

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH "SMC" NEW DELHI)**

BEFORE SHRI B.P. JAIN, ACCOUNTANT MEMBER

**ITA No. 6321/Del./2016
Assessment Year: 2012-13**

Col. Jaspal Singh S/o Late Sh. Surjit Singh, 381, Asian Games Village, Khel Gaon Marg, New Delhi	Vs.	ITO Ward-65(2) New Delhi
(Applicant)		(Respondent)
(PAN: AAXPS2675L)		

Assessee by: Sh. Satyen Sethi, Adv.

Sh. Arta Trana Panda, Adv.

Revenue by: Ms. Bedobina Chaudhari, Sr. DR

Date of hearing	09/03/2017
Date of pronouncement	15/03/2017

ORDER

PER B.P. JAIN, ACCOUNTANT MEMBER:

1. This appeal of the assessee arises from the order of Id. CIT(A)-21, New Delhi vide order dated 16.9.2016 for the A.Y. 2012-13. The assessee has raised the following grounds of appeal:-

"1. That on the facts and circumstances of the case and in law, the

Commissioner of Income-tax (Appeals)-21, New Delhi [briefly "the CIT(A)"] has erred in upholding the assessment of income at Rs.14,03,626/- as against declared income of Rs.3,28,260/-. The Appellant denies his liability to be assessed at the total income of Rs.14,03,626/-.

2. That on the facts and circumstances of the case and in law, the CIT(A) has erred in holding that the mesne profit is a revenue receipt and as such, addition of Rs.10,75,365/- on account of mesne profit was rightly made.

3. That on the facts and circumstances of the case and in law, the CIT(A) erred in not following the binding decision of this Hon'ble Tribunal in ITO vs. Late Shri Sandeep Goyal, IT A 2603/Del/2012 dated 5.4.2013.

That the appellant craves leave to add, alter, amend or vary any of the ground either at or before the hearing of the appeal."

2. The ld. counsel for the assessee did not press ground no. 1 being general in nature and therefore the same is dismissed. The ground no. 2 and 3 on one issue whether mesne profit are taxable as revenue receipt or capital receipts. The Assessing Officer taxed the said mesne profits as revenue profits, which was confirmed by the ld. CIT (A).

3. The ld. counsel for the assessee submitted note written submissions where the relevant dates of the evidence and reliance on decisions of various courts of law and how they applicable in the present case to prove that such mesne profit received are nothing but capital

receipts and not the revenue receipts. For the sake of convenience the same is reproduced as under:-

“Issue: -Whether mesne profits are taxable as revenue receipt

The Appellant, a retired colonel had leased his flat in Nehru Place to NTPC Ltd.

10.8.1995 Lease in favour of NTPC Ltd expired. However. NTPC Ltd. did not vacate the premises.

16.8.1995 I Suit for eviction was filed by the Appellant. NTPC Ltd vacated the property only on 6.4.1998.

30.4.1998 The suit for eviction was decreed. Mesne profits @Rs.40/- per sq. ft. with 24% interest for the period 10.8.1995 to 6.4.1998 was awarded by the Trial Court.

05.11.2005 On appeal by the NTPC Ltd, the Appellate Court reduced the mesne profits from j Rs.40/'- per sq. ft. to Rs.10/- per sq. ft.

23.3.2011 On appeal by the Appellant to the Delhi High Court, the Hon'ble Court upheld the order of the Trial Court granting mesne profits C/iRs.40/- per sq. ft. However interest was reduced from 24% to 12% per annum.

22.09.2011 Appellant received Rs. 10.75.365/- from NTPC Ltd as Mesne profits.

09.07.2012 For the assessment year 2012-13, return declaring income of Rs.3.28.260/- was I filed. Mesne profits of Rs. 10,75.365/- towards w rongful possession of property was I j treated as not taxable.

Assessment proceedings

Before the Assessing Officer, reliance was placed on Narang Overseas (P) Ltd. v. AC1T (2008) 111 ITD 1 (Mum-Special Bench). The Special Bench taking into consideration C1T v. P. Mariappa Gounder (1984) 147 ITR 676 (MadLand P. Mariappa Gounder v. C1T (1998) 232 1TR 2 (SC) has made following observations at page 20:

"In view of the these judgments, it cannot be said that in the case of P. Mariappa Gounder (supra), the Hon'ble Supreme Court adjudicated the issue regarding the nature and character of the mesne profits. The judgment of the Apex Court is restricted only to the issue regarding the year of taxability C

