ito Vs. Roop Singh

ito Vs. Roop Singh

SooperKanoon Citation : sooperkanoon.com/75858

Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Sep-14-2007

Judge : I Bansal, R Sharma

Appellant : ito

Respondent : Roop Singh

Judgement :

1. This an appeal filed by the revenue against the order of Commissioner (Appeals) dated 19-9-2005 for the assessment year 2000-01, in the matter of order passed under Section 271B/44AB of the Income Tax Act, 1961, wherein following grounds have been raised: (1) On the facts and in the circumstances of the case, whether the Commissioner (Appeals) has erred in law in not treating the enhanced compensation and interest thereon received by the assessee as income for the assessmentyear under consideration, despite the fact that Section 45(5) clearly stipulates that amount by which the compensation or consideration is enhanced or further enhanced by Court, Tribunal or authority, shall be deemed to be income chargeable under the head 'Capital gain' of the previous year in which such sum is received by the assessee.

(2) That the appellant craves for the permission to add, delete or amend the grounds of appeal before or at the time of hearing of appeal.

2. No body appeared on behalf of the assessee in spite of giving the opportunity, the Bench, therefore, decided to dispose the appeal after hearing the learned

Departmental Representative and considering the materials placed on record. We have heard the learned Departmental Representative and found from the record that during the year under consideration, the assessee was in receipt of enhanced compensation as well as interest thereon in respect of his land acquired by the government. In the return, the assessee has claimed exemption under Section 54B of the Act in respect of enhanced compensation. By referring to the amended provisions of Section 45(5), the assessing officer brought to tax the enhanced compensation along with the interest.

4. We have considered the contentions of the learned Departmental Representative. The issue regarding taxability of enhanced compensation and interest thereon is squarely covered by the decision of Income Tax Appellate Tribunal, Special Bench in case of Dy. CIT v. Padam Prakash (HUF) (2006) 10 SOT 1 (Del-Trib) wherein enhanced compensation was held to be liable to be taxed in the year of receipt whereas interest was liable to be assessed on accrual basis from year to year. Question of assessment of such interest income on accrual basis was held to be not liable till the dispute relating to interest on enhanced compensation is pending before the court of Law and had not attained finality. The same was held to be taxable on accrued basis only after there is a finality of matter. Following was the relevant observations of the Special Bench: It is clear from the definition of 'income' that several artificial items which cannot satisfy commercial concept of income are included and arc charged to tax under the Income Tax Act. It is always a policy decision of the government as to which receipt or activity is to be charged and which receipt is to be treated as exempt. Normally gain from transfer of a capital asset is a capital receipt and cannot be taken as taxable income. However, through a fiction it is included in the definition of 'income' and under Section 45 of Income-tax Act, it is charged to tax. Validity of imposition of income-tax on capital gains was challenged but their Lordships of the Hon'ble Supreme Court in the case of Navinchandra Mafatlal v. CIT held that word 'income' should be given its widest connotation. Thus inclusion of capital gains in the definition of 'income' was upheleared Their Lordships pointed out that capital gains was taxed in United Kingdom and in United States of America as 'income'. In the case of CIT v. B.C. Srinivasa Setty , their Lordships of Supreme Court held that Section 45 charges profit and gains arising from transfer of a capital asset to

income-tax. Therefore, it is not necessary here to consider the provision of Section 4 which is the main charging section. However, Section 5 of Income Tax Act is required to be considered and same has been reproduced in earlier part of this decision. It defines the scope of the total income which not only brings to tax income accruing or arising but also income which is received or is deemed to be received. Thus income received or deemed to be received under law is also part of the total income liable to be charged to tax. The expression 'income received' is used in contradiction to income accruing or arising. Under Sub-section (1) of Section 45, capital gain arising from transfer of a capital gain is charged to income-tax in the year in which transfer of a capital asset takes place. It is deemed to be income of the previous year relevant to the assessment year.

