powers) Act, 1947 and the Defence of India Act, 1939, and the rules framed thereunder for payment of interest on the amount of compensation. Counsel said that under the Act, the owner is paid not the market value of the property, but compensation determined in accordance with a highly artificial scheme, and that the interest paid, in truth, bears the same quality as compensation for deprivation of property and is on that account a capital receipt not exigible to tax. In support of his contention, counsel invited our attention to two decisions : *The Commissioners of Inland Revenue v. Ballantine*⁽²⁾ and *Simpson (H.M. Inspector of Taxes) v. Executors of Bonner Maurice as Executor of Edward Kay*⁽³⁾.

In *Ballantine's* case⁽²⁾ a claim of a firm of contractors against a railway company for “additional costs, loss and damage” was referred to arbitration. The arbitrator awarded to the claimant a sum of money mainly as damages, together with interest thereon at 5 per cent. per annum from the date of lodgment of claim until payment. The Revenue sought to charge the interest paid by the

(1) 53 I.T.R. 151.

(3) 14 T.C. 587.

(2) 8 T.C. 595.

A railway company to tax under Case III of Sch. D of the Income-tax Act, 1918. It was held that the sum added in the name of interest was part of damages, and was not "interest of money" chargeable to income-tax under Case III of Sch. D. Lord President Clyde observed :

B "Now it is familiar that an assessment of the kind may contain as one of its constituent elements an allowance in respect that the claimant has lain for a long time out of his remedy. The propriety of such an allowance may depend on the character of the claim, and its amount may depend on many considerations of which time is only one. C But an interest calculation is a natural and legitimate guide to be used by an arbiter in arriving at what he thinks would be a fair amount. In most cases in which such an allowance is a constituent of an award it does not separately appear, but is slumped along with other elements in the gross sum decreed for; but there is nothing to prevent an arbiter, if he thinks it just and reasonable in a particular case, to make the allowance in the D form of an actual interest calculation from a past date until the sum fixed as at that date is paid. In all such cases, however—whether the allowance is wrapped up in a slump award or is separately stated in the decree—the interest calculation is used *in modum aestimationis* only. E The interest is such merely in name, for it truly constitutes that part of the compensation decreed for which is attributable to the fact that the claimant has been kept out of his due for a long period of time. It is not therefore "interest of money" chargeable under Case III of Schedule D."

F In *Simpson v. Executors of Bonner Maurice as Executor of Edward Kay*⁽¹⁾ the executors of Kay, a naturalised British subject, who died during the First World War received, as the result of the peace treaty claims, amounts representing partly capital of securities, stocks and shares in Banks in Germany deposited by Kay; partly interest and dividends; and partly compensation under the Peace Treaty. In a proceeding for assessment of the receipt G to tax it was held that the compensation computed on the basis of interest was not income for the purposes of income-tax. Lord Hanworth, M. R., observed at p. 601 :

H "I want to add now one more word in reference to the sum which has been paid by way of compensation under Article 297. It is said in reference to that 'that, at least, arose at the time when it was paid under the order of the Mixed Arbitral Tribunal'. It was a sum

(1) 14 T.C. 580.

which was calculated as interest"— . . . 'and it is interest, and therefore it is within the words of the Schedule, which undoubtedly impose a tax upon interest which arises or accrues to a person liable to tax.' But is it interest? Is that its quality, or is it compensation estimated and measured in terms of interest? It appears to me quite clear that, apart from Article 297, no such sum could have been recovered."

Lawrence, L.J., observed at p. 605 :

"Neither the fact that the compensation was measured by the amount of the interest, which but for the embargo placed upon the money by the German Government could have been earned by the Respondents, nor the fact that part of the compensation was described as "interest" in the decision of the Mixed Arbitral Tribunal, in my judgment, has the effect of altering the character of the compensation paid to the Respondents."

But it must be noticed that liability to pay interest arose in *Ballantine's* case⁽¹⁾ under the award of the arbitrator and in the *Executors of Bonner Maurice as Executor of Edward Kay's* case⁽²⁾ under the order of the Mixed Arbitral Tribunal, and in each case it was held that what was paid, though called "interest", was in truth compensation for loss suffered on account of deprivation of property. According to the view taken by this Court in *Dr. Shamlal Narula's* case⁽³⁾, if the course of the obligation imposed by the statute to pay interest arises because the claimant is kept out of his money, the interest received is chargeable to tax as income. The same principle would apply if interest is payable under the terms of an agreement and the Court or the arbitrator gives effect to the terms of the agreement—express or implied—and awards interest which has been agreed to be paid.

It is therefore necessary to determine whether the obligation to pay interest awarded under the order of the High Court of Madras arose out of the statute or out of the award. In *Satinder Singh & Ors. v. Amrao Singh and Ors.*⁽⁴⁾ lands forming part of Cis-Sutlej Jagir were compulsorily acquired under the East Punjab Acquisition and Requisition of Immovable Property (Temporary Powers) Act, 1948. The claimants to the lands claimed in addition to statutory compensation interest from the date from which they were dispossessed and till the date of payment of compensation. The arbitrator appointed under the Act awarded interest on the amount of compensation and the High Court of Punjab in appeal confirmed the order. This Court held that the claimants were

(1) 8 T.C. 595.

