

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'F': NEW DELHI)**

**BEFORE SHRI SHAMIM, ACCOUNTANT MEMBER
AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

**ITA No:- 3139/Del/2019
(Assessment Year: 2015-16)**

Philia Estates Developers Private Limited. (Now Merged with AtheroI Builders & Developers Pvt. Ltd.).	Vs.	Assistant Commissioner of Income Tax, Circle-19(2)., C.R. Building, New Delhi.
APPELLANT		RESPONDENT
PAN No: AAEC2582R		

Assessee By : Shri R.S. Singhavi, CA and
Shri Satyajit Goel, CA
Revenue By : Shri Gurpreet Singh, Sr. DR

Date of Hearing : 17.04.2023

Date of Pronouncement : 02.05.2023

ORDER

PER SHAMIM YAHYA, A.M.

This appeal by the Assessee is directed against the order passed by the Learned Commissioner of Income Tax (Appeals)-7, New Delhi, dated 20.02.2019 and pertains to Assessment Year 2015-16. The Grounds of appeal are as under:-

- "1.(i) *That on facts and circumstances of the case, the Ld. CIT(A) was not justified in upholding addition to the extent of Rs. 3,08,08,041/- being aggregate of initial compensation of Rs. 1,73,24,927/- and enhanced compensation of Rs. 1,34,83,114/- received on acquisition of land by Government of India without appreciating the factual matrix of the case.*
- (ii) *That entire compensation being subject matter of dispute before judicial authorities, there was no case of any accrual of income in the year under consideration in terms of provisions of section 5 of the Income tax Act, 1961.*
- (iii) *That assessee has duly accounted for the entire compensation in AY 2017-18 on final settlement of issue of compensation and the surplus so arising having been subjected to tax, the impugned addition in the year under consideration is merely on account of timing difference and leads to double taxation.*
2. (i) *That even otherwise, the Ld. CIT(A) should have explicitly allowed the benefit of cost of acquisition while taxing compensation in the year under consideration.*
- (ii) *That income tax being chargeable only on "Income" arising to the assessee, the action of the assessing officer in rejecting the claim of cost of acquisition is in total disregard to scheme and intent of section 5 of Income tax Act, 1961 read with Article 265 of Constitution of India.*
3. (i) *That on facts and circumstances of the case, the Ld. CIT(A) was not justified in rejecting the claim of 50% deduction to the extent of Rs. 37,37,662/- u/s 57(iv) in respect of interest on enhanced compensation of Rs. 74,75,323/- by re-characterising the same under the head "Profit and Gains of Business & Profession" as against "Income from Other Sources".*
- (ii) *That interest on enhanced compensation being specifically covered under section 56(2)(viii) of the Income Tax Act, 1961, the same is assessable under the head "Income from Other Sources" and as such the claim of deduction u/s 57(iv) has wrongly been rejected by lower authorities.*
- (iii) *That in any case, the interest on enhanced compensation is not incidental to business activities of the assessee and same is chargeable to tax under section 56(2)(viii) r.w.s. 57(iv) of the Act.*
- (iv) *That even if such interest on enhanced compensation is considered under the head "Profit and Gains of Business & Profession", the benefit of deduction as contemplated under the statute has to be allowed for the purpose of computation of income chargeable to tax.*

4. That orders of lower authorities are not justified on facts and are bad in law.

5. That the appellant craves leaves to add, alter, amend, forgo any of the grounds of appeal at the time of hearing."

2. Ground No. 1 and 2 of the assessee's appeal are not pressed by the Ld. Counsel of the assessee. Hence the same are dismissed as not pressed.

3. The Ground No. 3 is regarding disallowance of Rs. 37,37,662/- being claim of deduction @ 50% under Section 57(iv) of the Act, in respect of interest received on enhanced compensation of Rs. 74,75,323/-. The Assessing Officer disallowed the claim of deduction U/s 57(iv) of the Act, on ground that as the appellant is in the business of real estate, the interest income arising from compulsory acquisition of property is taxable under the head PGBP and not income from other sources. Hence, the Assessing Officer accordingly held that as the interest income is not chargeable to tax U/s 56, the claim of deduction u/s 57(iv) of the Act is not admissible.

3.1 The Ld. CIT(A) upheld the order of the Assessing Officer. Against this order, the assessee is in appeal before us.

4. We have heard both the parties and perused the records. The Ld. Counsel of the assessee submitted that the impugned disallowance of claim of deduction U/s 57(iv) is misconceived and without proper appreciation of the specific provision of Section 56(2)(viii) read with Section 57(iv) of the Act.

4.1 He further submitted that the facts that the assessee is engaged in the business of PGBP is neither relevant nor will override the specific provision of section

56(2) of the Act. Hence, he submitted that the deduction claim U/s 57(iv) is correct and the same is to be allowed.

5. On the contrary, the Ld. DR relied on the orders of the authorities below. Upon careful consideration, we note that we may gainfully refer to the provision of Section 56(2)(viii) and Section 57(iv) of the Act.

"(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely-

(i) to (vii)...

(viii) income by way of interest received on compensation or on enhanced compensation referred to in sub-section (1) of section 145B;

Deductions.

57. The income chargeable under the head "Income from other sources" shall be computed after making the following deductions, namely

(i) to (Hi)

(iv) in the case of income of the nature referred to in clause (viii) of sub-section (2) of section 56, a deduction of a sum equal to fifty per cent of such income and no deduction shall be allowed under any other clause of this section:"

5.1 From the above, it is very much evident that Section 56(2)(viii) provides that interest on enhanced compensation has to be taxed under the head "Income from other source. In this view of the matter, we agree with the Ld. Counsel for the Assessee that the deduction U/s 57(iv) is to be allowed and the ground on which revenue authorities have disallowed the claim being the assessee engaged in business is of no relevance. Thus, on the basis of the overriding provision of Section 56(2)(viii) read with Section 57(iv) of the Act, we agree that the assessee is entitled

to the statutory deduction of 50% U/s 57(iv) of the Act. Hence we set aside the orders of the authorities below and decide the issue in favour of the Assessee.

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

Order pronounced in the open court on 2/5/2023

Sd/-
(CHALLA NAGENDRA PRASAD)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Dated: 02/05/2023
(Pooja)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	26.04.2023
Date on which the typed draft is placed before the dictating Member	27.04.2023
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	