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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision : 27th October, 2017

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W.P.(C) 8035/2016

RAM KUMAR

..... Petitioner

Through: Mr. Balbir Singh, Senior Advocate
with Mr. Aneesh Mittal, Advocates.
Mr. Arvind Kumar, Advocates.

Versus

INCOME TAX OFFICER, WARD-64(2) & ANR. Respondents

Through: Mr. Ashok K. Manchanda, Senior
Standing Counsel & Mr. Anand
Chaudhuri, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE PRATHIBA M. SINGH

SANJIV KHANNA, J. (Oral)

The Petitioner, Ram Kumar by way of the present writ petition has challenged the reassessment proceedings under Sections 147 read with Section 148 of the Income Tax Act, 1961 ('the Act') initiated vide notice dated 24th September, 2015 for the Assessment Year ('AY') 2011-12. The Petitioner has also challenged the order dated 8th August, 2016 rejecting the Petitioner's objections/representation against the re-opening of the assessment proceedings.

2. For AY 2011-12, the Petitioner had filed return of income declaring an income of Rs. 5,52,308 on 1st July, 2011 on which tax, including tax at source, of Rs. 45,796/- was duly paid.

3. On 19th March, 2012 the Petitioner filed a revised return for AY 2011-

12 seeking refund of Rs.12,94,962/- on account of TDS deducted by the Land Acquisition Collector ('LAC').

4. The Petitioner's case was taken up for scrutiny assessment vide notice under Section 143(2) of the Act dated 2nd May, 2013.

5. The Petitioner had claimed that the enhanced compensation of Rs. 64,75,249/- paid by the LAC relating to agricultural land was exempt from tax under Section 10(37) of the Act.

6. The Assessing Officer ('AO') passed the assessment order dated 14th February, 2014 on a total income of Rs. 6,28,376/- making an addition of Rs.10,800/- on account of interest income. The AO accepted the claim of the Petitioner that enhanced compensation of Rs.64,75,249/- was exempted under Section 10(37) of the Act.

7. As noticed above, the aforesaid assessment has now been made subject matter of the reassessment proceedings vide notice under Section 148 of the Act dated 24th September, 2015 which is the subject matter of the challenge before this Court.

8. In order to decide the aforesaid challenge, we would like to reproduce the reasons recorded by the AO for reopening of the assessment, which read as under:-

Please refer to your letter dated 20.10.2011 seeking copy of reasons for issuance of notice u/s 148 of IT Act in your case for A. Y. 2011-12. The reasons recorded in your case are as under:-

The assessee has filed original return of Income of Rs. 5,52,310/- on 01.07.2011 for A.Y.2011-12 claiming TDS amounting to Rs. 45,796/- . Later, the assessee filed a revised return of income of Rs. 5,52,310/- on 19.03.2012

claiming TDS of Rs. 13,40,758/- and claim a refund of Rs.12,94,962/-. However the return was processed u/s 143(1) of the Income Tax Act, 1961 at Rs. 5,52,310/-, on 17.01.2013 by allowing TDS of Rs.45,796/-.

The case was selected for scrutiny under CASS to examine the reasons and genuineness for high claimed of refund out of TDS. However, the Assessing Officer while completing the assessment on 14.02.2014 omitted to consider the taxability of TDS received of Rs. 80,02,471 which was interest on enhanced compensation which has to be taxed in the said assessment year u/s 56(2) (viii) of Income Tax Act, 1961. The Assessing Officer assessed at total income of Rs. 6,28,376/- by making an addition of Rs.10800/- and Rs. 65266/- on account of difference in gross receipts as per Form 16 issued from Ministry of Labour and Employment and on account of undisclosed bank interest income respectively.

On perusal of TDS certificate showing credits amount of Rs.7,46,90,061 issued on 10.06.2010 by Land Acquisition Office, Panchkula Haryana on enhanced compensation on account of land acquisition in the name of four persons including the assessee jointly, it is revealed that said amounts includes interest on enhanced compensation of Rs. 3,20,09,884/- out of which $\frac{1}{4}$ the share belongs to the said assessee amounting to Rs.80,02,471/- which has not been taxed in said assessment year u/s 56 (2)(viii) of the Income tax Act, 1961 .

