IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC-2', NEW DELHI
Before Sh. N. K. Saini, AM

ITA No. 676/Del/2015 : Asstt. Year : 2010-11

Jagan Nath Prasad & Sons, HUF, 14, Naya Ganj, Ghaziabad	Vs	Income Tax Officer, Ward-1(3), CGO Complex Ghaziabad
(APPELLANT)		**(RESPONDENT)**
PAN No. AAAHJ8091C		

Assessee by : Sh. Ashish Singhal & Smt. Ekita Gupta, CAs
Revenue by : Sh. J. P. Citandraker, Sr. DR

Date of Hearing : 20.07.2015		**Date of Pronouncement : 05.08.2015**

ORDER

Per N. K. Saini, AM:

This is an appeal by the assessee against the order dated 27.11.2014 of ld. CIT(A), Ghaziabad.

2. The only effective ground raised in this appeal reads as under:

> *"That the learned Assessing Authority was not justified in taxing the compensation received amounting to Rs. 4,75,041/- as the receipt was Capital Receipt, hence cannot be taxable. That the learned Commissioner of Income Tax (Appeals) was not justified to taxing the compensation received."*

3. Facts of the case in brief are that the assessee filed the return of income on 24.02.2011 declaring an income of Rs. 2,09,670/-. Later on, the case was selected for scrutiny. During the course of assessment proceedings, the AO noticed that the assessee received an amount of Rs. 4,75,041/- from Indian Oil Corporation Ltd. The AO asked the assessee to explain the nature of receipts, documentary evidence and as to why the said amount may not be added to its income. The assessee submitted that M/s Indian Oil Corporation laid down underground pipeline and paid the impugned amount for the damages done to the land, therefore, it was capital in nature. The AO did not find merit in the submissions of the assessee and made the addition of Rs. 4,75,041/- treating the said amount as revenue receipt and also causal and non-recurring nature.

4. Being aggrieved the assessee carried the matter to the ld. CIT(A) and reiterated the submissions made before the AO. The ld. CIT(A) incorporated the submissions of the assessee in paras 4 & 5 of the impugned order which read as under:

> *"That the assessee had an Agricultural land situated at Village: Rasoolpur, Sikroad, Pargana: Dasna, Distt: Ghaziabad.*
>
> *During the A.Y. 2010-11, M/s Indian Oil Corporation Ltd. had laid down the underground pipe-line. The land of assessee was in the way of pipe-line path to be laid down.*

For digging of land and laying the pipe-line, the Indian Oil Corporation Ltd. had paid Rs. 4,75,980/- to the assessee. This amount is received for granting the right to use the land for laying the pipeline and damages done to the land. The land is still owned by the assessee and there is no transfer of any asset. Therefore, compensation received by the assessee is not eligible for capital gain tax.

As per the Assessment Order, the amount received is for the loss of future profit but it is not loss of future profit as the compensation received for damages done to the land and granting the right to use the land for laying the pipeline below the land of the assessee. Therefore, it is a capital receipt in nature and not taxable.

Also, in the case of Shri Thakorbhai V. Naik V/s The Income Tax Officer, Ward-3(4), Surat (ITA No. 781/AHD/2010), it was held by the Hon'ble ITAT (Ahmadabad) that:-

> *"Thus, only question before me is whether the capital receipt is chargeable to capital gain tax or not. As per section 45 any profit or gains arising from the transfer of capital asset is chargeable to tax. Thus, transfer of capital assets is a necessary condition for chargeability of capital gain tax. In the case before me, the assessee continued to be the owner of the agricultural land. There is no transfer of agricultural land, or any right in agricultural land by the assessee to GGCL. When there is no transfer of capital assets, in my opinion, the receipt cannot be charged to capital gain tax. In view of the above, the order of the CIT(A) is partly modified and it is held that the compensation received by the assessee is capital receipt not chargeable tax."*

Similar judgment was held in the case of Shri Ishwarbhai Desai Vs The Income Tax Officer, Ward-3(1), Surat (ITA No. 544/AHD/2010). Copy of order is enclosed herewith. In both the case, the Hon'ble ITAT had held that amount received by assessee was treated as capital receipt not chargeable to tax.

