

Mrs. Catherine Thomas Vs. the Dy. Commissioner of

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Court : Income Tax Appellate Tribunal ITAT Cochin

Decided On : Feb-22-2007

Reported in : (2008)111ITD132(Coch.)

Judge : B S N., R S Padvekar

Appellant : Mrs. Catherine Thomas

Respondent : The Dy. Commissioner of

Judgement :

1. In this group of appeals, the assessee has challenged the impugned orders of the Commissioner of Income-tax(Appeals)-I, Kochi all dated 16-12-2004 for the Assessment Years 1987-88,1988-89, 1990-91, 1991-92 and 1992-93. The facts as well as the issues are identical in all these appeals, hence these appeals were hoard together and are being disposed of by this common order for the sake of convenience.

2. The assessee has filed concise grounds in all the appeals as the original grounds were consisting of lot of facts and arguments also. We will take up first the issue regarding the year of assessment of the enhanced compensation which arises in the assessment year 1992-93 in ITA No. 330(Coch)2005.

3. The facts in brief can be stated as under: The government of Kerala has acquired the assessee's immovable property consisting of approximately 80 cents of land and 5500 sq.ft of building under Land Acquisition Act. The government

acquired the said property on 10-7-1986 and taken the possession on 10-9-1986. The Tehsildar passed the LA Award on 10-7-1986 fixing the compensation of Rs. 4,20,970/- which was later on reduced to Rs. 3,67,516/-. There was some dispute in respect of the ownership over the property and hence the competent authority deposited the amount of award in the Sub-Court of Calicut. The assessee filed petition for enhancement of compensation before the Sub-Court and by judgment dated 22-10-1990 the Sub-Court enhanced the compensation by Rs. 17,53,887-50. The Sub-Court also awarded interest at the rate of 9% for one year and 15% till payment of said sum. The State Government challenged the judgment of the Sub-Court by filing appeal in the Hon'ble High Court of Kerala being LAA No. 281 of 1992. The State Government deposited the amount of Rs. 23,47,886/- which included interest also in the in Sub-Court, Kozhikode in 1991. The assessee also filed petition before the Sub-Court, Calicut for getting the said enhanced compensation. The Sub-Court ordered the release of the said amount of Rs. 23,43,886/- to the assessee on the production of the bank guarantee.. The assessee filed the bank guarantee for the sum of Rs. 23,43,886/- for the period of three years which was issued by the Catholic Syrian Bank, Kozhikode on 19-9-1991 in the Sub-Court and on the basis of the bank guarantee filed by the assessee, the Sub-Court released and paid the amount of Rs. 23,43.886/- In the month of September, 1991. The said amount was kept in the bank by investing in fixed deposit and in December, 1993 and January, 1994, the assessee was paid the amount originally deposited in the court by the Land Acquisition Tehsildar together with interest. The controversy is in respect of the enhanced compensation of Rs. 17,53,887/- as the Assessing Officer assessed the said enhanced compensation as a capital gain in the assessment year 1992-93 and worked out the interest on the enhanced compensation on the accrual basis as per the judgment of the Sub-Court, Kozhikode and brought to tax in the assessment year 1987-88 to 1992-93 as income under the head "income from other sources".

4. The assessee challenged the. order of the Ao bringing to tax the capital gain on the enhanced compensation in the assessment year 1992-93 before the CIT (Appeals) but some strange observation was made by the CIT(Appeals) on this issue by stating that the capital gain on the enhanced compensation is not assessed in the assessment year 1992-93. Now the assessee is in appeal before

US.

