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

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\+ **ITA 136/2004**

GIRISH BANSAL ..... Appellant

Through: Mr. Sanjiv Sabharwal, Senior Advocate with Mr. Gautam Chopra and Mr. Vinay Gupta, Advocates.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Praveen Kumar Jain, Advocate for Respondent No.1.
Mr. Raghvendra Singh, Advocate for Mr. Rahul Chaudhary, Senior Standing counsel for Revenue.

AND

6.

\+ **ITA 138/2004**

GYNENDRA BANSAL ..... Appellant

Through: Mr. Sanjiv Sabharwal, Senior Advocate with Mr. Gautam Chopra and Mr. Vinay Gupta, Advocates.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Praveen Kumar Jain, Advocate for Respondent No.1.
Mr. Raghvendra Singh, Advocate for Mr. Rahul Chaudhary, Senior Standing counsel for Revenue.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R

% 28.04.2016

Dr. S. Muralidhar, J.:

1. These appeals by the Assessees under Section 260A of the Income Tax Act, 1961 ('Act') are directed against the common order dated 21st April 2003 passed by the Income Tax Appellate Tribunal in ITA Nos. 2731-32/D-98 for the Assessment Years ('AYs') 1993-94 and 1994-95 respectively.

Background facts

2. The background facts are that the Punjab National Bank ('PNB') filed a suit for recovery of the loan advanced to M/s The Table Ware Craft Cottage, Mr. R.K. Goel, Mr. Virender Kumar Goel and Mr. Jitender Kumar Goel against the security of a property situated at 7-A, Friends Colony, New Delhi, which was mortgaged to PNB. On 29th January 1981, the suit was decreed.

3. In the execution proceedings filed by PNB as Decree Holder ('DH'), an order was passed for the auction sale of the aforementioned property. The Appellants herein, i.e., Girish Bansal and Gyanendra Bansal participated in the public auction and their bid for a sum of Rs.10,05,000 was accepted. The sale in their favour was confirmed by the Civil Court. On 2nd February 1989 a sale certificate was issued. This was followed by a sale deed executed in their favour which was duly registered with the office of the Sub-Registrar, Delhi on 6th February 1989.

4. The Judgment Debtors ('JDs'), however, challenged the order of the Civil

Court. The matter ultimately reached the Supreme Court by way of Civil Appeal No. 1003 of 1992. The terms of the compromise that was reached between the parties were recorded by the Supreme Court in its order dated 28th February 1992 as under:

> "With the consent of all the learned counsel appearing for the respective parties, the following order is made:
>
> i) The auction sale of the plot in question is set aside under Order 21 Rule 89 of the Code of Civil Procedure. (E.A. 185/88 before the Delhi High Court) without prejudice to the appellants first appeal No. 469/81 now pending before the Allahabad High Court.
>
> ii) The auction sale of plot No. A-7, Friends Colony, New Delhi of appellant No.1 in Execution Case No. 156/82 made on 23.11.87 for Rs.10,05,000/0 is set aside along with the sale certificate dated 22.2.1985 issued by the Registrar of the Delhi High Court which was registered with the Sub-Registrar, Delhi on 6.2.1989.
>
> iii) Respondent nos. 2 and 5, namely, Girish Bansal and Gyanender Bansal undertakes to hand over the vacant possession of the plot to the appellants before they withdraw the money from the Court.
>
> iv) The first respondent, namely, Punjab National Bank undertakes to deposit the original lease deed of the plot before the Court in case the documents have not been deposited in the Court so far.
>
> v) If the original lease deed of the plot has already been deposited in Court the appellants are directed to move an application and take back the original lease deed from the Court.
>
> vi) The High Court is directed to refund 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 (which amount according to the learned Counsel for the Bank is Rs.80,000/- in addition to the amount already withdrawn) within two months from today.

vii) Immediately after handing over the possession of the plot to the appellants the respondent Nos. 2 and 5, namely, Girish Bansal & Gyanendra Bansal are permitted to withdraw the amount of Rs.20 lakhs deposited in the Registry of this Court.