Also, a letter received from M/s Indian Oil Corporation Ltd. is enclosed herewith, which shows that the amount of Rs. 4,70,800/- had been paid as compensation for the land. The amount received as the compensation received for damages done to the land and granting the right to use the land for laying the pipeline below the land of the assessee. Therefore, it is a capital receipt in nature and not taxable.

It is submitted that appeal may please be decided in the view of above facts and cases decided by Hon'ble ITAT Ahmadabad."

"With reference to the above appeal, it is further submitted that as per Section 10(1) of the Petroleum and Minerals Pipelines Act, 1962:-

"Where in the exercise of the powers conferred by section 4, section 7 or section 8 by any person, any damage, loss or injury is sustained by any person interested in the land under which the pipeline is proposed to be, or is being, or has been laid, the Central Government, the State Government or the Corporation, as the case may be shall be liable to pay compensation to such person for such damage, loss or injury, the amount of which shall be determined by the competent authority in the first instance."

It means that compensation is paid only when there is any damage done to the person interested in the land under which the pipeline has been laid. The amount paid is in the form of compensation for damages. In our case, M/s Indian Oil Corporation ltd. had paid Rs. 4,70,800/- as compensation for damages done to the land and Rs. 4,242/- as compensation for damages done to the Corporation.

As these payments are in form of compensation for damages, hence it should be treated as capital receipt and not chargeable to tax."

5. The ld. CIT(A) after considering the submissions of the assessee confirmed the addition made by the AO by observing in para 6.1 of the impugned order as under:

"6.1 The appellant has relied on two decisions of Hon'ble ITAT. However, the facts of the present case are different. In these cases the assessing officer had assessed the said receipts under the head other sources and the CIT(A) had held them to be capital receipts. No appeal was filed before the ITAT by the department against order of the CIT(A). Therefore, the issue before ITAT was not whether these receipts were of capital nature or revenue nature. The department having accepted the receipt to be of capital nature (by not filing appeal against the CIT(A)'s order), the ITAT modified the CIT(A)'s order that these receipts were not subject to capital gain tax as no capital asset had been transferred.

In the present case, the assessing officer has held them to be revenue receipts of casual and non-recurring nature. I concur with the view of the assessing officer and uphold the addition. Ground of appeal no. 1 is therefore rejected."

6. Now the assessee is in appeal. During the course of hearing the ld. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that this issue is squarely covered by the decision of the Hon'ble Bombay High Court in Income Tax Appeal No. 2923/2010 in the case of Dr. (Ms) Avimay S. Hakim Vs ITO, 12(3)(2) order dated 10.08.2010. Reliance was also placed on the following decisions of the ITAT Ahmadabad Bench:

- *Shri Thakorbhai V. Naik Vs ITO in ITA No. 781/Ahd/2010, order dated 30.07.2010*
- *Vijay Ishwarbhai Desai Vs ITO in ITA No. 544/Ahd/2010, order dated 16.12.2010*

7. In his rival submissions the ld. DR strongly supported the orders of the authorities below.

8. I have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is an admitted fact that the assessee received a sum of Rs. 4,75,041/- towards the damages to the land belonging to it and the AO taxed it considering the same as revenue receipt, the ld. CIT(A) upheld the view taken by the AO.

9. On a similar issue their lordships of the Hon'ble Bombay High Court in the Case of Dr. (Ms) Avimay S. Hakim Vs ITO (supra) observed in para 5 of the order dated 10.08.2011 as under:

"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."

10. So, respectfully following the ratio laid down in the aforesaid referred to case, the impugned addition sustained by the ld. CIT(A) is deleted because the amount received towards the damage to the land belonging to the assessee cannot be said to be a revenue receipts.

11. In the result, the appeal of the assessee is allowed.

(Order Pronounced in the Court on 05/07/2015)

Sd/-
(N. K. Saini)
ACCOUNTANT MEMBER

Dated: 05/08/2015
Subodh