5. We have heard the learned sr. counsel Shri P. Balachandran for the assessee and the Id. Departmental Representative Smt. A.S. Bindhu for the revenue. The learned sr. counsel has filed written summary of his arguments advanced at Bar which is twofold and is as under: In the first stage, it was submitted that in the case of Keshav Mills Ltd. v. CIT 23 ITR 230, the Hon'ble Supreme Court laid down the proposition of law that the receipt of income refers to the first occasion when the recipient gets the money under his control. It was contended that the release of money by the Sub-Court on bank guarantee cannot constitute a receipt in assessment year 1992-93 as the money has not come under the assessee's control then. It was further contended that the assessee was not free to make investments as provided under Section 54, 54F etc as the money was not under his control. The receipt could at best be said to have occurred when the bank guarantee expired i.e. 19-9-1994 i.e. in the assessment year 1995-96 as a result of which the amount assessed in the hands of the assessee in the assessment year 1992-93 is legally wrong. It is further argued that the State Government had gone in further appeal against the entire award of the Sub-Court in LAA 281/92 and that appeal was finally decided only on 7-1-2003 and hence the capital gains on enhanced compensation could be taxed only for the assessment year 2003-04 in view of the proposition of law laid down by the Hon'ble Supreme Court in CIT v. Hindustan Housing and Land Development Trust Ltd. P. Mariappa Gounder v. CIT 232 ITR 2. Relying on the decision of the Hon'ble Karnataka High Court in the case of Chief CIT v. Smt. Shantavva 267 ITR 67, the Id. sr. counsel argued that when the reference court determines the compensation and such determination becomes final, the amount received in pursuance of the interim order will be finally determined and will become income; chargeable under the head "capital gains. The Id. Counsel for the) assessee further argued that the mere fact that some amounts had been received by furnishing security, in pursuance of the interim orders, pending final determination, would not make the amounts received by the assessee "compensation" or "consideration" that could be subjected to tax Under Section 45(5)(b). The Id. Counsel relied on the following precedents: It was submitted that In the case of Jehangir P. Vazifdar (supra) the Tribunal held that the word 'received' in Clause (b) of Sub-section (5) of Section 45 would mean

when it has come finally receivable or the same is received unconditionally.

5.1. The Id. senior counsel vehemently submitted that the decision of the Special Bench of the Tribunal in the case of Padam Prakash (HUF) 288 ITR (AT) 1 (Delhi-SB) is not in accordance with law and he made the following submissions: It was argued that the 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 compensation was reduced by any courts Tribunal or other authority.

Clause (c) to Sub-section (5) was therefore, inserted to take care of the situation. It was inserted by the Finance Act 2003 with effect from April 1, 2004. The Id. sr. counsel pointed out that the explanatory memorandum accompanying the Finance Bill 2003 relating to changes made in Section 45(5) of the Income-tax Act are as follows: The assesseees in some cases are facing hardship when such compensation or consideration is subsequently reduced by any court, Tribunal or other authority since there is no existing provision providing for re-computing of the capital gain charged in the year of receipt of compensation or consideration.

With a view to mitigate this hardship, it is proposed to amend Sub-section (5) by inserting a new Clause (c) to provide that where such amount consideration is subsequently reduced by any Court, Tribunal or other authority, the capital gain of that year, in which the compensation or consideration received was taxed, shall be computed accordingly.

It is proposed to insert a new Sub-section (16) in Section 155 to provide that the Assessing Officer shall amend the order of assessment to revise the computation of the said Capital gain of that year by taking the compensation or consideration so reduced by the court, Tribunal or any other authority to be the full value of consideration.

These amendments will take effect from 1st April, 2004 and will, accordingly, apply in relation to the assessment year 2004-05 and subsequent years.(260 ITR (St) 191, 217) The Id. sr. counsel submitted that three things are clear from the above explanatory note which are as under: (a) There is no existing provision to mitigate the hardship of the assessees when compensation is subsequently reduced.

(b) It is proposed to amend Sub-section (5) by inserting a new clause ;c); and (c) These amendments will take effect from 1st April, 2004 and will apply to assessment year 2004-05 and subsequent years.

The Id. Counsel contended that the judgment of the Special Bench of Appellate Tribunal in the case of Padam Prakash (HUF) (supra) is primarily based on this sub-clause and proceeded on the footing that it is declaratory in nature and the contention of the assessee, if accepted would render Clause (c) has not been given any retrospective effect in express terms. On the other hand the legislature itself thought that the explanation should work only prospectively with effect from 1st April, 2004. Hence Clause (c) cannot be taken to be declaratory or clarificatory in nature and the whole reasoning of the Appellate Tribunal fails on these grounds. Relying on the decision of the Hon'ble Supreme Court in the case of CIT v. Varas International P.Ltd. 283 ITR 484 (SC) the Id. Counsel submitted that the 5 member Constitution Bench of the Hon'ble Supreme Court has held that for an amendment of 1 a statute to be construed as being retrospective, the amended 1 provision itself should indicate either in terms or by necessary implication that it is to operate retrospectively. The Id.Counsel further relying on the decision of the Hon'ble Supreme Court in the case of Sakuru v. Tanoji AIR 1985 SC 1279, submitted that it was held by the Hon'ble Supreme Court that in the absence of clear Words indicating that the amending Act is declaratory, it would not be so construed. Making a reference to. the decision of the Jurisdictional High Court in the case of CIT v. S.R. Pattom 193 ITR 49 (Ker) and CIT v. Kerala Electric Lamp Works Ltd. 261 ITR 721, the Id. Counsel submitted that it has been held in the above decisions that the explanation has no retrospective effect when it says that it has come into force with effect from a particular date.

