IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1060 OF 2008

Commissioner of Income Tax -21 … Appellant

v/s

Savitridevi Ringshia … Respondent

Mr.Suresh Kumar along with N.A. Kazi for the appellant.

Mr.Pankaj Toprani a/with Ms.Keyuri Desai for the respondent.

CORAM: M.S. SANKLECHA &
N.M. JAMDAR, JJ.

DATED : 29TH JUNE, 2015

P.C.:

This appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 28 January 2008 passed by the Income Tax Appellate Tribunal (the Tribunal). This appeal is in respect of Assessment Year 1998-99.

2 Mr.Suresh Kumar, learned counsel appearing for the revenue urges the following question of law for our consideration:

“Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in allowing the appeal of the assessee by deleting the entire addition of Rs.93.34 lac and dismissing the appeal of the revenue holding that the amount received was by virtue of an interim order of the Court and is not accrued to the assessee ?”

3 The respondent-assessee is in the business of civil construction. The respondent-assessee had some disputes with Bombay Municipal Corporation (B.M.C.) in respect of a contract awarded to her by the B.M.C. In view of the dispute, the B.M.C. terminated the contract and refused to make the payment to the respondent-assessee. This resulted in the respondent filing a suit in the City Civil Court for recovery of its dues. The City Civil Court by order dated 6 May 1997 passed an interim order directing the B.M.C. to make payment of Rs.1.04 crores to the respondent assessee against it furnishing a bank guarantee of Rs.44 lacs to B.M.C. pending the disposal of the suit. The matter was carried in appeal to the High Court which directed the dispute to be referred to Arbitration.

4 The Tribunal, by the impugned order held that the amount received by the respondent assessee by an interim order dated 6 May 1997 was subject to final resolution of the dispute. Thus, it held that the amount received under an interim order cannot be considered as an income of the assessee as there is yet no absolute right to receive the amounts. The Tribunal further records that the B.M.C. had also filed a counter-claim and it was likely that the

respondent-assessee would have to pay more than what has been given to her by the interim order. In the above view, the Tribunal placed reliance on the judgment of the Supreme Court in the case of ***C.I.T. v/s Hindustan Housing & Land Development Trust Ltd.,*** reported in ***161 ITR 524 (SC)*** to hold that no income had accrued to the respondent-assessee during the subject assessment year.

5 The grievance of the respondent-assessee with the impugned order is that, under the interim order the respondent-assessee received Rs.1.04 crores subject to her furnishing bank guarantee of Rs.44 lacs. On the above ground it is submitted that the difference between the amount received and the bank guarantee furnished, is income which is accrued and received by the respondent-assessee and should be subjected to tax in Assessment Year 1998-99.

6 Mr.Toprani, learned counsel appearing for the respondent-assessee while placing reliance on the decision of ***Hindustan Housing*** (supra) and also places reliance on the decision of this Court in the case of ***C.I.T. v/s Saksaria Biswan Sugar Factory Pvt. Ltd.***, reported in ***195 ITR 778,*** wherein following the Apex Court decision, this Court has observed as under :

> *"4. In response to a query from the Bench, Shri Trivedi, learned counsel for the assessee, stated that, after prolonged litigation, the Central government came down with a fresh legislation known as Levy Sugar Price Equalisation Fund Act, 1976, and that the assessee had eventually to make over this amount to the Government under that Act. Placing then*

> *reliance on the andhra Pradesh High Court decision in the case of CIT v/s Chodavaram Co-op. Sugars Ltd. (1985) 49 CTR (AP) 295; (1987) 163 ITR 420 (AP), and the Karnataka High Court decision in the case of CIT v/s Mysore Sugar Co. Ltd. (1990) 82 CTR (Kar.) 255 : (1990) 183 ITR 113 (Kar.), Shri Trivedi reiterated that the extra amount received by the assessee was subject to several conditions. The amount was made available to the assessee on a bank guarantee and was to be refunded if the assessee lost in the writ petition. It was stated that, both the Andhra Pradesh and the karnataka High Courts, in identical circumstances, took the view that the amounts so received did not accrue to the assessee as its income until the finalization of the dispute. Shri Trivedi also invited our attention to the fact that, by its order dated December 17, 1990 (CIT v/s Nawabganj Sugar Mills Ltd. (1991) 187 ITR (St.) 74), the Supreme Court dismissed a special leave petition by the Department against a similar order dated August 18, 1983, of the Delhi High Court in I.T.C. No.184 of 1983.*
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> *5. Having heard the parties and after going through the decisions relied upon, we are in agreement with the view of the Karnataka High Court. What has happened in this case is that the assessee was permitted to collect the amount in question only pursuant to an interim order made by the court which was subject to several conditions to make the right absolute. Therefore, the collection made by the assessee at an enhanced rate at that stage was an inchoate one as this extra amount did not accrue to the assessee until the finalisation of the dispute pending before the Court. In fact, this is also the view taken by the Supreme Court in CIT v/s Hindustan Housing & Land Development Trust Ltd. (1986) 58 CTR 179 : (1986) 161 ITR 524 (SC). Accordingly, we are in agreement with the Tribunal and answer the first question in the affirmative and in favour of the asseessee."*

In view of the above, the issue is concluded in favour of the respondent-assessee.

7 Mr.Toprani further points out that the dispute between the respondent-assessee and the B.M.C. has now been resolved. The entire amount received as compensation including the amount received consequent to interim order dated 6 May 1997, order of the Court has been offered to tax for the Assessment Year 2009-10.

8 In view of the settled position of law by the decisions of this Court and Apex Court, it follows that the amount received under an interim order which is still subject to further final adjudication of the dispute cannot be considered to be an accrued income of the respondent-assessee. The amount received under the interim order is not granted on resolution of the dispute but pending the final decision on the dispute. Thus, no income has accrued to the assessee on the amounts received under the interim order. In the above view, we find no substantial question arises for our consideration.

9 Accordingly, appeal dismissed. No order as to costs.

(N. M. JAMDAR, J.) ***(M.S. SANKLECHA, J.)***