

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.2013/Del/2013
Asstt. Year: 2009-10

ADIT Circle-1(1), (Intt. Taxation), Room No. 409 E-2 Tower, 4 th Floor, Civic Centre, New Delhi – 110 002.	Vs.	Sudhir Choudhary, 45, Sunder Nagar, New Delhi 110 003 PAN ADQPC8926L
(Appellant)		(Respondent)

Department by:	Shri S.S. Rana, CIT(DR)
Assessee by :	Smt. Jyoti Narula, CA
Date of Hearing	28/01/2019
Date of pronouncement	12/02/2019

ORDER

PER O.P. KANT, A.M.

This appeal by the Revenue has been preferred against the order dated 28/01/2013 passed by the Ld. Commissioner of Income-tax (Appeals)-XXIX, New Delhi [in short the Ld. CIT(A)] for assessment year 2009-10 raising following grounds:

1. *“On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the additions made on account of damages received by the assessee, without appreciating that the*

assessee's right to receive damages was absolute and not disputed even by the opposing party.

2. The Ld. CIT(A)erred in replying upon the decision of the Hon'ble Court, where the entire amount was in dispute and there was no absolute right to receive the payment, while in the present case, the assessee's absolute right was admitted even by the opposing party and the only dispute was regarding quantum.

3. The appellant craves to add, amend, modify, or alter any grounds of appeal at the time or before the hearing of the appeal.”

2. Briefly stated facts of the case are that, the assessee, a non-resident, filed a return of income for the year under consideration on 31/07/2009 declaring total income of Rs. 1,92,80,160/- which included income from house property, capital gains and income from other sources. The case was selected for scrutiny and notice under section 143(2) of the Income Tax Act, 1961 (in short the Act) was issued and complied with. In scrutiny proceedings, the Assessing Officer observed deposit of Rs. 1,69,61,347/-in the NRO bank account of the assessee maintained with the Bank of Maharashtra. It was contended by the assessee that said amount represents part of compensation (i.e. 2/3rd) received from the Delhi Administration in consequence to the award by the Arbitrator, which was not taxable in the year under consideration because on that date appeal filed by the Delhi Administration before the Hon'ble Delhi High Court against the said award by the arbitrator, was pending. The Assessing Officer treated this part of compensation received in the year under consideration by the assessee, as its income on receipt basis and

made addition accordingly in the assessment order under section 143(3) of the Act passed on 29/12/2011. The Assessing Officer relied on the ratio of the decision of the Hon'ble Supreme Court in the case of CIT vs. Ghansyam HUF 315 ITR 1 (SC) to support the proposition that interest on compensation and enhanced compensation received by the assessee is taxable in the year of the receipt.

3. On further appeal, the Ld. CIT(A) held that appeal of the Delhi Administration against the arbitration award was pending before the Hon'ble Delhi High Court, therefore matter was sub-judice and pending finality. According to the Ld. CIT(A), the Hon'ble Delhi High Court permitted the assessee to keep a portion of the sum receivable as compensation and thus ratio in the case of CIT vs. Sarvatra Roadrunners (P) Ltd (2008) 173 Taxman 0141 (Del) would apply. He further observed that after the dismissal of the appeal of the Delhi Administration by the Hon'ble Delhi High Court vide decision dated 14/03/2012, the assessee has already offered the entire compensation including the 2/3rd amount received in asstt. Year 2009-10, for income and paid taxes thereon in assessment year 2012-13. Accordingly, the Ld. CIT(A) held that the sum of Rs. 1,69,61,347/- received by the assessee during the year under consideration was not taxable during the period under the appeal before him.

4. Before us, the Ld. DR relied on the order of the Ld. Assessing Officer. The Ld. DR also filed written submission supporting the finding of the Assessing Officer relying on decision of Hon'ble Supreme Court in following cases :

1. *CIT vs. Ghanshyam (HUF)* [2009] 182 Taxman 368 (SC)/[2009] 315 ITR 1 (SC)/{2009} 224 CTR 522 (SC)
2. *CIT vs. Govinda Choudhury & Sons* [1994] 74 Taxman 331 (SC)/[1993] 203 ITR 881 (SC)/[1994] 116 CTR 61 (SC)