5.2. The Id. Counsel further submitted that there are three decisions of the Karnataka and Madras High Courts wherein the amended provisions to Section 45(5) was considered. In Smt. Santavva (supra), the AO brought to tax an amount received by the assessee by furnishing security under Section 45(5)(b) of the Act treating it as income of the year in which the amounts were received. However, the Tribunal held that the amounts were not liable to tax as the receipts had a condition attached to it and an absolute right had not accrued to the assessee.

On appeal it was held by the High Court that the sum of Rs. 8 lakhs was received by the assessee not as enhanced compensation but as payment in pursuance of the interim orders of the. Court and Supreme Court by furnishing security to the satisfaction of the court, The mere fact that some amounts have been received by furnishing security in pursuance of the interim orders pending final determination would not make the amounts received by the assessee 'compensation' or 'consideration' that could be subjected to tax Under Section 45(5).(b).

The Id. Counsel submitted that a same view was taken in the case of T.Girijammal (supra). The Id. Counsel further submitted that in the decision of the Hon'ble Bombay High Court in the case of CIT v. Smt.

Godavaridevi Saraf 113 ITR 589 (Bom), it was held that the Income-tax Appellate Tribunal sitting anywhere in the country, has to respect the law laid down by the High Court, though of a different state, so long as there is no contrary decision of another High Court on that question. It was further submitted that in the decision in the case of Tej International Pvt. Ltd. v. DCIT 69 TTJ 651, it has been held that an authority higher than the Tribunal, i.e. the High Court has expressed an opinion on an issue, the Tribunal is no longer at liberty to rely upon earlier decisions of the Tribunal even if it were a party to them or including even by a Special Bench. Such a High Court being a non-jurisdictional High Court does not alter the position. It was further submitted that in the case of Sree Ram Transport Co. Ltd. v.CIT 70 ITD 406 (Mad), it has been held that unless and until there are reasons compelling the Tribunal to take a different view the decision of any High Court in the country on a particular issue must be followed and could not be ignored only for the reason that the Tribunal does not come under territorial jurisdiction of that particular High Court. The Id. Counsel further argued that in the case of Rupa Ashok Hurra v.Ashok Hurra and Anr. the Supreme Court has held that under Article 141 of the Constitution, the law declared by the Supreme Court is the law of the land; it is a precedent for itself and for all courts/Tribunals and authorities in India. The Id. Counsel therefore, contended that the decision of the Special Bench of the Tribunal in the case of Padam Prakash (HUF) (supra) as also of the third Member in 282 ITR (AT) 151 (Del) as regards the taxability of enhanced compensation on receipt basis is totally against the law laid down by the Hon'ble Supreme Court as

also the High Courts of Karnataka and Madras cited above.

6. Per contra, the Id. DR placed heavy reliance on the decision of the Special Bench of the Tribunal in the case of Padam Prakash (HUF) (supra). The Id. DR submitted that as far as the precedents relied on by the Id. sr. counsel are concerned, those precedents are prior to the introduction of Clause (c) to Section 45(5) of the Act. The Special Bench has taken into consideration the legislative intent in bringing Clause (c) on the statute book just to remove the practical difficulties of the Department wherever in future if the compensation awarded by the lower authorities is further reduced. Though there was a direction in Section 155(7A) of the Act, but still it was not possible to keep track of the unending litigation between the assessee and the government. The Id. DR vehemently submitted that the Hon'ble Special Bench of the ITAT has considered the entire case law on this issue whether the enhanced compensation is to be assessed on receipt basis or whether the assessment of the enhanced compensation should be deferred to the year in which the dispute in relation enhanced compensation has reached finality. The Id. DR submitted that Clause (c) of Section 45(5) was not available in the decisions relied on by the Id. sr. counsel and the Special Bench has correctly taken the view that it is declaratory or clarificatory in nature and it is having retrospective effect from 1-4-1988, though the same was introduced by Finance Act, 2003 with effect from 1-4-2004. The Id. DR supported the order of the AO.7. We have heard the rival submissions of the parties. We have also carefully considered the facts as per material placed before us. We have also carefully considered the precedents relied on both by the Id. Counsel as well as by the Id. DR. We would like to clarify here that there is no dispute in respect of the facts between the assessee as well as the revenue. It is an admitted position that original compensation in respect of the award passed by the Tehsildar dated 10-7-1986 was enhanced by the Sub-Court by the judgment dated 22-10-1990 by the amount of Rs. 17,53,887/-. The Sub-Court also awarded interest to the assessee. The State government challenged the judgment of the Sub-Court in the Hon'ble High Court of Kerala by filing appeal being LAA No. 281 of 1992 and the Hon'ble High Court dismissed the appeal filed by the State Government by judgment dated 7-1-2003. (In the meantime, the assessee filed the petition in the Sub-Court for releasing the amount and the Sub-Court directed the assessee to file bank