As per Section 56 (2)(viii) of the Income tax Act, 1961, the interest amount on enhanced compensation is taxable income in the hands of the said assessee w.e.f. 01.04.2010. It is seen from assessment order dated 14.02.2014 u/s 143(3), the Assessing officer has neither considered taxation of such interest amount on enhanced compensation of Rs.80,02,471/- nor any discussion has been made by the Assessing Officer in the body of the assessment order / office note / or order sheet entries regarding such taxation

of interest on enhanced compensation received by the assessee for A.Y. 2011-12 as per TDS statement receipt from Land Acquisition Office, Panchkula shown in the revised return filed by said assessee. Then Assessing Officer omitted to consider taxability of interest on enhanced compensation of Rs. 80,02,471/- in the hands of said assessee for A.Y. 2011-12 as per Section 56 (2)(viii) of the Income tax Act, 1961, in the assessment made on 14.02.2014 u/s 143(3) of Income Tax Act, 1961.

Since, such interest income on enhanced compensation due to land acquisition of Rs. 80,02,471/- was neither offered for taxation by the assessee nor Assessing Officer made any assessment of this amount by omitting such taxation of interest on enhanced compensation, I have reason to believe that income of Rs. 80,02,471/- chargeable to tax in the hands of above said assessee for A.Y. 2011-12 has escaped assessment. Hence I am satisfied that it is a fit case to issue notice u/s 148 of Income Tax Act, 1961 in the said case for the assessment year 2011-12 after taking necessary statutory approval u/s 151(2) r.w.s. u/s 147/148/149 of the Income Tax Act, 1961.

After supplying of reasons, you are requested to cooperate with the assessment proceedings and file necessary details asked for.”

9. The contention raised by the Learned Counsel for the Petitioner is that the reasons recorded do not show nexus and connection with the allegation of escapement of income. It is submitted that the reasons recorded are incorrect as the figures taken from the TDS certificate did not relate to the Assessee alone, but reflect the entire amount of compensation which was paid and was to be shared between the Legal Representatives / successors-in-interest of the owner of the land.

10. The learned counsel for the Petitioner has also objected to the

reasoning given by the AO in the order dated 8th August, 2016 which merely records that on merits the interest component received as enhanced compensation was taxable as per Section 56 (ix) [sic (viii)] read with Clause (b) to Section 145A of the Act.

11. Counsel for the Respondent has submitted that in the present case the AO while passing the original assessment order was not aware and did not have knowledge that enhanced compensation had included an element of interest as also the nature and character of the interest. In these circumstances, there is no question of change of opinion as the question of taxability of the interest element was not considered, examined and opined by the Assessing Officer. It is further stated that the question of taxability of interest would be examined on merits in the reassessment proceedings. Regarding the question of amounts mentioned in the reasons to believe it is submitted that the AO had to proceed on the basis of the documents and papers available on record which had indicated the total amount of compensation received.

12. We have considered the contentions raised by the Petitioner and the Respondent and are not inclined to interfere with the reassessment proceedings, at this stage. We record our reasons for the same.

13. Examination of the order sheet of the original assessment proceedings reflects and establishes that the AO had not examined the question whether the enhanced compensation had an element of interest or not. The AO in the original assessment proceedings had proceeded on the basis that the TDS certificate and enhanced compensation was in respect of the land without examining whether or not it had included an interest component. To this

extent learned counsel for the Petitioner has not disputed the assertions made by the learned counsel for the respondents, who has drawn our attention to the order sheets. In the order sheet dated 18th April 2013, which refers to interest component, it is pointed out was with reference to the difference between the interest disclosed by the Petitioner in his original return and as per Form 26AS. As noticed above, an addition of Rs.10,800/- was made by the AO in the assessment order dated 14th February, 2014 on this account. This amount of interest is different and distinct from the interest component which formed part of the enhanced compensation. The assessment order also does not mention or record that the Petitioner had received interest which was part of the enhanced compensation.

14. Noticeably, the office note to the assessment order records that the TDS of Rs.12,94,962/- issued by the LAC, on which the refund has been claimed, was not being taken into consideration as it was not reflected in Form 26AS. This note also mentions that the Petitioner has received enhanced compensation of Rs.64,75,249/- for compulsory acquisition of agricultural land in Karnal from the Land Acquisition Officer ('LAO'), Panchkula and this amount was exempted under Section 10(37) of the Act.

15. Subsequently, on verification the TDS certificate of Rs.12,94,962/-, it was found to have been issued by the LAO and credit of this amount was given to the Petitioner and refund order was issued. Copy of the refund order and the date on which the said refund order was issued has not been indicated and stated in the writ petition.

