

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'ए' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“ A ” BENCH, AHMEDABAD

सर्वश्री एन.के. बिल्लैया, लेखा सदस्य एवं महावीर प्रसाद, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER And
SHRI MAHAVIR PRASAD, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No. 246/Ahd/2015
(निर्धारण वर्ष / Assessment Year : 2007-08)

Shri Mukeshkumar K. Patel B-13, Saraswati Nagar Soc., Opp. ONGC AvniBhavan, Sabarmati, Ahmedabad - 380061	बनाम/ Vs.	The ITO, Ward – 14(2), Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AEEPP 9698 H		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri Tushar P. Hemani, A.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri James Kurian, Sr. D.R.

सुनवाई की तारीख / Date of Hearing	31/08/2017
घोषणा की तारीख/Date of Pronouncement	26/09/2017

आदेश / ORDER

PER SHRI MAHAVIR PRASAD, JUDICIAL MEMBER :

This is an appeal by the assessee against the order of the Commissioner of Income Tax(Appeals)-5, Ahmedabad, dated 30/12/2014 for the Assessment Year (AY) 2007-08, on the following Grounds:

- i. *The learned CIT(A) has erred both in law and on the facts of the case in confirming the action of AO in reopening the assessment u/s.147 of the act. On the facts and circumstances of the case,*

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learned CIT(A) ought to have held that the action of reopening is without jurisdiction and not permissible either in law or on facts.

- ii. *The learned CIT(A) has erred both in law and on the facts of the case in confirming the addition of Rs.4,53,570/- made in respect of interest income on receipt basis instead of accrual basis in spite of the fact that the said interest pertained to earlier assessment years. Ld; CIT(A) has further erred in not appreciating that out of the total sum of Rs.4,53,570/-, the appellant himself has shown a sum of Rs.63,498/- in the return of income filed by him.*
- iii. *Both the lower authorities failed to appreciate that it is a settled legal position of law that interest on enhanced compensation for land compulsorily acquired under the Land Acquisition Act, 1894 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 lands till the date of such order.*
- iv. *Both the lower authorities have passed the orders without properly appreciating the fact and that they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order. This action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.*
- v. *The learned CIT(A) has erred in law and on facts of the case in confirming action of the ld. AO in levying interest u/s.234A/B/C of the Act.*
- vi. *The learned CIT(A) has erred in law and on facts of the case in confirming action of the ld. AO in initiating penalty u/s 271(1)(c) of the Act.*

2. The relevant facts as culled out from the materials on record are as under:-

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In this case, the appellant has received total interest of Rs.4,53,570/- in the Financial Year 2006-07. The appellant has computed interest from F.Y. 2001-02 to 2006-07 as under:-

Sr. No.	F.Y.	A.Y.	Int. Amount Received (Rs.)	1/4th Share
1.	2001-02	2002-03	1,14,185	28,546
2.	2002-03	2003-04	3,04,495	76,123
3.	2003-04	2004-05	3,80,168	95,155
4.	2004-05	2005-06	3,80,168	95,155
5.	2005-06	2006-07	3,80,168	95,155
6.	2006-07	2007-08	2,53,747	63,436
Total			18,14,281	4,53,570

2.2 The appellant has not shown interest income on the accrual basis in the relevant Asst. Year 2002-03 to 2006-07. The appellant has not given any details to show that it was following the accruing system of accounting and accordingly the interest to the extent of Rs.63,436/- and not the full interest amount of Rs.4,53,570/- was taxable in the hands in the year under consideration. Since being the individual the appellant must be following the receipt method of accounting and in the year under consideration the entire interest have been received by the appellant therefore the same is liable to be taxed in the year under consideration itself and AO made the addition of Rs.4,53,570/-.

3. Against the said order assessee preferred first statutory appeal before the learned CIT(A) who dismissed the appeal of the assessee.

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4. Now appellant's appeal is before us.

5. We have gone through the impugned order and heard the submissions of both the parties.

5.2 Ground No.1 is not pressed.

5.3 Learned AR stated that during the F.Y. assessee and his mother Sakarben K. Patel, brother Shaileshkumar K. Patel and sister Ilaben K Patel have received interest amount to Rs.18,14,281/- as heirs of Deceased Keshavlal Marghabhai Patel. They have not shown share of said interest income in the heirs individual return as they were under bonafide belief that the total compensation received is for compulsory acquisition of agricultural land. Hence, it is exempt from income tax.

There belief for exempt from income tax was supported by reading of award in which honourable judge have mentioned that "All the opponent directed to prevent the deduction of income tax" Thus they believed that the said compensation is totally exempt from tax. Thus as fact mentioned above on bonafide belief and there was no intention to not to pay tax on interest income, they have not shown the share of the said interest income of Rs.18,14,281/- in respective heirs individual return of income. On knowing the fact's that share of interest received under award is to be shown in the individual return of income of the heirs.

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Thus, assessee offered his share of interest income amount to Rs.4,53,570/- (1/4th of Rs.18,14,281/-).

5.4 Learned AR also cited an order of Coordinate Bench's decision in the case of Sakarben K. Patel vs. ITO, who is also beneficiary of the award in ITA No.2989/Ahd/2013 for A.Y.2007-08, in which Hon'ble Bench held that "Hon'ble Gujarat High Court in the case of Movaliya Bhikubhai Balabhai Vs. ITO [(2016) 388 ITR 343 (Guj)] interest awarded under section 28 of the Land Acquisition Act, as admittedly the interest in this case is, is an accretion to enhanced compensation and is required to be treated as consideration on transfer which can be brought to tax as capital gains. In the present case, the land transferred is an agricultural land and, therefore, it cannot be taxed as capital gains since the agricultural land will fall outside the ambit of 'asset'. In this view of the matter, the plea raised by the Assessing Officer for taxation of interest, on receipts basis, is devoid of legally sustainable basis. While I decline to deal with the income already offered to tax by the assessee, on her own, I hold that the addition of Rs 3,90,034 was vitiated in law. I direct that this addition of Rs 3,90,034 be deleted and appeal allowed in the terms indicated above."

6. Respectfully, following the above said judgment, same is pertained to the matter of the assessee. Therefore, we allow this appeal of the assessee.

7. In the result, appeal of the assessee is allowed.

This Order pronounced in Open Court on	26/09/2017
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Sd/-
एन.के. बिल्लैया
(लेखा सदस्य)
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
महावीर प्रसाद
(न्यायिक सदस्य)
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Ahmedabad; Dated 26/09/2017

Priti Yadav, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-5, Ahmedabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad
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