guarantee and on filing of bank guarantee the court directed to release the amount to the assessee on 19-9-1991. The contention of the assessee is that though the amount of Rs. 23,47,887/- was released and paid to the assessee only that was a conditional payment on furnishing the bank guarantee as a security and the amounts received by the assessee were put in the bank in fixed deposit on 19-9-1991. The release of the said sum by the court does not constitute a receipt; of the assessee as the sum has not come under the control of the assessee as the amount was under the control and : supervision of the Sub-Court, Calicut as the said amount was deposited with Catholic Syrian Bank for obtaining the bank guarantee.

7.1. The bank guarantee furnished by the assessee expired on 19-9-1994 and at the best the said amount can be assessed in the assessment year 1995-96 as the assessee was deprived from taking the benefit of Section 54 or 55 as no liquid cash was available with him for investment purpose. The Id. Counsel has placed heavy reliance on the following precedents to support his contention: The Id. Counsel also vehemently submitted that the law laid down by the Special Bench in the case of Padam Prakash (HUF) (supra) is not the correct law as the Hon'ble Special Bench has not considered the following precedents: The Id. Counsel also placed reliance on the decision of the Constitution Bench of the Hon'ble Supreme Court in the case of Varas (International Pvt. Ltd. (supra) on the contention that whether any particular amendment is having retrospective or prospective operation then that amended provision itself should indicate either in terms or by necessary implication that it operates retrospectively.

7.2. There is no dispute regarding the binding force of the legal principles laid down by the Hon'ble Supreme Court as well as by the Hon'ble High Court. There is no dispute in this case in respect of charging the capital gain on the enhanced compensation but. the only dispute is in respect of the year in which it should be charged to tax and in our opinion, Sub-section (5) of Section 45 is relevant on the issue. Sub-section (5) in Section 45 was inserted by the Finance Act, 1987 to provide for taxation of the additional compensation in 'the 'year of receipt in stead of the year of transfer of the said capital asset. It was further provided that the additional compensation will be deemed to be the income in the hands of the

recipient even if the actual recipient happens to be a person different from the original transferor. For this purpose the cost of acquisition in the hands of the recipient of the additional compensation was provided to be Nil.

Moreover, the compensation awarded in the first instance would continue to be chargeable as income under the head "capital gain" in the previous year in which the transfer took place; In this context, reference may be made to CBDT Circular No. 495 dated 22-9-1987.

7.3. A new Clause (c) was inserted in Section 45(5) by the Finance Act, 2003 which was effective from 1-4-2004. It will be helpful to refer to the extract of the Explanatory Memorandum accompanying the Finance Bill, 2003 in which the purpose of insertion of Clause (c) to Section 45(5) was clarified as under: Recomputation of capital gains' In case of reduction In Compensation -The existing provisions of Sub-section (5) of Section 45, provide for method of computation of capital gains arising from the transfer of a capital asset, being a transfer by way of compulsory acquisition under any law, or a transfer the consideration for which was determined or approved by the Central Government or the Reserve Bank of India, and where the compensation or the consideration for such transfer is enhanced or further enhanced by any court, Tribunal or other authority. The said sub-section provides that the capital gain shall be computed by taking the compensation or consideration or enhanced compensation or consideration, as the case may be, as the full value of consideration and such capital gain shall be chargeable as income of the previous year in which such compensation or consideration is received by the assessee.

The assessee in some cases are facing hardship when such compensation or consideration is subsequently reduced by any court, Tribunal or authority, since there is no existing provision providing for re-computation of the capital gain charged in the year of receipt of the Compensation or consideration.

With a view to mitigate this hardship, it is proposed to amend Sub-section (5), by inserting a new Clause (c) to provide that where such amount of the compensation or consideration is subsequently reduced by any court, Tribunal or other authority, the capital gain of that year, in which the compensation or consideration received

was taxed, shall be recomputed accordingly.