There is no order as to costs. The appeal is disposed of accordingly."

5. Consequent upon the above settlement, each of the Appellants/Assessees received Rs.10,00,000.

The Assessment orders

6. Initially in the returns filed for AY 1996-97 each Assessee disclosed Rs.10,00,000 as sale price of the plot and declared capital gains of Rs.2,30,613. In the subsequent revised return the Assessees deleted the amount shown as capital gains. A note was furnished stating "Return has been revised due to the reason that the amount received by virtue of decree passed by Supreme Court, was wrongly treated as Capital Gain Income."

7. The revised returns were picked up for scrutiny. In the course of the assessment proceedings, the Assessing Officer ('AO') framed the following questions for consideration:

(i) Whether the amount of Rs.10,00,000/- revised by the assessee is a sale consideration and chargeable to tax under the head of capital gain or not?

(ii) Whether the amount received is not a capital gain as claimed by the assessee in the revised return?

(iii) Whether the assessee had claimed exemption of this amount and if so under what provision of Income-tax Act?

(iv). Whether, the amount received is covered under Section 10(3) of the IT Act, 1961 deals with receipts which are of a casual and non-recurring nature, or not?

8. In the assessment order dated 29th February 1996, the AO came to the conclusion that a sum of Rs.10,00,000 could not be considered as sale consideration since the auction sale had been set aside along with sale certificate and the same was treated as null and void. Further it could not be said that capital gain was attracted. However, as far as issue (iii) was concerned, the AO concluded that the sum of Rs.10,00,000 paid was not covered under any exemption clause of the Act and further that the Assessees had failed to quote any provision of the Act under which they were claiming exemption. The AO concluded that the Assessees had failed to demonstrate that Rs.10,00,000 was not chargeable to tax. On the fourth issue, the AO concluded that a sum of Rs.10,00,000 in the hands of each of the Assessees was "of a casual and non-recurring nature" and was therefore chargeable to tax under Section 10(3) of the Act. The AO proceeded to compute the taxable income of the two Assessees by bringing to tax the above sum of Rs.10,00,000 each in their hands.

Order of the CIT (A)

9. Aggrieved by the above assessment order, the Assessees filed appeals before the Commissioner of Income Tax (Appeals) [CIT(A)]. By separate

order dated 19th February 1998, the CIT (A) came to the following conclusions:

(i) To attract the exemption under Section 10(3) of the Act, the receipt must be both casual as well as non-recurring. In ***CIT v. Gulab Chand 192 ITR 495 (All)***, the Allahabad High Court held that even if the receipt did not fall within the ambit of any of the clauses under Section 2 (24) of the Act, it would still be 'income' within the natural meaning of that word. There could be capital receipts which at the same time were not taxable under Section 45 of the Act. Therefore, even if the receipt was capital in nature but not taxable under Section 45, they could still be brought to tax under Section 10(3) of the Act.

(ii) The amount received by each of the Assessees pursuant to the decision of the Supreme Court was casual and non-recurring income under Section 10(3) of the Act.

Impugned order of the ITAT

10. Against the aforementioned order of the CIT (A) dismissing their appeals, the Assessees filed ITA Nos. 2731 and 2732 of 1998 for the aforementioned AYs. The question framed for consideration by the ITAT for consideration was "Whether the Assessee had acquired any right in the said property and if the answer to this question is in the affirmative, then what is the nature of that right which the Assessee had acquired?" The further issue was "if the answer to the question is in the negative, whether

the amount received by the two Assessees was liable to be taxed and if so then under what head?"

