IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI

BEFORE SH. CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SH. M.BALAGANESH, ACCOUNTANT MEMBER

ITA No. 5803/DEL/2013
(Assessment Years : 2010-11)

Mr. Atul Sharma 207, Lawyers Chamber Delhi High Court, New Delhi-110 003 **PAN No. AARPS 6964 J**	Vs.	ITO Circle – 37(1) New Delhi
(APPELLANT)		**(RESPONDENT)**

Assessee by	Dr. Rakesh Gupta, Adv., Mr. Audhisthir Mehtani, Adv., Mr. Somil Aggarwal, Adv. and Shri Shrey Jain, Adv.
Revenue by	Shri Kanv Bali, Sr. D.R. and Shri Vivek Vardhan, Sr.D.R.

Date of hearing:	05.07.2024
Date of Pronouncement:	12.09.2024

ORDER

PER M. BALAGANESH, ACCOUNTANT MEMBER :

1. This appeal in ITA No.5803/Del/2013 for A.Y. 2010-11 arises out of the order by the Commissioner of Income Tax (Appeals)-XXVIII, New Delhi dated 05.08.2013 (hereinafter referred to as 'ld CIT(A)' in short) against the order of assessment passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter

referred to as 'the Act') dated 26.12.2012 by the Assessing Officer (hereinafter referred to as ld. AO).

2. The assessee has raised following grounds of appeal :-

(i). The Assessing Officer and the Ld. CIT(A) have legally erred in treating the amount of compensation received from DLF Company by the appellant as interest income instead of capital receipt.

(ii). That the Ld. CIT(A) has wrongly categorized the amount paid to DLF Company for purchase of property as investment.

(iii). The appellant craves to right to add, alter or change any of the grounds of appeal at the time of hearing."

3. We have heard the rival submissions and perused the material available on record. The assessee is an advocate by profession. The return of income for A.Y. 2010-11 was filed by the assessee on 13.10.2010 declaring total income of Rs.30,79,624/-. During the year under consideration, the assessee received an amount of Rs.24,15,137/- as compensation from DLF Commercial Complexes Ltd. on account of settlement of damages due to non delivery of property No. DTS 637 in DLF Tower, Shivagi Marg, New Delhi. These damages were calculated by DLF in the form of interest. The assessee had offered these damages received as income from other sources by treating it as interest income. Against this interest income, the assessee claimed deduction towards interest paid on bank loans. During the course of assessment proceedings, the assessee furnished the entire

details before the learned AO with regard to receipt of damages from DLF and also justifying the claim of deduction of interest paid on bank loans which were directly linked with the acquisition of property at DLF. Accordingly, a sum of Rs.19,77,913/- was claimed as deduction on account of interest payment in the return of income. The learned AO observed that assessee had availed loan from Citi Bank for the purpose of purchase of property at DLF Tower Shivagi Marg, New Delhi whereas the loan from ICICI bank was taken for property at Jaypee Greens, Noida. Accordingly, the learned AO resorted to disallow corresponding interest expenditure of Rs.8,84,207/- as not allowable under section 57(iii) of the Act. While doing so, the learned AO *suo moto* granted deduction of Rs.3,67,001/- to the assessee and proceeded to disallow the remaining sum of Rs.5,17,206/- and completed the assessment.

4. During the course of appellate proceedings, the assessee made a claim that compensation received from DLF for non delivery of property in time was to be construed as capital receipt and that the same has been erroneously offered to tax by him in the return of income. It was pleaded that the said amount was paid on account of damages suffered by the assessee due to non handing over of the property. Further, it was also brought to the notice of the learned CIT(A) that DLF Commercial Complexes Ltd. could not obtain the necessary approval and the construction of the property could not commence even after lapse of more than 2

