

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri Waseem Ahmed, Accountant Member and
Shri Soundararajan K., Judicial Member

ITA No. 59/Coch/2024
(Assessment Year: 2011-12)

Clint Martel Wilfred Clint Dale, Moolankuzhy Nazreth, Ernakulam 682002 [PAN: ABNPW6970H]	vs.	DCIT (Interational Taxation) Kochi
(Appellant)		(Respondent)

Appellant by:	Shri Sudhakar, Advocate
Respondent by:	Smt. Girly Albert, Sr. D.R.

Date of Hearing:	01.10.2024
Date of Pronouncement:	03.10.2024

ORDER

Per Bench

This appeal filed by the assessee is directed against the order of the National Faceless Appeal Centre, Delhi [CIT(A)] dated 30.11.2023 for Assessment Year (AY) 2011-12.

2. The only interconnected issue raised by the assessee is that the learned CIT(A) erred in confirming the addition made by the AO on account of enhanced compensation and interest thereon received against land acquisition in the name his deceased father.

3. The facts in brief are that the assessee is an individual and did not file any return of income under section 139 of the Act for the year under consideration. The AO noticed that there were cash deposits in the bank of the assessee. Accordingly, the AO issued notice under section 148 of the Act and

thus the assessment proceedings under section 147 of the Act was initiated. During the assessment proceeding, the assessee was asked to explain the sources of cash deposit of Rs. 1,02,00,000/- as on 21st October 2010 in his bank account.

4. It was explained that there was award passed by the court dated 6th December 2006 in favor of his father late Shri Thomas Wilfred for enhanced compensation and interest thereon in proceeding under Land Acquisition Act. In consequence to such award, the impugned amount was remitted representing the enhanced compensation as on 21st May 2008 for an amount of Rs. 1,18,69,043/- (including interest of Rs. 27,82,250) and deducted TDS of Rs. 13,44,836/- only. However, his father expired/died in the same month i.e. May 2008, therefore the amount was not claimed. The assessee along other legal heirs made claimed for the compensation and accordingly an amount of Rs. 1,05,24,207/- after adjusting the amount of TDS was received as on 28-09-2010 in cash from the office of tehsildar. The same cash after reducing legal expenses was deposited in his bank as on 21st October 2010 for distribution among the legal heirs.

5. The AO based on above found that the enhanced compensation received for Rs. 1,18,69,043/- is taxable income and liable to be taxed in the year in which it was received. The AO further found that the original compensation received/receivable by the assessee's father in earlier was taxed in the hand of the assessee as legal heirs. Therefore, the enhanced compensation received for the same was also liable to be taxed in the hand of assessee as legal heir in the year under consideration. Thus, the AO made addition of Rs. 1,18,69,043/- to the total income of the assessee.

6. The aggrieved assessee preferred an appeal before the ld. CIT(A). The assessee before the learned CIT(A) contended that the amount was received in consequence of the award dated 6th December 2006. The amount of award was computed till the date of January 2008 which was remitted by the office of special tehsildar on 21st May 2008 and TDS on the same was also deducted in the same year. Therefore, the income accrued and arose in the hands of his father in the F.Y. 2008-09 which cannot be taxed in his hand in the year under consideration i.e. F.Y. 2010-11 relevant to A.Y. 2011-12 in which only the amount was distributed among the legal heirs. The assessee alternatively submitted that the credit of TDS should be provided.

7. The learned CIT(A) after considering the finding of the AO, submission of the assessee confirmed the addition made by observing as under:

“5.2 The issue that arises for consideration in the present case is the date of receipt of the compensation. From the appellant's statement of facts which has been reiterated in the additional grounds of appeal filed by him, the award of compensation had been remitted by the Special Tahsildar to the Court in the financial year 2008, after quantification of the amount of compensation and interest thereon. The TDS due on the compensation was deducted and remitted by the Special Tahsildar on 21.05.2008. However, the father of the appellant, to whom the compensation was due, passed away in the same month and the compensation could be claimed only after filing details of the legal heirs. The amount of compensation was disbursed to the legal heirs including the appellant in September, 2010. The appellant has claimed that the compensation having been remitted by the Special Tahsildar to the Court in the year 2008 had become taxable in the hands of his late father in that year. He has further submitted that the amount was deemed to have been received by his father in the F.Y. 2007-08. This claim of the appellant is not acceptable since the facts of the case point to the fact that the appellant's father had not received the compensation having passed away in the month of May, 2008 when the compensation was remitted. Therefore, it cannot be said that the compensation was first received by the appellant's father during his lifetime. Given the specific facts of the case, the date of first receipt has to be reckoned as the date on which the compensation was received by the legal heirs, i.e. F.Y. 2010-11. The principle that the compensation becomes taxable in the year it was first received has been laid down by the Hon'ble Supreme Court in the case of CIT Faridabad vs Chet Ram (HUF) [2017] 86 taxmann.com 103.

