HIGH COURT OF DELHI : NEW DELHI

+ **ITA No.462 of 2003 & ITA No.234 of 2004**

Judgement reserved on: January 25, 2005

% Judgement delivered on: February 3rd, 2005

V.K. Jain
1, Madhuvan
Delhi ...Appellant

! Through Mr. Salil Aggarwal with
Mr. Prakash Kumar,
Advs.

Versus

$ Commissioner of Income-tax
Delhi-XII
New Delhi ...Respondent

^ Through Mr. R.D. Jolly, Adv.

Coram:

* **HON'BLE MR. JUSTICE SWATANTER KUMAR**
HON'BLE MR. JUSTICE MADAN B. LOKUR

1. Whether the Reporters of local papers may be allowed to see the judgement? Yes

2. To be referred to Reporter or not? Not necessary

3. Whether the judgement should be reported in the Digest? Not necessary

* **MADAN B. LOKUR, J.**

By this order, we propose to dispose of both the above appeals because they are connected with one another. ITA No.462/2003 is taken up first.

2. The Appellant is aggrieved by an order dated 16th December, 2002 passed by the Income Tax Appellate Tribunal, Delhi Bench C, New Delhi (for short the ITAT) in ITA No.192/D/98 for the assessment year 1994-95.

3. The Appellant has sought to raise, in this appeal under Section 260-A of the Income-tax Act, 1961 (for short the Act) as many as six substantial questions of law which, it is said, arise out of the order of the ITAT. The nub of the controversy,

however, is really with regard to the question whether enhanced compensation of about Rs.14.75 lakhs received by the Appellant is taxable in the year of receipt or is taxable only when it is finally determined to whom the amount, or part thereof, is due.

4. The Appellant had bhumidari rights in respect of land which was acquired by the Delhi Government. Apart from the Appellant who claimed compensation, the Gaon Sabha as well as the owner of the land also claimed compensation which was subsequently determined at Rs.14,75,368/-. According to the Additional District Judge who heard the respective claims, it was held that the Appellant was entitled to receive the enhanced compensation. However, it appears that appeals were filed against the decision of the Additional District Judge.

5. By an assessment order dated 6th March, 1997 passed

under Section 143(3) of the Act, the assessing officer took the view that because of the provisions of Section 45(5) of the Act, since the entitlement of the Appellant to the enhanced compensation was in dispute, the amount shall be deemed to be the income of the Appellant in the year of its receipt, regardless of whether the entitlement of the Appellant had become final or not.

6. Feeling aggrieved, the Appellant filed an appeal before the Commissioner of Income Tax (Appeals) [CIT (A)] who passed an order dated 23rd October, 1997 disagreeing with the assessing officer and concluded that the amount of enhanced compensation received by the Appellant is not taxable in the year of receipt because the Appellant cannot be said to have had an absolute right to receive the amount due to the pending dispute of entitlement which had not yet reached finality.

7. Against the order of the CIT (A), the Revenue preferred an appeal before the ITAT. By the impugned order dated 16th December, 2002, the ITAT was of the view that it is necessary to determine, as a matter of fact, the terms under which the enhanced compensation had been received by the Appellant and whether he was required to furnish any bank guarantee for restitution of this amount. The reason for the view taken by the ITAT was that it would have some bearing on the absolute entitlement of the Appellant to the enhanced compensation in question. Since the factual position was apparently not available from the record, the ITAT restored the case to the file of the CIT (A) with a direction to verify the specific facts mentioned in the impugned order and thereafter the CIT (A) would pass a speaking order in accordance with law after affording an opportunity to the Appellant of being heard.

8. Learned counsel for the Appellant vehemently

contended that the facts which the ITAT wanted to get determined were already available on the record and there was no reason for the matter to be remanded to the file of the CIT (A).

9. We are not impressed by the contention of learned counsel for the Appellant and also find that no substantial question of law arises in this regard, even if it is assumed that there is substance in the contention urged by learned counsel.

10. The ITAT has extracted the relevant portion of the order passed by the assessing officer which clearly indicates that for an effective determination of the issue arising in the case, it is absolutely necessary to know the amount of compensation that was actually received by the Appellant unconditionally and the amount that was received on his furnishing a bank guarantee. It is only then that it can be

determined, as a matter of fact, what is the amount of compensation received by the Appellant. Thereafter the law applicable, that is, Section 45(5) of the Act would come into play. Until the facts are determined, it would not be possible to decide whether the case set up by the Appellant was correct or not. We do not find any error in this view taken by the ITAT. Unless the facts of the case are known, it will not be possible to adjudicate the issues raised.

11. There is no merit in this appeal. The same is, accordingly, dismissed. No costs.

ITA No.234/2004

12. This is an offshoot of the order dated 16th December, 2002 passed in ITA No.92/Del/98 which has already been dealt with above.

13. After the ITAT passed its order dated 16th December, 2002, the Appellant filed an application under Section 254(2) of the Act praying for its recall. It was contended that certain mistakes of law as well as of fact have crept into the order. It was submitted before the ITAT that the Appellant had not been given a full hearing in the matter but was given an impression that the appeal filed by the Revenue was likely to be dismissed. Therefore, the order dated 16th December, 2002 is required to be recalled and the matter heard afresh.

14. By the impugned order dated 22nd October, 2003, the ITAT delved over the entire issue once again and came to the conclusion that no mistake worth its name has been pointed out by the Appellant. There was, therefore, no reason to interfere under Section 254(2) of the Act.

15. Ex facie, there is no substantial question of law that

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arises in this appeal. In any case, as already mentioned above, we do not find any error in the order dated 16th December, 2002 and even before us, learned counsel for the Appellant was not able to point out any error which requires any rectification.

16. There is no merit in this appeal also. It is, accordingly, dismissed. No costs.

(Madan B. Lokur)
Judge

February 3rd, 2005
ncg

(Swatanter Kumar)
Judge

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

PS
5.2.05