

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH : NAGPUR**

**INCOME TAX APPEAL NO.17 OF 2011**  
**with**  
**INCOME TAX APPEAL NO.18 OF 2011**  
**with**  
**INCOME TAX APPEAL NO.19 OF 2011**  
**with**  
**INCOME TAX APPEAL NO.20 OF 2011**

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**INCOME TAX APPEAL NO.17 OF 2011**

Smt. Premlata Purshottam Paldiwal,  
C/o. Paldiwal Nursing Home,  
Giripeth, Amravati Road,  
Nagpur.  
Tah. & Dist. Nagpur  
State of Maharashtra.

...

**APPELLANT**

.. **Versus** ..

The Commissioner of Income-tax-I,  
Aaykar Bhawan, Civil Lines,  
Nagpur  
Tah. & Dist. Nagpur  
State of Maharashtra.

...

**RESPONDENT**

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Mr. C.J. Thakar & Mr. S.C. Thakar, Advocates for the Appellant.  
Mr. A. Parchure & Mr. B. Mohta Advocates for the Respondent.  
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**INCOME TAX APPEAL NO.18 OF 2011**

Smt. Premlata Purshottam Paldiwal,  
C/o. Paldiwal Nursing Home,  
Giripeth, Amravati Road,  
Nagpur.

Tah. & Dist. Nagpur

State of Maharashtra. ...

**APPELLANT**

.. **Versus** ..

The Commissioner of Income-tax-I,  
Aaykar Bhawan, Civil Lines,  
Nagpur

Tah. & Dist. Nagpur

State of Maharashtra. ...

**RESPONDENT**

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Mr. C.J. Thakar & Mr. S.C. Thakar, Advocates for the Appellant.  
Mr. A. Parchure & Mr. B. Mohta Advocates for the Respondent.  
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**INCOME TAX APPEAL NO.19 OF 2011**

Smt. Premlata Purshottam Paldiwal,  
C/o. Paldiwal Nursing Home,  
Giripeth, Amravati Road,  
Nagpur.

Tah. & Dist. Nagpur

State of Maharashtra. ...

**APPELLANT**

.. **Versus** ..

The Commissioner of Income-tax-I,  
Aaykar Bhawan, Civil Lines,  
Nagpur

Tah. & Dist. Nagpur  
State of Maharashtra.

...

**RESPONDENT**

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Mr. C.J. Thakar & Mr. S.C. Thakar, Advocates for the Appellant.  
Mr. A. Parchure & Mr. B. Mohta Advocates for the Respondent.  
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**INCOME TAX APPEAL NO.20 OF 2011**

Smt. Premlata Purshottam Paldiwal,  
C/o. Paldiwal Nursing Home,  
Giripeth, Amravati Road,  
Nagpur.  
Tah. & Dist. Nagpur  
State of Maharashtra.

...

**APPELLANT**

.. **Versus** ..

The Commissioner of Income-tax-I,  
Aaykar Bhawan, Civil Lines,  
Nagpur  
Tah. & Dist. Nagpur  
State of Maharashtra.

...

**RESPONDENT**

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Mr. C.J. Thakar & Mr. S.C. Thakar, Advocates for the Appellant.  
Mr. A. Parchure & Mr. B. Mohta Advocates for the Respondent.  
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**CORAM** : M.S.SANKLECHA &  
MANISH PITALE, JJ.  
**RESERVED ON** : July 21, 2017.  
**PRONOUNCED ON** : AUGUST 01, 2017.

**JUDGMENT (Per M.S. SANKLECHA, J.)**

These appeals under Section 260-A of the Income Tax Act, 1961 (the Act) challenge a common order dated 30<sup>th</sup> May, 2011 passed by the Income Tax Appellate Tribunal, Nagpur (Tribunal). The impugned common order relates to the assessment years 1998-1999, 1999-2000, 2000-2001, & 2001-2002. Hence the four appeals.

2. All the four appeals were admitted on 14th December, 2011 on the following identical substantial question of law :

*'Whether the judgment of Delhi High Court in the case of Paragon Construction (I) Private Limited .vrs. C.I.T. (2005) 274 I.T.R. 413 (Del) has been correctly appreciated and distinguished by ITAT?'*

सत्यमेव जयते

3. It is an agreed position between the parties that above substantial question of law arises on identical facts in the four appeals. Therefore, facts in any one of the four appeals would be sufficient to answer the above substantial question of law raised in all the four appeals. Therefore, by consent of the parties we shall refer to the facts in Income Tax Appeal No.19 of 2011 relating to Assessment Year 1998-99.

