

ito Vs. Amar Lal

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Nov-30-2006

Judge : P Parashar, N Saini

Appellant : ito

Respondent : Amar Lal

Judgement :

1. This is an appeal filed by the revenue and a cross objection filed by the assessee against the order of the Commissioner (Appeals) dated 3-9-2001. Ground Nos. 1 & 2 of the appeal relate to the order of the Commissioner (Appeals) holding that enhanced compensation against which security has been offered, and on which interest was received, was not liable to tax in the year under appeal.

2. The Id. D.R. at the time of the hearing submitted that the issue stands covered by the Delhi Special Bench of the Tribunal in the case of Dy. CIT v. Padam Prakash (HUF) (2006) 10 SOT 1, where it has been held that enhanced compensation is to be taxed on receipt basis and it would not make any difference whether compensation is received as per interim order or on certain conditions or without any condition. It has further held that where the assessee's land was acquired under the provision of Land Acquisition Act, 1894 and enhanced compensation was granted to the assessee by the Appellate Court, enhanced compensation was to be taxed in the year of receipt notwithstanding that the order under which compensation of interest was received was challenged before the higher courts and litigation was pending. He submitted that as regards interest

income on enhanced compensation, it has been held that it is to be assessed on accrual basis from year to year. However, the question of assessment on such accrual basis would not arise unless it is finally determined. In case of dispute relating to interest payable on enhanced compensation is pending before a court of law and not attained finality, the same will not accrue and not liable to tax. Only after it is finally determined, the same can be subjected to tax in the light of decision of the Hon'ble Supreme Court in CIT v. Hindustan Housing & Land Development Trust Ltd. . Hence it was the submission that following the said decision, the ground No. 2 of the appeal of the revenue which relates to enhanced compensation should be allowed and ground No. 1 of the appeal of the revenue which relates to interest on enhanced compensation should be dismissed.

3. The Id. Counsel for the assessee during the course of hearing argued and submitted that before the Special Bench in Padam Prakash (HUF)'s case (supra) decision of the Hon'ble Madras High Court in CWT v. T.Girijammal was cited, which was on the issue of enhanced compensation and interest and has specifically considered Section 45(5)(c) and held that the additional compensation and interest thereon was not taxable till it attained finality from the decision of the higher court. He submitted that the Tribunal at page 27 of the order in Dy. CIT v. Padam Prakash (HUF) (2006) 10 SOT 1 (Delhi) (SB) has only recorded as under: When the additional compensation awarded by the civil court has not been accepted by the State and it has preferred an appeal objecting to the enhancement, the additional compensation received cannot be treated as part of the compensation received for the transfer of the land until it is finally determined by the higher judicial forums.

The Tribunal has not taken into consideration the said decision of the Hon'ble High Court, which is higher in hierarchy while deciding the issue.

He placed reliance on the decision of the jurisdictional High Court in CIT v. Abhishek Industries Ltd. and submitted that it has been held that: The Tribunal must examine the material on record before rendering a decision on any issue raised by the parties. The Tribunal being the last fact finding authority, a higher responsibility is cast by the Legislature on it to decide the cases by recording

complete facts and assigning cogent reasons. It is the duty of the Tribunal to decide the cases on the basis of the law laid down by the Supreme Court/High court and not what the Tribunal decides on the particular issue. Every effort must be made by the Tribunal to decide the issue by taking help from the decisions of the Supreme Court and if there is no direct authority of the Supreme Court on the point then of the jurisdictional High Court and lastly of any other High Court. Not taking note of the facts of the case nor the legal position and not even referring to the facts of the case involved in those decisions on which reliance is placed for deciding the appeal amounts to non-exercise of appellate powers by the Tribunal.

Hence, he submitted that following the decision laid down by the Punjab and Haryana High Court in the case of *Abhishek Industries Ltd.* {supra} and the decision of the Madras High Court in the case of *Smt. T.Girijammal* (supra), the appeal of the revenue should be dismissed on these grounds of appeal.

