

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" , SMC, BENCH: BANGALORE**

SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.221/Bang/2023
Assessment Year: 2017-18

Shri Rajaram Ganapati Bhat, Kedar Balagar, Yellapur, Uttara Kannada, Yellapur-581 359. PAN No. – ANXPB 7490 B	Vs.	The Income Tax Officer, Ward-1(1), Hubli.
APPELLANT		RESPONDENT

Assessee by	:	Shri Ravi Shankar, Advocate
Revenue by	:	Shri Ganesh R Ghale, Advocate – Standing Counsel for Revenue

Date of Hearing	:	25.09.2023
Date of Pronouncement	:	26.09.2023

O R D E R

PER LAXMI PRASAD SAHU, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order dated 06.01.2023 passed by the NAFC Delhi vide DIN No.ITBA/NFAC/S/250/2022-23/1048491033(1) for the assessment year 2017-18 on the following grounds of appeal:-

- 1) *The order of the learned Commissioner of income tax (Appeal), passed under section 250 of the Act in so far as it is against the Appellant is opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the Appellant's case.*
- 2) *The appellant denies himself liable to be assessed total income of Rs.io,43,479 against the income returned by the appellant of Rs.1,76,583/-*

2. The assessee also filed additional grounds of appeal, which is as under:-

“i) The learned CIT(A) failed appreciate that interest income on enhanced compensation for acquisition of agriculture property was to be considered as part of consideration & since sale of agricultural property being a capital receipt was exempt no income was taxable on the facts and circumstances of the case.

2) The learned CIT(A) failed appreciate that the deduction u/s 57(iv) of the Act provides 50% deduction on interest on enhanced compensation received on the facts and circumstances of the case.

3) The authorities below failed to appreciate that no adjustment u/s 154 of the Act could be made, unless the appellant was issued a show cause & the order passed is in violation of the principles of natural justice on the facts and circumstances of the case.

4) The authorities below were not justified in law and on facts in appreciating that tax could be collected only in accordance with law and no tax could be collected when the incomes were exempt, on the facts and circumstances of the case.

5) The authorities below failed to appreciate that it is settled position of law that "consent does not confer jurisdiction" on the facts and circumstances of the case.

6) Without prejudice to the right to seek waiver as per the parity of reasoning of the decision of the Hon'ble Apex Court in the case of Karanvir Singh 349 ITR 692, the Appellant denies herself liable to be charged to interest under section 234 of the Income Tax Act under the facts and circumstances of the case. The appellant contends that the levy of interest under section 234A, 234 B and 234 C of the Act is also bad in law as the period, rate, quantum and method of calculation adopted by the learned assessing officer on which interest is levied are not discernible and are wrong on the facts of the case.

7) The appellant craves leave to add, alter, amend, substitute, change and delete any of the grounds of appeal.

3. The assessee has also filed second additional ground of appeal, which is as under:-

“1. The learned Assessing officer failed to appreciate that the enhanced compensation received was to be partitioned among seven legal heirs 11 including the appellant, on the facts and circumstances of the case.

2. The learned Assessing officer was not justified in appreciating that it is settled position that "Consent does not confer jurisdiction" on the facts and circumstances of the case.

3. Without prejudice and not conceding that the enhanced compensation was in the nature of a capital receipt, the income if any

was to be restricted to 1/7th share of the gross receipt, in the hands of the appellant on the facts and circumstances of the case.

4. At the time of hearing, it was noticed that the appeal filed by the assessee was delayed by 16 days, which has been explained by the assessee in the Affidavit dated 20/05/2023 and he has also relied on the following judgments :-

1. Mahaveer Prasad Jain Vs. PCIT [2023] 153 taxmann.com 207 (Jaipur – Trib.)
2. Collector, Land Acquisition Vs. MST. Katiji and Others (198) 167 ITR 471 (SC).

5. We have heard the rival submission of both the parties and after pursuing of the materials placed before us, we are satisfied that the delay in filing the appeal was due to reasonable and sufficient cause and the delay in filing the appeal deserves to be condoned. We accordingly condone the delay in filing the appeal after relying on the judgment of Hon'ble Supreme Court in the case of Collector, Land Acquisition Vs. MST. Katiji and Others (198) 167 ITR 471.

6. The brief facts of the case are that the assessee filed return of income on 29/10/2017. Subsequently the return was processed by the CPC and income was enhanced. The assessee filed rectification application on 04/05/2019 which was dismissed by CPC on 9.7.2019 determining at Rs.10,43,479/-.