4. The brief facts giving rise to the appeals are as under :-

(a) The appellant/assessee owned agricultural land in village Borkhedi, Dist. Nagpur. This agricultural land was compulsorily acquired by Government of India issuing a notification dated 5th March, 1992 under Section 4 of the Land Acquisition Act, 1894. The Land Acquisition Officer in September, 1995 granted a compensation of Rs.9.33 Lakhs (inclusive of interest) to the appellants on acquisition of the notified land.

(b) As the appellant was aggrieved by above compensation it ensured a Reference was filed under Section 18 of the Land Acquisition Act by the Collector to the Civil Judge, Senior Division. By an order dated 21<sup>st</sup> September, 1996, Civil Judge, Senior Division enhanced the compensation to Rs.63.33 Lakhs (including interest of Rs.17.57 Lakhs).

(c) Being aggrieved with the order dated 21<sup>st</sup> September, 1996 passed by the Civil Judge Senior Division, the State filed an appeal bearing F.A. No.716 of 1996 before this Court. In the above appeal, this Court by an interim order dated 9th July,

1997 permitted the appellant/assessee to withdraw the amount of Rs.63.33 Lakhs on her furnishing a bank guarantee of Rs.35 Lakhs and solvent surety for the balance to the satisfaction of the Court. Consequent to complying with the above, the enhanced compensation of Rs.63.33 Lakhs was received by the appellant/assessee on 19<sup>th</sup> August, 1997.

(d) The appellant/assessee thereafter deposited the entire amount of Rs.63.33 Lakhs in Fixed Deposit with the Banks. The appellant/assessee earned interest of Rs.3.40 Lakhs on the Fixed Deposit with the bank for the Assessment Year 1998-99. The Assessing Officer sought to tax the interest received on Fixed Deposit of Rs.63.33 Lakhs of the Banks as income from other sources. The appellant/assessee resisted the same on the ground that the issue of compensation has not yet been finally decided and the income on account of compensation would accrue to her only on final determination of the compensation by the High Court. The Assessing Officer did not accept the appellant/assessee's claim and by order dated 28th November, 2003, brought the interest of Rs.3.40 Lakhs received on Fixed Deposit to tax as income from other sources for the subject assessment year. Identical orders were passed by the

Assessing Officer for the other three assessment years.

(e) Being aggrieved the appellant/assessee carried the issue in appeal to the Commissioner of Income Tax (Appeals) (CIT(A)). By consolidated order dated 14th September, 2004 for Assessment Year 1996-97 to 2001-02 the CIT(A) allowed the appeals of the appellant/assessee. The appeals which were before the CIT(A) were with regard to the Assessing Officer bringing to tax the compensation and the interest on enhanced compensation for the Assessment Years 1996-97 and 1997-98 under the Land Acquisition Act, while the appeals for the balance Assessment Years 1998-99 to 2001-02 was on interest on the fixed deposit made with the bank by the appellant/assessee on receipt of compensation amount of Rs.63.33 Lakhs, consequent to the interim order of the Court dated 14th September, 2004. These appeals were allowed by holding that the issue with regard to enhanced compensation had not yet been finally determined. Consequently, no income could have been said to have accrued during the subject assessment year as same was subject to final decision of the High Court in the pending appeal. It held that till issue of compensation was finally determined, no income on account of

compensation and interest thereon can said to accrue. Further, it invoked the principle of restitution to hold that the interest on fixed deposit accrued would be subject to restitution under Section 144 of the Civil Procedure Code. Consequently, it held that interest earned on the fixed deposit was also subject to the final conclusion of the proceeding in respect of compensation for acquisition of land by the High Court.

(f) Being aggrieved with the common order dated 14th September, 2004 of the CIT (A), the Revenue filed six appeals, one each for the Assessment Years 1996-97 to 2001-02 to the Tribunal. By the impugned order dated 30th May, 2011, the Tribunal recorded the fact that the parties are agreed that the original compensation and enhanced compensation received on account of land being acquired is not taxable, for the reason it is agricultural income. However, so far as interest on enhanced compensation under Section 28 of the Land Acquisition Act for Assessment Years 1996-97 and 1997-98 is concerned, it restored the same for reconsideration, to the Assessing Officer. So far as the appeals for Assessment Years 1998-99 to 2001-02 are concerned, it allowed the Revenue's appeal by holding that interest received on fixed deposit with banks is taxable. It held that the decision of Delhi High Court in **Paragon Construction**

(I) **Private Limited .vs. C.I.T. (2005) 274 I.T.R. 413** being relied upon by the appellant is not well founded. This is so as it would not be applicable to the facts of the present case in as much as in that case the interim order of the Court allowing the party to withdraw the amount provided for payment of interest in case the applicant/assessee loses at the final hearing of the proceeding seeking to challenge the award by an Arbitrator. In this case, the interim order of the Court dated 9th July, 1997 which allowed the appellant to withdraw the amount of Rs.63.33 Lakhs did not provide for any such interest to be paid by the appellant/assessee in case it failed at the final hearing before the High Court. Thus, the impugned order dated 30th May, 2011 of the Tribunal allowed the Revenue's appeals for Assessment Years 1998-99 to 2001-02 by holding interest on fixed deposit is taxable as income under head income from other sources.

