



* IN THE HIGH COURT OF DELHI

+ ITA Nos. 482 & 484 of 2003

% DECIDED ON : September 28, 2004.

Paragon Constructions (I) Pvt Ltd.

.... Appellant.

Through : Mr. V.U. Eradi, Advocate
with Mr. Vibhu Bakhru, Advocate.

Versus

Commissioner of Income Tax
Delhi V, & Another

.... Respondents

Through Ms. Prem Lata Bansal,
Advocate.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

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

B.C.PATEL, C.J. (ORAL)

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1. The appellant has approached this Court against the orders made by the Income Tax Appellate Tribunal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act".)

At the request of the learned counsel appearing for the parties, the appeals are taken up for final disposal.



2. For the assessment years 1991-92 and 1992-93 the Tribunal disposed of the appeals against the assessee. In the appeal for assessment year 1992-93 the question of law which arises is as under:-

“Whether the Tribunal was right in law in holding that interest amounting to Rs. 6,63,275/- accrued to the assessee during the previous year relevant to assessment year 1992-93 was includible in its total income ?”

A similar question arises for the assessment year 1991-92.

3. In the instant case it appears that there was a contract between the appellant and the New Delhi Municipal Committee (for short “NDMC”). There were disputes about implementation of the contract in time and the default committed by NDMC. We need not discuss these issues, suffice it to say that ultimately the matter was referred to the Arbitrator and the Arbitrator by his award dated 27.8.1987 held that NDMC shall pay to the appellant a sum of Rs. 33,45,669.24 with simple interest as specified in the award.

4. The appellant moved the High Court praying that the Arbitrator be directed to file the original award for making the



award a rule of the Court. Against the award objections were filed by NDMC. In those proceedings NDMC deposited the amount in the Court without prejudice to its objections to the award in order to avoid further interest. By an order dated 23.3.1988 the High Court directed that the amount of Rs. 49,61,856.64 be paid to the petitioner (appellant herein) subject to its furnishing a bank guarantee of a nationalised bank within one month for restitution and to the effect that if the respondent succeeds, the petitioner shall refund the amount to the respondent along with interest.

5. The amount was withdrawn on furnishing a bank guarantee and the same was deposited in Fixed Deposit Account with the bank. The assessing officer held that the interest accrued on the amount so deposited is a taxable income for the years under consideration. Before appeals were preferred before the Income Tax Appellate Tribunal, the High Court decided the issue in favour of the appellant during the financial year that ended on 31.3.1995. The appellant offered the principal sum awarded, namely, Rs.33,41,669/- and interest accrued thereon totalling to Rs. 61,46,020/- for tax for the assessment year 1995-96. These



amounts were duly brought to tax in the previous year relevant to assessment year 1995-96. These facts are not in dispute before us.

6. The Tribunal, however, held that since the assessee was following the mercantile system, he was liable to pay tax on the interest which was earned by him in the relevant year, and not in the year of determination by the High Court. This question, raised by the assessee, is not required to be examined in much detail, since this High Court in a case, namely, Director of Income Tax (Exemption) v. Goyal Charitable Trust : (1995) 215 ITR 672 had an occasion to examine a similar question which was as under:-

“Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was justified in dismissing the Departmental appeal and holding that the interest accrued on compensation could be assessable only after the enhanced compensation had been finally determined with the interest earned by the assessee during the year under consideration and had nothing to do with the compensation/enhanced compensation?”