11. In the impugned order dated 21st April 2003, the ITAT concluded as under:

(i) The submission of the Revenue that the Assessees had acquired a right in the capital asset which the Assessees on their own volition had given up against the payment, and therefore the amount received was a capital receipt and the alternative plea that if it was not a capital receipt, then it was a casual and non-recurring receipt, was rejected in light of the decision of the Karnataka High Court in ***C. Kamala v. CIT 114 ITR 159 (Karnataka).***

(ii) Once the sale was set aside pursuant to the compromise recorded by the Supreme Court, the Assessees could never be said to have acquired any right in the property, and therefore, they could not have transferred any right therein as well. The ITAT agreed with the counsel for the Assessees that the Assessees "had not acquired any capital asset and the receipt was not a capital receipt accessible to tax". Accordingly, the first question was answered in favour of the Assessees.

(iii) The word 'any receipt' is of wide aptitude. Again relying on the decision of the Allahabad High Court in ***Gulab Chand*** *(supra)* and the decision of the Bombay High Court in ***Kishan Mahadev Jaghav v. V.D. Vakhaskar , 249 ITR 266 (Bom)*** , it was held that the sum received by the Assessees was neither a business income nor a salary, nor an income

attracting capital gains. Therefore, the AO justified in bringing the amount to tax under Section 10 (3) of the Act.

Present appeals

12. While admitting the present appeals on 14th February 2005, the Court framed the following question of law for consideration in ITA 136 of 2003:

> "Whether in the facts of the case the amount received covered under Section 10(3) of the IT Act, 1961 deals with receipts which are of a casual and non-recurring nature, or not?"

12.1 This court also framed a similar question in ITA 138 of 2003 by an order also dated 14th February 2005:

> "Whether in the facts of the case the amount receive by the Assessee under a compromise recorded by the Supreme Court is a receipt of a casual and non-recurring nature within the meaning of Section 10(3) of the Income Tax Act, 1961?"

13. At the outset, it must be observed that learned counsel for both the parties have agreed that the above questions require to be reframed. Accordingly, the question that arises for determination in both appeals is reframed as under:

> "What is the nature of the receipt of Rs.10,00,000 each in the hands of the two Assessees and whether the AO, the CIT and the ITAT were justified in treating it as a receipt of a casual and non-recurring nature which could be brought to tax under Section 10(3) of the Act?"

14. This Court has heard the submissions of Mr. Sanjiv Sabharwal, learned Senior counsel appearing for the Appellant Assessees and Mr. Raghvendra Singh, learned Junior Standing counsel for the Revenue.

Submissions of counsel

15. The submission of Mr.Sanjiv Sabharwal is that the sum of Rs.20,00,000 that was deposited in the Supreme Court was directed to be paid to the Appellant Assessees in view of the order dated 28th February 1992, in lieu of the Assessees agreeing to the cancellation of the sale certificate and the sale deed in their favour. Mr. Sabharwal maintained that in view of the law explained by the Supreme Court in ***CIT v. Saurashtra Cement Ltd. 325 ITR 422 (SC)*** and ***Travancore Rubber & Tea Co. Ltd. v. CIT (2000) 243 ITR 158 (SC),*** it was a capital receipt not taxable under Section 45 of the Act. He submitted that the AO, CIT as well as the ITAT erred in proceeding on the basis that the receipt was of the casual and non-recurring nature that could be taxed under Section 10(3) of the Act. That provision was not a charging provision but an exemption provision. He submitted that this course was not available to the Revenue as was explained by the Supreme Court in ***CIT vs. D.P. Sandu Bros. 273 ITR 1 (SC)***, in which it upheld the decision of the Bombay High Court in ***V.D. Vakhaskar*** *(supra)*. He also referred to the decision of the Karnataka High Court in ***C. Kamala v. CIT*** *(supra)* to point out that in similar circumstances, the receipt of money upon cancellation of the auction sale by the Court was held not be in the nature of capital gains. He submitted that after the decision of the Supreme Court in ***D.P. Sandu Bros.*** *(supra)*, the decision of the Allahabad High Court in ***Gulab Chand*** *(supra)*, which was relied upon by the CIT (A) as well as ITAT in the present case, could no longer said to be a good law.