years from the date of booking of the property. Accordingly, the assessee lost confidence in DLF Commercial Complexes Ltd. and proceeded to seek compensation reckoned in the form of interest as per the terms and conditions agreed upon with DLF Commercial Complexes Ltd. The assessee also placed on record the copy of agreement entered into with DLF on 29.10.2007 wherein the compensation in the form of interest was agreed to be paid by DLF to the assessee in case of default from the side of DLF to handover the property in time. However, vide clause 16 of the said agreement, it was stated that the interest metre would start only if the property was not handed over to the assessee within 3 years from the date of agreement. But, since in the present case, the assessee had resorted to seek compensation within 2 years from the date of agreement, learned CIT(A) held that this sum of compensation received was not on account of damages for non delivery of the property and that the same was merely interest income chargeable to tax in the hands of the assessee. Hence, the learned CIT(A) held that amount received in the sum of Rs.24,15,137/- was not to be treated as compensation in the hands of the assessee and the same needs to be treated as interest income in the hands of the assessee. Apart from this, the learned CIT(A) also proceeded to uphold the disallowance of interest expenditure Rs.5,17,206/- made by the learned AO in the assessment. Aggrieved, the assessee is in appeal before us.

5. The short issue that arises for our consideration is whether the compensation received by the assessee from DLF for non delivery of property in time could be construed as capital receipt not chargeable to income-tax or not ? Vide Clause 16 of the Agreement dated 29.10.2007, the assessee would be entitled for compensation if delivery of the property is not handed over to the assessee within 3 years from that date. It is pertinent to note that the determination of compensation would be in the form of interest calculated @ 13% per annum. Accordingly, the assessee has received interest till 31.01.2010 calculated @ 13% per annum amounting to Rs.24,15,137/- from DLF Commercial Complexes Ltd. This sum was treated as capital receipt by the assessee before the learned CIT(A) even though the same was offered as income from other sources in the return of income. It is trite law that there is no estoppel against the statute. If a particular receipt is not chargeable to tax as per the provisions of the Act, the assessee would be entitled to make a fresh claim before the appellate authorities claiming exemption from the taxability of a particular receipt even though he has offered to tax in the return of income. Now what is to be seen is whether the compensation receipt is chargeable to tax or not in the hands of the assessee. This issue is no longer *res integra* in view of the decision of Hon'ble Himachal Pradesh High Court which are heavily relied upon by the learned AR in the case of H.P. Housing Board reported in (2012) 340 ITR 388 (HP) wherein the question that was raised before the Hon'ble High Court is as under:-

"1. Whether on the facts and in the circumstances of the case the Hon'ble Tribunal was right in law that the interest paid/credited by the Housing Board on the amount deposited by the allottees on account of delayed allotment of flats does not fall under the definition of interest as assigned to it in sub-s. (28A) of s. 2 of the IT Act, 1961?

2. Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal was right in holding that the interest paid or credited by the Housing Board to its allottees (payees) was of capital nature and thus not subject to A deduction of tax at source when as per law it is the recipient (payee) who can decide if a particular receipt (interest in this case) is of revenue or capital in nature.")

6. The aforesaid questions were answered by the Hon'ble Himachal Pradesh High Court by observing as under :-

"2. Briefly stated the facts are that the assessee-Housing Board had floated a self-financing scheme for sale of houses/flats wherein the allottees were required to deposit some amount with the petitioner and construction was to be carried out out of these amounts. One of the conditions of the terms of allotment was that in case the possession of the house/flat is not given to the allottee within a particular time frame then the assessee-Board was liable to pay Interest to the allottees on the money received by it. It appears that there was delay in construction of the houses and thereafter the Housing Board paid interest at the agreed rate to the allottees in terms of the letter of allotment. The ITO (TDS) carried out a survey and found that the assessee had not deducted tax at source and he held that the amount paid by the assessee to the allottees was in the nature of Interest within the meaning of s. 2(28A) of the IT Act and in terms of s. 194A of the IT Act, tax had to be deducted at source. He decided the case accordingly.

3. The assessee filed an appeal and the CIT held that the amount paid by the Board was not really interest within the meaning of s. 2(28A) but actually compensation for the delay in construction of the house and handing over possession of the

same to the allottees. It came to the conclusion that the interest was merely a convenient method to calculate the amount of compensation in order to standardize it. The Revenue filed an appeal against the said judgement, which was dismissed. Hence, this appeal.