Further, in paragraph 23 (page 2j), it was held that:

"The above discussion clearly reveals that judgment of the Hon'ble Supreme Court in the case of P. Mariappa Gounder (supra) only decides the issue regarding the year of taxability of the mesne profits. That judgment, therefore, cannot be said to be an authority for the proposition that nature of mesne profits is revenue receipts chargeable to tax. Accordingly, the contention of Revenue that the issue regarding the nature of mesne profits is covered by the aforesaid decision of the Hon'ble Supreme Court cannot be accepted. It is a dispute that there is a cleavage of opinion expressed by the High Courts on this issue". Discussing all the case laws, including that of P. Mariappa Gounder, the Special Bench held in paragraph 49 (page 45) that:

A "In the present case, after the termination of lease, NIHPL was occupying and using the () property unauthorisedly and thus the assessee was deprived of the use and occupation of the () property and therefore, the mesne profits received by the assessee under the consent decree awarded by the Apex Court at the rate of Rs. 10 lakhs p.m. was on account of damages for deprivation of use and occupation of the profits and therefore, the sum so received was capital in nature not chargeable to tax."

In paragraph 50 to 55 (page 45-48), the Special Bench examined the issue of taxability of interest from the date of termination of lease. It was observed in paragraph 55 that:

"The above discussion clearly reveals that if the interest is paid for deprivation of use of money fallen due to them it is revenue receipt chargeable to tax. On the other hand, if the interest is paid on account of the injury to the capital i.e., deprivation of use and occupation of the property then it is capital receipt not chargeable to tax. In the present case, it has already been held by us that mesne profit was for deprivation of use and occupation of the property. The interest received by the assessee is also for the same period as it is awarded up to the date of decree. The money has become due on the date of decree. Accordingly, it

is held that interest from the date of termination of lease till the date of decree would be capital receipt not chargeable to tax.

Notwithstanding the decision of Special Bench, which was directly on the issue because in the present case also the lease was terminated and mesne profits was on account of damages for deprivation of use and occupation, as in the case of Narang Overseas (P) Ltd (Supra), the Assessing Officer has assessed the mesne profits to tax. Out of Rs. 10,75.365/-, the amount of Rs.6,93,087/- was charged to tax u/s 25B of the Act, holding that the same was in addition to the rent and balance of Rs.3,82.278/- was taxed as income from other sources.

Appellate proceedings

The CIT(A) upheld the assessment order following the case of P. Mariappa Gounder (supra).

Submissions

I. The issue is squarely covered by Special Bench order in Narang Overseas P Ltd. (supra), wherein, judgment of Supreme Court in P. Mariappa Gounder (supra) was duly considered.

II. In CIT v. Goodwill Theatres Pvt. Ltd. (2016) 386 ITR 294 (Bom), where Narang Overseas (P) Ltd (supra) was followed Hon'ble Bombay High Court has declined to admit the question of law holding that unless the Revenue challenges the order of the Special Bench, it would be unfair of the Revenue to pick and choose assessee where it would follow the decision of Special Bench in Narang Overseas P. Ltd. (supra)

III. The question whether mesne profits is a capital revenue receipt has not been considered in *Narang Overseas (P) Ltd (supra)* by Hon'ble Delhi High Court either in *Pal Properties (1) (P) Ltd. v. CIT* [2002] 254 ITR 687 or in *CIT v. Uberoi Sons (Machines) Ltd.* (2012) 211 Taxman 123.

In *Pal Properties (supra)* the questions before the Hon'ble Court were:

"1. Whether the Tribunal was right in law in holding that damages or any part thereof for illegal occupation of the premises accrued to the appellant though the claim therefore was yet to be adjudicated finally and was pending disposal before the High Court?

2. Whether the Tribunal is right in law in holding that the amount received by the appellant under interim order of the High Court dated 6-1-1993 relevant to assessment year 1993-94 is taxable on month to month basis in assessment years 1990-91 and 1991-92 as relatable thereto?"

In *Uberoi Sons (Machines) Ltd. (supra)*, tenant continued to occupy the premises and mesne profits towards arrears of rent for the assessment years 1992-93 to 1998-99 was sought to be taxed by reopening the assessments. The questions before the Hon'ble Court were:

"(i) Whether the ITAT was, in the facts and circumstances of the case, correct in law in quashing the re-assessment order passed by the Assessing Officer under Section 147(1) of the Income Tax Act, 1961?