16. Countering the above submissions, it was submitted by Mr. Raghvendra Singh, learned counsel for the Revenue that it was never the case of the

Revenue that the sum of Rs. 20,00,000 received by the Assessees was a capital receipt or that it attracted capital gains that could be brought to tax as such. He submitted that at the time when the AO framed the assessments and the CIT (A) heard the appeals thereagainst, the decision of the Allahabad High Court in ***Gulab Chand*** *(supra)* was still good law and, therefore, they were justified in treating the receipt to be of casual and non-recurring nature exigible to tax under Section 10(3) of the Act. While he was unable to contest the proposition that Section 10(3) was not a charging provision and therefore the receipt could not be taxed thereunder, he nevertheless sought to urge that the decision of the Supreme Court in ***D.P. Sandu*** *(supra)* did not specifically disapprove the decision of the Allahabad High Court in ***Gulab Chand*** *(supra)* on this aspect. He also referred to the decision of this Court in ***CIT v. Meera Chatterjee (2012) 17 Taxmann.com 229 (Del.)***.

17. Mr. Singh sought to develop an alternative argument that if the Court is not inclined to sustain the impugned order on the ground that the receipt in question could not be brought to tax under Section 10(3) of the Act, then the plea that it was in the nature of a revenue receipt should be considered. According to him the difference between the auction sale consideration of Rs.10,05,000 paid by the Assessees and the sum of Rs.20 lakhs received by them constituted the interest component which was envisaged even under Order 21 Rule 89 Code of Civil Procedure, 1908 ('CPC'). Referring to Section 65 CPC and Order 21 of the CPC he pointed out that the auction purchaser does not perfect his title till the sale deed is actually executed although it would relate to the date of confirmation of sale. He referred to

the decision of the Supreme Court in ***Ramanathan Chettiar v. CIT (1967) 63 ITR 458 (SC).***

New plea cannot be permitted

18. As far as the last submission of the counsel for the Revenue is concerned, the Court finds that such a plea that the receipt is of revenue nature is being raised for the first time in the proceedings by the Revenue in this Court. As far as the assessment proceedings were concerned, the case of the Revenue was that the receipt was in fact of a casual and non-recurring nature and therefore exigible to tax under Section 10(3) of the Act. Before the ITAT, the submission of the Department Representative ('DR') as recorded in para 11 of the impugned order was that the Assessees had "acquired a valuable right in the property and the amount was received by the Assessee was for extinguishments of the right in the property and the amount so received given any name would be liable to be taxed".

19. The other submission of the DR recorded was "the assessee given consent to relinquish his right in the property and for relinquishing that right which he has acquired from the sale certificate and sale deed, the assessee asked for a price which is paid, on the receipt of which amount they cease to have right". It was specifically recorded in para 11 of the impugned order by the ITAT that "The Ld. DR submitted that the assessee in their wisdom agreed and consented to take the compensation for giving up of the right in the property and once having received the amount be it given in any name the said amount is to be brought to the tax and taxed not only under the

proper hands but also in the proper heads". After having said so, learned DR submitted that the amount received is the capital receipt.

20. The alternative plea of the DR as recorded in the impugned order of the ITAT was that if the amount was not capital receipt "then it has rightly been taxed as casual and non-recurring and in the circumstances, no interference in the orders of the authorities below is called for". Therefore, even before the ITAT, the plea of the Revenue was that it was either a capital receipt or a receipt of casual and non-recurring nature. In other words the case of the Revenue was not that a sum of Rs.20,00,000 was in the nature of revenue receipt in the hands of the Assessees. Realising this difficulty, it was urged by Mr. Singh, that the above stand was taken by the Revenue only in the light of the decision of the Allahabad High Court in ***Gulab Chand*** (supra) which at the relevant time was still good law.

