

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, "ए" चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'A', CHANDIGARH

श्री एन. के. सैनी, उपाध्यक्ष एवं श्री संजय गर्ग, न्यायिक सदस्य
BEFORE SHRI N.K. SAINI, VICE PRESIDENT &
SHRISANJAY GARG, JUDICIAL MEMBER

आयकरअपीलसं./ITA No. 1307/CHD/2018

निर्धारणवर्ष / Assessment Year : 2015-16

Smt. Jaswinderjit Kaur, 17293, 64, Avenue, SURREY BC, Canada	Vs. बनाम	The DCIT (International Taxation), Circle Chandigarh
स्थायीलेखासं./PAN NO: ADBPK4073D		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारितीकीओरसे/Assessee by : Sh. Mohit Dhiman, CA

राजस्वकीओरसे/ Revenue by : Sh. Madit Srivastava, Sr. DR

सुनवाईकीतारीख/Date of Hearing : 13.06.2019

उदघोषणाकीतारीख/Date of Pronouncement : 11.07.2019

आदेश/Order

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 16.07.2018 of the Commissioner of Income Tax (Appeals)-43, New Delhi [hereinafter referred to as CIT(A)].

2. The assessee in this appeal has taken following grounds of appeal:-

1. That the order passed by the worthy CIT (Appeals)-43, New Delhi dated 16.07.2018 is contrary to the facts of the case and law.

2. *That the Id. CIT(A) has erred in law as well as facts by upholding the addition made by the Id. DCIT by treating the compensation of Rs 10,47,582 as interest income.*
3. *That the Id. CIT(A) has erred by confirming the action of the Id. DCIT by treating the compensation received as Interest Income since the Appellant had made part payment to the builder for allotment of flat and not for the purpose of earning interest.*
4. *That the Id. CIT(A) has failed to appreciate that the amount of Rs. 10,47,582 had been paid as compensation for delay in construction and handing over physical possession by the builder pursuant to the case filed by the Appellant before the Consumer Forum.*
5. *That the Id. CIT(A) has erred in confirming the addition merely on the basis of nomenclature of payment mentioned by the payer in the letter addressed to the appellant dt. 04.03.2015.*
6. *That the Id CIT(A) has erred in confirming the addition without appreciating the decisions in case of CIT vs HP Housing Board (2012) 18 taxmann.com 129 (High Court of H.P) , Delhi Development Authority vs ITO (1995) (53 ITD 19) and GDA vs Dr NK Gupta (Revision Petition no. 2244/199 National Commission decided on 18/09/2002.)*
7. *That the Id. CIT(A) has erred in confirming the addition made by the Id. DCIT by solely applying the decision of IT AT Mumbai in case of Kumarpal Mohanlal Jain vs ITO (ITA no. 7231 MUM 2010) and treated the compensation received by appellant as interest.*
8. *That the Id. CIT(A) has failed to pass a speaking order without considering all the case laws relied upon by the appellant.*
9. **Relief Prayed for** : *That the addition of Rs. 10,47,582/- made by the Id. DCIT and upheld by the Id. CIT(A) may kindly be deleted or any other relief as deemed fit may be allowed.*
10. *That the Appellant craves leave to append, amend or withdraw any ground of appeal till it is finally decided.*

3. The sole issue involved in this appeal is as to whether the compensation received by an assessee on account of the failure of builder / developer to handover possession of the house would fall within the definition of 'interest' as defined u/s 2(28A) of the Income Tax Act, 1961 (in short 'the Act') and would be exigible to Income tax as per the provisions of the Income Tax Act.

4. The brief facts relevant to the issue are that the assessee had booked for a residential flat in a project to be launched by the Builder namely 'Parsvnath Prideasia' at Chandigarh. However, the builder / developer failed to deliver the possession of the built up flat on the stipulated date. The assessee, therefore, approached the State Consumer Disputes Redressal Commission, Chandigarh seeking refund of the amount as well as compensation. The complaint of the assessee was allowed by the State Consumer Disputes Redressal Commission, Chandigarh, whereby, a compensation was awarded to the assessee as per the clause 9 (c) of the agreement of the assessee with the builder i.e. @ Rs. 107.60 per square meter of the super area of the unit per month after stipulated period of 36 months from the date of booking / allotment. The Assessing Officer treated the aforesaid compensation received by the assessee as 'interest income' of the assessee exigible to the income tax. However, the plea of the assessee is that the same is a capital receipt in the hands of the assessee.

5. Both the Ld. Representatives of the parties have fairly agreed that the issue is now squarely covered by the decision dated 28.11.2011 of the Hon'ble Himachal Pradesh High Court in the case of 'CIT vs H.P. Housing Board' [2012] 18 taxmann.com 129 (HP), wherein, the Hon'ble Court has held that interest paid by the Housing Board to its allottees on amount deposited by them on account of delayed allotment of flats is not interest within the meaning of section 2(28A) of the Income Tax Act. The Hon'ble High Court while holding so observed that in the said case, the allottees had not given the money to the Board by way of deposit, nor had the Board borrowed the amount from the allottees. The interest was paid on account of damages suffered by the claimants for delay in completion of the flats and the same would not fall within the definition of interest as provided u/s 2(28A) of the Income Tax Act. Identical view has been taken by the Hon'ble Calcutta High Court in 'Principal CIT, Kolkata vs West Bengal Housing Infrastructure Development Corpn Ltd.' [2018] 96 taxman.com 610 (Calcutta) order dated 9.8.2018.

6. The facts of the present case also reveals that what has been paid by the builder is a compensation for its failure to construct and handover the possession of the flats which the assessee had booked with them. The facts and issue involved are squarely covered by the aforesaid decision of the Hon'ble Himachal Pradesh High Court in 'CIT vs H.P. Housing Board' (supra) and of Hon'ble Calcutta High Court in

‘Principal CIT, Kolkata vs West Bengal Housing Infrastructure Development Corpn Ltd.’ (supra). In view of this, the addition made by the lower authorities on this issue is hereby ordered to be deleted.

In the result, the appeal of the assessee is hereby allowed.

Order pronounced in the Open Court on 11.07.2019.

Sd/-
(एन. के. सैनी / N.K. SAINI)
उपाध्यक्ष /Vice President
Dated : 11.07.2019
“आर.के.”

Sd/-
(संजय गर्ग / SANJAY GARG)
न्यायिकसदस्य/ Judicial Member

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar