

* **HIGH COURT OF DELHI : NEW DELHI**

+ **ITA No.687 of 2007**

Judgment reserved on: January 25, 2008

% Judgment delivered on: February 19, 2008

Commissioner of Income Tax
Delhi-III,
C.R. Building, New Delhi

...Appellant

Through Ms. Rashmi Chopra, Advocate

Versus

Sarvatra Roadrunners (Pvt.) Ltd.
104, Bhanot Chamber
3, Community Centre
New Delhi

...Respondent

Through Nemo

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

MADAN B. LOKUR, J.

The Revenue is aggrieved by an order dated 3rd November, 2006 passed by the Income Tax Appellate Tribunal, Delhi Bench G, in ITA No.4859A/Del/2002 relevant for the Assessment Year 1997-98.

2. The Assessee had entered into two agreements with M/s South Eastern Coalfields Ltd. (SECL) for transportation of coal. Certain disputes arose between the Assessee and SECL with the result that the agreements were terminated and disputes referred for arbitration. In terms of the arbitration Award, the Assessee was to receive a sum of Rs.6,57,31,517/-. Objections appear to have been filed to the Award but they were rejected by the Court of competent jurisdiction on 26th July, 1996. Thereafter, SECL challenged the Award before the Madhya Pradesh High Court at Jabalpur. While admitting the appeal filed by SECL, the Madhya Pradesh High Court passed the following orders on 14th October, 1996 and 13th December, 1996. The order dated 14th

October, 1996 reads as follows:

“After hearing the counsel, we direct that if the appellant deposits 50% of the awarded amount which has been made a rule of the court within a period of six weeks from today, the execution and operation of the award for the balance amount shall remain stayed till the decision of this appeal. On deposit the respondent shall be at liberty to withdraw the same on furnishing security. Appellant to file private paper books within six weeks. Send for the records of the District Judge along with the record of the Arbitrator.”

The order dated 13th December, 1996 reads as follows:

“After hearing the counsel for the parties, we now extend the period for deposit by directing that the 50% of the decretal amount up to date shall be deposited by the appellants in the court below within a period of one month from today. Out of that deposit of 50% half of the amount may be paid to the respondents contractor on his furnishing such security for the restitution as would satisfy the Executing Court. Both the interlocutory applications thus stand disposed of.”

3. Pursuant to the aforesaid orders, the Assessee received a sum of Rs.3,28,65,728/- being 50% of the awarded amount. This amount was shown under the head current liabilities and provisions pending the decision of the Madhya Pradesh High

Court.

4. The return filed by the Assessee was processed under Section 143(1)(a) of the Income Tax Act, 1961 (the Act) and accepted. Subsequently, the assessment was reopened under Section 148 of the Act on the ground that there was reason to believe that the amount received by the Assessee as a result of the interim orders passed by the Madhya Pradesh High Court had escaped assessment.

5. The Assessee naturally contested the case before the Assessing Officer but its objections were overruled and an assessment order was passed treating the amount of Rs.3,28,65,728/- as the Assessee's income liable to tax.

6. On appeal, the Commissioner of Income Tax (Appeals) [CIT (A)] came to the conclusion that in the event SECL succeeded in its plea before the Madhya Pradesh High Court, the Assessee would be obliged to return the amount received by it

and, therefore, following the decision of the Supreme Court in *Commissioner of Income Tax v. Hindustan Housing & Land Development Trust Ltd.*, [1986] 161 ITR 524, it was held that the amount had not accrued to the Assessee as income in the relevant previous year. The addition made by the Assessing Officer was accordingly deleted.

7. The Revenue preferred an appeal before the Income Tax Appellate Tribunal but the view taken by CIT (A) was approved by the Tribunal and that is how the Revenue is in appeal before us.

8. On a reading of the interim orders passed by the Madhya Pradesh High Court on 14th October, 1996 and 13th December, 1996, it is quite clear that the Assessee had no right to receive the money in the sense that no right had accrued or vested in the Assessee in this regard. In the event SECL succeeded in the appeal filed by it, the Assessee was obliged to return the amount by way of restitution under Section 144 of the Code of Civil

Procedure.