The definition of 'transfer' of a capital asset, as per Section 2(47) encompass the compulsory acquisition under law profit or gain arising from compulsory acquisition is deemed income of the year in which compulsory acquisition takes place. It is the scheme of the Act relating to taxability of the capital gains. It is now restricted to capital gains arising on compensation awarded on compulsory acquisition. Their Lordships of Supreme Court in the case of Hindustan Housing & Land Development Trust Ltd. (supra) held that unless compensation awarded or right to receive compensation attains finality, capital gain cannot be computed. If right to receive compensation awarded is subject-matter of dispute then unless and until that dispute is settled, compensation allowed is inchoate and capital gains cannot accrue or arise. The aforesaid scheme and statutory provisions which were considered by their Lordships did not work well and department had to face difficulties in realizing capital gains arising on compensation enhanced by Courts at different stages i.e., at the level of District Judge, High Court and the Supreme Court. It was difficult to keep track of a case and to bring to tax higher amount of compensation. It was not possible to keep on rectifying an assessment under Sub-section (7A) of Section 155 of the Income Tax Act. These difficulties faced by the department are enlisted in the circulars, which have been quoted above.

In order to overcome above difficulties and to improve the situation, the Legislature amended Section 45 by introducing Sub-section (5) to Section 45 with effect from 1-4-1988. Now compensation payable is brought to tax at two stages : one under

Sub-section (1), i.e., in the year in which transfer takes place.

This gain is computed with reference to the compensation awarded by the Acquisition Officer. If any capital gain arises or accrues with reference to compensation awarded it is liable to tax under Sub-section (1) of Section 45(ii). Secondly enhanced compensation is separately and independently assessed. Earlier right to receive compensation was not separate from right to receive enhanced compensation (See Mrs. Khorshed Shapoor Chenai v. Asstt. CEO but now right to receive enhanced compensation is treated separately for taxation purposes as per the changed provision. Sub-section (5) of the section deals with a situation where compensation on compulsory acquisition is enhanced (including further enhanced) by any Court, Tribunal or other authority.

Such enhancement of compensation is brought to charge in the year in which such enhanced compensation is received. Sub-section (5) is a complete code as it provides not only for charging enhanced compensation but also contains a machinery for computation of income by providing that cost of acquisition and cost of improvement in such a case would be nil. It further provides that in case of a death, enhanced compensation shall be deemed to be the income of the person receiving it. The amount is to be taxed in the year of the receipt. Sub-section (5) is an overriding provision and quite different from Sub-section (1) of Section 45 in content and texture.

Intention of the Legislature to depart from the earlier scheme of taxability of compensation on account of difficulties faced by the revenue has been referred to above is quite clear. It is not possible to disregard change introduced by the Legislature by applying old scheme to cases of enhanced compensation.

22. In the background narrated above, we do not see nor were given any good reason why scheme of Sub-section (5) should not be applied to receipt of enhanced or further enhanced compensation as envisaged by the sub-section. Why the amount received should not be brought to tax in the year of the receipt when language and intention of the Legislature is absolutely clear. Why court should not give effect to the legislative intent and follow its mandate. In the case of A.N. Roy, Commr. of Police v. Suresh Sham Singh , their Lordships observed as

under: 18. It is now well-settled principle of law that the court cannot enlarge the scope of legislation or intention when the language of the statute is plain and unambiguous. Narrow and pedantic construction may not always be given effect to. Courts should avoid a construction, which would reduce the legislation to futility. It is also well-settled that every statute is to be interpreted without any violence to its language. It is also trite that when an expression is capable of more than one meaning, the court would attempt to resolve the ambiguity in a manner consistent with the purpose of the provision, having regard to the great consequences of the alternative constructions.

Lord Halsbury as early as 1901, in oft-cited decision pertaining to the interpretation of fiscal statutes stated the law in the following manner: (A) Court of law, has nothing to do with the reason ableness orunreasonableness of a provision of a statute except so far as it may help it in interpreting what the Legislature has said. If the language of a statutebe plain, admitting of only one meaning, the Legislature must be taken tohave meant and intended what it has plainly expressed, and whatever it has in clear terms enacted must be enforced though it should lead toabsurd or mischievous results.

