

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE**

**Before Shri Shailendra Kumar Yadav Judicial Member
and Shri G.S.Pannu Accountant Member**

ITA NO. 421/ PN/2011

(Asstt.Year : 2003-04)

**Sri Dilip G. Sopal Barshi,
Bhoyare Road, Bardhi, Dist Solapur.
PAN No.AEHPS 6227A**

.. **Appellant**

Vs.

**Income Tax Officer,
Ward-2(3), Solapur**

.. **Respondent**

Appellant by	:	Sri S.P. Joshi & Ms. Kirti Joshi
Respondent by	:	Dr. Santosh Kumar
Date of Hearing	:	17-05-2012
Date of Pronouncement	:	16 -07 -2012

ORDER

PER SHAILENDRA KUMAR YADAV JM :

This appeal has been filed by the assessee against the order of CIT(A) on following grounds :

“1. The Ld. CIT(A) erred in holding that the amount of compensation received of Rs. 15,00,000/- is enhanced compensation for acquisition of right to draw water from a well which was already compulsorily acquired in 1986 by the State Government and consequently erred in holding that it is liable to Capital Gains tax.

2. The CIT(Appeals) erred in not holding that there was no cost of acquisition for the new right granted by the State Government to draw water from the well already compulsorily acquired by it with all the rights attached to the well by paying full compensation for all the rights embedded with and in the ownership of the well and consequently erred in not holding that the amount of compensation of Rs. 15 lakhs received by the appellant for giving up this New right to draw water in favour of the Pune Municipal Corporation was not liable to Capital Gains Tax.

3. Without prejudice to Ground Numbers 1 and 2 above, the CIT(Appeals erred in holding that no deduction is available from the compensation amount of Rs. 15 lakhs as per explanation to Section 45(5)(b) of the IT Act, 1961 while bringing to Capital Gains Tax and that too without giving a notice of enhancement of income as was required under the law.

4. The CIT(Appeals) observation that “the AO may take necessary action to correct the mistake in adopting the cost of acquisition of the right to draw water from the well as per Law” be held to be his pious hope and not a direction to correct any such possible or alleged mistake”.

2. The assessee was the owner of the agricultural land situated at Survey No.162/1 & 2/1, Hadapsar, Pune, on which a well was existing. The said land was acquired for Public Works Department of Maharashtra State Government through Land Acquisition Proceeding by concerned Land Acquisition Collector vide award dated 17-07-1986. Accordingly assessee's compensation for above said land was determined at Rs.99,683/- and paid to assessee in Financial Year 1986-87. Same was offered to taxation as Long Term Capital Gains Tax in Return of Income filed for assessment year 1987-88 which is not in dispute. Copy of award dated 17-7-1986 by concerned Land Acquisition Officer has been placed at page 1 to 17 of paper book filed by the assessee. The said land was acquired for widening the road by Public Work department (hereinafter called PWD) of Maharashtra State Government. Subsequent to this the assessee was paid Rs.15,00,000/- compensation in the year relevant to A.Y. 2003-04. In return filed for relevant Assessment Year, i.e., 2003-04 the assessee claimed exemption in respect of said amount of Rs. 15 lakh received by him. The said amount was paid to assessee on ground that he had surrendered his right to use water from a well for effective widening the road by Pune Municipal Corporation (hereinafter called PMC) because said area was handed over to P.M.C. from P.W.D. It was claimed that there was no cost of acquisition for which rights. According to learned Authorised Representative of assessee the provisions of section 45 were not attracted and consequently no capital gain could have arisen for said payment of Rs.15,00,000/-. Assessee relied on the decision of Hon'ble Supreme Court in the case of CIT Vs. V.C. Srinivas Shetty (1981) 128 ITR 294 (SC). However, this stand of the assessee was not found to be acceptable by the Assessing Officer. The Assessing Officer of the view that State Government has primarily acquired the Agricultural land and the well on it was a part and parcel of such land. Therefore same forms

the capital asset within the meaning of section 2(14) of the Income Tax Act and any gains derived from such transaction is liable to tax u/s. 45 of the Income Tax Act. Therefore, the Assessing Officer levied capital gains thereon after reopening the case.