Going by the aforesaid principle, the enhanced compensation becomes taxable in the F.Y. 2010-11 in the present case. If the appellant's argument is accepted, then the enhanced compensation would not have suffered taxation either when it was due to the appellant's father or when it was actually received by the appellant, which is against the provisions of the Act. The AO has also pointed out that the original compensation was assessed in the hands of the appellant, being the legal heir given authority by others. However, the appellant did not return the additional compensation received on acquisition of land. As per the provisions of Section 159, reproduced below, the appellant being the legal heir was responsible for the payment of taxes on the additional compensation received.

159.(1) Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased.

(2) For the purpose of making an assessment (including an assessment, reassessment or recomputation under Section 147) of the income of the deceased and for the purpose of levying any sum in the hands of the legal representative in accordance with the provisions of sub-section(1),-

(a) any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representative and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased,

(b) any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal representative; and

(c) all the provisions of this Act shall apply accordingly.

(3) The legal representative of the deceased shall, for the purposes of this Act, be deemed to be an assessee.

5.3 The appellant, has, in Ground of appeal no. 4, raised a grievance that he was not given credit for the TDS deducted on the additional compensation. On the one hand, the appellant is claiming that the compensation could not be taxed in his hands and on the other, he is claiming the credit of the TDS on the compensation. During the hearing held on 02.06.2022 the Authorized Representative had been asked by the then CIT(Appeals) to file a detailed affidavit explaining the facts of the case and admitting income in the hands of the appellant, subject to the TDS credit being given. Thereafter, the case was posted for hearings on 03.11.2022, 27.02.2023, 07.09.2023 and again 10.11.2023. The appellant was specifically requested to file the affidavit as above. However, no response has been received from the appellant, despite adequate opportunities being given. In the light of the above facts as well as the legal position discussed above, the addition of the long-term capital gains made in the impugned order is sustained. The grounds of appeal are therefore dismissed.”

8. Being aggrieved by the order of the learned CIT(A), the assessee in appeal before us.

9. The learned AR before us contended that the impugned amount cannot be taxed in the hands of the assessee in the entirety. As such, the legal heirs are liable to pay the tax on the income of the deceased collectively in the manner provided under the provisions of section 159 of the Act.

10. On the other hand, the Ld. DR submitted that the matter needs to be re-examined at the level of the AO so as to bring the legal heirs on record for the purpose of determining the income in their respective hands.

11. The ld. AR in the rejoinder did not raise any objection if the matter is set aside to the file of the AO for fresh adjudication as per the provisions of law.

12. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the original compensation was made subject to tax in the hands of the present assessee which is evident from the finding of the AO. Accordingly, the AO has added the entire amount of enhanced compensation in the hands of the assessee only. It is a fact on record that in the present case the assessee is no more and therefore the tax liability on the income of the deceased assessee has to be collected in the manner provided under the provisions of section 159 of the Act. However, we note that the authorities below have nowhere made the reference to the provisions of the section 159 of the Act. Accordingly, we are inclined to restore the issue to the file of the AO for fresh adjudication to determine the recovery of the tax from the legal heirs as per the provisions of law.

13. Before parting, it imperative to note that there is no whisper whether any proceedings are initiated in the hands of the other legal heirs for the

recovery of the tax except the assessee. In this regard, we are inclined to make it clear that our finding should not be interpreted so as to initiate the proceedings against the other legal heirs. As such, the income tax Department is at liberty to initiate the proceedings against the other legal heirs as per the provisions of law. Hence, the ground of appeal of the assessee is hereby allowed for statistical purposes.

14. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on 03rd October, 2024 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-
(Soundararajan K.)
Judicial Member

Sd/-
(Waseem Ahmed)
Accountant Member

Cochin, Dated: 03rd October, 2024

n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar
ITAT, Cochin