7. In the aforesaid case the Division Bench, after considering the decision of the Supreme Court in the case of

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Commissioner of Income Tax v. Hindustan Housing and Land Development Trust Ltd : (1986) 161 ITR 524 and a decision of this Court in Harish Chandra v. Commissioner of Income Tax : (1985) 154 ITR 478 held as under:-

"We have given our anxious consideration to the submissions made by counsel for the parties. On a consideration of the record we find that the assessee-trust was allowed to withdraw the enhanced compensation deposited in the court by furnishing a bank guarantee for the amount of compensation as also for the future interest which is the subject-matter in the present case. In view of the aforesaid fact, we are of the opinion that the right to receive the future interest as also the enhanced compensation by the assessee is still unsettled inasmuch as the assessee has been directed to withdraw the future interest also along with the enhanced compensation on furnishing a security for restitution. Accordingly, the withdrawal of the interest portion by the assessee is contingent inasmuch as there is a possibility of the said amount being returned by the assessee in the event of the acceptance of the appeal of the Government.

It is thus apparent that the principles laid down by the apex court (see [1986] 161 ITR 524) and by this court (see [1985] 154 ITR 478) are also applicable to the facts and circumstances of the present case."

8. We may quote the relevant portion of the Supreme Court decision in the case of Commissioner of Income Tax v.

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Hindustan Housing and Land Development Trust Ltd (supra)

as under:-

"In the present case, although the award was made by the arbitrator on July 29, 1955, enhancing the amount of compensation payable to the assessee, the entire amount was in dispute in the appeal filed by the State Government. Indeed, the dispute was regarded by the court as real and substantial, because the assessee was not permitted to withdraw the sum of Rs. 7,36,691 deposited by the State Government on April 25, 1956, without furnishing a security bond for refunding the amount in the event of the appeal being allowed. There was no absolute right to receive the amount at that stage. If the appeal was allowed in its entirety, the right to payment of the enhanced compensation would have fallen altogether."

9. The Andhra Pradesh High Court in the case of **Khan Bahadur Ahmed Alladin & Sons v. Commissioner of Income**

Tax : (1969) 74 ITR 651 held that :-

"Income -tax is not levied on a mere right to receive compensation; there must be something tangible, something in the nature of a debt, something in the nature of an obligation to pay an ascertained amount. Till such time, no income can be said to have accrued. ... On the date when the collector awarded the compensation, it is only that amount which had accrued or was deemed to accrue, whether in fact paid or not. But by no stretch of the words in section 4(1)(b)(i), could it be said that the right to enhanced compensation,



which has not yet been accepted by the proper forum, namely, the court, has also become payable on the date when the original compensation became payable, for being included in that year of assessment. The enhanced compensation accrues only when it becomes payable, i.e., when the court accepts the claim."

This decision has been approved by the Apex Court in the case of Commissioner of Income Tax v. Hindustan Housing and Land Development Trust Ltd (*supra*).

10. The learned counsel for the revenue submitted that in view of the Supreme Court decision in Babulal Narottamas and Others v. Commissioner of Income Tax : (1991) 187 ITR473 the interest which was earned by the assessee is required to be charged in the relevant year and not on the date when the Court made the order finally. In that case what was deferred was not the accrual of the right, but date of payment. As such, the right to receive the remuneration could not be said to have arisen on the date of the judgment of the High Court. The instant case is not one where merely the date of payment is deferred. Here the entire right to receive the same was in question and jeopardy. The right accrued to the assessee when the award was affirmed by the High Court.



Therefore, the aforesaid decision sought to be relied on by the learned counsel for the revenue is not applicable to the present case.

11. In the instant case it is very clear that it was only in view of the order made by the Court that the amount was permitted to be withdrawn and that too on the furnishing of a bank guarantee of a nationalised bank and the appellant was required to refund the amount with interest to the respondent in case the respondent succeeded. Therefore, the determinative date would be the date on which the decision was rendered by the Court and it is for that relevant year that the income tax will have to be assessed as it can be said that the amount accrued on that date only.

12. In view of what has been discussed by us hereinabove, the answer is required to be given in favour of the assessee and against the revenue. The appeals are allowed accordingly with no orders as to costs.

Reliant.
CHIEF JUSTICE

Badar Durrez Ahmed.
BADAR DURREZ AHMED, J

September 28, 2004
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