4. To appreciate the rival contention of the parties, it would be appropriate to refer to the relevant portion of ss. 2(28A) and 194A of the IT Act, which read as follows:

> *"Sec. 2(28A).-Interest means Interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) and includes any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilized.*
>
> *Sec. 194A.-(1) Any person not being an individual or an HUF, who is responsible for paying to a resident any income by way of interest other than income (by way of interest on securities) shall, at the time of credit of such Income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct Income-tax thereon at the rates in force."*

5. Ms. Vandana Kuthiala, learned counsel for the Revenue, has placed reliance on the judgement of the Madras High Court in Viswapriya Financial Services & Securities Ltd. vs. CIT (2003) 179 CTR (Mad) 334 (2002) 258 ITR 496 (Mad), wherein the Madras High Court held as follows:

> *"The definition of Interest, after referring to the interest payable in any manner In respect of any moneys borrowed or debt incurred proceeds to include in the terms money borrowed or debt incurred, deposits, claims and "other similar right or obligation" and further Includes any service fee or other charge in respect of the moneys borrowed or debt incurred which would include deposit, clalm or other similar right or obligation, as also in respect of any credit facility which has not been utilized. This statutory definition*

regards amounts which may not otherwise be regarded as interest as interest for the purpose of the statute. Even amounts payable in transactions where money has not been borrowed and debt has not been incurred are brought within the scope of the definition as in the case of a service fee paid in respect of a credit facility which has not been utilized. Even in cases where there is no relationship of debtor and creditor or borrower and lender, if payment is made in any manner in respect of any moneys received as deposits or on money claims or rights or obligations incurred in relation to money, such payment is, by this statutory definition, regarded as interest."

6. Ms. Kuthlala, relying upon the aforesaid observation submits that the allottees had deposited some amount with the Board and now when interest was being paid on this amount the same was interest within the meaning of s. 2 (28A) and in terms of s. 194A of the Act tax at source had to be deducted by the Board.

7. In our view this judgement is not applicable to the facts of the present case. In the case before the High Court the assessee was a company engaged in retail finance services. It had assured the investors that if they invest money with the assessee company they would be refunded guaranteed repayment of amount Invested within 36 months at a minimum return of 1.5 percent. The return could be more than 1.5 percent but the company had promised that under no circumstance the return would be less than the guaranteed return of 1.5 percent. It was in this context that the Madras High Court held that what was paid by the company was interest and nothing else. There can be no dispute with the law laid down by the Madras High Court but the question which arises in the present case is whether the amount paid by the assessee is by way of interest or otherwise.

8. In the case in hand it stands proved that in case the houses were ready within the stipulated period the Board would not be liable to pay Interest. When construction of a house is delayed there can be escalation in the cost of construction. The allottee loses the right to use the house and is deprived of the rental income from such house. He is also deprived of the right of living in his own house. In these circumstances the amount which is paid

by the Board is not payment of interest but in our view is payment of damages to compensate the allottee for the delay in the construction of his house/flat and the harassment caused to him. It may be true that this compensation has been calculated in terms of interest but this is because the parties by mutual agreement agreed to find out a suitable and convenient system of calculating the damages which would be uniform across the Board for all the allottees.

9. While taking this view we are relying upon the judgement of the apex Court in Bikram Singh & Ors. vs. Land Acquisition Collector & Ors. (1997) 139 CTR (SC) 475 (1997) 224 ITR 551 (SC). In the case before the apex Court the question was whether the interest paid to the persons whose land had been compulsorily acquired under ss. 28 and 31 of the Land Acquisition Act was a revenue receipt or a capital receipt. The apex Court held that though it was termed as interest on delayed payment, it was actually a revenue receipt and therefore the provisions of s. 194A of the IT Act would have no application. It would be pertinent to mention that the National Consumer Dispute Redressal Commission in Revision Petn. No. 2244 of 1999 titled as Ghaziabad Development Authority vs. Dr. N.K. Gupta under similar situation held that when the State Commission directed payment of interest to the allottees for delayed completion of flats the same did not fall within the purview of s. 194A of the IT Act.

10. In the present 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 amount was paid under a self-financing scheme for construction of the flat and the interest was paid on account of damages suffered by the claimant for delay in completion of the flats.

11. In view of the above discussion, we answer both the questions in favour of the assessee and against the Revenue. The appeal is accordingly dismissed with no order as to costs."