21. Be that as it may, the Court finds that the Revenue cannot be permitted to shift its stand from one forum to another. The consistent case of the Revenue is to be tested at various levels for its correctness. It is possible that in the interregnum there might be decisions of the Supreme Court which might support or negate the case of the Revenue. That would then have to be taken to its logical end. In the circumstances, the Court is not prepared to permit the Revenue to urge a new plea for the first time in this Court.

Not a revenue receipt

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 28th February 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.

Not a receipt taxable under Section 10 (3)

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 support of her contention, the ITAT 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:

> "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 in exemption provided by the Act lies upon the assessee."

23.3 It was further observed as under:

> "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 assembly is assessable income where he fails to disclose satisfactorily the source and the nature of the receipt. But here the source of income was disclosed by the appellant and there was no dispute about the truth of the disclosure."

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

24.1 In ***C. Kamala*** (*supra*), the facts were more or less similar to the facts on hand. The Assessee was declared purchaser of certain immovable property for Rs. 125 at a court auction held in 1962. The JDs then filed an application under Rule 90 Order 21 of CPC to get the sale set aside. After their

application was dismissed by the executing court the JDs filed an appeal and during the pendency of the appeal, the dispute between the parties was compromised. Under the compromise the Assessee agreed to the sale being set aside on payment of Rs.20,000 by the person in whose favour the JDs had agreed to execute a sale deed conveying the property in question. Consequently, a compromise was recorded by the Civil Judge and the sale was set aside. The question arose as to the taxability of the sum of Rs.20,000. The Income Tax Officer ('ITO') held that the said sum represented long term capital gains and was liable to be taxed as such under the Act. The case of the Assessee was that she had not acquired any title in the property in question and therefore the question of transferring any interest for a consideration of Rs.20,000 did not arise. The case of the Revenue was that the receipt should be treated as consideration for relinquishment of her interest in a capital asset.

24.2 The Supreme Court ***C. Kamala*** (*supra*) negatived the plea of the Revenue holding that "there cannot be any transfer of interest in a capital asset by the auction purchaser when the sale itself is set aside in appeal". It was reiterated "The department cannot be permitted to treat the transaction in question as a transfer of capital asset by the assessee even though she had not acquired any interest in the property and had not done any act which would either directly or indirectly amount to a transfer." Consequently, the Court concluded that the sum of Rs.20,000 which was received by the Assessee could not be treated as long term capital gains.

25.1 In ***Travancore Rubber*** (*supra*) the Assessee was the plantation company engaged in the business of growing rubber and tea. It entered into three agreements with the purchasers for sale of old rubber trees. The purchasers paid a certain amount by way of earnest money and another sum by way of advance under the three respective agreements. The total amount of earnest money received by the Assessee under the three agreements was Rs. 75,000 and the total amount by way of advance was Rs. 3,56,300.

25.2 All the three purchasers defaulted in payment of the balance amount and the agreements were accordingly terminated and the amount of earnest money and the advance was forfeited by the Assessee. The Assessee's right to retain the amount of earnest money and advance was confirmed by the Civil Court.

25.3 In its return filed for the AY 1977-78, the Assessee claimed that the amounts were not taxable as revenue receipt. While the AO agreed with the Assessee, the CIT (A) sought to revise the order of the AO by exercising revisional power under Section 263 of the Act and held that the amounts forfeited were revenue income. The Assessee succeeded in its appeal before the ITAT. However, the High Court remanded the matter to the ITAT. On remand, the ITAT came to the conclusion that the receipt was not accessible as revenue receipt but as 'income from other sources'. Upon a reference, the High Court held that the amounts were income receipts "in the context of the situation".

25.4 The Supreme Court in ***Travancore Rubber*** (supra) disagreed with the High Court and held that when the Assessee had entered into three agreements for sale of old and unyielding rubber trees what was received by way of advance consideration was a capital receipt. It was observed that if the sale had gone through then there would be no question that the consideration would be subject to capital gains. However, it was held that the amount forfeited was a capital asset of the Assessee and directly related to the sale of such capital. Accordingly, it was held that the forfeited amount ought to be treated as a capital receipt.

