

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH MUMBAI

**BEFORE AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

ITA Nos. 4661 & 4662/Mum/2024

Assessment Year: 2016-17

Percival Joseph Pereira Ground Floor, Avbels Saint Andrew Road, Bandra West, Mumbai – 400 050. (PAN No. AISPP5177F) (Appellant)	Vs.	Income Tax Officer (IT)- 3(3)(1), Mumbai (Respondent)
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Present for:

Assessee : Dr. K. Shivram Sr. Adv. and Shri Rahul
Hakani, Adv.

Revenue : Shri Mahesh Pamnani, Sr. DR

Date of Hearing : 21.02.2025

Date of Pronouncement : 19.05.2025

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

These appeals filed by the assessee are against the orders of Ld. CIT(A)-57, Mumbai, vide order nos. ITBA/APL/S/250/2024-25/1068376636(1) and ITBA/APL/S/250/2024-25/1068192200(1) dated 05.09.2024 and 30.08.2024, respectively passed against the assessment order by Income Tax Officer (International Taxation)-3(3)(1), Mumbai, u/s. 143(3) r.w.s. 147 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 31.12.2019 and penalty order passed by Income Tax Officer (International Taxation)-3(3)(1), Mumbai u/s

271(1)(c) of the Act, dated 18.03.2022, both for Assessment Year 2016-17.

2. Grounds taken by the assessee are reproduced as under:

ITA NO. 4661/Mum/2024

"1) The Learned CIT(A) erred in confirming penalty of Rs 20,10,01,733/- u/s 271(1)(c) for concealment of income.

2) The Learned CIT(A) erred in confirming penalty of Rs 20,10,01.733/-u/s 271(1)(c) for concealment of income on the addition of Rs 43,08,61,042/- as income from other sources and Rs. 22,49,01,802 as income from capital gains being amounts received on account of compensation for acquisition of land without appreciating that there is no concealment of income as Assessee has made all bonafide disclosures w.r.to the addition and in fact reopening was done on the basis of information given by the Assessee about said income and that penalty is not automatic and hence penalty u/s 271(1)(c) of Rs 20,10,01,733/- may be deleted.

3) The Learned CIT(A) erred in confirming penalty of Rs 20,10,01,733/-u/s 271(1)(c) for concealment of income without appreciating that in the facts of the present case there was a bonafide dispute w.r.to the year of taxability and said issue is a legal and debatable issue and thus there is no concealment of income and hence penalty u/s 271(1)(c) of Rs 20,10,01,733/- may be deleted."

ITA NO. 4662/Mum/2024

1) The Ld CIT(A) erred in not condoning the delay in filing appeal with appreciating that Assessee had shown sufficient cause for delay and hence the delay in filing the appeal before the CIT(A) may be condoned

2) The Ld CIT(A) erred in confirming the reopening of Assessment without appreciating that in the facts and circumstances of the case reopening is bad in law.

2.1) The Ld CIT(A) erred in confirming reopening of Assessment without appreciating that in the facts and circumstances of the case there did not exist any reason to believe that income has escaped Assessment and hence reopening is bad in law

3) The Ld CIT(A) erred confirming order of Ld AO taxing long term capital gain amounting to Rs.22.49,01,802/- being compensation on acquisition of land in AY 2016-2017 without appreciating that compensation was received in pursuance of an interim order of the Bombay High Court and thus same will be income chargeable under the head "Capital gains" of the previous year in which the final order of such court is made and hence the addition of Rs 22,49,01,802/-may be deleted.

4) The Ld CIT(A) erred confirming order of Ld AO taxing the interest of Rs 44,29,98,502/- u/s 56(2)(viii) in AY 2016-2017 being interest on delay in

payment of compensation on acquisition of land without appreciating that the compensation as well as the interest thereon was received in pursuance of an interim order of the Bombay High Court and thus interest on delay in payment of compensation will be income chargeable under the head "Income from other Sources" of the previous year in which the final order of such court is made and hence the addition of Rs 44,29,98,502/- may be deleted.

5) The Ld CIT(A) erred in confirming the order of the Ld AO in taxing the long term capital gains amounting to Rs.22,49,01,802/- being compensation on acquisition of land in AY 2016-2017 and taxing the interest of Rs 44,29,98,502/- u/s 56(2)(viii) in AY 2016-2017 being interest on delay in payment of compensation on acquisition of land without appreciating that the compensation and the consequential interest is not taxable as same is received for acquisition of Agricultural land and hence the addition of Rs 22,49,01,802/- and Rs 44,29,98,502/- may be deleted."

3. We first take up quantum appeal against the assessment order wherein the crux of the issue is in respect of addition made by the Id. Assessing Officer u/s.45(5)(b) towards additional compensation received by the assessee and interest on additional compensation u/s.56(2)(viii) which according to the assessee was received on account of interim order by the Hon'ble High Court of Bombay in the appeal filed by the State Government of Maharashtra not accepting the award passed by the Civil Court.

4. Brief facts of the case are that assessee is a non-resident and a senior citizen residing in Australia as an Overseas Citizen of India (OCI). Assessee owned a land admeasuring 2,76,500 sq. mtrs at village Panaje, Taluka Uran, District Raigad. These lands were acquired by the Special Land Acquisition Officer (SLAO) during the year 1986 for which an order was passed u/s.11 of the Land Acquisition Act (LAA), 1894, awarding compensation of Rs.14,49,531/-. Aggrieved by the order of SLAO, assessee made a reference u/s.18 of the LAA before the Court of Civil Judge, Senior Division, Raigad at Alibag on 25.07.1990 bearing Land Acquisition Reference No. 620/2000 (old L.A.R. No.2661 of 1990). Against the said reference made by the assessee, the Court of Civil

Judge, Senior Division, Raigad at Alibag, pronounced its order on 01.04.2014 enhancing the compensation by awarding additional compensation to the assessee. The Court also directed the SLAO to pay interest on the said compensation. The direction given by the Court in the said order are reproduced as under:

“35 In view of my discussion as to issue Nos. 1 and 2 herein above, the compensation for acquisition of the lands under reference is required to be enhanced to Rs. 500/- per sq.mt. The applicant is also entitled to the benefit of additional component of 12% p. a. under section 23(1)(A) of the Act as well as solatium under section 23(2) and also the interest under section 28 of the Act in addition to the market value of the lands.....

.....3. The Opponent shall also pay interest on the above amount at the rate of 9% p.a. for the first year from the date of possession and thereafter, at the rate of 15% p.a. till the realization of the amount.”

4.1. The details of additional compensation awarded to the assessee in terms of the above direction is tabulated as under:

Sr. No.	Particulars	Amount
1.	Market value of the land u/s. 23(1) of the Act: 2,76,500 sq. mtr. X Rs. 500/- per sq mtr.	13,82,50,000/-
2.	30% Solatium as per the Act.	4,14,75,000/-
3.	12% Addl. Component u/s. 23(1A) of the Act from the date of publication of Notification u/s 4 i.e. 25.11.1986 to 17.9.1989 i.e. the date of Award. [Years 2 Months 9 and Days 22.]	4,66,36,333/-
4.	Total Amount	22,63,61,333/-
Less	Amount awarded to claimants and certified by the SLAO	14,59,531/-
	Net Payable amount	22,49,01,802/-

4.2. In respect of interest, it was directed that it be paid at the rate of 9% for the first year from the date of possession and thereafter at the rate of 15% per annum till the realisation of the amount.