5. The appellant/assessee is in appeal before us from the impugned order of the Tribunal only for the Assessment Years 1998-99 to 2001-02 where the interest earned on fixed deposit has been brought to tax as income from other sources.

6. Mr. Thakkar, the learned counsel for the appellant, in support of the appeal submits as under :-

(a) The amount received as interest on fixed deposit of Rs.63.33 Lakhs could not be said to have accrued to the appellant/assessee, as the income earned thereon was a continuance of the compensation and interest thereon, awarded by order dated 21.09.1996 of the Civil Judge, Senior Division. This is so as the compensation and interest was not final, but pending the decision of the High Court.

(b) The issue arising herein stands covered by the decision of the Delhi High Court in **Paragon Construction** (*supra*). It is submitted that on identical facts, the Delhi High Court held that where amount has been received by the assessee at an interim stage subject to the condition that in case assessee failed at the final hearing he would refund the amount to the respondent along with interest at the rate prescribed in the interim order the amount earned on.

(c) In any view of the matter, on the principle of restitution as provided in Section 144 of the Civil Procedure Code the appellant/assessee would be obliged to return the

amount of Rs.63.33 Lakhs along with all further benefits obtained by her (including the interest on fixed deposit) on the aforesaid amount to the successful party.

7. As against the above, Mr. Parchure, learned counsel for the Revenue, submits as under :-

(a) In the present facts, the appeals are only concerned with the issue of bringing to tax, interest earned on the fixed deposit made by the appellant/assessee. It has no connection with the compensation to be finally awarded along with interest in the land acquisition proceedings before the High Court.

(b) The interest earned on the fixed deposit by the appellant-assessee is not a continuation of the compensation proceedings along with interest thereon which are receivable consequent to the land acquisition. Thus the two should not be linked.

(c) The decision of the Delhi High Court in **Paragon Construction** (*supra*) would have no applicability to the present facts. This is as observed by the Tribunal for the reason that in the interim order dated 9th July, 1997 passed by the High Court

allowing the appellant/assessee to withdraw the amount of Rs.63.33 lakhs contained no stipulation that in case appellant/assessee loses before the High Court, then the assessee was obliged to return the amount of Rs.63.33 Lakhs along with interest, as was the case in the case of **Paragon Construction** (*supra*).

(d) Section 144 of the Civil Procedure Code would have no application to the present facts, in absence of successful party i.e. the State making an application to the Court for restitution.

8. We have considered the rival submissions. The only substantial question of law raised relates to the impugned order of the Tribunal completely misconstruing the decision of the Delhi High Court in **Paragon Construction** (*supra*) which according to the appellant would apply on all fours to the present facts. The facts in **Paragon Construction** (*supra*) before the Delhi High Court were as follows:-

(a) The assessee therein was entitled to a sum of money from the Municipal Corporation consequent to award of the Arbitrator.

(b) The assessee moved the High Court seeking a direction that the Arbitrator be directed to file the original award in Court for making it the rule of the Court. This was objected to by the Corporation. In those proceedings the Corporation deposited the amount of the award without prejudice to its objection to the award.

(c) The Court by an interim order allowed the assessee therein to withdraw the amount deposited subject to furnishing a bank guarantee and an undertaking that in case the Corporation succeeds, the assessee will refund the amount to the Corporation along with the interest.

In the present facts although the interim order allowed the assessee to withdraw the amount of Rs.63.33 lakhs, there was no stipulation in the interim order that in case the appellant loses, she was obliged to return the amount to the State along with interest. Therefore, the facts in the present case are completely distinguishable from the decision of the Delhi High Court in **Paragon Construction** (supra). The requirement of returning the amount along with interest thereon by a subsequent order of the Court is uncertain. Therefore, such an uncertain event cannot by itself divest the accrual of interest

income on the fixed deposit in subject assessment year in the hands of the appellant-assessee. Further as pointed out above, there was no obligation in terms of the order allowing the appellant to withdraw the amount of Rs.63.33 lakhs, to deposit the same in fixed deposits and return it along with interest received on fixed deposit to the State in case it loses in the appeal filed by the State before the High Court. Therefore, the interest if awarded at the final hearing would not necessarily be related to the interest earned on the fixed deposit in the absence of any such direction being made in the interim order. Thus the impugned order of the Tribunal has correctly held that the decision of the Delhi High Court in **Paragon Construction** (supra) would have no application in view of the above distinction to the present facts.