16. We have also examined the TDS certificate placed on record. Under the heading 'Nature of payment', the word 'Enhanced Compensation' is

recorded. The TDS certificate was issued in the name of several persons including the Petitioner. Under the heading 'Amounts paid/credit', in the subsequent column three amounts are indicated as below:

PR (i.e. Principal) - Rs.4,26,79,407/-
INT (i.e. Interest) - Rs.3,20,09,554/- and
Costs - Rs.1,100/-

The TDS certificate shows that tax was deducted at the flat rate of 20%.

17. It is apparent and obvious to us that the AO in the original assessment proceedings did not examine the question of taxability of interest as this aspect appears to have completely escaped his attention. It is not even the case of the Petitioner that the AO had examined the said question in the original assessment proceedings.

18. On the question of figures given in the reasons to believe, we would record that the AO had to proceed on the basis of documents available on record. It is not the case of the Assessee that he had not received interest amount as indicated in the reasons to believe. The figure or quantum is disputed. Even if we are inclined to accept the contention of the Petitioner that the figures of interest as indicated in the reasons to believe recorded for issue of reassessment notice are not correct, it cannot be disputed that the Petitioner was also entitled to a part of the interest. The figures may be wrong or incorrect for the reason that the interest had to be bifurcated and divided amongst several recipients and the details of such recipients was not available with the AO when he recorded the said reasons.

19. Learned counsel for the Petitioner has submitted that the interest in the present case, in terms of the decision of the Supreme Court, in

Commissioner of Income Tax v. Ghanshyam (HUF) (2009) 325 ITR 1 (SC) (hereafter '***Ghanshyam (HUF)***') would be part of the enhanced compensation and not interest which is taxable. In particular, our attention is drawn to paragraphs 24, 25, 26, 33 and 35 of the said decision. The aforesaid decision draws a difference between interest which is payable under Section 34 of the Land Acquisition Act, 1894 which would be taxable and interest payable under Section 23 (1A), 23(2) and 28 which as per the Petitioner is not taxable. According to the Petitioner, the interest received, as per the Award, was under Sections 23(1A), 23(2) and 28, and hence would not be taxable.

20. Learned counsel for the Respondents on the other hand submits that the decision in ***Ghanshyam (HUF) (supra)*** is dated 16th July, 2009 and the Act has been subsequently amended in the form of enactment of Clause (viii) to sub section 2 to Section 56 read with Clause (b) to Section 145A with effect from 1st April, 2010 by Finance (2) Act, 2009.

21. Learned counsel for the petitioner however has drawn our attention to the judgment of the Supreme Court in ***Ramabai v. Commissioner of Income Tax, (1990) 181 ITR 400 (SC)*** and Memorandum/Circular No.5/2010 (F No.142 /13/2010 – SO (TPL) dated 3rd June, 2010 explaining the newly enacted provisions of Clause (viii) inserted to sub-section 2 to Section 56 and Clause (b) to Section 145A of the Act.

22. We have considered the contention raised by the Petitioner that the interest element would partake the character of enhanced compensation and is not taxable, on the basis of the ratio in the case of ***Ghanshyam (HUF)*** but we are not giving any opinion on the same at this stage. These aspects, we

believe, are matters which the AO will have to examine in detail during the course of reassessment proceedings. We would not like to comment on the issues which the AO will have to determine and decide in the course of reassessment proceedings.

23. We would, however, like to observe that the AO should have been more careful while disposing of the objections/representation made by the Petitioner vide order dated 8th August, 2016. Though the Petitioner had raised similar objections at that time and also cited the judgement of the Supreme Court, the same have not been considered in depth and detail. It would have been more appropriate for the AO to clarify that the said submissions and contentions would be examined in depth and on merits during the course of reassessment proceedings. The assessment order should deal and answer the said contentions including the question of nature of interest and the section under which it was paid, and the effect and impact of the decisions relied upon by the petitioner. These issues would be considered and determined in the re-assessment proceedings. We have not made any observations on merits. We also clarify that in case the Petitioner is aggrieved by the final assessment order, he would be at liberty to challenge the said order, in accordance with law.

24. With the above observations, the writ petition is dismissed without any order of costs.

SANJIV KHANNA, J

PRATHIBA M. SINGH, J

OCTOBER 27, 2017/R