

आयकर अपीलीय अधिकरण, A/“SMC” न्यायपीठ, चेन्नई ।

IN THE INCOME TAX APPELLATE TRIBUNAL
A/“SMC” BENCH, CHENNAI

श्री. चंद्र पूजारी लेखा सदस्य, के समक्ष ।

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

I.T.A.No.2202/Mds./2017

(Assessment Year : 2012-13)

Shri N.Baskar,
72,Main road, Mangadu,
Chennai 600 122.

PAN AHGPB 3495 A

(अपीलार्थी /Appellant)

Vs. The Income Tax officer,
Corporate circle 3(2),
Chennai-34.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by

: Mr.A.S.Sriraman,Advocate

प्रत्यर्थी की ओर से/Respondent by

: Mr.B.Sagadevan, JCIT, D.R

सुनवाई की तारीख/ Date of hearing : 27.11.2017

घोषणा की तारीख /Date of Pronouncement : 20.12.2017

आदेश / O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal is filed by the assessee, aggrieved by the order of the Learned Commissioner of Income Tax(A)-11, Chennai dated 27.07.2017 pertaining to assessment year 2012-13.

2. The assessee has raised the following grounds for adjudication.

1. The order of The Commissioner of Income Tax (Appeals) 11, Chennai dated 27.07.2017 in I.T.A.No.122/CIT(A)-11/2016-17 for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.
2. The CIT (Appeals) erred in dismissing the grounds challenging the validity of the re-assessment completed u/s 143(3) r/w section 147 of the—1- Act without assigning proper reasons and justification and ought to have appreciated that the order of re-assessment was passed out of time, (invalid, passed without jurisdiction and not sustainable both on facts and in law.
3. The CIT (Appeals) erred in confirming the taxability of interest on enhanced compensation for compulsory acquisition of agricultural lands amounting to ₹77,57,030/- on the application of section 56(2)(viii) of the Act in the computation of taxable total income without assigning proper reasons and justification.
4. The CIT (Appeals) failed to appreciate that the assessment of the net consideration/interest at ₹38,78,515/- after granting deduction u/s 57(4) of the Act was wrong, erroneous, unjustified, incorrect and not sustainable in law.
5. The CIT (Appeals) failed to appreciate that the conclusions reached to tax the interest on the enhanced compensation for the acquisition of the exempted capital asset especially on the misconstruction of the provisions of section 145A (b) of the Act were wrong, erroneous, unjustified, incorrect and not sustainable in law.
6. The CIT (Appeals) went wrong in recording the findings in this regard in para 5.3.2 of the impugned order without assigning proper reasons and justification.
7. The CIT (Appeals) failed to appreciate that the decisions relied upon in para 5.3.3 had no application to the facts of the case and cited & relied upon out of context, thereby vitiating the decision rendered in para 5.3.2 of the impugned order.
8. The CIT (Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law.

3. The facts of the case are that the assessee is an individual and for the above Assessment Year the return of income was filed on 08.09.2015 electronically in response to the reopening notice u/s 148 of the Act dated 13.03.2015 in admitting the taxable total income at ₹52,36,190/- including income from capital gains at ₹46,73,137/-. Later, the assessee filed another return on 04.03.2016 admitting the taxable total income at ₹5,63,050/- withdrawing the income originally admitted under the head 'capital gains'.

3.1 However, the Income Tax Officer, Corporate Ward 3(2), Chennai vide his re-assessment order dated 23.03.2016 u/s 143(3) r/w section 147 of the Act had brought to tax ₹38,78,5151- u/s 56(2)(viii) r.w section 57(iv) of the Act in the computation of taxable total income. The assessee received total compensation of ₹2,57,93,257/- including interest on compulsory acquisition of agricultural property. Out of this, interest was ₹ 77,57,030/-. Out of this, deduction at 50% was granted u/s 56(2)(viii) r.w section 57(iv) of the Act and the AO brought the balance amount of ₹38,78,5151- by re-opening of assessment u/s.147 of the Act. Aggrieved by the order of Id. Assessing Officer, the assessee objected the re-opening of

assessment before the Id. Assessing Officer as well as before the Ld.CIT(A).

4. Before Bench, at the time of hearing, the Id.A.R did not press the ground relating to re-opening of assessment. Accordingly, this ground stands dismissed as not pressed.

5. However, the Id.A.R submitted that interest received on compulsory acquisition of agricultural land is nothing but enhanced compensation on the land acquired by the Authorities and it is to be exempted u/s.10(37) of the Act. For that purpose, Id.A.R relied on the following orders of Tribunal.