It is proposed to insert a new Sub-section (16) in Section 155 to provide that the Assessing Officer shall amend the order of assessment to revise the computation of said capital gain of that year by taking the compensation or consideration so reduced by the court, Tribunal or any other authority to be the full value of consideration.

These amendments will take effect from April 1, 2004 and will, accordingly, apply in relation to the assessment year 2004-05 and subsequent years.

7.4. In the case of Padam Prakash (HUF) (supra) the following questions were framed for the consideration of the Special Bench: 1. Whether, on the facts and in the circumstances of the case, enhanced compensation and interest is to be taxed in the year of receipt, notwithstanding that order under which compensation and interest is received, is challenged before the higher courts and litigation is pending? 2. Whether, on the facts and in the circumstances of the case, will it make any difference to the taxability of compensation and interest if the same are received on furnishing of security? As far as the facts relating to the case of Padam Prakash (HUF) (supra) are concerned, those are more or less identical to the facts of the assessee's case before us. There also the contention of the assessee was that unless the issue of the enhanced compensation has reached finality, the same cannot be taxed on receipt basis. In that case also, the court of the Addl. District Judge released the amount and AO brought to tax the same on receipt basis. The Special Bench was concerned with the interpretation of Section 45(5) of the Act and it was more concerned with the consequence of insertion of Clause (c) to Sub-section (5) of Section 45. The Special Bench referred to the following precedents which were cited at the Bar by the parties: CIT v. National Electric Supply and Trading Corporation Pvt.

td. 248 ITR 794 (Del) CIT v. Orissa State Financial Corporation 7.5. After exhaustively dealing with the relevant provisions of the Act on the issue, the Hon'ble Special Bench of the ITAT in the case of Padam Prakash (HUF) (supra) held as under: 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 April 1, 1988. The picture without insertion of the 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 the 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 the 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 the purpose and object of the enactment. The principle of reasonable construction by creating 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 applicable to the interpretation of Clause (c) and we accordingly hold that it is retrospective in operation.

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 the 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 subsequently reduced then assessment is required to be modified to take the reduced compensation of income. Thus the statutory provision leaves no scope for not taxing compensation on receipt basis under any situation. There is no way to read in clear language of the statute that receipt, if conditional or allowed as per Interim order of the 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.

There is no doubt that in the case of Hindustan Housing and Land Development Trust Ltd. , it was laid down by their Lordships of the Supreme Court that there is

no accrual of income unless the right to receive compensation is finally determined. Such a view had been taken] by the several High Courts and by the several Benches of the Tribunal, following the aforesaid decision of the Hon'ble Supreme Court. The case law in which the 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 sub-section would be redundant if the arguments of the assessee are accepted. In fact all the clauses would be redundant if capital gain is to be brought to tax only when compensation attains finality. Sub-section (5) of Section 45 has no purpose to serve if the 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 the 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. Therefore, the special provision relating to taxability of amount is the year of receipt, cannot be disregarded. For the aforesaid reasons also the arguments advanced on behalf of the assesseees cannot be accepted.

7.6. The Id. Sr. counsel argued that in the case of Padam Prakash (HUF) (supra), the Hon'ble Special Bench of the ITAT has not considered the decision of the Hon'ble Karnataka High Court in the case of Smt.

Santavva (supra) and decision of the Hon'ble Madras High Court in the case of T. Girijammal (supra). In our opinion, the argument of the Id.sr. counsel is not

sustainable as the Hon'ble Special Bench has also by reference considered the said decisions while arriving at the final conclusion. In the present case also, enhanced compensation was paid to the assessee in September, 1991. In our opinion, on receipt basis, the AO has rightly brought to tax the capital gain on the said enhanced compensation. In our further opinion, the principle laid down by the Hon'ble Special Bench of the Income-tax Appellate Tribunal in the case of Padam Prakash (HUP) (supra) are squarely applicable to the facts of the present case. We are, therefore, of the opinion that the AO has rightly brought to tax the amount of enhanced compensation in the assessment year 1992-93. We, therefore, decide this issue against the assessee.

