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## **RAJ PAL SINGH V. CIT [2020] 118 TAXMANN.COM 508 (SC)**

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### **ABSTRACT**

“The SC on August 25, 2020 {RAJ PAL SINGH v. COMMISSIONER OF INCOME TAX} held that capital gains shall be deemed to have accrued: (a) upon making of the award, in the case of ordinary acquisition referable to Section 16; and (b) after expiration of fifteen days from the publication of the notice mentioned in Section 9 (1), in the case of urgency acquisition under Section 17 of the Land Acquisition Act, 1894. Hence, the Supreme Court held that the transfer of the capital asset for the purposes of Section 45 of the Act of 1961, was complete only on 29.09.1970, the date of award and not on 15.05.1968, the date of notification for acquisition under Section 4 of the Act of 1894; and hence, capital gains arising out of such acquisition have rightly been charged to tax with reference to the date of award i.e., 29.09.1970.”

**KEYWORDS:** Income Tax Act, Land Acquisition, Date and Notification and Award.

## INTRODUCTION

*“The Competing and Conflicting Forces must, shall and ought to be balanced and enforced through a perspective of Harmonious Interpretation whereby, the counter-enforced variables are not only enforced but also prevented through cooperation and coordination from being mutually destructive.”- PROFESSOR H.L.A. HART*

Income Tax Act, 1961 lays down a Comprehensive Domestic Taxation Regime which is not only effective and efficient but also has endured the winds of the ages since its enactment. In the given research the taxability of the Accrual of the Capital Gains via the Land Acquisition Act, 1894 and Section 45 of the Income Tax Act, 1961 has been deliberated. Thus, the critical aspect which is the forebearer of the research is the balancing of the needs of the taxation regime with the flagrant urge of economic progression and land acquisition thereto.

Thus, the Research herein centres around the Case Reviewal of Raj Pal Singh V. CIT.<sup>1</sup> The Research discusses the Land Acquisition Act, 1894 and the Income Tax Act, 1961 in reference to the taxability of the Capital Gains accrued and its constituents.<sup>2</sup>

Court was addressing an appeal of whether capital gains arising out of land acquisition compensation were chargeable to income-tax under Section 45 of the Income Tax Act 1961 for the previous year referable to the date of award of compensation and not the date of notification for acquisition. The Court held that for chargeability of income-tax, the income ought to have accrued and therefore, capital gains due to land acquisition are chargeable only upon making of the award of acquisition of land, in the case of ordinary acquisition under S.16 of the Land Acquisition Act 1894 and after expiration of 15 days from the publication of the notice in case of urgency acquisition under S. 17. Therefore, such income is chargeable to tax only upon the making of award.

The Research identifies the Approval Methodology along with the Procedure followed. The balancing of the competing and conflicting forces has been highlighted herein. The Relevant Facts of the case along with the Arguments of the Appellant and the Respondent has also been brought to light. The final decision of the court along with the reasoning is also provided. The Researcher concludes with an critical analysis highlighting the imperative nature of the

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<sup>1</sup> Raj Pal Singh V. CIT [2020] 118 TAXMANN.COM 508 (SC)

<sup>2</sup> 1987 SCR (1) 562

judgement. Along with which, a synopsis has also been provided for quick referral and identification of crucial framework of the judgement.

### **AIM & OBJECTIVE OF THE STUDY**

- ✓ To critically analyze capital gains arising out of land acquisition compensation and its chargeability to income-tax through the Case Reviewal
- ✓ To discuss the considerations revolving around the novel transformative concept of capital gains and its accrual upon taking over of possession after making of the award and not the date of notification for acquisition.

### **RATIONALE OF THE STUDY**

- ✓ To stress upon the Imminent and Imperative nature of the conflicting forces of the Economic and Financial Forces amidst the Taxation Laws through a critical discussion of multiple variants including the Land Acquisition Act, 1894, the Approval Methodology, Income Tax Act, 1961 along with a study of such judicial precedents as laid down by the honourable court concerning capital gains and the acquisition-cum-compensation proceedings

### **RESEARCH METHODOLOGY**

- ✓ **RESEARCH DESIGN:** The researcher follows the premise of the Exploratory Research Design and primarily focusses on the legal-economic means of strengthening efficient Justice Dispensation. The study '*in-toto*' is qualitative, descriptive and analytical in its nature.
- ✓ **METHOD OF DATA COLLECTION:** The researcher follows Doctrinal method of research requiring the compilation of relevant data from the specified databases in order to analyze the material and arrive at a more complete understanding of the Law and Taxation Analysis and other considerations revolving around the said matter of socio-legal and economic pertinence.
- ✓ An analysis of reports, documents, journals and other available resources within online databases were referred to.
- ✓ **TOOLS OF ANALYSIS:** The researcher has pounded over the Economic and Mercantile relevance of chargeability of capital gains to income tax in matters of land acquisition, imputing secondary data for data analysis while employing tabling methods for effective data representation.