26.1 In ***Gulab Chand*** (supra) the Assessee was an individual carrying on the business of pawning and dealing in shares. During the relevant AY, he received a sum of Rs.15,000 for surrendering the tenancy of the godown occupied by him as tenant. Initially, in the return filed the amount was disclosed as a capital gain. Later he contended before the ITO that this was not at all taxable since it was not a revenue receipt. The ITO held it to be a casual receipt within the meaning of Section 10(3) of the Act and after exempting a sum of Rs.10,000 brought a sum of Rs.14,000 to tax. The ITAT in appeal considered the amount as representing capital gain. Thereafter, at the instance of Revenue a reference was made to the High Court.

26.2 After discussing Section 10(3) of the Act which talks of receipts which are of casual and non-recurring nature which are exempted to the extent that they do not exceed to Rs.5,000 to the aggregate, the High Court of Allahabad in ***Gulab Chand*** (supra) concluded that in the light of the

decision in ***CIT v. B.C. Srinivasa Setty (1981) 128 ITR 294 (SC)*** even if a receipt is of capital nature it might not attract capital gains chargeable under Section 45 of the Act "for the simple reason that there was no cost of acquisition for the tenancy right". Therefore it was held to be of a casual and non-recurring nature within the meaning of Section 10(3) of the Act.

27. The Calcutta High Court in ***B.K. Roy Pvt. Ltd. v. CIT (1995) 211 ITR 500 (Cal)*** dissented from the decision in ***Gulab Chand*** (supra) holding that if a capital receipt is not taxable as capital gain, then it cannot be treated as a casual and non-recurring receipt under Section 10(3) of the Act.

28.1 This view was also the view of the Bombay High Court in ***Cadell Weaving Mill Co. Pvt. Ltd.*** (supra). The Bombay High Court followed the decision of the Calcutta High Court in ***B.K. Roy*** (supra) and dissented from the decision in ***Gulab Chand*** (supra). The question before the Bombay High Court was whether the money received upon surrender of tenancy rights and whether such receipt could be construed to be a casual and non-recurring receipt within the meaning of Section 10(3) of the Act and as such is exigible to tax under Section 56 of the Act.

28.2 In ***Cadell Weaving Mill Co. Pvt. Ltd.*** (supra), the precise question addressed by the Bombay High Court was: "Whether the surrender value of a tenancy right, if not chargeable to tax as capital gains under Section 45, is liable to be taxed as "income from other sources" under section 56 of the Act? In answering the above question the Bombay High Court held as under:

Income-tax Act except to the extent of any capital receipt being expressly sought to be covered by the Act or Parliament as in the case of section 2(24) (vi). In fact, in the present matter, the surrender value received by the assessee has accrued on transfer of the capital asset but it is not chargeable under section 45 for want of cost of acquisition. However, from that, one cannot bring such a receipt under Section 10(3) because section 10(3) refers to types of income which do not from part of total income. In other words, a receipt has to be income before it comes within the purview of Section 10(3). Section 10(3) does not apply to a capital receipt".

28.3 It was further observed as under:

Department seeks to bring such receipts under the residuary head, the onus is on the Department in the first instance to show as to how such a receipt would constitute income item."

28.4. It was further observed as under:

45. They did apply the head, viz., "Capital gains". However, when it came to computation, the Department found that cost of acquisition cannot be computed. Hence, it is now sought to be argued that such capital gains would constitute "income from other sources" under Section 56. In the case of United Commercial Bank Ltd. v. CIT , it has been held that income which falls under one specific head could not be brought to tax under any other head. If for any reason, the computation machinery fails, it is not open to the Department to apply the residuary clause".

