

(2008) 03 P&H CK 0051

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Commissioner of Income Tax

APPELLANT

Vs

Hardwari Lal (Huf) and Others

RESPONDENT

Date of Decision: March 26, 2008

Acts Referred:

- Income Tax Act, 1961 - Section 155, 260A, 45
- Land Acquisition Act, 1894 - Section 18

Citation: (2008) 219 CTR 583 : (2009) 312 ITR 151

Hon'ble Judges: Satish Kumar Mittal, J; Rakesh Kumar Garg, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Rakesh Kumar Garg, J.

These appeals u/s 260A of the IT Act (for short the "Act") have been filed by the Revenue against the orders passed by the Tribunal, New Delhi, whereby it has been held that the interest on enhanced compensation is taxable when the issue relating to enhanced compensation attains its finality as the same would accrue to the assessee at that time only.

2. The brief facts of the case are that the assessee had received an enhanced compensation and interest on enhanced compensation during the year under consideration. The assessee filed return of income and showed interest income on accrual basis from year to year. The AO held that the income from interest received by the assessee has to be assessed in the year of its receipt.

3. The CIT(A) held that the amount of interest cannot be termed as income of the year to be taxed in a particular assessment year unless the same has become final. On appeal filed by the Revenue before the Tribunal it was held that the interest on enhanced compensation is taxable when the issue relating to enhanced compensation attains such finality and the same would accrue to the assessee at

that time only. While deciding these appeals, the Tribunal has relied upon its Special Bench decision in the case of 2007 (288) ITR (Trib) 1 .

4. The Revenue is in appeal before this Court challenging the order of Tribunal.

5. Mr. Yogesh Putney, learned Counsel appearing for the Revenue, has argued that in view of [Rama Bai and Others Vs. Commissioner of Income Tax, Andhra Pradesh Hyderabad and Others,](#) , the interest on enhanced compensation for land compulsorily acquired under the Land Acquisition Act, 1894 awarded by the Court on a reference u/s 18 of the Act or on further appeal has to be taken to have accrued not on the date of the order of the Court granting enhanced compensation but on its having accrued year after year from the date of delivery of possession of the land till the date of such order, and such interest cannot be assessed to Income Tax in one lump sum in the year in which the order is made and therefore, the Tribunal has erred in law while holding that the interest on enhanced compensation is taxable when the issue relating to the enhanced compensation attains its finality as the same would accrue to the assessee at that time only. On the basis of the abovesaid argument, counsel for the Revenue has further argued that the following substantial question of law arises from the order of the Tribunal for consideration of this Court:

Whether, on the facts and circumstances of the case, the Hon"ble Tribunal is right in holding that if the litigation regarding quantum of enhanced compensation was pending before a Court and had not attained finality, interest on enhanced compensation would not accrue and could be subjected to tax only when the issue of enhanced compensation is finally settled?

6. We have heard learned Counsel for the appellant and gone through the averments made in the appeals.

7. We are of the opinion that these appeals are without any merit. The controversy in hand stands settled by a decision of the Special Bench in the case of Dy. CIT v. Padam Parkash (HUF) (supra). The Special Bench has relied upon the judgment of Madras High Court, in the case of [The Commissioner of Wealth Tax Vs. Smt. T. Girija Ammal,](#) . In the said judgment, the Madras High Court has held that the enhanced compensation received could not be treated as part of the compensation received from the transfer of the land until it was finally determined by the High Court or the Hon"ble Supreme Court. In the case of [Commissioner of Income Tax, West Bengal-II, Calcutta Vs. Hindustan Housing and Land Development Trust Ltd.,](#) , it has been authoritatively laid down by the Hon"ble apex Court that the interest on enhanced compensation would not accrue and cannot be subjected to tax until an issue of enhanced compensation is finally settled. This Court in ITA No. 4 of 2005 decided on 25th Feb., 2008 in the case of Chandi Ram v. CIT and Ors. reported at (2008) 4 DTR (P&H) 25. has held that the enhanced compensation is to be assessed in the year when the dispute regarding enhanced compensation attains finality. This Court has

followed the said view of the apex Court while interpreting the provisions of Section 45(5)(b) after insertion of Clause (c) to Section 45(5) and Sub-section (16) of Section 155 of the Act as inserted by Finance Act, 2003 , w.e.f. 1st April, 2004 and has held that the provisions of Section 45(5)(b) will be attracted only when the assessee receives enhanced compensation in pursuance of a final order of the Court or Tribunal or other authority increasing the compensation. In IT Appeal No. 177 of 2005 decided on 14th Nov., 2005 in the case of CIT v. Dilbagh Singh, the following questions were raised by the Revenue:

1. Whether on the facts and circumstances of the case, the Hon"ble Tribunal has erred in law in setting aside the order of the CIT(A) in which action of the AO in bringing to tax the interest received on enhanced land compensation, on the receipt basis, was held as correct ?