3. The matter was carried out before the appellate authority wherein the order of Assessing Officer was confirmed. The same has been opposed before us. The Authorised Representative submitted that land as well as well were already acquired for road widening vide the award made by the concerned land acquisition officer on 17-07-1986 for which compensation was paid to the assessee. The said award dated 17-07-1986 has been placed at Page Nos. 1 to 17 of the Paper Book filed on behalf of the assessee. It was further submitted on behalf of the assessee that inspite of the acquisition by way of the above said award dated 17-07-1986 the State Government was kind enough to grant a right to assessee to lift the water from well for Irrigation purpose at a nominal rent of Rs.1/- per annum. This right was granted to assessee after acquisition of the land by the State Government and the assessee has not incurred any cost for acquisition of the said right. It was further clarified that when the PMC who took over the area from PWD and started filling the well for effectively executing road widening work. The assessee approached the concerned civil court against filling of said well because he had acquired right to lift water from same. However matter was settled mutually by the parties to litigation which is not in dispute. Accordingly settlement was arrived between the parties and in terms of mutual settlement the assessee was paid payment of Rs. 15 lakhs for surrendering the right to lift water from said well. Out of the above amount of Rs. 15 lakhs, Rs. 6,26,194/- was contributed by Pune Municipal Corporation and remaining amount of Rs. 8,73,806/- was contributed by Serum Institute of India because later party was engaged in construction of road on

behalf of P.M.C. at relevant point of time. In this background, it was contended that since there was no cost incurred by the assessee for acquisition of the rights to lift the water. As such this right is not covered by the provisions of section 55(2) of the Income Tax Act. Therefore in view of the decision of the Hon'ble Supreme Court in the case of (1981) CIT Vs. V.C. Srinivas Shetty (SC), no capital gains would be worked out since provisions of section 45(1) r.w.s. 48(1) are not applicable in respect of transfer of such assets. In this background it was submitted that an amount of Rs. 15 lakhs received is not enhanced compensation. It is in lieu of foregoing right to draw water from a well subsequent to acquisition of said land as stated above. Learned Authorised Representative submitted that CIT(A) erred in holding that it is liable to capital gain. On the other hand Departmental Representative submitted that Assessing Officer was justified in holding that amount of compensation received of Rs. 15 lakhs is enhanced compensation for acquiring right to draw water from a well which was already compulsorily acquired in 1986 by State Government. Consequently same is liable to capital gain tax.

4. The Government has to carry out multifarious development programmes for addressing social and economic problems of the society. Government has to establish welfare institutions like hospital, educational institutions etc. and develop other infrastructural facilities. Developing infrastructure including improvement of surface transport is one of development activity done by State Government and Central Government as the case may be. As a welfare measure, i.e. P.W.D. (one of the organs of State Government) had to widen road for smooth transport to address increasing pressure on existing roads for which adjoining lands are acquired. Such widening covered assessee's land. Accordingly assessee's land falling in Survey No.162/1 & 2 as mentioned above along with other lands was acquired under

relevant provisions of Land Acquisition Act in 1986 and compensation thereof was given by concerned Land Acquisition Officer as per relevant provisions of Land Acquisition in the year 1986. There is nothing on record to suggest the assessee's has disputed the same by way of reference or otherwise under relevant provision of Land Acquisition or by way of writ, etc. Thus the land acquisition proceedings with regard to acquisition of said agricultural land of assessee including well thereon stood concluded and achieved finality.