- a) In the case of P.Susheela Vs. I.T.O reported in (2016) 48 CCH 0264 (Hyd. Trib.)
- b) In the case of Urvi Chirag Sheth Vs. I.T.O reported in (2016) 47 CCH 0414 (Ahd. Trib.)

6. On the other hand, Id.D.R submitted that interest received on delayed payment of enhanced compensation in respect of compulsory acquisition of agricultural land cannot be treated as

exempted income and it is to be taxed in terms of Sec. 56(2)(viii) r.w section 57(iv) of the Act.

7. I have heard both the parties and perused the material on record. In my opinion, the argument of the Id.A.R is having no merit. Interest on delayed payment of enhanced compensation in respect of acquisition of immovable property is a revenue receipt and it is to be taxed and cannot be exempted u/s.10(37) of the Act and it cannot be considered as a part of consideration received in respect of agricultural land specified us.2(14)(iv) of the Act. This view of myself is fortified by the following judgements:-

A. Kamail Singh v. State of Haryana* [2009] 184 Taxman 257 (Puni. & Har.)

“**Section 194A** of the Income-tax Act, 1961 - Deduction of tax at source Interest other than interest on securities - Whether interest on delayed payment of enhanced compensation in respect of acquisition of immovable property is revenue receipt exigible to tax under section 4 and, therefore, is liable to deduction of tax at source under section 194A- Held, yes

Section 194-LA of the Income-tax Act, 1961 - Deduction of tax at source - Acquisition of certain immovable property, compensation payment - Whether interest accrued on delayed payment of amount of enhanced compensation in respect of acquisition of agricultural land would partake character of

compensation for 'agricultural land' which is excluded from operation of section 194LA- Held, no”

B. Tuhi Ram v. Land Acquisition Collector [1993] 66 Taxman 127 (Punjab & Haryana)

“**Section 2(14)(iii)** of the Income-tax Act, 1961 - Capital asset - Agricultural land - Whether sub-clause (iii) of clause (14) of section 2 is ultra vires - Held, no.

Section 2(1A) of the Income-tax Act, 1961 - Agricultural income - Whether amounts received as compensation consequent to compulsory acquisition of agricultural land specified under section 2(14) (iii) is not agricultural income but capital gain and eligible to income-tax - Held, yes - Whether interest paid/payable for paying compensation belatedly is agricultural income - Held, no.

Section 194A of the Income-tax Act, 1961 - Deduction of tax at source - rest other than interest on securities - Whether provisions of section 194A apply to interest paid/payable for paying compensation for acquisition of land as falls under section 2(14)(iii) belatedly - Held, yes.

Section 4 of the Income-tax Act, 1961 - Income - Chargeable as - Whether amount received as interest on amount of compensation assessed under Land Acquisition Act, 1894, or under Requisition and Acquisition of Immovable Property Act is income taxable under the income-tax Act - Held, yes.”

C. Bikram Singh v. Land Acquisition Collector [1996] 89 Taxman 119 (SC)

“**Section 4** read with section 2(28A), of the Income-tax Act, 1961 – Income - Assessable as - Whether interest received on delayed payment of compensation for compulsory acquisition determined under section 28 or 31 of the Land Acquisition Act, 1894 is a revenue receipt and, therefore, exigible to tax - Held, yes

Section 2(28A) of the Income-tax Act, 191 - Interest - Meaning of - Whether amended definition of 'interest' was intended to make revenue receipt of interest on delayed payment of compensation from non-taxable - Held, no

In my opinion, Ld.CIT(A) has rightly placed reliance on the above judgements and held against the assessee. Hence, I do not find any infirmity in the order of the CIT(Appeals) and the same is confirmed. This ground of appeal raised by assessee is rejected.

8. Before me, the assessee placed one more argument stating that spreading of interest received to different assessment years. In my opinion, the assessee in this case had not demonstrated that it is following mercantile system of accounting. Hence, it is to be taxed on cash system basis i.e. receipt basis. This ground of appeal is also rejected.

9. Further, Id.A.R submitted that proper opportunity of hearing to the assessee by the lower authorities was not offered during proceedings, hence there is a violation of principles of natural justice. Before me, the Id.A.R is not able to demonstrate how the opportunity

is not given by the lower authorities in prosecuting the case before them. In the absence of any material to show that the lower authorities failed to give proper opportunity of hearing to the assessee, this ground of appeal is also dismissed.

10. In the result, the appeal of assessee is dismissed.

Order pronounced on 20th December, 2017.

Sd/-
(चंद्र पूजारी)
(CHANDRA POOJARI)
लेखा सदस्य /ACCOUNTANT MEMBER

Chennai,
Dated the 20th December, 2017.

K s sundaram.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |