IN THE INCOME TAX APPELLATE TRIBUNAL,
AHMEDABAD A BENCH, AHMEDABAD

[Coram: Pramod Kumar AM and S S Godara JM]

I.T.A. No.: 630/Ahd/16
Assessment year: 2012-13

Urvi Chirag Sheth ***……Appellant***
B-032, Orchid Whitefield
Prahlad Nagar Extension Road
Makarbara, Ahmedabad 380 051
[PN: AXGPS8242R]

Vs.

Income Tax Officer
Ward 5(2)(3), Ahmedabad ***……Respondent***

Appearances by:
Hiren Trivedi *for the appellant*
Anita Hardasani *for the respondent*

Date of concluding the hearing : May 10, 2016
Date of pronouncing the order : May 31st, 2016

O R D E R

Per Pramod Kumar, AM:

1. The short point that requires our adjudication in this case is whether or not the learned CIT(A) was justified in upholding the addition of Rs 7,47,143 on account of interest awarded to the assessee, as a part of enhanced accident compensation, by Hon'ble Supreme Court. The assessment year involved is 2012-13 and the impugned order was passed by the learned CIT(A) on 28th January 2016.

2. The issue in appeal lies in a very narrow compass of facts. The assessee before us is an unfortunate victim of a motor accident. On 18th May 1990, she was travelling in a car, which met a serious accident, leaving her permanently disabled, what is termed by the competent authority, at ninety percent level. She claimed a compensation of Rs 15,00,000 for this tragic loss of her physical abilities. She did eventually get it but she had to knock the doors of Hon'ble Supreme Court, and it was finally on 26th April 2011 that her claim was upheld. As if this long struggle of 21

years in the judicial process was not enough, the destiny had more in store for her. It is this settlement of the accident compensation claim that has led to a new round of litigation- this time about taxability of a component of compensation, i.e. interest component. Mercifully, there is no, and there cannot be, any dispute about the fact that the compensation for disability cannot be subject to tax, but the stand of the Assessing Officer is that interest component on compensation awarded by Hon'ble Supreme Court is taxable as it is covered under section 145A(b) r.w.s. 56(viii) of the Act. In appeal, learned CIT(A) has confirmed this stand by observing as follows:

> **4.3 I have considered the facts of the case and submission made by the appellant. The Assessing Officer is of the opinion that the case of the assessee come under the purview of Section 145A(b) r.w.s. 56(2)(viii) of the Act as the assessee has received interest on compensation of Rs.14,94,286/-. However, the AO has allowed deduction of Rs.7,47,143/- as per provisions of Section 57(iv) of the Act. The main contention of the appellant is that the interest which is received by any person under any statute is taxable under the Act, however, if the interest is awarded by courts of higher authorities as part of fair and equitable compensation is not taxable in the hands of the assessee, as the same is capital receipt. The appellant has relied upon certain judgments but these judgments are based on different facts, these are not much help to the assessee. The provisions of Section 56(2)(viii) r.w. Section 145A(b) of the Act are not considered in these judgments. The other contentions of the appellant that the provisions of Section 56(2)(viii) of the Act deal with interest on compensation received under land requisition Act, 1994 only is also not correct. A plain reading of Section 56(2)(viii) clearly says that income by way of interest received on compensation or on enhanced compensation referred to in clause b of Section 145A shall be chargeable to income tax under the head "income from other sources". The AO has rightly made the addition, therefore, the addition is confirmed. Thus these grounds of appeal are dismissed.**

3. The assessee is not satisfied, and is in further appeal before us.

4. We have heard the rival contentions, perused the material on record and duly considered facts of the case and the applicable legal position.

5. As we have noted earlier in this order, the assessee had to go right upto Hon'ble Supreme Court to have her compensation claim accepted. What ought to have been paid to her soon after the accident, was eventually paid in full after twenty

