* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on: 15 May 2024**
Judgment pronounced on: 30 May 2024

\+ ITA 1114/2018

PRINCIPAL COMMISSIONER OF INCOME TAX-4

..... Appellant

Through: Mr.Siddhartha Sinha, Sr.SC with
Ms.Anuja Pethia and
Ms.Dacchita Shahi, Jr.SCs.

versus

INS FINANCE & INVESTMENT P LTD. ..... Respondent

Through: Mr.Ved Jain, Ms.Soniya Dodeja
and Mr.Nischay Kantoor, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J.

1. The moot question involved in the present appeal pertains to whether the ITAT rightly held that the receipt of interest against the principal amount deposited by the assessee pursuant to the auction sale,

which was eventually nullified by the court, is liable to be characterized as a capital receipt ?

2. This appeal seeks to assail the correctness of the order dated 13.04.2018 passed by the Income Tax Appellate Tribunal ["**ITAT**"], whereby, the ITAT has deleted the addition to the tune of INR 3,19,07,676/-, holding it as capital receipt not chargeable to tax.

3. The brief facts pertinent to decide the present controversy would reveal that on 30.09.2011, the assessee filed its return of income amounting to INR 4,22,107/- for the Assessment Year ["**AY**"] 2011-12. Thereafter, the assessee's case was picked up for scrutiny and notice under Section 143(3) of the Income Tax Act, 1961 ["**Act**"] was issued on 31.07.2012.

4. During the course of the assessment, it was found by the Assessing Officer ["**AO**"] that in the balance sheet of the assessee, INR 3,19,07,676/- was added in the capital reserve and the assessee has claimed tax deducted at source ["**TDS**"] credit of INR 54,41,122/-. Subsequently, when the AO inquired about the justification of the amount added to the capital reserve, the assessee apprised that it had acquired the right to purchase a property through an auction carried out by the Punjab National Bank. Thereafter, the assessee paid the entire purchase price, however, the said auction came to be annulled and the Punjab and Haryana High Court *vide* order dated 21.09.2010 passed in CWP No. 1470/2010 directed for refund of the whole amount deposited by the assessee along with the interest accrued thereon.

5. On 30.03.2014, the AO passed an assessment order, whereby, the amount of INR 3,19,07,676/-, was added to the total income of the

assessee as the same was ascertained to be not falling in the category of capital receipt.

6. Aggrieved by the said assessment order, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals) ["**CIT(A)**"]. On 17.11.2015, the CIT(A) affirmed the finding of the AO which treated the amount of INR 3,19,07,676/- as not being a capital receipt. However, for the purpose of computation, the CIT(A) deleted the addition of INR 3,19,07,676/- which was solely attributed to AY 2011-12, while directing the AO to compute the said amount by dispersing it over a period concerning other relevant AYs.

7. Against the CIT(A) order, both the assessee and the Revenue filed an application under Section 154 of the Act before the CIT(A) itself. On the one hand, the assessee prayed for considering the amount in question as capital receipt, while on the other hand, the Revenue contended that the apportionment of the said amount in other relevant AYs was contrary to the provisions of Section 145A(b) of the Act as it then stood in the relevant AY. However, on 23.03.2016, the CIT(A) allowed the application of the assessee and modified its earlier order dated 17.11.2015 and held that the said amount was in the nature of capital receipt and therefore, not liable to tax.

8. Thereafter, the Revenue and the assessee preferred an appeal before the ITAT against the CIT(A) orders dated 17.11.2015 and 23.03.2016, respectively. The ITAT *vide* common order dated 13.04.2018 allowed the appeal of the assessee against the order dated 17.11.2015 and held that the amount in question was in the nature of capital receipt and thus, not chargeable to tax.

9. It is this order which is impugned before us at the instance of the Revenue.

10. Mr. Siddhartha Sinha, learned standing counsel, appearing on behalf of the Revenue assailed the impugned order on the principal ground that the amount received by the assessee was in the nature of the compensation and thus, the interest on the said amount would be liable to tax. He further submitted that the amount in question ought to be considered as income from other sources in terms of provisions of Section 56(2)(viii) of the Act and thus, the same would be deemed to be income for the relevant AY.