- ✓ **LIMITATIONS:** The research paper, in its very essence, is of an extensive nature, however, for the purpose of the study, relatives concerning the Case Reviewal of Raj Pal Singh v. CIT (2020) has been highlighted in conjunction with the Land Acquisition Act, 1894 along with the elaborate Approval Methodology.

## **RAJ PAL SINGH V. CIT<sup>3</sup>**

### **FACTS OF THE CASE**

- ✓ Raj Pal Singh, the Karta of the Amrik Singh HUF (“The assessee”) had bought a land from a person who migrated to Pakistan. The original owner gave some part of the land to S.A. Jain college on lease for 20 years which was expiring on 31.08.1967. Later the college moved the government of Haryana for compulsory acquisition of the whole land.
- ✓ A notification under Section 4 of the Land Acquisition Act, 1894 was issued by the Government of Haryana on 15.05.1968, seeking to acquire the subject land for public purpose. The notification was followed by the declaration dated 13.08.1969 under Section 6 of the Act of 1894. Ultimately, after submission of the claim for compensation, the Land Acquisition Collector, Ambala proceeded to make the award on 29.09.1970.
- ✓ The case of the assessee was selected for scrutiny and ITO passed an order dated 12.02.1982 enhancing the income adding the interest income received as per the award date.
- ✓ On an appeal with CIT(A), question arose as to why Capital Gains shall not be taxable in the year of receipt of award (i.e.) AY 1971-72. Assessee contented that the transfer was related to Section 17 (i.e., urgency acquisition) of 1894 Act, and therefore the transfer shall be when the first notification was issued (i.e.) AY 1968-69.
- ✓ However, CIT(A) held that, until the actual amount of compensation has been fixed, no income could be said to have occurred and therefore, it shall be taxable only when the award was announced.
- ✓ On an appeal, the ITAT held that since no actual date of acquisition has been mentioned, the same has to be ascertained at the first stage. The ITAT also referred to the similar

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<sup>3</sup> [2020] 118 TAXMANN.COM 508 (SC)

case of the assessee for the AY 1975-76 whereby that was a clear case of urgency acquisition and possession was taken on date of notification under section 9(1).

### **ASSESSMENT PROCEEDINGS:**

#### **PROCEEDINGS WITH ITO**

- ✓ The assessee contented that the transfer was covered under the urgency matter of section 17 of the Act of 1894 and therefore, taxable only in the year of notification (i.e.) AY 1969-70
- ✓ The ITO after making enquiries from the revenue concluded that the date of transfer for land was 'in consonance' with the date when the award was announced.
- ✓ For the case relevant to AY 1975-76, the ITO clarified that specific date of taking over possession was mentioned in the notification as per section 9 of the Act of 1894.
- ✓ The same was not the case of AY 1971- 72 and therefore ITO held that in the instant case, the award was announced on 29.09.1970 and the said date shall be relevant to determine transfer

#### **PROCEEDINGS WITH CIT(A)**

- ✓ The assessee contented that the acquisition of land was a case of Compulsory acquisition under section 17 of the 1894 Act and date of possession shall be 15.05.1968 (i.e. date of notification under section 4).
- ✓ Assessee further contented that in the order of award dated 29.09.1970, the interest was awarded from the date of notification under section 4 and such date be date of transfer.
- ✓ CIT (A) rejected the contention of the assessee and upheld the order of ITO.
- ✓ Possession of land (Requisite for Section 17) CIT (A) upheld that the Possession of the Land should have taken before the award date and Possession should have been taken after 15 days of notice under section 9(1)
- ✓ Relevance of Interest payment from the date of notification under section 4. The interest awarded was based on the ruling of court and based on an equitable interpretation of Section 28.

