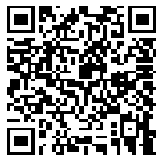


IN THE HIGH COURT OF DELHI AT NEW D

% *Decided On* : 09th November, 2009.

1) **ITA No. 733 of 2007**

M/s. Sardar Exhibitors Pvt. Ltd. ... Appellant
through : Mr. K. Sampath with Mr. Rajiv K. Garg, Advocates.

VERSUS

DCIT, Company Circle 25(6), CR Building, New Delhi ...Respondent
through: Ms. Suruchi Aggarwal, Advocate.

2) **ITA No. 734 of 2007**

M/s. Sardar Exhibitors Pvt. Ltd. ... Appellant
through : Mr. K. Sampath with Mr. Rajiv K. Garg, Advocates.

VERSUS

DCIT, Company Circle 25(6), CR Building, New Delhi ...Respondent
through: Ms. Suruchi Aggarwal, Advocate.

3) **ITA No. 735 of 2007**

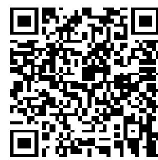
M/s. Sardar Exhibitors Pvt. Ltd. ... Appellant
through : Mr. K. Sampath with Mr. Rajiv K. Garg, Advocates.

VERSUS

DCIT, Company Circle 25(6), CR Building, New Delhi ...Respondent
through: Ms. Suruchi Aggarwal, Advocate.

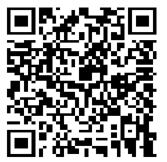
CORAM :-
THE HON'BLE MR. JUSTICE A.K. SIKRI
THE HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether Reporters of Local newspapers may be allowed



1. All these appeals are filed by the same assessee. Question proposed to be raised is identical and it relates to different assessment years. The appellant herein is the owner of premises No. A-33, Kailash Colony, New Delhi which were let out by the Appellant herein to Ministry of Defence, Government of India (MOD), under a lease deed dated 16.09.1985 for a period of three years on a monthly rent of Rs.1,75,192/-. As per the lease deed, the appellant was also to construct an additional area according to specifications provided by the Ministry of Defence and the additional area created was to be assessed by the Ministry of Work for determining additional rent to be payable from the date of completion of such work. The said lease expired on 15.09.1988 by efflux of time. In spite of numerous efforts on part of the appellant herein, neither a consensus was reached over the amount of rent nor MOD vacated the premises. Hence, the appellant was constrained to invoke the arbitration clause provided under the lease deed dated 16.09.1985 and referred the disputes/differences, to a Sole Arbitrator to be appointed by the Secretary, Ministry of Defence, Government of India.

2. The Arbitrator was appointed by the Court who made the award dated 30.04.1992 whereby the learned Arbitrator adjudicated the



efflux of time or otherwise and at what rate, fr which period to which period?

(b) As to whether the respondents are liable to pay the damages/rent for the modifications, additions and alteration of the carpet area measuring 10645 sq. ft. and at what rate and from which period to which period?

(c) As to whether the respondent ceased to be the tenant of the premises bearing No. A-33, Kailash Colony, New Delhi after the expiry of the period of lease vide agreement-dated 16.19.1985 as the lease had not been extended thereafter?"

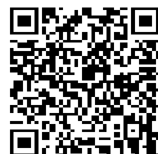
3. The first issue was answered by holding that the MOD had become unauthorized occupant with effect from 16.09.1988 and was liable to pay the damages for use and occupation beyond that date. The Arbitrator accordingly quantified the damages as under to be paid along with simple interest @ 9% per annum.

a) With effect from 16.09.19878 to 15.09.1989 @ Rs.4 per sq. ft. of the carpet area;

b) With effect from 16.09.1989 to 15.09.1990 @ Rs.8.50 per sq. ft. of the covered area; and

c) With effect from 16.09.1990 onwards @ Rs.9.75 per sq. ft. of the covered area.

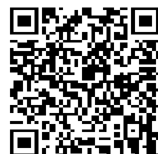
As regards issue No. 2, the Arbitrator held that rent/damages are payable for the carpet area of 1415 sq. fts. and not 10675 sq. fts. as claimed by the appellant, and it was held that this failure



29.10.1985 to 15.09.1989 @ Rs.4 per sq. fts. being the respective years.

4. The aforesaid award was challenged by filing objections, which was filed by the MOD. However, these objections were rejected and award was made rule of the Court vide orders dated 02.12.1996. Appeal there against was dismissed by the Division Bench of this Court on 25.03.1997 and Special Leave Petition was also dismissed by the Apex Court vide orders dated 28.07.1997. Thus, the award of the Arbitrator attained finality. Thereafter, notice was issued under Section 148 of the Income Tax Act (hereinafter referred to as 'the Act') on 30.03.2000 by the Assessing Officer. According to the AO, the aforesaid amount received by the assessee under the award constituted 'income' which is escaped assessment. Plea of the assessee was that it was a capital receipt not assessable to income. This plea of the assessee was turned down by the AO. In further appeal filed by the assessee, the CIT (A) reversed the view of the AO. However, the Income Tax Appellate Tribunal (hereinafter referred to as 'the Tribunal) has set aside the orders of the CIT (A) and restored the assessment orders passed by the AO.

5. According to the assessee, after the termination of the tenancy,



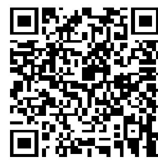
for any loss of profit and therefore, the amount is not ass to tax.

6. After hearing the learned counsel for the parties at length, we are of the opinion that on the facts of this case, the Tribunal has rightly held that the amount received under the Arbitration Award was not a capital receipt, but income chargeable to tax.