11. *Per contra,* Mr. Ved Jain, learned counsel appearing on behalf of the assessee vehemently opposed the said submissions. He submitted that the amount in question was paid to the assessee in view of the order dated 21.09.2010 passed by the Punjab and Haryana High Court in CWP No. 1470/2010 on account of cancellation of the auction. He argued that the aforesaid amount was not in the nature of compensation and therefore, the question whether interest paid on such amount would be chargeable to tax or not would have no significance herein. To substantiate his arguments, he placed reliance on the decisions of ***CIT v. Saurashtra Cement Ltd.***[1] and ***Pr. CIT v. Pawa Infrastructure Pvt. Ltd.***[2].

12. We have heard the learned counsels appearing on behalf of the parties and perused the record.

13. At the outset, it is imperative to point out that the learned counsel appearing on behalf of the assessee had initially raised the objection on

[1] (2010) 11 SCC 84.
[2] 2022 SCC OnLine Del 5123.

the maintainability of the appeal pursuant to low tax effect, which was also noticed in our orders dated 17.03.2023 and 06.11.2023, however, at this stage, the said contention was not pressed by him.

14. As the facts of the matter depict that undisputedly the amount in question was received by the assessee *vide* order dated 21.09.2010 passed in CWP No. 1470/2010 by Punjab and Haryana High Court on account of cancellation of the auction, this fact was also recorded in the order impugned before us. The relevant extracts of the ITAT order dated 13.04.2018 are reproduced herein for reference:-

> "We have carefully considered the rival contentions and perused the orders of lower authorities. Admittedly, assessee is not in business of real estate. Brief facts shows that Assessee Company participated in the auction carried out by Punjab National Bank, Chandigarh on 5.12.2006 through Debt Recovery Tribunal in respect of property mortgaged by M/s. Sanmati Rice Mills as a security for borrowed fund. The assessee was declared the highest bidder at Rs. 10.07 crores. The assessee deposited the above sum with DRT in stipulated time as per terms and conditions of the bidder auction. The Debt Recovery Tribunal also issued the certificate of sale to the assessee on 02.03.2007. Subsequently the order of the Debt Recovery Tribunal was challenged before Debt Recovery Appellant Tribunal (DRAT) and orders dated 25.06.2009 was passed wherein it was ordered that the possession taken by the assessee of the auctioned property be returned back to the original borrower. The assessee challenged the above order before the Hon'ble Punjab and Haryana High Court in CWP number 1470 of 2010. The Hon'ble High Court directed Punjab National Bank to return the whole sum deposited along with interest accrued thereon. Consequently, the DRT recovered the money from Punjab National Bank and refunded the same to the appellant. So assessee was repaid originally auction amount as well as a further sum of Rs 31907676/- . The Punjab National Bank by making the repayment deducted the tax at source in respective years and issued certificates in favour of DRT. Furthermore, the assessee filed a civil suit in the court of Civil Judge Sr. Division, Chandigarh for recovery of damages. It is stated that the above sum was accepted from Punjab National Bank subject to legal right of the petitioner to challenge the compromise arrived between the borrower and the bank. Therefore, it was stated that the dispute had not reached any finality and therefore, no interest or