4. We have heard the rival submissions and deliberated upon the decision cited at the bar and perused the orders of the lower authorities and the materials available on record. We find that the issue stands decided by the decision of the Special Bench of the Tribunal in the case of *Padam Prakash (HUF)* (supra), wherein it has been held: 25. It is no doubt true that Legislature while inserting Sub-section (5) in Section 45 through the Finance Act, 1987 with effect from 1-4-1988, did not provide for cases where enhanced or further enhanced compensation was subsequently reduced by any Court, Tribunal or other authority. Such situation has been taken care of by insertion of Clause (c) to subsection (5). The said clause no doubt was inserted by Finance Act, 2003 with effect from 1-4-2004, but it has to be taken to be declaratory in character. In a given case where enhanced compensation is assessed on receipt basis, and amount of compensation is subsequently reduced, then revenue will have to rectify and take reduced amount in place of amount originally taken in the assessment. Thus the Legislature has dealt with a situation of compensation getting reduced in appeal or other proceedings. How to ignore above provision and the purpose for which such provision was made by the Legislature Mischief rule of interpretation is clearly applicable here. Therefore, with utmost respect we are unable to follow the cases cited on behalf of the assesseees.

26. Even specific provision like Sub-section (7A) of Section 156 supported above inference. Therefore, we are of the view that Clause (c) of Sub-section (5) was declaratory and would come into force with effect from 1-4-1988 the date on which Sub-section (5) was inserted in the Statute.

27. Clause (c) to Sub-section (5) was inserted by Finance Act, 2003 but it has to be held to be retrospective in operation and taken to be introduced with effect from 1-4-1988. The picture without insertion of above Clause (c) was incomplete as the section did not deal with a situation where enhanced compensation is reduced in further appeal by Courts or Tribunal. The provision was made to obviate the hardship and unintended consequences of Sub-section (5) of Section 45. The clause was inserted to make entire scheme workable and to supply an obvious omission in the provision. The situation envisaged as per Clause (c) above was required to be given reasonable construction to accomplish purpose and object of the enactment. Principle of reasonable construction by treating a provision as retrospective, on the ground that such construction would make the whole enactment workable, was applied by their Lordships of the Supreme Court in the case of Allied Motors (P.) Ltd. v. CIT (1977) 224 ITR 677. The aforesaid principle is fully applicable to the interpretation of Clause (c) and we accordingly hold that it is retrospective in operation.

28. Having held that as per Sub-section (5) of Section 45 of the Income-tax Act, enhanced or further enhanced compensation is to be taxed on receipt basis as per scheme of Sub-section (5) of Section 45, we are of the view that it does not make any difference whether compensation is received as per interim order or on certain conditions or without any condition. This simple answer follows from obvious and plain language. What is required to be considered is that compensation had been paid and received. If for any reason, it is subsequently reduced then assessment is required to be modified to take reduced compensation of income. Thus, statutory provision leave no scope for not taxing compensation on receipt basis under any situation. There is no way to read in clear language of statute that receipt, if conditional or allowed as per interim order of High Court is no receipt of compensation and would not be taxed in the year of the receipt. If the arguments of counsel for the assessee and Interveners are adopted, it would tantamount to

adopting a narrow and pedantic construction and reduce legislation to futility.

Therefore, we do not find any substance in the arguments advanced on behalf of the assessee and the interveners.

29. There is no doubt that in the case of Hindustan Housing & Land Development Trust Ltd. {supra}, it was laid down by their Lordship of Supreme court that there is no accrual of income unless right to receive compensation is finally determined. Such a view had been taken by several High Courts and by several Benches of the Tribunal, following aforesaid decision of Hon'ble Supreme Court. The case law in which aforesaid scheme of Legislation to tax compensation and enhanced compensation on receipt basis and its object and purpose were not considered have no application. We have given sufficient reasons to hold why enhanced compensation or further enhanced compensation is to be taxed on receipt basis in the year of the receipt. Therefore, the cases in which this changed scheme was not considered at all have no application.