7. A.C. Sampath Iyengar in its book 'Law of Income-Tax (VIIth Edition) at Page NO.518 has made the following subtle distinction between the capital receipt and revenue receipt in the hands of the assessee:

> "If the quality of the claim for interest is compensation, for the reason that the claimant has been deprived of the use of the money and has not had his money at the due date, it would be income in his hands. It may be regarded either as representing the profit he might have made if he had had the use of the money in time, or, conversely, the loss he had suffered, because he had not had that use. If, on the other hand, the claim is for loss of property or loss of goods, or some other injury to capital and the element of interest comes in by way of estimating the compensation to be granted for such capital loss or capital injury, then, the receipt would be capital."

8. Thus, if compensation is for loss of profit, it would constitute revenue receipt and if, on the other hand, the compensation is for loss of property or some other injury to capital, it would constitute capital receipt. This principle has been accepted by the Supreme Court in the case of ***Kettlewell Bullen and Co.***



> principle is disclosed. Where on a consideration of circumstances, payment is made to compensate a per: for cancellation of a contract which does not affect the trading structure of his business, nor deprive him of what in substance is his source of income, termination of the contract being a normal incident of the business, and such cancellation leaves him free to carry on his trade (freed from the contract terminated) the receipt is revenue : Where by the cancellation of an agency the trading structure of the assessee is impaired, or such cancellation results in loss of what may be regarded as the source of the assessee's income, the payment made to compensate for cancellation of the agency agreement is normally a capital receipt.

9. In the present case, it is not in dispute that the premises were given on rent by the assessee to the MOD on agreed rent. Thus, MOD was the contractual tenant for that period. However, even after the expiry of the said period and termination of tenancy, the MOD did not vacate the premises. Though the contention of the MOD was that it had right to continue in the premises even after the initial period of tenancy, assessee had contested this position and pleaded that the MOD had become unauthorized occupant after the period of tenancy was over. This issue was decided by the learned Arbitrator in favour of the assessee. Since, the MOD had continued to occupy the premises for some time for which occupation was treated as unauthorized, the question of mesne profits for this period arose. Such mesne profits are under the provisions of Order XII Rule 12 of the Code of Civil Procedure.

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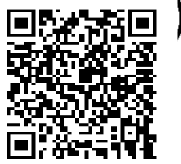


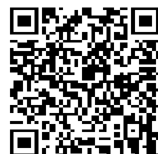
out the premises to another person. For this reason, t fixed is the one which is the prevailing market rent at which the property could have reasonably been let out. Thus, the entire exercise is done to ensure that the landlord is paid fair rental value for the period during which the erstwhile tenant remained in unauthorized occupation. This was the precise exercise done by the arbitration in the present case. Thus, the assessee is paid the amount which is the fair rental value for the period in question. It would clearly amount to compensation for loss of profit and not compensation for loss of property or some other injury to the capital.

10. We may note that the aforesaid issue came up for consideration before the Madras High Court in the case of ***Commissioner of Income-tax, Tamil Nadu-V*** Vs. ***P. Mariappa Gounder*** [174 ITR 676]. The following questions were formulated:

   i) Whether mesne profits decreed by a court of law can be held to be taxable income in the hands of the decree holder ?

   ii) Whether the relevant year in which mesne profits are to be charged to income-tax ?

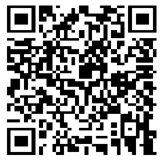
Answering the aforesaid questions in favour of the Revenue, the



"Whether the mesne profits decreed by the Supreme Cour
of an income nature?"

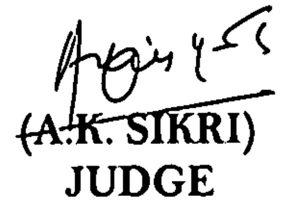
4. We do not think it should take us long to find the correct answer. A claim for mesne profits is usually directed against one who has deprived the true owner of possession of his property and who has thereby prevented the true owner from enjoying the income or usufruct of the property. When, in such a suit or proceeding, the court awards mesne profits to the true owner, that represents a just recompense to him for the deprivation of the income which ought properly to have come into his hands but for the interference of the person in wrongful possession of the property.

5. The code of Civil Procedure defines mesne profits as that which is person in wrongful possession of property has actually received or might with ordinary diligence have received therefrom. The accent of the definition in s. 2(12) of the Code concentrates more on the methodology of calculation of mesne profits rather than on what the true nature of mesne profits is. As we earlier stated, the rationale of awarding mesne profits is that the trespasser or the person in wrongful possession not only defies the title of the true owner, but also prevents the true owner from enjoying the income or the usufruct of the property in question. When therefore the court decrees mesne profits, that decree is in recognition of the position that the true owner is entitled to the income from the property and the person in wrongful possession is to compensate the true owner in that regard by paying either the actual income from the property or a reasonable estimate of that income. Having regard to these characteristics of mesne profits, there can be no doubt that they are also a species of taxable income. Under the scheme of the I.T. Act, anything which can properly be regarded as income an which is not expressly exempted from taxation under a specific provision of the statute must be regarded as taxable income. We are, therefore, satisfied that the Tribunal and the other authorities were right in their view that the Tribunal and the other authorities were right in their view that mesne profits has to be assessed as taxable income in the hands of the present assessee."



11. Insofar as apportioning those amounts received by the a in various assessment years is concerned, that relief has already been given by the Tribunal itself.

12. We are, therefore, of the opinion that no question of law arises. These appeals are totally misconceived and are dismissed with cost quantified @ Rs.10,000/- in each of the appeal.



(A.K. SIKRI)
JUDGE

(SIDDHARTH MRIDUL)
JUDGE

November 09, 2009.
pmc