damages have accrued to the assessee finally. The assessee further relied on the decision of Ghaziabad Development Authority Vs. Dr. N. K. Gupta 258 ITR 337 wherein it has been held that merely because the damages are stated to be interest they cannot be subject to tax as interest, We have also carefully perused the order of the Debt Recovery Tribunal, Chandigarh dated 03.12.2008 wherein in para No. 22 has set aside the sale, and the bank was directed to refund the sale consideration originally accepted from the appellant along with any interest accrued on it, which has been kept in the office of the Debt Recovery Tribunal. Therefore, the Debt Recovery Tribunal has not awarded any interest to the appellant but it has just refunded the money deposited by the assessee in auction along with any interest earned by the bank on that sum in favour of DRT. The revenue could not show that at the time of auction there was any condition of payment of interest to the assessee in the case the auction is cancelled. In fact as per certificate of sale dated 02.03.2007 even the possession of the property was also given confirming the sale absolutely in favour of the assessee. Even otherwise as per the provisions of section 2(28A) of the Act interest means interest payable in any manner in respect of money borrowed or debt incurred including a deposit, claim or other similar rights. In the present case, the above sum was not payable to the assessee because of any such debt incurred. The assessee purchased a property in auction which was transferred to assessee, subsequently the sale was cancelled, so assessee was paid original sum and some further amount which was earned by bank as interest thereon from the date assessee paid to the bank till the date of order. Therefore, above sum cannot be considered as interest.

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11. The Ld DR could not controvert above facts and finding that sum is not chargeable to tax as it is capital receipt. Ld DR has heavily relied on the provision of section 56(2) (viii) of the act. The above section provides that income shall be chargeable to tax under the head income from other sources if it is income by way of interest received on compensation or on enhanced compensation referred to in clause (b) of section 145A. The provision of section 145A provides that any interest received by the assessee on compensation or enhanced compensation shall be chargeable to tax in the year in which it is received. Therefore, provision of section 145A speaks about the timing of taxability and section 56 (2) (viii) the head under which it is chargeable. However, the character of income should be interest on compensation or enhanced compensation. In the present case, we have already held that it is not interest but compensation. Section 56 (2) (viii) also

> does not provide for taxation of compensation but only interest on such compensation. In the present case, the assessee has received compensation. Ld DR also could not show that if the amount received is interest on compensation what the amount of compensation itself is. In view of this, we reject the contention of the revenue that provision of section 56 (2) (viii) applies to the impugned amount."

15. It is ex-facie evident from a reading of the impugned order that the ITAT had considered the aspect that the amount received by the assessee was not in the nature of debt rather, the same was received on account of cancellation of the auction. Therefore, the ITAT has appropriately characterized the interest on the amount received by the assessee as capital receipt and thus, rightly held that the same was not chargeable to tax.

16. At this juncture, reliance can be placed upon the decision of the Supreme Court in the case of ***Saurashtra Cement Ltd.*** *(supra),* wherein, it was held that damages with respect to the delay in the procurement of the capital asset were in the nature of the capital receipt and thus, not chargeable to tax. The relevant paragraphs of the said decision are reproduced herein for reference:-

> **"14.** The question whether a particular receipt is capital or revenue has frequently engaged the attention of the courts but it has not been possible to lay down any single criterion as decisive in the determination of the question. Time and again, it has been reiterated that answer to the question must ultimately depend on the facts of a particular case, and the authorities bearing on the question are valuable only as indicating the matters that have to be taken into account in reaching a conclusion.
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> **15.** In *Rai Bahadur Jairam Valji* [AIR 1959 SC 291 : (1959) 35 ITR 148] it was observed thus: (AIR pp. 292-93, para 2)
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> "*2.* The question whether a receipt is capital or income has frequently come up for determination before the courts. Various rules have been enunciated as furnishing a key to the

solution of the question, but as often observed by the highest authorities, it is not possible to lay down any single test as infallible or any single criterion as decisive in the determination of the question, which must ultimately depend on the facts of the particular case, and the authorities bearing on the question are valuable only as indicating the matters that have to be taken into account in reaching a decision. [Vide *Van Den Berghs Ltd. (Inspector of Taxes)* v. *Clark* [1935 AC 431 : (1935) 3 ITR (Eng Cas) 17 (HL)] .] That, however, is not to say that the question is one of fact, for, as observed in *Davies (Inspector of Taxes)* v. *Shell Co. of China Ltd.* [(1951) 32 TC 133 : (1952) 22 ITR Supp 1 (CA)] :

> 'these questions between capital and income, trading profit or no trading profit, are questions which, though they may depend no doubt to a very great extent on the particular facts of each case, do involve a conclusion of law to be drawn from those facts.' "

