

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI**

BEFORE SH. R. K. PANDA, ACCOUNTANT MEMBER

ITA No.5160/Del/2016
Assessment Year: 2012-2013

Sunil Sharma Village-44, Bhengal Begampur Noida -201304 PAN No. AXNPS6821M (APPELLANT)	Vs.	Income Tax Officer Ward – 3 (4) Noida (RESPONDENT)
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Appellant by	None
Respondent by	Shri Saras Kumar, SR. DR

Date of hearing:	09/12/2019
Date of Pronouncement:	11/12/2019

ORDER

PER R.K PANDA, AM:

This appeal filed by the assessee is directed against the order dated 24.06.2016 of the CIT(A)-1, Noida relating to A.Y.2012-13.

2. Facts of the case, in brief, are that the assessee is an individual and filed his return of income on 21.03.2013 declaring total income of Rs.2,81,930/-. The AO completed the assessment

u/s.143 (3) on 10.03.2015 determining the total income at Rs.21,23,720/- wherein he made addition of Rs.18,41,786/- being unexplained income of the assessee. In appeal the Ld. CIT(A) in the exparte order passed by him, upheld the action of the AO. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal challenging the addition of Rs.18,41,786/-.

3. None appeared on behalf of the assessee despite service of notice. I, therefore, deem it proper to dispose of the appeal on the basis of material available on record and after hearing the Ld. DR.

4. There was a small delay in filing of this appeal before the Tribunal for which the assessee has filed a condonation application. After considering the same the delay in filing of the appeal is condoned.

5. After hearing the Ld. DR and on perusal of the record, I find the AO in the instant case made addition of Rs.18,41,786/- being interest earned on fixed deposits on the ground that there was no compliance from the side of the assessee despite sufficient opportunities granted by him. In appeal the ld. CIT(A) confirmed the action of the AO in the exparte order passed by him on the ground that there was no appearance before him and the appeal was filed before him late.

6. A perusal of the statement of facts filed by the assessee shows that the interest is on account of enhancement compensation whereas the AO in the assessment order has mentioned the same as interest on fixed deposits. A perusal of the statement of facts filed alongwith appeal set shows that the assessee has mentioned as under :-

1. That the Assessee is a Resident of Vill- Bhangel Bagumpur, Phase II Noida Paragana & Thesil- Dadri, Distt- Gautam Buddh Nagar U.P.

2. That The Assessee is an individual, deriving income from agriculture & service.

3. The land was acquired by the NOIDA Authority on 05.10.1989 for compulsory land acquisition. The date of the publication of the notification under section 4(1), on 29.04.1988. The possession was taken by Noida authority on 12.01.1989. The land was award on 05.10.1989. The Assessee went to court for enhanced compensation under suit number ALR 254/90. The case was listed on 1990 "Jagram Vs UP Government",

4. The Assessee with co owners had received enhanced compensation as per high court direction from 29.04.1989 to 20.07.2011.

5. The Assessee with co owners had received actual compensation of Rs. 27,67,152/-

6. The Assessee with co owners had received enhanced compensation in the mode of interest from 13.01.1989 to 12.01.1990 for Rs 2,49,044/- and from 13.01.1990 to 12.01.2011 for Rs 89,29,183/-

7. The Assessee with co owners had received total enhanced compensation of Rs.91,78,227/- - from 13.01.1989 to 12.01.2011.

8. The Assessee with co owners had received actual compensation + enhanced compensation of Rs. Rs 1,19,45,379/- including of TDS of Rs 10,27,961/-

9. The Assessee share was received of Rs 11,05,519/- including interest and actual compensation as confirmed by bank and Noida authority later but due to non availability of PAN of one co-owners TDS were transferred equally of

Assessee PAN account with all co owners. Which is show the TDS of Assessee received of Rs 1,84,178 and showing income of Rs 18,41,786/-.

10. *The error was rectified by Noida authority later on 12.09.2016 and given direction to the assessee for ratification for TDS abnormality with the Income tax department. In this regard a clarify letter was received from Noida Authority 12.09.2016 to the Assessee. The Assessee share was 1/10 of all received compensations of land. The actual TDS was deducted of Assessee of Rs. 92,090/-. And the actual enhanced of interest of Rs 9, 20,900/.*

11. *The lack of this clarity AO had made impugned assessment order and the same was confirmed by Honble CIT (Appeal) Noida.*

12. *Assessee received enhanced compensation on its lands being acquired by UP Government for compulsory land acquisition (Noida Authority) as also interest thereon during the previous year relevant to assessment year 2012-13.*

13. *Assessee filed its return on income for the assessment year 2012-13 in which he did not offer the amount of enhanced compensation and the interest received thereon during the previous year relevant to the assessment year for taxation, on the plea that the amount of enhanced compensation received had not accrued to the Assessee during the year of receipt as the entire amount was in dispute in appeal before the High Court for granting enhanced compensation. The amount was received by the Assessee in terms of the order of the High Court against the joint family share of Assessee's family. The interest received on enhanced compensation during the previous year was also, according to the Assessee was not clear and not chargeable to tax on the same plea.*

14. *The A.O. did not accept the contentions of the Assessee on the ground that in terms of Section 45(5) of the Income tax Act, the amount by which compensation or consideration stood enhanced or further enhanced by the Court, is deemed income chargeable under the head "Capital Gains" of the previous year in which the said amount came to be received. The A.O. accordingly brought to tax the amount of enhanced compensation of Rs. 18,41,786/- received by the assessee during the previous year relevant to the assessment year 2012-13 as unexplained income. The assessee actually share was received in the interest mode on enhanced*

compensation of Rs.9,20,900/- The assessee filed appeal against the order of the A.O. in which he reiterated the above contention.

15.That the amount of enhanced compensation not to be taxed under Section 10(37) of the Income tax act 1961 was Rs. 11,05,519/whereas the interest on enhanced compensation was Rs.9,20,900/-.

7. Thus, there is contradiction between the facts mentioned by the assessee in the statement of facts and findings given by the AO in the assessment order. Considering the totality of the facts of the case and in the interest of justice I deem it proper to restore the issue to the file of the AO with a direction to give one final opportunity to the assessee to substantiate his case. The assessee is also hereby directed to appear before the AO and substantiate its case failing which the AO is at liberty to pass appropriate order as per law. I hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

8. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 11.12.2019.

Sd/-
(R.K PANDA)
ACCOUNTANT MEMBER

Neha

Date:- 11 .12.2019

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	11.12.2019
Date on which the typed draft is placed before the dictating Member	11.12.2019
Date on which the approved draft comes to the Sr.PS/PS	11.12.2019
Date on which the fair order is placed before the Dictating Member for Pronouncement	11.12.2019
Date on which the fair order comes back to the Sr. PS/ PS	11.12.2019
Date on which the final order is uploaded on the website of ITAT	11.12.2019
Date on which the file goes to the Bench Clerk	11.12.2019
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	