4.3. Against this order of the Court of Civil Judge, State of Maharashtra through the SLAO filed a statutory appeal before the Hon'ble High Court of Bombay since it did not accept any portion of the award passed by the Civil Court. The appeal so filed by the State of Maharashtra as an applicant bear the number First Appeal (St) No. 25519 of 2019 [Final No. 535 of 2015]. In this appeal, an application for stay of the order of Civil Court was also moved before the Hon'ble High Court of Bombay vide Civil Application No.1410 of 2014. Submission made by the State of Maharashtra through its appeal before the Hon'ble High Court of Bombay states-

"1) That the Trial Court has committed an error in holding that the compensation awarded by S.L.A.O. to the claimant is inadequate and improper.

2) That the Reference Court erred in partly allowing the reference preferred by the claimant u/s. 18 of the Land Acquisition Act.

3) That the Reference Court erred in coming to the conclusion that the claimant is entitled to get market value of the acquired land @ Rs.500/-PSM and all other statutory benefits."

4.4. In the said application filed by the State of Maharashtra, in para-3 it mentioned about the uncertainty of getting back of the excess payment if the applicant succeeds in its appeal. It prayed that in order to avoid multiplicity of proceeding in execution and restitution, the order passed by the Civil Court be stayed for its operation, execution and implementation until the hearing and final disposal of the appeal so filed. The submission so made in this respect is reproduced as under:

"3. In the event of the Applicant-State succeeding in the First Appeal, it would be absolutely difficult to get back the excess payment that would be received by the claimants under the impugned Judgment and Award. Besides, there would be multiplicity of the proceedings in execution and restitution. In this premise, it would be just, proper and necessary to grant this Civil Application as prayed for herein and pass the order to stay the operation, execution and implementation of the impugned Judgment and Award to meet the ends of justice.

4. The Applicant therefore prays:-

(a) Ruled be issued;

(b) that this Hon'ble Court be pleased to stay the operation, execution and implementation of the Judgment and Award dated 01.04.2014 passed by the Learned Civil Judge, Senior Division, Raigad at Alibag in L.A.R. No.620 of 2000 (Old L.A.R. No.266/1990), till the hearing and final disposal of the above mentioned First Appeal;

(c) interim/ad-interim relief in terms of prayer clause (b) hereinabove;

(d) any other order as this Hon'ble Court deem fit in the interest of justice may be passed.

4.5. Subsequently, for grant of stay, Hon'ble High Court of Bombay passed an interim order dated 18.04.2015 asking the applicant to deposit the entire amount payable as per the judgment and award by the Civil Court, within a period of three months from the date of the said order. Hon'ble Court also permitted the assessee to withdraw the said amount, if deposited by the applicant which was subjected to furnishing of adequate security for the said amount, to the satisfaction of the Court.

4.6. Pursuant to this order, the Court of Civil Judge, Senior Division, Raigad at Alibag, vide order dated 16.10.2015, determined the amount of Rs.1,00,15,82,114/- to be deposited by the State of Maharashtra. Since the said amount was deposited by the applicant, the assessee was permitted to withdraw the amount subject to the condition of furnishing bank guarantee of 60% of the amount deposited and indemnity bond in respect of the remaining amount. Consequently, assessee received amount of Rs.1,00,15,82,114/- in two parts on 30.01.2016 on which State of Maharashtra Government had done TDS of Rs.8,50,41,773/- which reflected in Form No. 26AS of the assessee for the year under consideration. Assessee had to keep 60% of the said amount in the bank to obtain bank guarantee.

5. For the year under consideration, assessee filed his return of income on 31.07.2016, reporting total income at Rs.1,42,95,590/- claiming refund of prepaid taxes and TDS amounting to Rs.8,25,78,755/-. In the said return, assessee did not offer the additional compensation received by him in view of proviso to section 45(5)(b). However, he intimated the details of the said transaction to the concerned Assessing Officer by way of a submission dated 09.08.2016. This letter formed the basis for initiating re-assessment proceeding by issuing notice u/s.148, dated 26.03.2019. Ld. Assessing Officer recorded the reasons to believe for invoking the re-assessment proceedings referring to the amount of additional compensation received by the assessee not offered to tax in the return filed by him.

5.1. Assessee made various submissions before the ld. Assessing Officer contending that additional compensation received by him during the year is not taxable since the order passed by the Hon'ble High Court of Bombay is not the final order but an interim one. Further, it was submitted that Hon'ble High Court of Bombay had stayed the operation, execution and implementation of the order of ld. Civil Court and therefore proviso to section 45(5)(b) comes into play making the amount taxable in the year in which the final order is passed. After considering the submission made by the assessee, ld. Assessing Officer completed the assessment by making an addition of Rs. 65,57,62,844/- in respect of additional compensation as well as interest on the said amount. According to the ld. Assessing Officer, enhanced compensation received by the assessee from compulsory acquisition of land is taxable u/s.45(5)(b) in view of the order of Court of Civil Judge, Senior Division, Raigad at Alibag, dated 16.10.2015 which is the final order. According to him, since this order being a final order, the enhanced compensation received by the assessee is taxable on receipt basis in accordance with

provisions contained in section 45(5)(b). Also, interest received by the assessee on the said compensation was taxable as 'income from other sources' u/s. 56(2)(viii). Aggrieved, assessee went in appeal before the ld. CIT(A).

6. Ld. CIT(A) at the first instance took note of delay of 1119 days in filing the appeal by the assessee before him. Assessee furnished an application for condonation of delay in filing the said appeal explaining the reasons for the same. Ld. CIT(A) took note of the reasons given by the assessee for the delay caused in filing the appeal which were supported by affidavit of the CA, who was a senior citizen and had certain medical issues. Ld. CIT(A) referred to section 249(2) pointing out that the appeal ought to have been filed within 30 days from the receipt of notice of demand. He also referred to section 249(3), according to which appeal filed beyond the prescribed date may be admitted if the ld. CIT(A) is satisfied that there was sufficient cause for the assessee for not presenting the appeal within the prescribed time. He further noted that in absence of any sufficient cause on the part of the assessee, the appeal filed by the assessee beyond the time of 30 days is not admissible and maintainable. After considering the submissions of the assessee in this respect, he held that there was no sufficient reason for the assessee to file the appeal after a long delay of 1119 days. Accordingly, the said delay was not condoned and he held that appeal is liable to be dismissed as stated in para 5.5 of his order. Contrary to this, in para 6, ld. CIT(A) noted that since the assessee had made a request for early hearing before the Chief Commissioner of Income Tax (IT), West Zone, Mumbai, the same was granted and thereafter he took up the appeal for adjudication on merit.

6.1. It is thus noted that on one hand, ld. CIT(A) holds that the delay is not condoned and the appeal is liable to be dismissed, however, on the other hand he took up the appeal for adjudication on merit which he has done so by passing a speaking order on the grounds raised by the assessee on the merits of the case sustaining the addition made by the ld. Assessing Officer.

6.2. In this respect, we take note of section 249 of the Act. To address the issue in hand before us, we need to delve into the understanding of the expression "sufficient cause". Sub-section 3 of Section 249 contemplates that the CIT(A) may admit an appeal after expiry of relevant period, if he is satisfied that there was a "sufficient cause" for not presenting it within that period. Similarly, it has been used in section 5 of Indian Limitation Act, 1963. Whenever interpretation and construction of this expression has fallen for consideration before Hon'ble High Court as well as before the Hon'ble Supreme Court, then, Hon'ble Court were unanimous in their conclusion that this expression is to be used liberally.