16. In *Kettlewell Bullen and Co. Ltd.* [AIR 1965 SC 65] dealing with the question whether compensation received by an agent for premature determination of the contract of agency is a capital or a revenue receipt, echoing the views expressed in *Rai Bahadur Jairam Valji* [AIR 1959 SC 291 : (1959) 35 ITR 148] and analysing numerous judgments on the point, this Court laid down the following broad principle, which may be taken into account in reaching a decision on the issue: (*Kettlewell Bullen and Co. Ltd. case* [AIR 1965 SC 65] , AIR p. 79, para 36)

> "*36*. … Where on a consideration of the circumstances, payment is made to compensate a person 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."

17. We have considered the matter in the light of the aforenoted broad principle. It is clear from Clause 6 of the agreement dated 1-9-

1967, extracted above, that the liquidated damages were to be calculated at 0.5% of the price of the respective machinery and equipment to which the items were delivered late, for each month of delay in delivery completion, without proof of the actual damages the assessee would have suffered on account of the delay. The delay in supply could be of the whole plant or a part thereof but the determination of damages was not based upon the calculation made in respect of loss of profit on account of supply of a particular part of the plant.

18. It is evident that the damages to the assessee were directly and intimately linked with the procurement of a capital asset i.e. the cement plant, which would obviously lead to delay in coming into existence of the profit making apparatus, rather than a receipt in the course of profit earning process. Compensation paid for the delay in procurement of capital asset amounted to sterilisation of the capital asset of the assessee as the supplier had failed to supply the plant within time as stipulated in the agreement and Clause 6 thereof came into play. The aforestated amount received by the assessee towards compensation for sterilisation of the profit earning source, not in the ordinary course of their business, in our opinion, was a capital receipt in the hands of the assessee."

17. It is also pertinent to point out the observations made by this Court in the decision of ***Pawa Infrastructure Pvt. Ltd.*** *(supra)*, wherein, the Co-ordinate Bench has held that the compensation received from the cancellation of the lease was in the nature of the capital receipt. The paragraph no. 23 of the said decision is reproduced herein for reference:-

"23. We are, therefore, of the considered opinion that the leasehold rights held by the assessee in the plot was a capital asset and that the compensation received by the assessee from the Government of Goa on the cancellation of the plot was a capital receipt and not a revenue receipt. It is trite law that if an agreement for transfer of rights in an immovable property is not performed by the transferor, the transferee is entitled for compensation as he/she is deprived of the price of escalation. Therefore, the character of payment received as compensation by the transferee bears the character of capital receipt. The payment of interest in the facts of the present case is compensatory in nature and, therefore, does not bear the character of

revenue receipt. Thus, we hold that the Assessing Officer's order dated February 15, 2016, was correct and it did not suffer from any error, justifying the invocation of the Principal Commissioner of Income-tax's powers under section 263 of the Act."

18. It is elementary to point out the decision of this Court in the case of ***Girish Bansal v. Union of India and Ors.,***[3] wherein, the sale certificate of the successful bidder was cancelled by virtue of the court order and the amount received by the bidder on account of cancellation of the auction was termed as a capital receipt. The relevant paragraphs of the said decision are reproduced herein for reference:-