#### **PROCEEDINGS WITH ITAT**

### **QUESTION OF LAW:**

The ITAT took up the issue concerning the date of taking over physical possession of the land since the matter presented a complex scenario, where a clear finding about this date was difficult to emerge by the lower authorities.

- ✓ The ITAT referred to the observations regarding “possession of land”, as occurring in the award dated 29.09.1970 and observed that, possession of the land was supposed to have been taken on 15.05.1968.
- ✓ The ITAT further observed that to sort out the controversy, such stipulation in the award was required to be depended upon.
- ✓ The date of actual physical possession was inferable from the intention of the parties and the language of such stipulation in the award.
- ✓ The ITAT held that since the actual physical possession was taken on 15.05.1968, such a date shall be the transaction date and not on the date of award i.e., 29.09.1970. Hence, capital gains were not to be taxed for the AY 1971-72.

**PROCEEDINGS WITH HONORABLE HIGH COURT**

Whether on the facts and circumstances, the Tribunal was right in Law in holding that the capital gains are not assessable in the year under consideration as the transaction did take place on the date of notification i.e. 15.05.1968 and not on the date of award on 29.09.1970?

<b>CONTENTION OF REVENUE</b>	<b>CONTENTION OF ASSESSEE</b>
<p>As per the Income Tax Act, Capital Gains are taxable in the year in which transfer takes place.</p> <p>Therefore, the date of award 29.09.1970 ought to be considered for the purpose of calculating Capital Gain and not the date of notification i.e., 15.05.1968.</p>	<p>It had been a matter of urgency acquisition where the possession of land was taken on the date of notification i.e., 15.05.1968</p> <p>In view of the provisions contained in Section 17, the transfer took place on that date (15.05.1968) and not on the date of award (29.09.1970).</p>

- ✓ The HC answered the reference in favour of the revenue while holding that the Collector had not taken possession of the land under Section 17 as the said provisions was not invoked by the Government.

- ✓ For the purpose of CG, the date of award was required to be taken as the date of taking over possession because, on that date, the land vested in the Government under Section 16 of the Act of 1894.
- ✓ The High Court further examined the ambit and scope of Section 45 of the Income Tax Act and read along with Section 16 of the Act of 1894.
- ✓ On such examination, the HC came to the conclusion that the transfer of the land and its vesting in the Government took place on 29.09.1970, (i.e.) the date of award.
- ✓ The HC stated that Income tax is not levied on a mere right to receive compensation. There must be something tangible, something in the nature of an obligation to pay an ascertained amount. The Capital Gain is chargeable only in the year of award since only at that time, the amount was ascertainable. Therefore, CG shall be chargeable to tax in the AY 1971-72.

## **PROCEEDINGS WITH THE APEX COURT**

### **CONTENTIONS OF THE ASSESSEE**

- ✓ The land was already in possession of the government when notification under section 4 of the Act of 1894 was issued.
- ✓ As per the award dated 29.09.1970, the interest was allowed from the date of notification under section 4 (i.e. 15.05.1968) and hence the date of transfer be the same for the purpose of Capital gains
- ✓ According to the assessee, the transfer was complete on the date of notification i.e., on 15.05.1968 and capital gains, if any, could have only been charged on the date of notification and not with reference to the date of award.

### **RULINGS RELIED UPON BY THE ASSESSEE**

#### **RAMA BAI V. CIT<sup>4</sup>**

- ✓ The interest income in cases of land acquisition accrues from year to year and is taxable in the respective year of its accrual
- ✓ In the present case, since the possession was taken on 15.05.1968, capital gains and interest accrued were taxable only in the AY 1969-1970 and not in the AY 1971-1972.

### **KERALA HIGH COURT IN THE CASE OF PETER JOHN.**

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<sup>4</sup> (1990) 181 ITR 400 [SC]

- ✓ The owner of property is entitled to compensation on the day on which he is dispossessed; and that such right does not await quantification of compensation by the authority.
- ✓ On application of these principles to the case at hand, the date of award i.e., 29.09.1970 for quantification of compensation has no relevance, and the only relevant date is 15.05.1968.

**BERGER PAINTS INDIA LTD. V. CIT<sup>5</sup>**

- ✓ Assesse further contended by relying on the case of Berger Paints India Ltd. Vs. CIT (2004) 266 ITR 99, wherein it was held that where the order passed in favour of the very same assessee and against the revenue in a similar matter has attained finality, the revenue cannot seek re-opening of the issue in relation to the other case without a just cause.