(ii) Whether the ITAT was correct in law in holding that the excess amount payable to the assessee towards mesne profits/compensation for unauthorized use and occupation of the premises accrued to the assessee only upon the passing of the decree by the Civil Court on 14.10.1998?"

Since there is no direct decision of Delhi High Court, therefore, decision of Special Bench in *Narang Overseas (P) Ltd (supra)* is required to be

followed, as held in CUT v. Janapriya Engineers Syndicate (2015) 371 ITR 439 (T&A.P.)”

4. The ld. counsel for the assessee further submitted that note of Pal Properties is was relied upon the ld. DR how the same is not applicable in the present case which is reproduced herein below:-

“Questions considered in Pal Properties (I) (P) Ltd. v. CIT [2002] 254 ITR 687 were as under:

"1. Whether the Tribunal i was right in law in holding that damages or any part thereof for illegal occupation of the premises accrued to the appellant though the claim therefore was yet to be adjudicated finally and was pending disposal before the High Court ?

2. Whether the Tribunal is right is law in holding that the amount received by the appellant under interim order of the High Court dated 6-1-1992 relevant to assessment year 1993-94 is taxable on month to month basis in assessment vears 1990-91 and 1991-92 as relatable thereto?"

Factual matrix giving rise to the questions was that for the assessment year 1990-91, rental income was shown for three months i.e. April to June, 1989. Assessee’s stand that tenancy was valid till June, 1989, hence, no rent has accrued for the later period. The Assessing Officer made addition on account of rent for the period of 9 months i.e. July, 1989 to March, 1990 for the reason that the assessee was entitled to receive rent, inasmuch as. it had filed a suit for possession and recovery of rent and compensation at the market value.

For assessment year 1991-92, similar addition on account of rent was made for the period of 12 months. The Tribunal took the view that the claim for mesne profit @Rs.70,000/- was higher than the rent of Rs.24,000/- and therefore, Rs.24,000/- was taxable per month.

On these facts, the Hon'ble High Court observed at page 692 that:
"Upon valid termination of tenancy, the tenant no longer remains a tenant but becomes a trespasser. For the purpose of his eviction, the appellant herein filed a suit and also claimed a decree for mesne profits. Rent and mesne profit connote two different meanings. "

Taking into consideration the facts of the case, the High Court at page 693 and 694 observed that:

"In the instant case, the claim of the appellant against his erstwhile tenant is pending. The Us between the parties being pending adjudication, the fate thereof is unknown.

In a given case, having regard to the delay in disposal of the matter, the parties may arrive at a settlement in terms whereof the landlord may give up his right of mesne profit or even pay some amount from his pocket. It, therefore, cannot be said that only because the claim of the appellant by way of mesne profit denotes a higher amount of the rent, the same can be divided into two parts, as has been sought to be done by the Tribunal. "

In this background, the Hon'ble High Court answered the questions as under (page 696-697):

"In that view of the matter, question No. 1 must be answered in favour of the assessee and against the revenue. As a logical corollary, the question No. 2 must also be answered in favour of the assessee and against the revenue. However, we may place on record that after a period of two years, by an interim order passed by the court, some amount had been directed to be paid to the assessee herein which the assessee had shown in its return without prejudice to its rights and contentions. We do not intend to express any opinion on merits so far as the contention of the assessee is concerned that despite the same, the income accrued by it, is not taxable. "

The underlined portion clearly bring out that the High Court did not express any opinion on {taxability of the amount received pursuant to the interim order of the High Court dated 6.1.1993. "

5. The ld. DR on the other hand relied upon the order of the ld. CIT (A) and the order of the Assessing Officer.

6. I have heard the rival contentions and perused the facts of the case. On perusal of the record of the brief note/written submission submitted for the ld. counsel for the Satyen Sethi, Advocate and the arguments of the ld. DR I am of the view that the case is squarely covered by the decision of Special Bench in the case of Narang overseas Pvt. Ltd. (supra) and therefore the mesne profit are not taxable as revenue receipt but has to be treated as capital receipts in view of the arguments and submissions put forth by the ld. counsel reproduced herein above and I am fully convinced with the said submissions and find no defect in the same.

7. In the result, the appeal of the assessee in ITA No. 6321/Del/2016 is partly allowed.

8. Pronounced in the open court on 15.03.2017.

Sd/-
(B.P. JAIN)
ACCOUNTANT MEMBER

Dated: 15.03.2017

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Copy forwarded to:

- 1) Appellant
- 2) Respondent
- 3) CIT
- 4) CIT (Appeals)
- 5) DR: ITAT

ASSISTANT REGISTRAR

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