> **"22.** Nevertheless, even if one were to test the above plea of the Revenue, it appears to be untenable for a simple reason that the receipt of Rs. 20,00,000 by the assessees was consequent upon the order recorded by the Supreme Court on February 28, 1992, in Civil Appeal No. 1003 of 1992. There is no indication in the said order that the said amount constitutes the interest on the sum of Rs. 10,05,000 as is sought to be urged by Mr. Singh. On the other hand, in clause (vi) of the compromise, extracted hereinbefore, there is a specific direction to the High Court to release "the balance of Rs. 10,05,000 with the accrued interest to the appellants after satisfying the decree of the fist respondent, namely, Punjab National Bank." Where the sum had to be paid together with interest, which was to be deposited in the Registry of the Supreme Court, it is not possible to the court to presume that the said sum constituted the interest on the auction sale consideration that had been paid by the assessees. Consequently, the court is not prepared to accept the plea of the Revenue that the above sum of Rs. 20 lakhs constituted revenue receipt in the hands of the assessees.
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> Not a receipt taxable under section 10(3)
> **23.** 23.1 The settled legal position is that all receipts do not constitute income. For a receipt sought to be taxed as income, the burden lies upon the Revenue to prove that it is within the taxing provision. Among the earlier decisions of the Supreme Court is Parimisetti Seetharamamma v. CIT (1965) 57 ITR 532 (SC). There the assessee explained that the jewellery and the money received by her were the gifts made by the Maharani of Baroda. Disbelieving the assessee on the ground that she had failed to produce documents in

[3] 2016 SCC OnLine Del 2543.

support of her contention, the Income-tax Appellate Tribunal held that what was given to her was remuneration for services rendered or to be rendered. This was upheld by the High Court leading to the consequent appeal by the assessee to the Supreme Court.

23.2 The Supreme Court in Parimisetti Seetharamamma (supra) noted that it was not the case of the assessee that the receipts were income that was exempted from taxation. Her case was that the receipt does not fall within the taxing provisions at all. It was explained by the Supreme Court as under (page 536 of 57 ITR):

> "In all cases in which a receipt is sought to be taxed as income, the burden lies upon the Department to prove that it is within the taxing provision. Where however a receipt is of the nature of income, the burden of proving that it is not taxable because it falls within an exemption provided by the Act lies upon the assessee."

23.3 It was further observed as under (page 537 of 57 ITR):

> "Whether a receipt is liable to be treated as income depends very largely upon the facts and circumstances of each case : it is open to the Income-tax authorities to raise an inference that a receipt by an assessee is assessable income where he fails to disclose satisfactorily the source and the nature of the receipt. But in this case the source of income was disclosed by the appellant, and there was no dispute about the truth of that disclosure."

23.4 After analysing the evidence it was concluded that what the assessee had received was not assessable to tax.

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31. Examined in light of the legal position explained in the above decisions, the court is of the view that as far as the present case is concerned, the sum of Rs. 20 lakhs received by the assessees was in the context of the cancellation of the sale certificate and the sale deed executed in their favour in relation to an immovable property and neither assessee was dealing in immovable property as part of his business. While it could if at all be said to be in the nature of a capital receipt, what is relevant for the present case is that the Revenue has been unable to make out a case for treating the said receipt as of a casual and non-recurring nature that could be brought to tax under section 10(3) read with section 56 of the Act."

19. Therefore, in light of the judicial precedents enunciated above, it is crystal clear that the interest accrued on the compensation received herein can be termed as a capital receipt and thus, the same is not

chargeable to tax. In the present case, the amount in question was received due to the order passed by the Punjab and Haryana High Court in CWP No. 1470/2010 on account of cancellation of the auction.

20. However, it is pertinent to point out that this amount cannot be characterized as compensation granted by the Court on account of cancellation of the auction. Rather, such an amount was a bonafide amount of the successful auction bidder, which he had deposited against the purchase of the land. The amount so received by the assessee was the entitlement of the successful bidder which was given back to the assessee *vide* an order of the Court. Thus, when the amount in question was not in the nature of compensation, then, as a natural corollary, the interest accrued on the said amount cannot tantamount to revenue receipts and hence, the same cannot be subjected to tax as per Section 56(2)(viii) of the Act.

21. In view of the foregoing discussion, we are of the considered opinion that the ITAT was correct in holding that the amount of interest i.e., INR 3,19,07,676/- was in the nature of capital receipt and thereby, not chargeable to tax. Thus, we do not find any reason to interfere with the judgment rendered by the ITAT.

22. Consequently, the instant appeal stands dismissed. Pending application(s), if any, are also disposed of.

PURUSHAINDRA KUMAR KAURAV, J.

YASHWANT VARMA, J.

MAY 30, 2024/p