one years of the tragic incident. Hon'ble Supreme Court, vide judgment dated 26th April 2011, concluded that "**Considering all this, we grant compensation of Rs 15 lacs (Rupees fifteen lacs) with interest at the rate of 8% on the enhanced compensation from the date of filing the claim petition before MACT** *(Motor Accidents Claims Tribunal)* **till the date of realization**". The payment made to the assessee, therefore, is in the nature of compensation for the loss of her mobility and physical damages. Clearly, such a receipt, in principle, is a capital receipt and beyond the ambit of taxability of income since only such capital receipts can be brought to tax as are specifically taxable under section 45. Hon'ble Supreme Court has, in the case of **Padmaraje R. Kadambande vs. CIT [(1992) 195 ITR 877 (SC)],** observed that, ". . . . **we hold that the amounts received by the assessee during the financial years in question have to be regarded as capital receipts and, therefore, are not income within meaning of s. 2(24) of the Income Tax Act**." [Emphasis supplied]. This clearly implies, as is the settled law, that a capital receipt, in principle, is outside the scope of 'income' chargeable to tax and a receipt cannot be taxed as income unless it is in the nature of a revenue receipt or is specifically brought within ambit of 'income' by way of specific provisions of the Income Tax Act. The accident compensation is thus not taxable as income of the assessee. What is termed as interest also is of the same character and it seeks to compensate the time value of money on account of delay in payment. On the first principles, such an interest cannot have a standalone character of income, unless the interest itself is a kind of statutory interest at the prescribed rate of interest. Right now, however, we are dealing with a situation in which the interest is awarded by Hon'ble Supreme Court in its complete and somewhat unfettered discretion. An interest of this nature is essentially a compensation in the sense it accounts for a fall in value of money itself at the point of time when compensation became payable vis-a-vis the point of time when it was actually paid, or, for the shrinkage of, what can be termed as, a measuring rod of value of compensation. If the money was given on the date of presenting the claim before the MACT, it would have been Rs 15 lacs but since there is an inordinate, though partial, delay in payment of this amount, interest payment is to factor for fall in value of money in the meantime. The transaction thus remains the same, i.e. compensation for disability, and the interest rate, on a rather notional basis, is taken into account to compute the present value of the compensation which was lawfully due to the assessee in a somewhat distant past. Viewed thus, the amount of compensation received at this point of time, whichever way is it computed, has the same character. If compensation itself is not taxable, the interest on account of delay in payment of compensation cannot be taxable either. In the case of **CIT Vs Oriental Insurance Co Ltd [(2012) 211 Taxman 369 (All)],** Hon'ble Allahabad High Court has, *inter alia*, held that "**To our opinion, the award of compensation under motor accidents claims cannot be regarded as income. The award is in the form of compensation to the legal heirs for the loss of life of their bread**

earner. Hence the interest on such an award cannot be termed as income to the legal heirs or to the victim himselfò Their Lordships have also observed, referring to a series of judicial precedents on the issue, that ñ**if interest awarded by the court for loss suffered on account of deprivation of property or paid for breach of contract by means of damages, or were not paid in respect of any debt incurred or money borrowed, shall not attract the provisions of Section 2(28A) read with Section 194A(1) of the Income Tax Act**ò Essentially, this conclusion supports the school of thought that when principal transaction, i.e. accident compensation for the delayed payment of which the interest is awarded, itself is outside the ambit of taxation, similar fate must follow for the subsidiary transaction, i.e. interest for delay in payment of compensation, as well. Touching a different chord but coming to the rescue of the assessee, Hon'ble Punjab & Haryana High Court, in the case of **CIT Vs B Rai [(2004) 264 ITR 617 (P&H)]**, draws a line of demarcation between the interest granted under the statutory provisions and interest granted under discretion of the court, and holds that the latter is outside the scope of ó**income**ô which can be brought to tax under the Income Tax Act, 1961. As Their Lordships stated, in so many words, ñ**where interest……is to be paid is in the discretion of the court, as in the present case, the said interest would not amount to 'income' for the purposes of income tax**ò That precisely is the situation before us as well.

6. Revenue, however, does not even challenge these propositions, and, in our considered view, rightly so; it is only on the scope of provisions of Section 145A(b) and section 56(2)(viii) that they rest their case. It is, therefore, perhaps only appropriate to appreciate the scope of these provisions and take a look at the facts surrounding introduction of these provisions vide the Finance Act 2009.

7. Ironically, the statutory provisions being pressed into service to bring this income to tax, were provisions meant to give relief to the assessee. When these provisions were introduced, the Memorandum Explaining the Provisions of the Finance Bill 2009 had this to say:

> **Rationalization of provisions for taxation of interest received on delayed compensation or enhanced compensation**
>
> The existing provisions of Income-tax Act provide that income chargeable under the head ñProfits and gains of business or professionò or ñIncome from other sourcesò, shall be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee. Further, the **Hon'ble Supreme Court, in the case of Rama Bai Vs. CIT (181 ITR 400) has held that arrears of interest computed on delayed or enhanced compensation shall be taxable on accrual basis. This has**

caused undue hardship to tax payers. With a view to mitigating the hardship, it is proposed to amend section 145A to provide that the interest received by an assessee on compensation or enhanced compensation shall be deemed to be his income for the year in which it is received, irrespective of the method of accounting followed by the assessee. Further, it is proposed to insert clause (viii) in sub-section (2) of section 56 to provide that income by way of interest received on compensation or on enhanced compensation referred to in sub-section (2) of section 145A shall be assessed as "income from other sources" in the year in which it is received. This amendment will take effect from 1st April, 2010 and shall accordingly apply in relation to assessment year 1998-99 and subsequent assessment years.

