

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

**BEFORE SH.SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SH. SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No.6055/Del/2018
Assessment Year: 2014-15

Atul Sharma 207, Lawyers Chamber, Delhi High Court New Delhi-110003 PAN No.AARPS6964J	Vs.	ACIT Circle – 61 (1) New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Yudhisthir Mehtani, CA
Respondent by	Sh. N.K. Bansal, Sr. DR

Date of hearing:	10/10/2024
Date of Pronouncement:	13/11/2024

ORDER

PER SUDHIR KUMAR, JM:

This appeal by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-20, New Delhi [hereinafter referred to as "CIT(A)"] vide order dated 31.07.2018 pertaining to A.Y. 2014-15 pertaining to arises out of the assessment order dated 22.12.2016 under section 143(3) of the Income Tax Act 1961 [hereinafter referred to as 'the Act'].

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

1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not deleting the entire addition of Rs.59,47,942/- made by Ld. AO under the head "Income from other sources" relating to interest received from M/s Jai Prakash Associates Ltd, as compensation and further erred in sustaining the same to the extent of Rs.35,22,516/- (Rs,59,47,942 Rs.24,25,426) (Lc. after allowing the interest expenditure) and that too by recording incorrect facts and findings & without observing the principles of natural justice.

2. This in any case and in any view of the matter, action of the Ld CIT(A) is not deleting the entire addition of Rs.59,47,942/- made by Ld. AO under the head "Income from other sources", is bad in law and against the facts and circumstances of the case,

3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld A.O. in charging interest u/s 234B and 234C of the Income Tax Act.

4. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.

2. The brief facts of the case are that the assessee is an advocate by profession, in addition to carrying on business in his own name the assessee is also partner in M/s. Link Legal, carrying on the profession of advocate & solicitors. The return of income for A.Y. 2014-15 was filed by the assessee on 30.11.2024 declaring income at Rs 6501934/-. The case of assessee was selected for scrutiny under Limited Scrutiny under CASS on the following reasons:-

1. Gross interest shown in schedule Os of ITR is less than interest receipts reported in 26AS

2. Mismatch between income /receipt credited to Profit & Loss account considered under other heads of income and income from heads of income other.

3. A notice was issued u/s 143(2) of the Act was issued on 31-08-2015 and again notice u/s 142(1) of the Act along with questionnaire was issued to the assessee. The authorized representative of the assessee has attended the assessment proceedings. According to AO the assessee has not shown the interest income of Rs 59,47,942/- received from Jai Prakash Associates Ltd. The assessing officer has made the total additions of Rs.5995462/- as undisclosed interest Rs.59,47,942/-and undisclosed receipt of interest income from DLF utilities Ltd Rs.47520/-. Aggrieved the order of the

assessing officer the assessee has filed the appeal before the Ld.CIT(A) who vide his order dated 31-07-2018 partly allowed the appeal and directed the AO to re-compute the "Income From Other Sources" after deducting the amount of Rs 24,25,426/- u/s 57(iii) of the Act, against which the assessee is in appeal before us.

4. The ld AR has submitted that the Jaypee Greens Greater Noida has allotted the unit to the assessee, which was to be handed over within 39 months, but the company could not hand over the possession. The company has paid the amount of Rs 5947940/- by way of damages to compensate the assessee for non-handing over the property with in time. He has further submitted that it is covered matter by the decision of Hon'ble Delhi Tribunal in the assessee own case ITA No 5803/Del/2013 Shri Atul Sharma vs ITO in which the Hon'ble Tribunal held that the interest received in form of compensation as capital receipt.

5. The Ld DR has supported the order of the lower authorities. He has submitted that the terms and conditions of the allotment were different and the assessee has not filed the terms and conditions of the allotment, so the case is not covered from the assessee's own case.