5. On the contrary, Ld. Counsel of the assessee filed a paper book containing pages 1 to 63. She referred to page 21 of the paper book containing details of the total compensation received including interest and the treatment of the same given by the assessee in assessment year 2012-13. The Ld. Counsel also referred to the order of the Hon'ble Delhi High Court dated 14/03/2012, which is available on page 60-63 of the paper book wherein the appeal of the Delhi Administration against the award allowed by the Arbitrator has been dismissed. The Ld. Counsel also drawn our attention to photo copy of receipt of cheque amounting to Rs. 1,69,61,347/- dated 06/05/2008 issued by the Pay and Accounts Officer of the Hon'ble Delhi High Court, which is available on page 55 of the paper book. A copy of the award of the Arbitrator has also been filed on pages 22 to 54 of the paper book. The Ld. Counsel supported the order of the Ld. CIT(A) on the issue in dispute.

7. We have heard the rival submissions and perused the relevant material on record including the paper book filed by the assessee. Briefly stated facts qua the issue in dispute are as under:

- (i) The property in reference is 11, Lancer Road Delhi, which was owned and possessed by the assessee. It was a double storeyed building comprising of 6 flats, 2 garages and four servant quarters build upon a plot of land admeasuring 1125 m²
- (ii) By way of a written lease deed dated 06/01/1965, the property of the assessee was taken on lease for a period of 5 years by the Delhi Administration. Instead of handing over the possession of the property on expiry of the lease

period, the Delhi Administration continued in possession of the entire property.

- (iii) Subsequently, the Delhi Administration issued a notification u/s 4 and 17(1) of the Land Acquisition Act, 1894 for acquisition of the entire property of the assessee besides other properties. The declaration u/s 6 of the Land Acquisition Act, 1984 was made on 10th March, 1987.
- (iv) The assessee challenged said notification dated 06/03/1987 under section 4 and 17(1) of the Land Acquisition Act, 1894 and declaration dated 10/03/1987 u/s 6 of the said Act on several grounds in the writ CW No. 229/1992 and prayed for consequential relief.
- (v) In the judgement dated 25/01/1995, the Hon'ble Delhi High Court (Single Judge Bench) quashed the impugned notification u/s 4,6,and 17(1) of the Land Acquisition Act and directed the Delhi Administration to hand over vacant peaceful possession of the entire premises of 11, Lancer Road, Delhi to the assessee within one month from the date of the order. The Hon'ble High Court (Single Judge) held that the assessee was entitled to damages from 10th March 1987 and the damages would be determined by an Arbitrator. The appeal against the said order of the Single Judge Bench was dismissed by the Division Bench of the Hon'ble Delhi High Court on 20/03/2002 and further civil appeal against the judgement of the Hon'ble Delhi High

Court was also dismissed by the Hon'ble Supreme Court on 28/04/2004.

- (vi) The Arbitrator was appointed to determine the damages payable by the Delhi Administration to the assessee. The Arbitrator awarded damages of Rs. 1,13,55,070/- and interest up to 31/05/2006 was computed at Rs. 1,20,63,366/-.
- (vii) The Delhi Administration filed the appeal before the Hon'ble Delhi High Court against the award determined by the Arbitrator. The Hon'ble Delhi High Court directed the Delhi Administration to deposit total sum of the award payable to the assessee with the Hon'ble High Court.
- (viii) The Hon'ble High Court ordered 2/3rd amount of total sum to the assessee to keep with him till the final decision of the Hon'ble High Court.

8. Before us, the assessee has submitted detail of the total amount received as damages/compensation and interest thereon, which is available on page 21 of the paper book. For ready reference the said detail is reproduced as under :

“Reconciliation of addition as per the Assessment Order under section 143(3) for Assessment Year 2009-10 and the Income as per the Return of Income Assessment Year 2012-13

Particulars	Amount in (Rs.)	TDS	Remarks
Total Rent to be received from the Government of the National Capital Territory of Delhi	13,213,421		Out of Rs. 2,54,42,010 interest income shown in A.Y. 2012-13 Rs. 1,22,28,589 and Rs. 1,32,13,431 income from house property
Total Interest to be received from the Government of the National Capital Territory of Delhi	12,228,589		
TOTAL (A+B)	25,442,010		
Less: 2/3 amount received on 06.05.2008	16,961,340		
Balance	8,480,670		
Interest Received on amount Rs. 84,80,670	1,652,299	165,299	Interest Income Shown in A.Y. 2012-13 along with TDS

9. According to the Assessing Officer, the 2/3rd amount of the damages/compensation (i.e. Rs. 1,69,61,347/-) awarded by the Arbitrator, which was received by the assessee in the year under consideration by way of cheque dated 6/5/2008, (a copy of which is available on page 55 of the paperbook), was taxable on the receipt basis in the year under consideration.