If the language of this sub-section be not controlled by some of the other provisions of the statute, it must, since itslanguage is plain and unambiguous, be enforced, and your Lordships House sitting judicially is not concerned with the question whether thepolicy it embodies is wise or unwise, or whether it leads to consequencesjust or unjust, beneficial or mischievous. [Cooke v. Charles A. Vogeler Co.(1901) AC 102; Cape Brandy Syndicate v. IRC (1921) 1 KB 64/12 Tax Cases 358].

After considering above authority, their Lordships of Supreme Court in the case of Orissa State Warehousing Corpn. v. CIT (SC) A fiscal statute has to be interpreted on the basis of the language used therein and not de hors the same. No words ought to be added and only the language used ought to be considered so as to ascertain the proper meaning and intent of the legislation. The court is to ascribe natural and ordinary meaning to the words used by the Legislature and ought not, under any circumstances, substitute its own impression and ideas in place of the

Legislature's intent as is available from a plain reading of the statutory provisions.

Individual cases of hardship and injustice do not and cannot have any bearing for rejecting the natural construction.

23. Having in mind above authorities and plain and unambiguous language of Sub-section (5) of Section 45, we do not see any good ground why the changed scheme should not be applied and why enhanced compensation be not brought to tax in the year of receipt. There is no scope to whittle down applicability of the provision by introducing philosophy that gain has not accrued or arisen. The right to receive compensation has not attained finality. 'Idea' of accrual of income not being supported by the Legislature's intent as is available from the plain language cannot be accepted. Even otherwise statutory provision is quite equitable. Obligation to pay tax is cast on the assessee only after enhance compensation is pocketed by the assessee. It is taxed when it is actually received.

24. The main thrust of the argument of learned Counsel for the assessee and of the interveners was that compensation is received under an order which is not final. The finality is shaken when order is challenged before a superior court. The right to receive compensation is under dispute. The same is yet to be adjudicated upon and court in its wisdom might reverse, modify or reduce the compensation awarded or hold that it was not payable at all.

Superior court under- an interim arrangement may impose conditions and compensation might be received on furnishing of securities.

Therefore, unless final word on compensation or enhanced compensation is heard, there can be no gains. Argument is based and supported by the decision of Supreme Court in the case of Hindustan Housing Development Corpn. (supra). Some other decisions based on above decisions are also relied upon. On careful consideration of the statutory provision, particularly the scheme adopted with the introduction of Sub section (5) of Section 45, we are unable to find any force in the arguments raised on behalf of the assessees or the interveners. As discussed above, a new scheme to tax enhanced or further enhanced compensation on receipt basis in the year of receipt has been introduced by adopting plain and

unambiguous language. Tribunals and Courts are required to give effect to the mandate of the Legislature. Therefore, decision of Hindustan Housing Development Corpn. (supra) and all other decisions which have not taken note of intention and scheme of the Legislature and its purpose, are not applicable to cases where enhanced compensation is received.

We have given our reasons for reaching above conclusion which need not be repeated.

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 the 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 assessees.

26. Even specific provision like Sub-section (7A) of Section 155 supported above inference. Therefore, we are of 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 work able, 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.

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 provisions 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 donot find any substance in the arguments advanced on behalf of the assessees 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 Lordships 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 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 betaxed 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 subsection (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 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 attains 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 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 special provision relating to taxability of amount is the year of receipt, cannot be disregarded. For aforesaid reasons also the arguments advanced on behalf of assessees 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 Ltd (supra) as also decision of Rama Bai v. CIT (supra) 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 decisions 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. In view of the above, we set aside the order of Commissioner (Appeals) and restore the matter back to the file of the assessing officer for deciding the taxability of enhanced compensation and interest as per the observations of the Special Bench discussed hereinabove.

6. In the result, the appeal of the revenue is allowed for statistical purposes in terms indicated hereinabove.