5. Interestingly subsequent to this amount of Rs.15 lakhs was paid for abandoning the right of lifting of water from the well. As stated above as goodwill gesture State Government allowed assessee to lift water from well situated on his acquired land at nominal rent of Rs. 1/- per annum after acquiring said agricultural land along with well thereon. It is settled legal position that award of Land Acquisition Officer can be challenged by way of reference before the concerned Revenue Officer/Appellate Authority under the section 18 of the Land Acquisition Act, 1894. As stated above, there is nothing on record to suggest that enhancement proceedings has been preferred by assessee before the concerned Revenue Officers/Appellate Authority under the relevant provisions of section 18 of the Land Acquisition Act. So there is no occasion of enhancing the compensation at all because the assessee has not preferred the enhancing proceedings by way of reference before concerned appellate authority. Coming to the surrender of the right to lift the water from the well for consideration of Rs. 15 lakhs, we find that the land of assessee in question was acquired for widening the road and the assessee was paid the compensation in respect of said agricultural land vide award of 1986 which stood concluded as discussed above. However, State Government in exclusion of the other agriculturists falling in the said award, granted a special privilege to assessee for lifting the water from said well without disturbing the

widening of the road by paying nominal rent of Rs.1/- per year. Subsequently it was not found practically possible to allow lifting of water from said well for effective widening of the road. Ultimately it was decided that widening is not possible without filling well which was opposed by the assessee before Civil Court by way of civil litigation. Consequent to that a mutual understanding was arrived between the parties by virtue of which the assessee was paid Rs. 15 lakhs for surrendering the right to lift the water from well for irrigation of his remaining adjoining agricultural land. The said amount was contributed by Pune Municipal Corporation and Serum Institute of India as stated above, which is not in dispute. Infact due to increasing the Municipal limit area of road was put at disposal of P.M.C. who assigned the road widening work to Serum Institute of India. There is nothing on record to suggest that assessee has acquired the right of lifting of water from said well for any consideration. There is also nothing on record to suggest that the right of lifting water from said well at rate of Rs.1 per year had any nexus to acquisition of land in question. In this situation it cannot be said enhanced compensation because the assessee has not challenged award in question at Survey No. 162 vide award dated 17-07-1986 under relevant provisions of Land Acquisition Act, 1894. Subsequent payment is in lieu of abandoning right to lift water from well, which was acquired by assessee without incurring any cost.

6. To sum up assessee's Agricultural land in question was acquired under the relevant provisions of Land Acquisition Act, 1894 and assessee was paid compensation by concerned Land Acquisition Collector under the relevant provisions of Land Acquisition Act in the year 1986. In case the land owner is aggrieved by the amount of compensation he might have preferred a reference before the concerned Appellate authority under Section 18 of Land Acquisition Act, `894. There is nothing on record to suggest that the assessee has filed any

reference for enhancement of the compensation before concerned Appellate authority against the award in question. Subsequent to acquisition proceedings assessee was granted right of lifting water from said well which is independent right given by State Government for the rent of Rs. 1/- per year. There is also nothing on record to suggest that right of lifting of water was acquired by assessee by incurring any cost. Such right is not covered by provisions of section 55(2) of the I.T. Act. Therefore, in view of decision of Hon'ble Supreme Court in the case of V.C. Srinivas Shetty (supra) no capital gain could be worked out since provisions of section 45(1) r.w.s. 48(1) are not applicable in respect of payment made to assessee in lieu of surrender the right to lift the water from well filled for widening of road. Accordingly capital gains as worked out by the Assessing Officer in the assessment year under consideration is not justified. Same is directed to be deleted.

7. In the result, the appeal filed by the assessee is allowed.

Pronounced in the open Court on this the 16th day of July 2012.

Sd/-
(G.S.PANNU)
ACCOUNTANT MEMBER

Sd/-
(SHAILENEDRA KUMAR YADAV)
JUDICIAL MEMBER

Pune, dated the 16th July 2012

Copy of the order is forwarded to :

1. The Assessee
2. ITO Ward-2(3), Solapur.
3. The CIT(A)-III, Pune
4. D.R. "A" Bench, Pune
5. Guard File

By order

// True Copy //

Senior Private Secretary,
Income Tax Appellate Tribunal, Pune