BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 25.03.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.21513 of 2017 and
WMP(MD) No.17793 of 2017

D.A.K.Chinnaraj Naidu ..Petitioner

Vs.

1.The Commissioner of Income Tax,
V.P.Rathnasamy Nadar Road,
Bibikulam,
Madurai – 625 002.

2.Assistant Commissioner of Income Tax,
Circle-I,
Virudhunagar. ..Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent in C.No.115/09/PCIT-2/MDU/2015-16 Dated 30.03.2017 quash the same and consequently direct the respondents to forthwith sanction and pay the refund the sum of Rs.3,00,049/- deducted towards TDS with applicable interest from the date of deduction and with cost, within such time may be directed by this Court.

For Petitioner : Mr.J.Parekhkumar

For Respondents : Ms.M.Parameshwari for
Mrs.S.Srimathy
Standing Counsel

O R D E R

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents.

2.The petitioner is owning lands in Virudhunagar, which was acquired for the Collectorate Complex of Virudhunagar District. The petitioner was granted compensation by the land acquisition officer. Aggrieved by the quantum awarded to him, the petitioner sought reference and enhancement of the compensation. The proceedings went on for number of years and ultimately only on 31.12.2006, the petitioner was disbursed with the compensation amount. It comprised not only enhanced compensation, but also solatium and interest. The authority, who had disbursed the compensation deducted a sum of Rs.5,94,000/- at source and handed over the balance amount to the petitioner herein. Thereafter, the petitioner filed his returns for the assessment year 2007-2008 and in the said return, the petitioner indicated that only a sum of Rs.1,52,539/- was received by him towards interest component. The main contention of the petitioner is that the accrued interest of Rs.45,00,000/- received by him has to be spread over from the date of acquisition. Since the petitioner's request was not considered, he filed W.P.(MD) No.17675 of 2014 and vide order dated 03.11.2014, this Court directed the Assessing Authority to pass orders on the petitioner's representation. Pursuant to the said direction given by this Court, the Assessing Authority vide order dated 17.12.2014, held that the petitioner's request was not maintainable and rejected the same. The relevant portion of the said order is extracted as under:-

> *5.The assessee's second contention is regarding the quantum of interest to be assessed in AY 2007-2008. Assessee's contention in this regard is that interest received represents interest for the period from date of delivery of possession ot the date of order of the court and hence the same is not to be assessed to tax entirely in this Assessment Year but has to be assessed in the respective Assessment Years on annual basis. No doubt, the Income Tax Act takes into account two points of time at which the liability to tax is attracted viz the accrual of the income or its receipt. It is also evidenced from records that interest granted is for the period 21.09.1985 to 31.12.2006. However, this interest become due to the assessee only by the order dated 18.11.2002 of the Hon'ble High Court. From the affidavit filed it is gathered that though the order of the Hon'ble High Court was in the year 2002, the assessee filed execution petitions before Subordinate Judge, Virudhunagar only in the year 2004, the acquisition authority filed calculation memo only in the year 2007 and the assessee also received the amunt within the financial year ending 31.03.2007.*
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> *5.1. The interest income which was neither received nor accrued in the relevant previous years cannot be assessed in the respective assessment years, as contended by the assessee. Further, though in this case, interest can also be taxed on due basis from AY 2003-2004 onwards, as contended by the assessee, there is nothing on record to show that the assessee had already admitted interest income on due basis in the respective earlier Assessment years viz AY 2003-04 to 2006-07. As per Form 16A, total amount received by the*

assessee is Rs.58,30,939/- and as evidenced from the details available in record the breakup of the same is as under.

Enhanced compensation	Rs.9,45,080.00
Solatium	Rs.3,46,355.00
Interest	Rs.45,39,504.00
Total	Rs.58,30,939.00

3.Aggrieved by the same, the petitioner filed a Revision before the first respondent herein under Section 264 of the Income Tax Act, 1961. The Revisional Authority also noted that the petitioner herein had used the amount received on compulsory acquisition of land for constructing a house and the said claim was supported by a valuation report and held that the Assessing Authority has to give necessary relief to the petitioner on that score. The application was thus partly allowed and he was sanctioned with refund also correspondingly. The primary contention urged by the learned counsel for the petitioner is that the interest portion received by the petitioner following his land acquisition should be spread over from the year of acquisition till the year of payment. He also pointed out that during the relevant assessment year 2007-2008, the petitioner was not having any taxable liability. He also pointed out that for the said assessment year, he could have rightly shown only a sum of Rs.1,45,000/- as interest received. This amount would not attract any tax liability. The main contention is that the assessing authority had never raised any demand in respect of the previous years. Till date, no notice has been received from the respondent and the petitioner's income for the earlier years had not been assessed to tax. Therefore, according to him, the respondents committed illegality by retaining a sum of Rs.3,49,000/- that was deducted from the compensation amount by way of TDS.

4.I have to necessarily sustain the contention of the petitioner's counsel that even though a sum of Rs.45,00,000/- was received as interest in the year 2006 for the assessment year 2007-2008, still it cannot be taxed as a single receipt and that the said amount should be spread over from the year of acquisition. I called upon the counsel on either side to file a memo of calculation to demonstrate if by such spreading over, whether the petitioner would be liable to pay any tax at all. The learned Standing Counsel appearing for the respondents filed a statement, which *prima facie* indicates that the petitioner would definitely have to pay a substantial sum by way of tax. If only the petitioner is able to demonstrate that the petitioner's tax dues will be zero, if the interest amount is spread over from the year of acquisition till the date of payment, this Court can consider granting relief to the petitioner.The petitioner's counsel would contend that it is for the respondent to issue notice of assessment. I cannot countenance such a contention. I would be justified in ordering refund, only if the petitioner can demonstrate that he is not at all liable to pay any sum towards tax for the amount of compensation received by him. As already admitted by the petitioner's counsel, the petitioner received a sum of Rs.58,00,000/- out of the said amount, Rs.45,00,000/- alone represented the interest portion. The Standing Counsel has demonstrated that spreading over the interest portion over several years would still attract liability more than what was deducted at source. Since, the petitioner had not demonstrated that the petitioner is not liable to pay any tax, I am not inclined to interfere with the impugned order. The Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Commissioner of Income Tax,
V.P.Rathnasamy Nadar Road,
Bibikulam,Madurai - 625 002.

2.Assistant Commissioner of Income Tax,
Circle-I, Virudhunagar.

+1 CC to M/s.P.SRINIVAS, Advocate (SR-13938[F] dated 26/03/2021)
+1 CC to M/s.S.SRIMATHY, Advocate (SR-14045[F] dated 29/03/2021)

W.P.(MD)No.21513 of 2017 and
WMP(MD) No.17793 of 2017

25.03.2021

RRS (10.05.2021) 4P 5C