[Clauses 26,27,56]

8. In the case of **Rama Bai** *(supra),* which is *raison d'être* for this amendment in law, Hon'ble Supreme Court, speaking through Hon'ble Justice S Ranganathan- as he then was, one of the most illustrious former Presidents of this Tribunal, had observed that ñ**the interest cannot be taken to have accrued on the date of the order of the Court granting enhanced compensation but has to be taken as having accrued year after year from the date of delivery of possession of the lands till the date of such order".** What is significant, however, that taxability of interest was not in dispute in the said case; the only dispute was the year in which the income should be taxed. The amendment in law, therefore, deals with the point of time when an income is it to be taxable. It does not bring to tax an income which was, until the point of time when amendment was made, not taxable earlier. Section 145A, it is important to bear in mind, deals with the method of accounting on cash or mercantile basis which again has its focus on the point of time when an income is taxable rather than taxability of income itself. When an income is not taxable, section 145A has no relevance. It is in this backdrop that we can take a look at Section 145A which is as follows:

Section 145A: Method of accounting in certain cases—

Notwithstanding anything to the contrary contained in section 145,—

(a)……..(not relevant for our purposes)

(b) interest received by an assessee on compensation or on enhanced compensation, as the case may be, shall be deemed to be the income of the year in which it is received.

9. Section 145A starts with *a non obstante* clause which restricts the scope of Section 145 dealing with the method of accounting. It is not a charging provision. The only impact it has on taxability of an income is its timing of taxability. What is not taxable is not made taxable under section 145A(b) but what is taxable under the mercantile method of accounting, i.e. on accrual basis, is made taxable on cash basis of accounting, i.e. at the point of time when interest is actually received. Nothing else needs to read into this provision, and the memorandum explaining the provision of Finance Bill 2009, as reproduced earlier, makes that amply clear. As for the provisions of Section 56(2)(viii), it is only an enabling provision, as unambiguously made clear in the above memorandum as well, to bring interest income to tax in the year of receipt rather than in the year of accrual. Section 56(2)(viii) provides thaté é ò**incomes, shall be chargeable to income tax under the head 'income from other sources', namely ….(viii) income by way of interest received on compensation or enhanced compensation referred to in clause (b) of Section 145A**ò The starting point of this exercise is income, and it is only when the receipt is in the nature of an income, that the classification of income under a particular category arises. In other words, when interest received by the assessee is in the nature of income, such interest can be taxed under section 56 (2)(viii). Section 56(1) makes this aspect even more clear when it states that ñ**Income of every kind, which is not to be excluded from the total income under this Act, shall be chargeable to income tax under the head "income from other sources", if it is not chargeable to income tax under any of the heads specified in Section 14, items A to E**ò and then, in the subsequent provision, i.e. Section 56(2), proceeds to set out an illustrative, rather than exhaustive list of, such ñincomesò Clearly, unless a receipt is not an income, there is no occasion for the provisions of Section 56(1) or 56(2) coming into play. Section 56 does not decide what is an income. What it holds is that if there is an income, which is not taxable under any of the heads under Section 14, i.e item A to E, it is taxable under the head ó**i**ncome from other sourcesô The receipt being in the nature of income is a condition precedent for Section 56 coming into play, and not *vice versa*. To suggest that since an item is listed under section 56(2), even without there being anything to show that it is of income nature, it can be brought to tax is like putting the cart before the horse. The very approach of the authorities below is devoid of legally sustainable merits. The authorities below were thus completely in error in bringing the interest awarded by Hon'ble Supreme Court to tax. The question of deduction under section 57(iii), given the above conclusion, is wholly irrelevant. We vacate this action of the Assessing Officer, and disapprove the CIT(A)ôs action of confirming the same. Grievance of the assessee is thus upheld.

10. As we part with the matter, we must say that, as fellow citizens, we are deeply anguished to take note of the long journey that the assessee had to undertake to get

her dues and then to fight this unjust income tax demand on her. In order to ensure that others donot have to tread the same arduous path- at least with respect to the tax demand, and to bring an element of certainty, we would suggest that the Central Board of Direct Taxes may as well take a conscious call on issuing appropriate administrative instructions in this regard and ensuring that what was brought as a measure of relief to the taxpayers is not used, by the field officers, as a source of taxation. Such a step certainly cannot mitigate the pain of an accident victim but it can probably help in ensuring that hardships of the accident victim are not further compounded, and thatôs the least that a responsive tax administration, like the one we fortunately have at present, can do. We must also place on record that fact that despite smallness of amount involved, learned representatives have rendered valuable assistance in this case, and that we deeply appreciate their assistance.

11. In the result, the appeal is allowed in the terms indicated above. Pronounced in the open court today on 31st day of May, 2016.

Sd/- *Sd/-*

S S Godara **Pramod Kumar**
(Judicial Member) **(Accountant Member)**
Dated: the 31st day of May, 2016.

Copies to: *(1) The appellant* *(2) The respondent*
(3) DIT *(4) DRP*
(5) DR *(6) Guard File*

By order etc

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad