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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.2923 OF 2010

Dr. (Ms) Avimay S. Hakim

..Appellant.

V/s.

The Income Tax Officer 12(3)(2), Mumbai

..Respondent.

Mr. J.D. Mistri, senior Advocate with A.K. Jasani for the appellant.

Mr. D.K. Kamwal for the respondent.

CORAM : J.P. DEVADHAR AND
A.A. SAYED, JJ.

DATED : 10TH AUGUST, 2011

P.C. :-

1. Heard. Admit on the following question of law :-

“ Whether on the facts and in law, the Tribunal was right in holding that the amount of Rs.8,42,000/- received as a compensation for damage caused to the land, a capital asset of the appellant, was a revenue receipt taxable in the hands of the appellant ? “

2. The assessment year involved herein is AY 2004-05.

3. The assessee has a property at Lonawala within the limits of local municipal council. The Lonawala Municipal Council started the

construction of an over-bridge which was passing over the land owned by the assessee. For the purpose of the construction of the over-bridge, the Sahara India Commercial Corporation Ltd. ('Sahara India' for short) had financed the costs of construction. As Sahara India encroached upon the land belonging to the assessee and made a *kuccha road* for access by digging and excavating the assessee's land so as to facilitate the construction of the over-bridge, the assessee filed a Civil Suit in the Court of the Civil Judge, J.D., Vadgaon being C.S. No.170/03 and obtained interim stay and injunction against Sahara India and the Municipal Council. Subsequently, the parties settled the Suit wherein Sahara India agreed to pay to the assessee compensation as under:-

- (i) Compensation for the damage to the land Rs.8,42,000/-;
 - (ii) Consideration for granting the right of way in the land Rs. 5,58,000/-;
- Total Rs.14,00,000/-.

4. The consideration of Rs.5,58,000/- received by the assessee for granting the right of way was held by the ITAT as capital receipt and hence not liable to tax. As regards the compensation for the damage caused to the land, the ITAT held that since the land remains with the assessee, it is possible that the assessee may utilize that land for generation of further income and, therefore, it cannot be said that the compensation received by the assessee was in the nature of capital

receipt.

5. The facts brought on record before the ITAT and before this Court by filing an additional affidavit clearly show that the property belonging to the assessee was damaged by Sahara India and in fact after paying compensation, neither Sahara India nor the Municipal Council have restored the land belonging to the assessee to its original position. The fact that Sahara India has removed the equipments from the plot belonging to the assessee, it cannot be said that the damage caused to the land has been set right by restoring the land to its original position. In these circumstances, in our opinion, the amount of Rs. 8,42,000/- received by the assessee towards the damage to the land belonging to the assessee cannot be said to be revenue receipt. The fact that the land has remained with the assessee and that the assessee in future may earn profits from the said land cannot be a ground to hold that the compensation received by the assessee in lieu of damage caused to the land was revenue receipt. Accordingly, we answer the question in favour of the assessee and against the revenue.

6. The appeal is disposed off accordingly with no order as to costs.

(A.A. SAYED, J.)

(J.P. DEVADHAR, J.)