(3) 53 I.T.R. 151

(2) 14 T.C. 580.

(4) [1961] 3 S.C.R. 676.

A entitled to interest on the compensation amount from the date of
dispossession till the date on which the amount of compensation
was paid to the claimants. Section 5 of the East Punjab Acquisition
and Requisition of Immovable Property (Temporary Powers)
B Act, 1948, set out the principles according to which compensation
was to be paid in regard to the acquired property, and by cl. (e)
thereof it was provided that the arbitrator in making the award
shall have regard to the provisions of sub-s. (1) of s. 23 of the
Land Acquisition Act, 1894 in so far as the same may be appli-
C cable. The Act contained no express provision for payment of
interest on compensation determined by the arbitrator. This Court
rejected the contention of the State of Punjab, that ss. 28 and 34
of the Land Acquisition Act which dealt with the payment of
interest were not intended to apply to the proceedings before the
arbitrator. It was observed :

“Stated broadly the act of taking possession of immov-
able property generally implied an agreement to pay inter-
est on the value of the property and it is on this princi-
ple that a claim for interest is made against the State.”

D The Court further observed :

“It would thus be noticed that the claim for interest
proceeds on the assumption that when the owner of im-
movable property loses possession of it he is entitled to
claim interest in place of right to retain possession. The
question which we have to consider is whether the appli-
E cation of this rule is intended to be excluded by the Act
of 1948, and as we have already observed, the mere fact
that s. 5(e) of the Act makes s. 23(1) of the Land Ac-
quisition Act of 1894 applicable we cannot reasonably
infer that the Act intends to exclude the application of
this general rule in the matter of the payment of inter-
F est.”

The Court also observed :

“When a claim for payment of interest is made by
a person whose immovable property has been acquired
compulsorily he is not making claim for damages prop-
erly or technically so called; he is basing his claim on
G the general rule that if he is deprived of his land he should
be put in possession of compensation immediately; if not,
in lieu of possession taken by compulsory acquisition inter-
est should be paid to him on the said amount of com-
pensation.”

The scheme of the East Punjab Acquisition and Requisition of
H Immovable Property (Temporary Powers) Act, 1948 is similar to
the scheme of the Requisitioned Land (Continuance of Powers)
Act, 1947. The Court in *Satinder Singh's* case⁽¹⁾ held that be-

(1)[1961] 3 S.C.R. 676.

cause of the injunction expressly to apply the provisions of s. 23(1) of the Land Acquisition Act, 1894, in the determination of compensation, the application of ss. 28 and 34 dealing with the payment of interest on the amount awarded as compensation cannot be deemed excluded. The Court also held that when the owner of property is dispossessed pursuant to an order for compulsory acquisition, an agreement that the acquiring authority will pay interest on the amount of compensation is implied. A

The reasoning on which the right of the owner of the lands acquired to interest was affirmed in *Satinder Singh's* case⁽¹⁾, *prima facie*, applies in this case. Counsel for the assessee contended that the application of ss. 28 and 34 of the Land Acquisition Act in proceedings for arbitration under the Requisitioned Lands (Continuance Powers) Act, 1947, was expressly excluded by s. 19(1)(g) of the Defence of India Act which enacted that : B

"Save as provided in this section and in any rules made thereunder, nothing in any law for the time being in force shall apply to arbitration under this section." C

But cl. (g) is not susceptible of any such interpretation. Clauses (a) to (f) of s. 19(1) are a Code relating to arbitration in determining the compensation payable to a person deprived of his property. Provisions relating to payment of interest are not, however, part of the law relating to arbitration and there is nothing in cl. (g) which excludes the application of the substantive law relating to payment of interest when the arbitration is determining the amount of compensation. D

We are therefore of the view that the principle on which *The Commissioners of Inland Revenue v. Ballantine*⁽²⁾ and *Simpson (H.M. Inspector of Taxes) v. Executors of Bonner Maurice as Executor of Edward Kay*⁽³⁾ were based has no application to this case. It may be recalled that in those cases the arbitrator and the Arbitral Tribunal were, in awarding interest, not seeking to give effect to, or to recognize a right to interest, conferred by statute or contract. The source of the right to interest in both the cases did not arise from the statute or agreement. In the case on hand, the right to interest arose by virtue of the provisions of ss. 28 and 34 of the Land Acquisition Act, 1894, and the arbitrator and the High Court merely gave effect to that right in awarding interest on the amount of compensation. Interest received by the assessee was therefore properly held taxable. E

The appeals fail and are dismissed with costs. One hearing fee. F

Y.P.

Appeals dismissed. H

(1) [1961] 3 S.C.R. 676.

(2) 8 T.C. 595.

(3) 14 T.C. 580.