10. Before the Ld. CIT(A), the assessee contended that matter was pending in the Hon'ble High Court and in case the assessee loses the case, he had to return the money back and therefore the assessee had not recognised the same as income in the return of income for the year under consideration. Before the Ld. CIT(A) the assessee relied on the decision of the Hon'ble jurisdiction Delhi High Court in the case of CIT Vs Sarvatra Roadrunner (supra). The Ld. CIT(A) observed that matter was subjudice and pending finality, thus following the above decision

of the Hon'ble High Court and also in view of the fact that the assessee paid taxes on the entire amount of compensation along with interest received in assessment year 2012-13, he deleted the addition in the year under consideration.

11. In view of the above facts, the moot question before us is whether the amount of the damages/compensation awarded to the assessee by the arbitrator and 2/3rd of the said amount received by the assessee in the year under consideration, is crystallised as income of the assessee in the year under consideration.

12. The Hon'ble Delhi High Court in the case of CIT vs Sarvatra Roadrunners P Ltd (supra) observed that the assessee had no right to receive the money in the sense that no right had accrued or vested in the assessee . The relevant finding of the Hon'ble High Court's reproduced as under:

“8. On a reading of the interim orders passed by the Madhya Pradesh High Court on 14.10.1996 and 13.12.1996, it is quite clear that the assessee had no right to receive the money in the sense that no right had accrued or vested in the assessee in this regard. In the event SECL succeeded in the appeal filed by it, the assessee was obliged to return the amount by way of restitution under section 144 of the Code of Civil Procedure.”

13. We note that in subsequent para (ie. para 9) the Hon'ble High Court relied on the decision of Hon'ble Supreme Court in the case of CIT vs. Hindustan Housing and Land Development Trust Ltd. (1986) 161 ITR 524 as under:

“9. A somewhat similar situation had arisen in Hindustan Housing. In that case, the lands belonging to the assessee were requisitioned and then acquired by the State

Government. The issue of compensation was required to be adjudicated by the Calcutta High Court as a result of an appeal preferred by the State Government. Pending the appeal, the State Government deposited some amounts payable under the Award made under the provisions of the Requisition of Land (Continuance of Powers) Act, 1951. The assessee was permitted by the High Court to withdraw the amount on furnishing a security and the assessee did withdraw the amount and credited it in its suspense account. The question that arose before the Supreme Court was whether the revenue could claim that the amount payable to the assessee as compensation could be said to have accrued to it as income during the relevant previous year. While answering this in the negative and accepting the contention of the assessee, it was held that the assessee had no absolute right to receive the amount pending the appeal, since it was allowed by the High Court to withdraw the amount deposited by the State Government only on furnishing a security for refunding the amount in the event of the appeal filed by the State Government being allowed. Secondly, if the appeal was allowed in its entirety, the right to payment of the enhanced compensation would have fallen altogether. It was further held, approving the decision of the Andhra Pradesh High Court in Khan Bahadur Ahmed Alladin & Sons v. CIT [1969] 74 ITR 651 that the right to receive compensation was an inchoate right and the enhanced compensation would accrue to the assessee only when the Court accepted its claim. The Supreme Court also made a reference to two decisions of the Gujarat High Court, namely, Topandas Kundanmal v. CIT r 1978] 114 ITR 237

and Addl. CIT v. New Jehangir Vakil Mills Co. Ltd. [1979] 117 ITR 849 to conclude that on the final determination of the amount of compensation, the right to such income in the nature of compensation would arise or accrue and till then there was no liability in praesenti in respect of the additional amount of compensation claimed by the owner of the land.”

14. In the above case the assessee was permitted by the Hon'ble High Court to withdraw the amount of compensation on furnishing a security and the assessee withdrew the amount and credited in its account. It is evident that in the said case the Hon'ble High Court allowed to withdraw the amount deposited by the State Government only on furnishing of a security for refunding the entire amount in the event of the appeal filed by the State Government being allowed. Thus we can deduce the ratio decidendi that in case of the amount of compensation awarded, to the extent of amount for which an assessee is asked to furnish a security by the Hon'ble court till pending litigation, do not accrue to that assessee.