**CONTENTIONS OF THE REVENUE**

- ✓ Revenue referred to the definitions of “capital asset” and “transfer” as per Income Tax Act.
- ✓ It contended that though possession of the land was with the College, gain on account of transfer of land accrued only on the date of award.
- ✓ The Revenue further stated that the acquisition had not been under the urgency provisions contained in Section 17 of the Act of 1894.
- ✓ The government did not issue directions to take possession after the expiry of 15 days from the date of publication of notice under Section 9(1).
- ✓ The only applicable provision for taking possession in the present case had been Section 16 whereby possession could be taken by Collector after making the award under Section 11 and only thereupon the land vests in the Government.

**ANALYSIS OF LAND ACQUISITION ACT, 1894<sup>6</sup>**

<b>SECTION 4</b>	–	Notification to be published in the official gazette for intention to acquire a land.
Publication	of	

<sup>5</sup> (2004) 266 ITR 99

<sup>6</sup> Land Acquisition Act, 1894,

<https://dolr.gov.in/sites/default/files/THE%20LAND%20ACQUISITION%20ACT.pdf> (Accessed on: 02.10.2021)



preliminary notification.	
<b>SECTION 5A</b> – Hearing of Objections	Any person interested in the land to be acquired can object such acquisition within 30 days.
<b>SECTION 6</b> – Declaration land is for Public Purpose	After hearing of the objections, the declaration undersigned by the Secretary to the government shall be made to acquire the land.
<b>SECTION 9</b> – Notice to interested persons	The collector shall then give a public notice for takeover of the land and any compensation claim shall be made to him.
<b>SECTION 11</b> – Enquiry and award by collector	On the day so fixed, the collector shall enquire and proceed to award the interested persons.
<b>SECTION 16</b> – Power to take Possession	When the Collector has made an award under Section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government.
<b>SECTION 17</b> – Acquisition in Urgency	In the case of urgency, the collector shall take the possession of the land on the expiration of 15 days from the date of publication of notice u/s 9(1) of the Act of 1894.

### VARIOUS RULINGS RELIED UPON BY THE SUPREME COURT

#### LT. GOVERNOR OF HIMACHAL PRADESH V. AVINASH SHARMA<sup>7</sup>

- ✓ In the present case a notification under s. 17 (1) and (4) was issued by the government and possession which had previously been taken must, from the date of expiry of 15

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<sup>7</sup> 1971 SCR (1) 413

days from the publication of the notice u/s 9(1), be deemed to be the possession of the Government.

#### **CIT V. PANDARI LAXMAIAH<sup>8</sup>**

- ✓ Possession of the land was taken on 03.08.1977 whereas notice under Section 9(1) was issued on 20.05.1980 and award was passed on 25.03.1981.
- ✓ The High Court held that the relevant date for vesting of the land in the Government would be the date of making the award.

#### **BUDDAIAH V. CIT, KARNATAKA-2<sup>9</sup>**

- ✓ The HC held that since title of land passes to the Government on possession being taken by the authority under Section 16, such date of taking possession becomes relevant for the purposes of Section 45 of the Income Tax Act.

#### **SPECIAL LAND ACQUISITION OFFICER, BOMBAY V. GODREJ AND BOYCE<sup>10</sup>**

- ✓ Under the scheme of the Act, neither the notification under Section 4 nor the declaration under Section 6 nor the notice under Section 9 is sufficient to divest the original owner of, or other person interested in, the land of his rights therein.
- ✓ Section 16 makes it clear beyond doubt that the title to the land vests in the government only when possession is taken by the government. Till that point of time, the land continues to be with the original owner.

#### **JUDGEMENT**

- ✓ Completion of transfer with vesting of land in the Government essentially correlates with taking over of possession of the land under acquisition by the Government.
- ✓ However, where possession is taken over before arriving of the relevant stage for such taking over, capital gains shall be deemed to have accrued upon arrival of the relevant stage and not before.

In such cases, capital gains shall be deemed to have accrued:

- ✓ Upon making of the award, in the case of ordinary acquisition referable to Section 16;  
and

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<sup>8</sup> (1997) 223 ITR 671.

<sup>9</sup> (1985) 155 ITR 277.

<sup>10</sup> (1988) 1 SCC 50

- ✓ After expiration of 15 days from the publication of the notice mentioned in Section 9 (1), in the case of urgency acquisition under Section 17.
- ✓ In the present case, the land in question was subjected to acquisition under the Act of 1894 by adopting the ordinary process leading to award under sec. 11 and therefore, capital gains would have accrued upon taking over of possession after making of the award (i.e.) 29.09.1970.<sup>11</sup>

### **CRITICAL ANALYSIS**

The acquisition of land was a matter of ordinary acquisition under section 16 where the possession of the land was transferred only upon making the award dated 29.09.1970. The taxability of Capital gains arises on transfer of such capital asset. Transfer in terms of Section 2(47) of the I.T. act read with Land acquisition act 1894 shall be made only upon making the award dated 29.09.1970. As per Land acquisition act, 1894 read with various rulings, the possession of the land was completed to be transferred only upon making the award as per Section 11 as provided under section 16. The interest on compensation provided from the date of notification under section 4 was based on just and equitable basis and it did not result in vesting of the land in Government on that date of notification. The judgement shall hold good even in the Land Acquisition Act of 2013<sup>12</sup> since the provisions are similar with an exception that under normal acquisition, now the time has been specified (i.e.) 3/6 months as the case may be and upon completion of the same, the transfer shall be completed.<sup>13</sup>

### **CONCLUSION: A SYNOPSIS**

A land, which became property after its original owner migrated to Pakistan, was allotted to assessee's father, who migrated to India, in lieu of a property left in Pakistan. A substantial part of said land had been given by the original owner on a lease for 20 years to a government college. Later on, the college moved the government for compulsory acquisition of said land. A notification was issued by the government on 15-05-1968 seeking to acquire said land for a public purpose. This was followed by a declaration dated 13-08-1969. Ultimately, the land

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<sup>11</sup> Samith Sagaranhalli, The Lawyer's Digest: Supreme Court Judgments passed in August 2020, Bar and Bench, <https://www.barandbench.com/columns/the-lawyers-digest-supreme-court-judgments-passed-in-august-2020> (Accessed on 02.10.2021)

<sup>12</sup> The Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013, <https://legislative.gov.in/sites/default/files/A2013-30.pdf> (Accessed on 02.10,2021)

<sup>13</sup> Sundara Rajan Krishnamachary, Supreme Court Judgement on Transfer in the case of Compulsory Acquisition, DVS Advisors, <https://dvsca.com/wp-content/uploads/2020/10/Case-law-SC-on-Compulsory-land-acq.pdf> (Accessed on 02.10,2021)

acquisition collector proceeded to make the award on 29-09-1970. Assessee contended that at the time 'of issuance of notification land was already in the possession of the college even after expiry of the lease. He contended that transfer took place on the date of preliminary notification. However, revenue contended that transfer reached its completion only on the date of award. Supreme Court held that publication of preliminary notification of compulsory acquisition did not vest the property in the Government as it only informed about the intention of the Government to acquire the land for a public purpose.<sup>14</sup>

After the notification, the Land Acquisition Collector is required to examine the objection if any to the proposed acquisition. Thereafter Government issues declaration signifying its satisfaction that the land was indeed required for public purpose. Thereafter, the Collector is to make his award, and after making the award, takes possession of the land under acquisition. Thereupon, the land vested in the Government free from all encumbrances.

Thus, the land vested in the Government on the date of making of the award and not on the date of publication of notification. The right to receive compensation arises the moment Government takes possession of the property acquired.

In the matters relating to compulsory acquisition of land under of the Land Acquisition Act, 1894, completion of transfer with the vesting of land in the Government correlates with taking over of possession of the land under acquisition by the Government.

It couldn't be said that immediately upon issuance of preliminary notification for compulsory acquisition of land, the possession of land transfer to Government. Thus, capital gains would have accrued upon taking over of possession after making of the award. Accordingly, capital gains to the assessee-appellant for the acquisition in question could not have accrued before the date of award, i.e., 29.09.1970.

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<sup>14</sup> 25 Key Income-tax Ruling in Year 2020, Taxmann, <https://www.taxmann.com/post/blog/4794/25-key-income-tax-ruling-in-year-2020/> (Accessed on 03.10.2021)

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