6. We have heard the parties and perused the material available on record.

7. The Ld CIT(A) has observed in his order as under;-

6.5 The plea of the appellant that the interest of Rs. 24,25,426/- paid on housing loan has a direct nexus with earning of this interest amount received from Jaiprakash Associates Ltd. of Rs. 59,47,982/- and allowable u/s 57(iii) of the Act has been considered on the basis of the documents produced by the appellant regarding the repayment of interest to ICICI Bank on housing loan for the investment made in this property. The details of this are as under: -

<i>S.No.</i>	<i>Period</i>	<i>Amount (Rs.)</i>
<i>1</i>	<i>01/04/2007 to 31/03/2008</i>	<i>1,66,048/-</i>
<i>2</i>	<i>01/04/2008 to 31/03/2009</i>	<i>7,05,400/-</i>
<i>3</i>	<i>01/04/2009 to 31/03/2010</i>	<i>6,44,707/-</i>
<i>4</i>	<i>01/04/2010 to 31/03/2011</i>	<i>6,32,813/-</i>

5	01/04/2011 31/03/2012	to	2,76,458/-
	Total		24,25,426/-

6.6 In this light, the plea of the appellant has been considered in the light of the provisions of section 57 (ill) of the Act which is reproduced as under: -

"57. The income chargeable under the head "Income from other sources" shall be computed after making the following deductions, namely

(iii) any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income;"

In the light of the above, as the interest paid to ICICI Bank has a direct nexus with earning of this Interest income, the Assessing Officer is directed to recompute the 'Income From Other Sources after deducting the amount of Rs.24,25,426/- u/s 57(iii) of the Act and the appellant will get relief accordingly.

6.7 The Assessing officer has also made the addition of Rs. 47,520/- on account of interest income from DLF

Utilities Ltd. During the course of appellate proceedings, the appellant has taken a plea that this amount has been shown as income in any subsequent year on the basis of receipt as the appellant was maintaining cash system of accounting. The appellant was asked to produce the evidence in this regard that interest of Rs. 47,520/- was shown as income in any subsequent year and why the TDS amount was not shown during the year under consideration as appearing in 26AS. In response, the appellant could not give any details or evidence that this interest income was offered for taxation in any other year. As the corresponding TDS has been claimed in this year, this amount is rightly taxed by the Assessing Officer in the year under consideration in the light of the provisions of Section 198 r.w.s. 199 of the Act and this ground of the appeal deserves to be dismissed and the addition made by the Assessing Officer of Rs.47,520/- is confirmed.

8. The short issue that arises for our consideration is whether the compensation received by the assessee from Jaypee Greens Greater Noida for non-delivery of property in time could be construed as capital receipt not chargeable to income-tax or not. Accordingly, the assessee has received interest till 01-07-2014 calculated @ 12%per annum amounting to Rs 5947980/- from Jaypee Green Greater Noida. This sum was treated as capital receipt by the assessee. The issue is that the

compensation receipt is chargeable to tax or not in the hands of the assessee has been decided by the Hon'ble Himachal Pradesh High Court and relied upon decision of assessee's own appeal in ITA No.5803/Del/2013 was allowed by the Hon'ble ITAT. The Hon'ble High Court held 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.

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(281) and 1948 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, claim or other similar right or obligation, as also in respect of any credit facility which has not been utilized. This statutory definition egards 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 tenent of interest but this is because the parties by mutual agreeing 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 only 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,"

9. The plea of the assessee is that he has made repayment of interest of Rs 2425426/- on housing loan to the ICICI Bank. It is not disputed that the Jaypee Greens Greater Noida has not handed over the unit to the assessee within 39 months and the assessee has applied for cancellation of the allotment and the allotment was cancelled by the builders and the compensation was calculated by considering interest @12% per annum. The assessee has received the capital receipt of Rs 5947980/- from the Jaypee Greens Greater Noida. Perusal of the order of the Ld CIT(A) it reveals that the assessee has made the repayment of interest to ICICI Bank on housing loan for investment of property. In the ITA No. 5803/Del/2013 the coordinate bench has held that as under :-

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“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 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 the view of the above observation and respectfully following the various judicial precedents relied upon hereinabove, we hold that the compensation received by the assessee from Jaypee Greens Greater Noida for cancelling the allotment of unit due to not handed over within time in the sum of Rs 5947980/-is not chargeable to tax in the hands of the assessee. The appeal of the assessee is liable to be allowed.

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

Order pronounced in the open court on 13.11.2024.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

NEHA, Sr. PS
Date:-.11.2024

Sd/-
(SUDHIR KUMAR)
JUDICIAL MEMBER