7. Further, we find that assessee had made payments as per the time schedule given by DLF as under:-

Date	**Cheque Nos.**	**Amounts**
03.10.2007	159496	Rs.16,63,650/-
29.11.2007	249207	Rs.11,09,100/-
30.01.2008	249252	Rs.11,09,100/-
03.04.2008	320126	Rs.11,09,100/-
Loan from Citi Bank		Rs.56,98,840/-
Total		**Rs.1,06,89,790/-**

8. The assessee was given alternative site in DLF, Okhla Project, wherein the compensation received in the sum of Rs.24,15,137/- together with amounts already paid by the assessee as detailed (supra) were sought to be adjusted with the payments due for the new flats. It is not in dispute that DLF Commercial Complexes Ltd. could not obtain the necessary approval and accordingly, the construction of the property could not commence even after lapse of more than 2 years from the date of booking of the property by the assessee. Accordingly, the assessee having lost confidence in the behaviour of the DLF Commercial Complexes Ltd., resorted to invoke Clause - 16 of the Agreement dated 29.10.2007 and seek compensation thereon which was determined in the form of interest. It is to be understood that though the compensation was calculated by considering interest @ 13% per annum from the date of respective payments till 31.01.2010, what is to be seen is interest is only a parameter that has been used for determining the amount of

compensation to be paid to the assessee. The same at any stretch of imagination cannot be construed as interest earned by the assessee. It is pertinent to note that assessee had not advanced any loans to DLF Commercial Complexes Ltd. The assessee had merely booked a property and started making payments as per the time schedule given by the DLF. Hence, the amounts paid by the assessee towards advance for purchase of property cannot be construed as loan granted by assessee to DLF warranting payment of any interest thereon. There was no borrowing made by DLF from the assessee. Hence, there is no debt owed or incurred by DLF to the assessee. No deposit has been made by the assessee with DLF warranting receipt of interest. Hence, it falls outside the scope of definition of interest under section 2(28A) of the Income-tax Act.

9. In view of the above, the ratio laid down by the Hon'ble Himachal Pradesh High Court in the decision referred (supra) would squarely apply to the case of the assessee herein. Further, we find that the Hon'ble Calcutta High Court in the case of Principal Commissioner of Income Tax Vs. M/s. West Bengal Housing Infrastructure development Corporation Limited reported in 413 ITR 82 also had an occasion to look into the similar issue from the context of applicability of TDS provision on compensation paid by builder to the flat allottees for delayed delivery of the flats in terms of section 194A of the Act. In this case also, the compensation was determined on the basis of

interest. Hence, the Revenue sought to apply the provision of section 194A of the Act in the hands of the builder and sought TDS thereon considering the compensation payment as interest paid by the builder to the allottees. The Hon'ble Calcutta High Court by applying the provisions of section 2(28A) of the Income-tax Act and the decision of Hon'ble Himachal Pradesh High Court referred (supra) held that the compensation paid to the builder to the flat allottee cannot be construed as interest at all and hence, there is no question of deduction of tax at source in terms of section 194A of the Act thereon. This decision of Hon'ble Calcutta High Court was further subjected to challenge by the Revenue before the Hon'ble Supreme Court and the Special Leave Petition (SLP) of the Revenue was dismissed by the Hon'ble Supreme Court which is reported in 263 Taxman 237. Similar view was taken by the Co-ordinate Bench of this Tribunal in the case of Delhi Development Authority vs. ITO reported in 53 ITD 19; decision of Hon'ble Kerala High Court in the case of Beacon Projects Pvt. Ltd. vs. CIT reported in 377 ITR 237 and Co-ordinate Bench of Delhi Tribunal in the case of Sawhney Builders Pvt. Ltd. vs. ACIT (TDS) reported in 201 ITD 259.

10. In view of the above observations and respectfully following the various judicial precedents relied upon hereinabove, we hold that the compensation received by the assessee from DLF for delayed handing over of the property in the sum of Rs.24,15,137/- is not chargeable to tax in the hands of the

assessee. Accordingly, the grounds raised by the assessee are allowed.

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

Order pronounced in the open court on 12.09.2024

Sd/-	**Sd/-**
(CHALLA NAGENDRA PRASAD)	**(M. BALAGANESH)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Date:- 12.09.2024

*Priti Yadav, Sr. PS**

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

ASSISTANT REGISTRAR
ITAT NEW DELHI