9. In fact the above findings of ours would dispose of the substantial question of law in favour of the Revenue. However, we have considered the further submissions made by the appellant-assessee challenging the impugned order. This as we heard the parties on the same at length. The core issue which arises for our consideration is whether interest received on fixed deposit for the subject assessment year has accrued to

the appellant-assessee for being taxed. The main limb of the appellant-assessee's case as canvassed before us is that the interest on the fixed deposit should not be brought to tax in the subject assessment year as the source of the deposit on which the interest has been earned is the compensation received by her in land acquisition proceedings. It is a settled issue between the parties that the amounts received at the interim stage in the land acquisition proceedings cannot be brought to tax not only for the reason that it is agricultural income but also for the reason that final determination of the enhanced compensation receivable by the appellant-assessee has not yet been finally determined. Mr. Thakar very fairly states that it is not appellant's claim that interest received on the fixed deposits is not taxable because it is agricultural income. Admittedly it is not agricultural income. However, the interest accruing to the assessee on fixed deposit is taxable only on the final determination of the compensation receivable by her in the land acquisition proceedings pending before this Court. This for the reason that it is a continuation of the compensation receivable on acquisition of land and, therefore, it has to be considered as a part of enhanced compensation which is yet to be determined by the Court. Therefore, when the compensation received at the interim stage

cannot be brought to tax, as it only accrues at the final determination then on the same basis the interest earned on the amount of fixed deposit should also follow the principal amount of Rs.63.33 lakhs received at interim stage.

10. The above submission ignores the facts that once the interim compensation has been received by the appellant-assessee pending the final disposal by the High Court, she is free to deal with the amount as she deems fit. There is no requirement under the law nor any direction given by the Court while passing an interim order allowing the appellant to withdraw the sum of Rs.63.33 lakhs so as to invest the same in fixed deposits and account for the interest earned thereon. The moment the appellant-assessee receives/withdraws the amount of Rs.63.33 lakhs from the Court, it becomes a part of her pool of income/wealth to be utilised/disposed of as she deems fit. Therefore, the fixed deposit which is made in the Bank at the time of deposit loses its character as compensation amount received at the interim stage from the High Court. This link/connection is broken. It is a deposit made in the Bank by the appellant-assessee in her own capacity as an individual and not as a trustee appointed by the Court to make fixed deposit for

the benefit of any accrual or interest arising therefrom for the benefit of successful party in the litigation before it. Therefore, there is no continuity as submitted on behalf of the appellant so as to exclude the interest earned on the fixed deposit from exigibility to tax.

11. The source of funds to earn income cannot determine the taxability of the income earned on the capital amount which has been invested. This in the absence of any statutory mandate otherwise. The income earned would be chargeable to tax irrespective of the source of the funds from which the income has been earned. In the mercantile system of accounting, income accrues when the right to receive the same arises, even though the actual receipt could be at a later date. In the present case it is an accepted position that the right to receive the interest from the fixed deposits already accrued to the appellant-assessee. In such circumstances, the interest on the fixed deposit would be chargeable to tax, as sought to be done by the Assessing Officer under the head income from other sources.

12. It was next submitted that in any view of the matter on the principle of the restitution as provided under Section 144

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of the Civil Procedure Code , the appellant-assessee would be obliged to return the amount of Rs.63.33 lakhs along with all benefits obtained by her to the successful party i.e. the State. Section 144 of the Code of Civil Procedure would only be triggered if the successful party makes an application to the Court for restitution. This application for restitution by the successful party is not a certainty. An application for restitution may or may not be made by the successful party. In any event even if application is made, the benefit which the assessee would have gained out of benefit/income out of the amount of Rs.63.33 lakhs would be net of tax. In those circumstances, the requirement for the appellant to pay to the State would be only the net amount received by her after payment of taxes due. Thus we find no merit in the submission that no tax is payable on the income earned on the fixed deposits as the same could be subject to proceedings of restitution under Section 144 of the Code of Civil Procedure.

13. In the above view, the identical substantial questions of law as raised for our consideration in all the four appeals are answered in the affirmative i.e. in favour of the respondent-revenue and against the appellant-assessee.

14. Hence all four appeals are dismissed. No order as to costs.

(Manish Pitale, J.)

(M.S. Sanklecha, J.)

waghmare/halwai, p.s.