8. The next issue is regarding the assessment of interest on the enhanced compensation, whether it should be assessed on accrual basis or receipt basis. We have already narrated the relevant facts pertaining to the issue of enhanced compensation and the said facts are applicable to this issue also. Hence to avoid repetition, we are not reproducing the same. We have heard the Id. sr. counsel for the assessee and the Id. DR for the revenue on this issue. The summary of the arguments of the Id. sr. counsel are as under: The Id. sr. counsel submitted that this issue is involved in ITA Nos. 325 to 330(Coch)/2005 for the assessment years 1987-88 to 1992-93. The AO worked out the interest on compensation at Rs. 87,358/-, Rs. 2,16,088/-, Rs. 2,63,083/-, Rs. 2,63,080/-, Rs. 2,63,080/- and Rs. 1,17,487/- respectively for all the assessment years from 1987-88 to 1992-93 and included the same to the total income under the head other sources as per paragraph 11, 11.6, 4.4 and 8 of the respective asst. orders. The CIT (Appeals) confirmed the asst. of interest as per para 4, 3, 4, 3, 3 of the respective appellate orders relying on the decision of the Apex Court in the case of K.S. Krishna Rao v. CIT reported in 181 ITR 408.

The Id. Counsel submitted that the assessee had filed petition for enhancement of the compensation before the Sub-Court Kozhikode in LD.AR 72/1987 and by judgment dated 22-10-1990 the court enhanced the compensation by Rs. 17,53,887.50. Interest at 9% for one year and 15% till payment was also allowed on this amount by the court. Against said order the State filed appeal before the High Court in LAA 281/9?. A bank guarantee for the sum of Rs. 23,47,886/- was

given by the Catholic Syrian Bank on 19-9-1991 on the security of the deposit of the sum which was directed by the court to be paid on bank guarantee for three years. The Id. Counsel contended that as the State Govt. filed appeal before the High Court and the same was pending the AO went wrong in bringing to tax the interest on enhanced compensation without considering the pendency of the appeal before the High Court. The Id. Counsel submitted that the 'proposition of law with regard to this issue is laid down by the Apex Court in the case of Hindustan Housing and Land Development Trust Ltd. (supra) and P. Mariappa Gounder (supra) as also Jehangir P. Vazifdar (supra) to the effect that when litigation is pending no interest accrues and therefore, there is no reason or logic in assessing the interest income for the assessment years 1987-88 to 1992-93 especially when the Court's judgment awarding enhanced compensation is dated 22-9-1991. In this connection, the Id. Counsel relied on the decision of the Delhi Bench of the Tribunal in the case of DCIT v. Bhim Singh Lather (supra) wherein after elaborate consideration of several judicial pronouncements, the Hon'ble Third Member concurred with the Judicial Member and held that interest on additional compensation is taxable only in the year of final adjudication of the dispute and when there are pending proceedings there is no accrual of interest and it is taxable only in the year of final adjudication. The Id. Counsel further contended that the interest on enhanced compensation is taxable only in the assessment year 2003-04, when the order of the High Court in LAA 281/92 was pronounced.

It was further contended that the decision in the case of Padam Prakash (HUF) (supra) is in conformity with the decision of the Third Member in the case of Bhim Singh Lather (supra) and it was held that "in case a dispute relating to interest payable on enhanced compensation is pending before the court of law and has not attained finality, the same will not accrue and not liable to tax. It was further argued that only after it is finally determined, the same can be subjected to tax and hence interest on additional compensation is taxable only on the final adjudication of the dispute and when there are pending proceedings there is no accrual of interest. The Id. Counsel further contended; that it has also been so held in the case of T. Girijammal (supra) and in the case of Sajjansinh N. Chauhan v. ITO 73 ITD 38 (Ahd). It was further argued that the case of Krishna Rao relied on by the CIT(Appeals) is on a different footing from the assessee's case on the following

three grounds among others: (i) There are no fetters imposed by the court in that case. Here, the assessee got the money only on a bank guarantee being furnished for the entire enhanced sum to the Sub-Court, Calicut. The guarantee was on the security of the amount released by the court and the amount was hence under the contra and supervision of the Sub Court.

(ii) In that case it. was the assessee who had taken the contention that the amount should be spread over the years.

(iii) If the state appeal had been allowed, the assessee would have had to refund the entire amount.

The Id. sr. counsel, therefore, submitted that the interest on enhanced compensation maybe taxed in lump sum only in the assessment year 2003-04.

9. Per contra, the Id. DR submitted that the CIT(Appeals) confirmed the assessment of interest following the decision of the Apex Court in the case of K.S. Krishna Rao 181 ITR 408. It was further argued that the judgment of the Hon'ble Supreme Court in the case of K.S. Krishna Rao (supra) is on a different footing from the assessee's case due to the following reasons : The assessee's argument that since there are no fetters imposed by the court, the assessee's case is distinguishable is only a very simplistic argument. As far as the assessee's argument that in that case, it was the assessee who had taken the view that the interest income should be spread over the years, the Id. DR submitted that what is important to note is the principle embedded in the judgment. The Id. DR further submitted that it is pertinent to note here that in that particular case the Hon'ble Supreme Court treated the petition for special leave to appeal from the order of the High Court refusing to call for a statement of case as one directly from the appellate order of the Tribunal, since the question stood concluded by the decision in the case of Rama Bai v. CIT . The Id.DR further submitted that another important fact is that the Andhra Pradesh High Court in the case of CIT v. M. Sarojini Devi 250 ITR 759 has laid down that the AO need not wait for the final disposal of the case by the Apex Court to tax interest. The assessee can claim refund if he succeeds in appeal to Supreme Court and if at any stage the decision comes which is against the assessee, the assessee can always claim refund from

the Department, It was, further submitted by the 1d, DR that the most important judgment regarding this issue is the case of Rama Bai v. CIT (supra) wherein the matter was finally settled by the Hon'ble Supreme Court. That was a case where the reference to the Supreme Court was made through the President of the Income Tax Appellate Tribunal wherein the Hon'ble Supreme Court held that interest cannot be taken to have accrued on the date or order of the court granting enhanced compensation but has to be taken as having accrue year after year from the date of delivery of possession of the lands till the date of such order. According to the Id. DR, the said judgment laid to rest the question of taxing interest on enhanced compensation.

The Id. DR relied on the precedent in the case of K.S. Krishna Rao (supra) which was also relied on by the CIT (Appeals).

10. We have heard the rival submissions of the parties. We have a so carefully considered the facts which are otherwise not disputed in this case on the issue also. We have also carefully considered the principles laid down in the precedents relied on by the parties. The argument of the Id. sr. counsel is that the judgment of the Sub-Court awarding enhanced compensation and interest was challenged by the State Government by filing appeal before the Hon'ble High Court and the assessee was permitted to withdraw the amount by the Sub-Court only on furnishing of bank guarantee and it was not an unfettered right of the assessee to get the interest, as the said subject matter was in further appeal to the Hon'ble High Court and hence the AO went wrong in bringing to tax the interest of enhanced compensation without considering the pendency of the appeal before the High Court. In the paper book filed by the assessee xerox copy of the judgment of the Hon'ble High Court of Kerala in LAA No. 281 of 1992 dated 7-1-2303 is placed at pages 34 to 38. The Hon'ble High Court dismissed the appeal filed by the State government challenging the judgment of the Sub-Court. Hence, finality to the litigation has been reached only after the Hon'ble High Court dismissed the appeal filed by the State on 7-1-2003. The contention of the assessee is that the assessee has not asked for the spread over of interest and the assessee is following the cash system, hence the entire interest amount on enhanced compensation should be taxed in lumpsum only in the assessment year

2003-04.

10.1. In the case of Hindustan Housing and Land Development Trust Ltd. (supra) and Smt. Rama Bai (supra), the principles regarding the assessability of interest on the enhanced compensation has been laid down by the Hon'ble Supreme Court. The interest is to be assessed on accrual basis from year to year. Moreover, the contention of the Id. DR that the assessee is following cash system of accounting and hence the same should be assessed in the year when the Hon'ble High Court finally dismissed the appeal filed by the State government has no force. In the dictum of the Hon'ble Supreme Court cited above the principles of taxability of interest on the enhanced compensation have been settled that interest on the enhanced compensation should be taxed on accrual basis from the date of delivery of the possession of land and such interest cannot be assessed to income-tax in one lumpsum in the year in which the order is made.

10.2. Here, we would like to refer to the decision of Special Bench of Tribunal in the case of Padarm Prakash (HUF) (supra) where in after considering the principles laid down in the case of Hindustan Housing and Land Development Trust Ltd. (supra) and Rama Bai (supra) it is held as under: That as far as the question of interest income on enhanced compensation is concerned, the Legislature had made no change in the statutory provision and, therefore, decision of the Supreme Court in the case of Hindustan Housing and Land Development Trust Ltd. 161 ITR 524 as also the decision of Smt. Rama Bai v. CIT 181 ITR 400 (S.C) would apply. The interest is to be assessed on accrual basis from year to year. However, the 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 has 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 the decisions of Hon'ble Supreme Court, referred to above.

After carefully considering the principles laid down in the different precedents relied on by the Id. Counsel, we are of the opinion that the AO has rightly brought to tax the interest on the enhanced compensation on accrual basis.