Some decisions of Benches wherein even after introduction of Sub-section (5) of Section 45 it was held that there has to be right to receive compensation in our humble opinion do not lay down correct law, and should be taken to be overruled.

It will not be out of place to state that Clause (c) of aforementioned subsection would be redundant if arguments of assessee are accepted. In fact all the Clauses would be redundant if capital gain is to be brought to tax only when compensation attain finality. Sub-section (5) of Section 45 has no purpose to serve, if above contention is accepted. The assessee wishes to apply only Sub-section (1) of Section 45 in total disregard of statutory provision of Sub-section (5). Further after insertion of Sub-section (5), the scheme of assessment of enhanced or further enhanced compensation is to be taxed only in the year of receipt. If it is not taxed in that year, but is held to be taxed in the year in which amount of compensation is finally determined, then there is no provision to charge it to tax otherwise than in the year of receipt, cannot be disregarded. For aforesaid reasons also the arguments advanced on behalf of the assesseees cannot be accepted.

30. That as far as question of interest income on enhanced compensation is concerned, the Legislature had made no change in the statutory provision and therefore, decision of Supreme Court in the case of Hindustan Housing & Land Development Trust (supra) as, also decision of Smt. Rama Bai v. CIT (1997) 181 ITR 400 (SC) would apply. The interest is to be assessed on accrual basis from year to year. However, question of assessment of such interest on accrual basis would not arise unless it is finally determined. In case a dispute relating to interest payable on enhanced compensation is pending before a court of Law and not attained finality, the same will not accrue and not liable to tax. Only after it is finally determined the same can be subjected to tax, in the light of decision of the Hon'ble Supreme Court, referred to above.

In the light of our directions, the assessing officer would revise assessment and tax enhanced compensation and interest, after providing reasonable opportunity of being heard to the assessee. All the above appeals are allowed in terms stated above.

5. The judicial discipline demands that the orders of the superior courts should be followed by lower courts. Therefore, the decision rendered by the Special Bench is binding on the Division Bench of the Tribunal and therefore, should be followed by it. If the assessee has any grievance against the decision rendered by the Special Bench, then the same should be agitated before the Appropriate Forum. The facts being identical, respectfully following the decision of the Special Bench of the Tribunal, we hold that additional compensation received by the assessee against the acquisition of land is taxable in the year of receipt i.e., the present year under appeal, whereas the interest of the additional compensation is taxable, when the issue relating to additional compensation attains finality as the same would accrue to the assessee at that time only. Thereafter, following the decision of the Hon'ble Supreme Court in the case of Smt. Rama Bai v. CIT , the same should be taxed year to year basis.

Accordingly, the ground No. 2 of the appeal of the revenue is allowed and ground No. 1 of the appeal of the revenue is dismissed.

6. Ground No. 3 of the appeal relates to the order of the Commissioner (Appeals) allowing deduction under Sections 54B and 54F of the Income Tax Act, 1961 on the actual receipt of enhanced compensation. At the time of hearing the Id. D.R. did not make any submission on this ground of appeal of the revenue. In view of our decision in ground No. 2, we hold that the deduction under Sections 54B and 54F are consequential and accordingly dispose of this ground of appeal.

1. That the amount of enhanced compensation and interest thereon was released to the respondent-assessee as per directions of the Hon'ble High Court, partly against security furnished by the respondent assessee and partly unconditionally without furnishing any security.

The entire said amount is still disputed before the Hon'ble Punjab & Haryana High Court and till the controversy/dispute is finally resolved, the entire said amount cannot be termed as amount received and income taxable in the present period.

2. That the distinction, between the amount of enhance compensation and interest thereon released conditionally against security and unconditionally without security, created in the impugned appeal order by Id. Commissioner (Appeals), Faridabad is immaterial. What is material is the existence of the dispute regarding the amount in question.

8. In view of our findings given in ground Nos. 1 and 2 of the appeal of the revenue, these grounds of cross objection raised by the assessee have become infructuous and are dismissed accordingly.

9. In the result, the appeal of the revenue is partly allowed and the cross objection of the assessee is dismissed.

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