28.5 ***In Cadell Weaving Mill Co. Pvt. Ltd.*** (supra), the Bombay High Court summarized its findings as under:

"Whenever there is a receipt, one has to ascertain its source. If it is a business income or salary income or capital gains chargeable under Section 45 and, if so, it is taxable under that head, then no further

> inquiry has to be made, viz.; whether the receipt is casual and non-recurring. Since capital gains are brought within the tax net under Section 45, they cannot fall in Section 10(3); If any amount of capital gains is non-taxable for any reason as capital gains, that amount cannot be treated, automatically, as a casual and non-recurring receipt under Section 10(3). In order to attract Section 10(3), two conditions are required to be satisfied, viz., that the receipt should be casual and non-recurring and that it should not arise by way of business income, salary income or capital gains chargeable under Section 45. Therefore, the aforestated three types of incomes constitute exceptions to Section 10(3). That capital receipts do not fall under Section 10(3)."

29.1 The decision of the Bombay High Court was carried in appeal by the Revenue and the said appeal was decided by the Supreme Court along with the appeal of ***D P Sandu Bros.***(supra). A three-judge bench of the Supreme Court in ***D P Sandu Bros.***(supra) upheld the judgement of the Bombay High Court holding that a tenancy right is a capital asset and the sum received on the surrender of the tenancy right is a capital receipt within the meaning of Section 45. It was further held that it was not open to the Revenue to impose tax on such capital receipt by the Assessee under any other Section since "income derived from different sources falling under a specific head has to be computed for the purposes of taxation in the manner provided by the appropriate Section and no other". The amount received on surrender of the tenancy right would attract Section 45 and the amounts derived if at all would be taxable only under the head "capital receipt and assessable if at all only under Item E of Section 14. That being so, it cannot be treated as a casual or non recurring receipt under Section 10(3) and be subjected to tax under Section 56". If the income cannot be taxed under Section 45 "it cannot be taxed at all...".

29.2 The Supreme Court in ***D P Sandu Bros.***(supra) again reiterated the dictum in ***B.C. Srinivasa Setty*** (supra) to the effect that if the computation as provided under Section 48 could not be applied to a particular transaction, it must be regarded as "never intended by Section 45 to be the subject of the charge".

30.1 In ***CIT v. Saurashtra Cement Ltd., 325 ITR 422 (SC)***, the Assessee had entered into an agreement for supply of a cement plant with a condition that in the event of delay caused in delivery of the machinery, the Assessee would be compensated at 5% of the price of the respective portion of the machinery without proof of actual loss. With the supplier failing to supply the machinery within the stipulated time, the Assessee received Rs. 8,50,000 by way of liquidated damages, whereby the ITAT held this to be a capital receipt and the High Court answered in favour of the Assessee, the Revenue went in appeal before the Supreme Court.

30.2 Affirming the decision of the High Court, the Supreme Court in ***CIT v. Saurashtra Cement Ltd.*** (supra) held the damages received by the Assessee were "directly and intimately linked with the procurement of a capital asset viz., the cement plant. The amount received by the assessee towards compensation for sterilization of the profit-earning source, not in the ordinary course of business, was a capital receipt in the hands of the assessee."

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.

Conclusion

32. In the light of the clear enunciation of the law in the aforementioned decisions of the Court, it is plain that as far as the present case is concerned, the AO was in error in proceeding on the basis that a sum of Rs.20,00,000 received by the Assessee was in the nature of a casual and non-recurring receipt which can be brought to tax under Section 10(3) of the Act. Having held that it could not be in the nature of capital gain it was not open to the Revenue to seek to bring it to a tax under the revenue receipt. Following the decision in ***Cadell Weaving Mill*** (supra), there can be no manner of doubt that what is in the nature of capital receipt, cannot be sought to be brought to tax by resorting to Section 10(3) read with Section 56 of the Act.

33. The question framed by the Court is accordingly answered in favour of the Assessee and against the Revenue. Consequently, the impugned orders

of the AO, CIT as well as the ITAT are hereby set aside. The appeals are allowed but in the circumstances with order as to costs.

S. MURALIDHAR, J

VIBHU BAKHRU, J

APRIL 28, 2016
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