9. A somewhat similar situation had arisen in *Hindustan Housing*. In that case, the lands belonging to the assessee were requisitioned and then acquired by the State Government. The issue of compensation was required to be adjudicated by the Calcutta High Court as a result of an appeal preferred by the State Government. Pending the appeal, the State Government deposited some amounts payable under the Award made under the provisions of the Requisition of Land (Continuance of Powers) Act, 1951. The assessee was permitted by the High Court to withdraw the amount on furnishing a security and the assessee did withdraw the amount and credited it in its suspense account. The question that arose before the Supreme Court was whether the Revenue could claim that the amount payable to the assessee as compensation could be said to have accrued to it as income during the relevant previous year. While answering this in the negative and accepting the contention of the assessee, it was held that the assessee had no absolute right to receive the amount

pending the appeal, since it was allowed by the High Court to withdraw the amount deposited by the State Government only on furnishing a security for refunding the amount in the event of the appeal filed by the State Government being allowed. Secondly, if the appeal was allowed in its entirety, the right to payment of the enhanced compensation would have fallen altogether. It was further held, approving the decision of the Andhra Pradesh High Court in *Khan Bahadur Ahmed Alladin & Sons v. Commissioner of Income Tax*, [1969] 74 ITR 651 that the right to receive compensation was an inchoate right and the enhanced compensation would accrue to the assessee only when the Court accepted its claim. The Supreme Court also made a reference to two decisions of the Gujarat High Court, namely, *Topandas Kundanmal v. Commissioner of Income Tax, Gujarat*, [1978] 114 ITR 237 and *Additional Commissioner of Income Tax, Gujarat v. New Jehangir Vakil Mills Co. Ltd.*, [1979] 117 ITR 849 to conclude that on the final determination of the amount of compensation, the right to such income in the nature of compensation would arise or accrue and till then there was no liability in praesenti in

respect of the additional amount of compensation claimed by the owner of the land.

10. Learned counsel for the Revenue, however, relied upon *K.C.P. Limited v. Commissioner of Income Tax*, [2000] 245 ITR 421. We, however, find that the decision relied upon is quite inapposite. In *K.C.P. Limited*, the levy price of sugar was fixed at Rs.120.30 per quintal and this was challenged by the assessee in the High Court of Andhra Pradesh. The assessee was then permitted by the High Court, by an interim order, to sell sugar at the rate prevailing prior to the notification fixing the levy price of sugar with the result that the assessee was able to sell the sugar at Rs.131.01 per quintal plus excise duty until further orders.

11. The Andhra Pradesh High Court had not cast any liability on the assessee to refund the amount to the purchasers of sugar from whom the excess amount was realized in the event the writ petition filed by the assessee was dismissed. As luck would have it, the writ petition filed by the assessee was in fact

dismissed and even in the final order passed by the High Court, there was no direction to the assessee to refund the amount collected by it. The net result of the decision of the Andhra Pradesh High Court was that the assessee was no longer entitled to charge Rs.131.01 per quintal plus excise duty on the sugar sold by it.

12. The amount realized by the assessee as a result of the interim order passed by the High Court was treated by the Assessing Officer as a trading receipt and even though the CIT (A) and the Tribunal held that the amount was not taxable, the High Court came to the conclusion that the amount was liable to tax and the decision of the High Court was affirmed by the Supreme Court.

13. Quite clearly, the facts in *K.C.P. Limited* are not at all applicable to the facts of the present case inasmuch as there was no requirement of the assessee therein to refund the amount to anybody either in law or as a result of any order passed by the

Andhra Pradesh High Court. We, therefore, do not see the relevance of the decision relied upon by learned counsel for the Revenue.

14. In view of the above, we are of the opinion that both the CIT (A) as well as the Tribunal were correct in law in deleting the addition of Rs.3,28,65,728/- made by the Assessing Officer.

15. No substantial question of law arises for consideration. The appeal is dismissed.

MADAN B. LOKUR, J

February 19, 2008
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V.B. GUPTA, J

Certified that the corrected copy of the judgment has been transmitted in the main Server.