2. Whether Hon"ble Tribunal has erred in law in relying on the decision of the Hon"ble Supreme Court in the case of Rama Bai (supra) although the facts of the present case are materially different inasmuch as that the assessee in this case was not maintaining any books of accounts on regular basis and neither he had shown the interest income on land compensation on accrual basis in any of the earlier years?

3. Whether the Hon"ble Tribunal has erred in law in not justifying the action of the AO in bringing to tax the interest on enhanced compensation on receipt basis as the interest was received by the assessee in the year of appeal and though the interest was paid for delayed payment of enhanced compensation, it could not have been determined earlier on accrual basis on any hypothetical or undermined amount?

8. These appeals were dismissed and it was held that the interest has to be taxed on accrual basis. While dismissing the appeal, this Court has followed the decision of the Karnataka High Court in the case of [Chief Commissioner of Income Tax and Another Vs. Smt. Shantavva](#) . The relevant part of the judgment in Smt. Shantavva's case (supra) is reproduced hereunder:

Only when the reference Court determines the compensation and such determination becomes final the amount received in pursuance of the interim order will be appropriated against the compensation finally determined and will become income chargeable under the head "Capital gains". The mere fact that some amounts had been received by furnishings 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 u/s 45(5)(b).

9. In Rama Bai's case (supra) the ITO while making the assessment for the asst. yrs. 1967-68 and 1968-69 held that the right to receive interest on the enhanced compensation arose on the date when the city civil Court passed the order i.e. on 7th July, 1967. The assessee's objection to tills was that the interest should be

distributed over the period commencing from the date of dispossession of the assessee under the Land Acquisition Act till the date of payment. This contention was not accepted by the ITO. The Tribunal rejected the contention of the assessee and held that the entire interest on enhanced compensation was liable to be taxed for the asst. yr. 1968-69. On the above facts, the following question arose before the apex Court:

Whether, on the facts and circumstances of the case, the interest of Rs. 29,870 is liable to the assessed for the asst. yr. 1968-69?

While answering the question at issue the Hon"ble apex Court held that it is concluded by the decision of the apex Court in [Commissioner of Income Tax, Madras Vs. T.N.K. Govinda Raju Chetty](#), and therefore, the question of accrual of interest will have to be determined in accordance with the above decision of this Court and the effect of the decision whether the interest cannot be taken to have accrued on the date of the order of the Court granting enhanced compensation but has to be taken as having accrued year after year from the date of delivery of possession of the lands till the date of such order. Thus, in Rama Bai's case (supra) the Hon"ble Supreme Court decided the question only to the extent that on receipt of interest income in lump sum the same is not to be taxed and the same is to be spread over from the date of delivery of possession of the land till the date of order.

10. In the present case, the question posed by the Revenue is slightly different. The pith and substance of the question raised before us is whether in the circumstances of a compensation case where the matter of enhanced compensation has not attained finality, the interest on enhanced compensation would not accrue and could be subjected to tax only when the issue of enhanced compensation is finally settled. The Hon"ble Supreme Court of India in the case of [K.S. Krishna Rao Vs. Commissioner of Income Tax, Andhra Pradesh](#), has held that the interest on enhanced compensation cannot be taxed all in a lump sum as having accrued on the date on which the Court passes the order for enhanced compensation and the interest has to be spread over on an annual basis right from the date of delivery of possession till the date of the order of the Court on a time basis. In another case titled as [Bikram Singh and Others Vs. Land Acquisition Collector and Others](#), the Hon"ble apex Court has held that the interest received on delayed payment of compensation under the Land Acquisition Act is a revenue receipt assessable to Income Tax. However, the assessee is entitled to spread over the income for the period for which payment came to be made, so as to continue the income for assessing tax for the relevant accounting year.

11. Thus, in view of the above discussed judgments of the Hon"ble apex Court and this Court, the interest on enhanced compensation would not accrue till the issue of enhanced compensation is finally decided and thereafter on attaining the finality of determination of enhanced compensation by the Court, the interest accrued to the assessee has to be spread over on an annual basis right from the date of delivery of

possession till the date of the order of the Court on the time basis.

12. Consequently, in the light of the said authoritative pronouncement, no fault can be found with the view taken by the Tribunal. Thus, no question of law, much less substantial question of law, survives for our consideration.

13. Accordingly, these appeals are dismissed.