15. But in the instant case the assessee was allowed to withdraw 2/3rd of amount compensation awarded without any security and security was furnished in respect of remaining 1/3rd amount only though the entire amount was deposited by the Delhi Administration before the Hon'ble High Court. The Ld. Counsel of the assessee was specifically asked to produce a copy of the order of the Hon'ble High Court, wherein the assessee has been allowed to get 2/3rd of the compensation, but no such order was produced before us. There is nothing on record which could establish that disbursal of two third of the compensation to the assessee was objected by the Delhi Administration. Further, we note that Hon'ble High Court in order

dated 14/03/2012, dismissing the appeal of the Delhi Administration for want of prosecution observed as under:

*“12. Noting that the **respondent had unconditionally withdrawn part sum deposited and the remainder upon furnishing the bank guarantee**, since the appeals are being dismissed, we discharge the bank guarantee furnished by the respondent and require the Registry to return the same to the respondent.” (Emphasis supplied externally by us)*

16. It is evident from the above observation of the Hon'ble High Court that assessee unconditionally withdrawn the 2/3rd of the sum deposited by the Delhi Administration and bank guarantee was submitted in respect of the balance 1/3rd amount. From the above decision it manifests that in relation to 2/3rd amount , which is in dispute before us , no conditions of any security was imposed by the Hon'ble High Court . This 2/3rd amount was received unconditionally and enjoyed by the assessee which means there was certainty of income in the hands of the assessee to the extent of this amount . The security was submitted by the assessee or obtained by the Hon'ble court in respect of only 1/3rd amount of the compensation, thus we can say that the assessee had no absolute right to receive the 1/3rd of compensation amount pending the appeal, and thus to the extent of 2/3rd of compensation amount was crystallised as income of the assessee in the year under consideration.

17. Further we may also like to mention that arbitral awards cannot be interfered by the Hon'ble Courts on merits and their jurisdiction is confined to section 34 of the Arbitration and Conciliation Act, The grounds, mentioned in section 34(2) under which a party can make an application to the court to set aside an award are as follows:

“ (i) When the party making the application was incapacitated to enter the agreement.

(ii) The arbitration agreement, to which the parties are subjected, is not valid under the law.

(iii) A proper notice of appointment of arbitrators, or of the arbitral tribunal was not given to the party making the application.

(iv) Arbitral award deals with a dispute not contemplated by the parties or beyond the term of submission.

(v) Composition of the Arbitral Award was not in accordance with the agreement of the parties.

(vi) Subject-matter of dispute is not capable of settlement by arbitration under the law for the time being in force.

(vii) The arbitral award is in conflict with the public policy of the country.”

18. Further, according to section 35 of the said act, subject to section 34 of the Act, an arbitral award shall be final and binding on the parties and persons claiming under them respectively.

19. In the instant case, the award was challenged on two grounds, which has been discussed by the Hon’ble High Court in para 9 in 10 of the order dated 14/03/2012 in FAO(OS) 229/2007, which are reproduced as under:

“9. Counsel for the respondent states that a challenge to an award which is premised on re-appreciation of evidence would not succeed for the reason an Arbitrator is the final authority between the parties to appreciate the evidence led.

Sufficiency or insufficiency of evidence can not be a subject matter of challenge while questioning an award.

10. Pertaining to the second ground of challenge on the quantum of the damages worked out. Learned counsel points out that the award would reveal that the learned Arbitrator has referred to the CPWD manual and in relation thereto has worked out the compensation and for which the Learned Arbitrator has relied upon Annexure R-1 being the decision of the Rent Fixation Committee of the appellant.”

20. The first challenge was premised on re-appreciation of the evidences, whereas the second challenge was on quantum of the damage worked out, which was also objected on behalf of the assessee that same was based on the CPWD manual/ Rent Fixation Committee. Thus, it is evident that the right to receive the compensation, was even not disputed by the opposing party.

21. In view of the aforesaid discussion, we set aside the finding of the Ld. CIT(A) on the issue in dispute and restore that of the Assessing Officer. Accordingly, the grounds of the appeal of the Revenue are allowed.

22. In the result, the appeal of the revenue is allowed

This decision was pronounced in the Open Court on 12th February, 2019.

sd/-

(BHAVNESH SAINI)
JUDICIAL MEMBER

sd/-

(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 12/02/2019

Veena

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi