

52(2) of the Act can be invoked only where the consideration for the transfer of a capital asset has been understated by the assessee, or, in other words, the full value of the consideration in respect of the transfer is shown at a lesser figure than that actually received by the assessee, and the burden of proving such understatement or concealment is on the revenue. The understatement or not showing the full value of the consideration would be with a view to reduce the tax liability. Therefore, before invoking the provisions of section 52(2) of the Act, the Income-tax Officer should have material before him because the onus is on the revenue on which he has to record a finding. Since the Income-tax Officer invoked the provisions of Section 52(2) of the Act, he would be having material before him and on the peculiar facts of this case, no jurisdiction has been shown by the revenue for further opportunity to collect the facts and material. Even in the order of the Appellate Assistant Commissioner no foundation was laid for such permission.

(2) For the reasons recorded above, we are of the opinion that the Tribunal was right in holding that the Appellate Assistant Commissioner erred in giving to the Income-tax Officer a further opportunity to collect further facts and material relevant for the valuation of the land. Accordingly, we answer the question in favour of the assessee i.e. in the affirmative.

P.C.G.

Before G. C. Mital and S. S. Sodhi, JJ.

COMMISSIONER OF INCOME TAX, PATIALA,—*Applicant.*

versus

M/S CHIRANJI LAL MULTANI MAL RAI BAHADUR (P),—*Respondent.*

Income Tax Reference No. 150 of 1979

December 15, 1988.

Income Tax Act (XLII of 1961)—S. 256(1)—Assessee allowed interest by the High Court—Income Tax Officer adding this amount in assessee's income.—Such amount—Whether ex-gratia payment—Whether can be taxed.

Commissioner of Income Tax, Patiala v. M/s Chiranji Lal Multani
Mal Rai Bahadur (P). (G. C. Mital, J.)

Held, that the amount of interest received by the assessee was by way of compensation and was a casual receipt and could not be included in the income of the assessee in the relevant assessment year. However, the Tribunal was not right in observing that the awarding of interest was in the nature of ex-gratia payment. The payment was under the discretion of the Court but not ex-gratia. (Para 5).

Reference under section 256(1) of the Income Tax Act, 1961, arising out of the order of the Tribunal (Chandigarh Bench) in ITA No. 929 of 1976-77, dated 30th September, 1978, relating to the assessment year 1972-73 refer the following questions of law to the Hon'ble High Court for its opinion:—

Whether on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal has been in error in deleting the addition of Rs. 13,871 ?

Ashok Bhan, Sr. Advocate with Ajay Mittal, for the Applicant.

R. S. Aulakh Advocate, for the Respondent.

JUDGMENT

Gokal Chand Mital, J.

(1) The assessee made a security deposit of Rs. 34,250 with the Central Government pursuant to a contract for the supply of 1820 tonnes of wheat. Later on, disputes arose between the assessee and the Central Government and the security deposit was forfeited. The Income-tax Officer allowed the deduction in computing profits for the year in which the forfeiture occurred.

(2) The assessee challenged the action of the Central Government in forfeiting the amount by filing a civil suit. The High Court by judgment and decree dated December 4, 1970 decreed the suit for return of the security and allowed interest at the rate of 3 per cent per annum from the date of filing of the suit till realisation.

(3) In pursuance of the High Court decree the assessee got back the security amount as also interest amounting to Rs. 13,871 and in the relevant assessment year, namely 1972-73 filed return in which the refund of the security amount was included in the income and claimed that the amount of Rs. 13,871 received as interest was a casual receipt, which was in the discretion of the Court, and hence

not subject to tax. The Income-tax Officer did not agree and included the amount of interest as income of the assessee from other sources. On assessee's appeal, the Appellate Assistant Commissioner allowed the deduction of interest keeping in view the ratio of Ballantine's case (1924) 8 Tax Cases 595. The Commissioner of Income-tax remained unsuccessful before the Tribunal and has got the following question referred for opinion of this Court :—

“Whether on the facts and in the circumstances of the case, the Income-Tax Appellate Tribunal has been in error in deleting the addition of Rs. 13,871 ?”