10.3. The Id. Counsel submitted that there is no proper quantification of the interest. The Id. Counsel has also filed in his written argument the working of the excess amount of interest assessed by the AO in the assessment years 1987-88 to 1992-93 which is as under:-----

Asst.	Year	Interest	on	Enhanced	Total	enhanced
compensation-----						
					1987-88	87,358
- 87,358-----					1988-89	2,16,088 -
2,16,088-----					1989-90	2,63,083 -
2,63,083-----					1991-92	2,63,083 -
2,63,083-----					1992-93	1,17,487
17,53,887		18,71,374-----				
12.10.179						17,53,887
29.64,066-----					Total	Amount

assessed as above 29,64,066Less: Amount received 23,47,886Excess amount assessed as Interest 6,16,180on enhanced compensation In our opinion, the correct working of the interest needs reconsideration by the AO. We, therefore, restore this issue to the file of the AO to examine the year-wise working of the interest on the enhanced compensation brought to tax after considering the order of Sub-Court granting interest to the assessee. Only for the limited purpose of correctly verifying the working of the interest: assessed under the head "income from other sources", this issue is restored to the AO. If necessary the AO should modify the order. The AO should of course give reasonable opportunity of being heard to the assessee as per the principles of natural justice. We, therefore, decide the issue of assessability of interest on the enhanced compensation against the assessee.

11. The next issue is regarding the estimation of the domestic expenses in the assessment years 1987-88 and 1988-89. There was a search action against late Shri K.T. Thomas, the original assessee. On the basis of statement recorded Under Section 132(4), the AO made the following additions as unexplained family and legal expences: It is not disputed in this case that this addition is made on the basis of the statement recorded during the course of search Under Section 132(4) in the year 1995. The copy of the said statement is placed in the paper book at page Nos. 2 to 21. The relevant portion of the statement is at page 9 of the paper

book. The assessee objected by filing written explanation stating that all the explanations given in 132(4) statement are in the year 1995 and assessing the alleged income for all seven years prior to said statement is illogical and baseless since the assessee was not incurring such huge expenses during the year 1987 and that the situation (prevalent during the year 1987) was having no relation to the statement given in 1985. The assessee also explained that he had sufficient money also in 1986-87. The AO made the addition based on the admission of the assessee in the sworn statement recorded during the course of search that his family expenses were about Rs. 4,000/- per month and also incurred heavy expenses on legal matters. In respect of the expenses regarding the legal charges paid to his son, it was contended that his son is enrolled as an advocate in the year 1992, so there is no question of payment of any legal charges to his son in the year 1986 when he was not an advocate. Finally, the AO made the above addition.

12. The assessee challenged the said addition before the CIT(Appeals).

The CIT(Appeals) was of the opinion that the said household expenses are estimated on the basis of the statement of the deceased assessee.

at the time of search in the year 1995 but there is no basis for working out the amount of Rs. 1,80,000/- and the estimate is only pure assumption and it is not based on material relating to assessment year concerned. The CIT(Appeals) therefore, restricted the estimation to Rs. 1 lakh. Now; the assessee challenged the said estimation before us.

13. We have heard the parties. In this case, the said additions are made which are based on some of the admissions or statements of the deceased assessee during the course of search action Under Section 132.

The CIT(Appeals) himself has come to the conclusion that the said additions are not based on any material and are only on pure assumption. The CIT(Appeals) has also given the finding that the AO has not made any attempt to quantify the household expenses for the year when the statement was made. The CIT(Appeals) has further given the finding that there is merit in the assessee's

contention that the estimate is illogical and baseless. The revenue has not challenged this finding of the CIT(Appeals) before us.

14. We find substance in the argument of the Id, sr. counsel that merely on the basis of some of the admissions and statements of the deceased assessee which was recorded during the course of search Under Section 132 estimation or addition cannot be made. When the CIT(Appeals) himself has come to the conclusion that the said estimation is only on the assumption and the AO has not given any reason for quantifying the amount of Rs. 1,80,000/- per year. We find that the CIT(Appeals) has also sustained Rs. 1 lakh without giving any reasons and that is also on assumption. It is not the case of the AO that any incriminating document or material was found during the course of search. Having regard to these facts, we do not find any justification to uphold the addition sustained by the CIT(Appeals). We, therefore, direct the AO to delete the entire addition of Rs. 1 lakh sustained by the CIT(Appeals) relating to the alleged household expenses and legal expenses. This issue is decided in favour of the assessee.

15. In the result, the assessee's appeals ITA Nos. 325 and 326(Coch) 2005 are partly allowed, ITA Nos. 328, 329 and 330(Coch)/2005 are dismissed.

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