7. Aggrieved from the above rectification rejection, the assessee filed appeal before the CIT(A). During the appellate proceedings, the CIT(A) issued various notices, but except one notice dated 11/11/2022

all other notices were not responded by the assessee and accordingly the CIT(A) decided the issue on the basis of the documents available before him. During the course of appellate proceedings, the assessee filed written synopsis, which has been incorporated by the CIT(A) in his order. The CIT(A) after considering the issue regarding additional compensation awarded u/s 23(1)(a) of the Act and solatium u/s 23(2) of the Act, noted that section 28 is applicable only in respect of the excess amount which has been determined by the Court after reference u/s 18 of the 1894 Act. The CIT(A) after discussing the issue in detail & relied judgments dismissed the appeal of the assessee by observing as under:-

“6.6 DECISION: With the above discussion, it is decided that the interest income received on compensation or enhanced compensation is taxable in the year of receipt as per the provisions of S.56(2)(viii) rws 57(iv) of the Act. The interest income received on enhanced compensation cannot be spread over as per the decision of Hon'ble SC's decision which is not applicable due to the reason of change in the provisions of the Income Tax Act as discussed above. Therefore, the ground of appeal raised by the appellant is dismissed.

8. Aggrieved from the above order of the CIT(A), the assessee filed appeal before the ITAT.

9. The Id.AR reiterated the submission made before the lower authorities and he further submitted that the CIT(A) has wrongly dismissed the appeal of the assessee. The assessee has received compensation against property in which there was seven beneficiaries and in this regard he has filed vernacular letter dated 13/01/2011 and he also has filed detailed computation of interest and enhanced compensation. It is clear that the interest amount received by the assessee is Rs.9,75,662/- and TDS has been deducted at 10% thereon, The assessee has disbursed the shares to the other beneficiaries as per

their entitlements, therefore, only 1/7th portion of the total interest should be computed in the hands of the assessee as interest received on the enhanced compensation. **He has also submitted a court order in the ITAT official site.** He further submitted that the CIT(A) has not considered relevant provisions for giving 50% benefit of deduction as per sec. 56(2)(viii) r.w.s 57(iv) of the I. T. Act. Accordingly, he requested that the matter may be sent back to the AO for a fresh computation of the income. The Id.AR of the assessee also requested that the TDS credit should be given as per Form No.26AS to the assessee..

10. The Id. DR relied on the other hand relied on the order of the lower authorities. He submitted that the CIT(A) has rightly taxed in the hands of the assessee and the facts about seven beneficiaries were not brought to the notice of the CIT(A) during the appellate proceedings. The case law relied by the Id.CIT(A) is squarely applicable in the present facts of the case. The amendment made by the Finance Act in this regard is squarely applicable and the case law relied by the assessee during the appellate proceedings are before amendment, therefore the case laws are not applicable. Accordingly, he requested that the order of the CIT(A) should be upheld.

11. Considering the rival submissions, I note that the assessee filed return of income declaring income from other sources of Rs.1,76,583/- whereas the income has been determined by the CPC at Rs.10,43,479/- and in the appellate proceedings, the CIT(A) has dismissed the appeal of the assessee. During the arguments, the Id.AR of the assessee has submitted that the computation of the enhanced compensation and

interest thereon. The assessee has also filed letter in vernacular language in which as per the Id.AR of the assessee there are seven beneficiaries listed as per the Court order - LAC 16, 38, 62 of 2006 dated 12/12/2014. However, this fact was not submitted during the first appellate proceedings, therefore, this issue is remitted back to the AO for determination of the correct income in the hands of the assessee as per shares of the assessee and also as per the writ petition. Considering the provision of sec. 56(2)(h) r.w.s 57(4) of the Act, I also observe from the Form No.26AS submitted by the Id.AR of the assessee the total TDS has been deducted of Rs.97,566/-, which has been reported in the name of the assessee. In Form No.26AS by the Finance Comptroller in (KAIL), the necessary TDS credit should be given to the assessee as per law and the assessee is directed to file necessary documents and not to seek unnecessary adjournments for early disposal of the case and the AO is directed to give reasonable opportunity of being heard to the assessee and decide the case as per law.

12. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 26th September, 2023.

Sd/-
(Laxmi Prasad Sahu)
Accountant Member

Bangalore,
Dated 26th September, 2023
Vms

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.

By order

Asst. Registrar/ITAT, Bangalore