So far as the position of law is concerned the matter is concluded by the decision of the Supreme Court in *T.N.K. Govinda Raju Chetty v. Commissioner of Income-Tax, Madras* (1). The relevant observations are as follows :—

“But it must be noticed that liability to pay interest arose in *Ballantine's case* under the award of the arbitrator and in the *Executors of Bonner Maurice as Executor of Edward Kay's case* under the order of the Mixed Arbitral Tribunal, and in each case it was held that what was paid, though called ‘interest’, was in trust compensation for loss suffered on account of deprivation of property. According to the view taken by this Court in *Dr. Shamlal Narula's case*, 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.”

On the principles laid down in the quotation, the facts of the case were examined and the following conclusion was drawn :—

“We are, therefore, of the view that the principle on which *Commissioners of Inland Revenue v. Ballantine* and *Simpson v. Executors of Bonner Maurice as Executor of Edward Key* were based has no application to this case. It may be recalled that in those cases the arbitrator and the

(1) (1967) 66 I.T.R. 465

Commissioner of Income Tax, Patjala v. M/s Chiranji Lal Multani
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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 in hand, the right to interest arose by virtue of the provisions of sections 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."

(4) From the afore-said decision it is clear that if interest is paid on the basis of contract or under a statute, the same is taxable, but if interest is awarded by the Court for loss suffered on account of deprivation of property, it amounts to compensation, though called interest, and would not be taxable.

(5) The learned counsel for the revenue urged that the interest has been allowed by virtue of section 34 of Civil Procedure Code and, therefore, is allowed under a statute and has to be included in the income and cannot be treated as casual receipt. Before the Supreme Court the interest was allowed under sections 28 and 34 of the Land Acquisition Act, 1894, where there is no discretion with the Court to grant more or less than what is provided by the statute, whereas under section 34 of the Code of Civil Procedure it is discretionary for the Court, on the facts and circumstances of the case, to allow interest not exceeding 6 per cent. The Delhi High Court awarded interest at the rate of 3 per cent in its discretion for wrongful deprivation of the security deposit. This case clearly falls in line with *Ballantine's* case which was noticed by the Supreme Court in the aforesaid decision and was distinguished because there the interest was awarded by way of compensation for loss suffered on account of deprivation of property under the orders of the Court and not under any statute like the Land Acquisition Act. Accordingly, we are of the view that the amount of interest received by the assessee was by way of compensation and was a casual receipt and could not be included in the income of the assessee in the relevant assessment year. However, the Tribunal was not right in observing that the awarding of Rs. 13,871 as interest was in the nature of *ex-gratia* payment. The payment was under the discretion of the Court but not *ex-gratia*.

(6) For the reasons recorded above, we answer the question in favour of the assessee, that is, in the negative, with costs quantified at Rs. 500.

P.C.G.

Before G. R. Majithia, J.

VED KUMARI,—Petitioner.

versus

UNION OF INDIA AND OTHERS,—Respondents.

Civil Writ Petition No. 518 of 1983

February 10, 1989.

Transfer of Property Act (IV of 1882)—S. 41—Petitioner purchasing shop from auction purchaser of evacuee property—Show-cause notice served on the auction purchaser for cancellation of sale—Petitioner bona-fide purchaser for consideration—Petitioner taking extra care to ascertain that transferee had the power to make the transfer and acted in good faith—Alienee from an ostensible owner is protected if he or she can establish that the sale in their favour was with express or implied consent of the true owner.

Held, that the provisions of S. 41 of the Transfer of Property Act protects the bona fide purchaser for consideration from true owner. There can be no dispute that the entire sale consideration was paid by the present petitioner to her vendor. An alienee from an ostensible owner is protected under S. 41 of the Transfer of Property Act if he or she can establish that the sale in their favour was with the consent, express or implied, of the true owner and that it was for consideration and that they had taken reasonable care to ascertain that the transferee had the power to make the transfer and acted in good faith. In the present case the petitioner fulfils all the tests. (Para 4)

Petition under Article 226 of the Constitution of India, praying that :—

(i) *that a writ of certiorari may be issued thereby quashing orders passed by the Chief Settlement Commissioner and confirmed by the Secretary, Rehabilitation on revision and review and sale of the shop in dispute may be restored;*

Or

(ii) *Such other appropriate writ, order or direction as may be deemed fit under the circumstances of the case may*