6.3. We may make reference to the following observations of the Hon'ble Supreme Court from the decision in the case of *Collector Land Acquisition Vs. Mst. Katiji & Others*, 1987 AIR 1353:

- "1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.*
- 2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.*
- 3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.*
- 4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side*

cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

6.4. Similarly, we would like to make reference to authoritative pronouncement of Hon'ble Supreme Court in the case of *N.Balakrishnan Vs. M. Krishnamurthy (supra)*. It reads as under:

"Rule of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

*A court knows that refusal to condone delay would result foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under [Section 5](#) of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Iain Vs. Kuntal Kumari* [AIR 1969 SC 575] and *State of West Bengal Vs. The Administrator, Howrah Municipality* [AIR 1972 SC 749]. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss."*

6.5. We do not deem it necessary to re-cite or recapitulate the proposition laid down in other decisions. It is suffice, to say that the Hon'ble Courts are unanimous in their approach to propound that whenever the reasons assigned by an applicant for explaining the delay, then such reasons are to be construed with a justice-oriented approach.

6.6. In the given set of facts, out of the total delay of 1119 days, 715 days are attributable to the Pandemic of Covid 19 for which Hon'ble Supreme Court in its *Suo Moto Writ Petition (C)No. 3 of 2020*, dated 10.01.2022 has excluded the period from 15.03.2020 to 28.02.2022. Thus, excluding this period, the delay remains is of 404 days. In this respect, assessee explained his bonafide of relying on the advice given to him by the tax consultant and Chartered Accountant, he being non-resident and living outside India. It was only when the penalty order dated 18.03.2022 was passed imposing penalty on the addition made by ld. Assessing Officer that assessee revisited the entire issue. He visited India and took alternate opinions and consultations from different Chartered Accountants to contest the addition made on his returned income. Relevant affidavits were placed on record to explain the facts in this respect forming part of the paper book.

6.7. In the peculiar set of facts where ld. CIT(A) has referred to provisions of section 249 and has dismissed the same on account of sufficient cause not presented by the assessee for the delay in filing and at the same time has proceeded to adjudicate on the merits of the case in terms of Section 250 which deals with procedure in appeals by fixing dates for hearing of the appeal and passed the order on the merits of the case dismissing the appeal.

6.8. Upon perusing the provisions contained in section 249(2), it states that the appeal has to be presented within 30 days of the relevant date. Further, by way of sub section (4) of section 249, no appeal shall be admitted unless prescribed conditions are fulfilled. Sub section (3) of 249 provides for admitting the appeal even if the appeal is filed after the prescribed limitation, if assessee is able to demonstrate sufficient cause for not presenting it within the prescribed period to the satisfaction of the Appellate Authority. It is only after the admission of the appeal, that the procedure in appeal as prescribed u/s.250 are followed with. This section provides for fixing of day and place for the hearing of the appeal among other procedures. Thereafter, section 251 lists down the powers of the Appellate Authority in disposing of the appeal.

6.9. In the present case, ld. CIT(A) has despite holding that the appeal is dismissed on account of delay has proceeded to adjudicate upon the merits of the case by resorting to provisions of section 250 and 251 which in itself suggests that the delay in filing the appeal has been impliedly condoned as section 249 uses the word “admit” the appeal. It is upon appeal having admitted only that ld. CIT(A) can proceed to adjudicate on the same and dispose it off as prescribed in section 251. Thus, keeping the above discussion in juxtaposition relating to sufficiency of cause and the provisions contained in section 249, 250 and 251 of Act, we find it appropriate to condone the delay of 404 days, since the balance 715 days are attributable to the period of Pandemic of Covid 19 covered by the decision of Hon'ble Supreme Court in its *suo moto* writ petition (supra).

7. From the perusal of the order of ld. CIT(A), it is noted that issue as to whether the enhanced compensation of Rs.22,49,01,802/-

received by the assessee is taxable u/s.45(5)(b) for the year under consideration or not, has been elaborately dealt with. Assessee heavily relied on provisions of section 45(5)(b) which provides a carve out to clause (b) of Section 45(5) by way of a proviso that compensation received pursuant to an interim order of a Court, Tribunal or other Authority shall be deemed to be income chargeable in the year in which the final order of such Court, Tribunal or other Authority is made. The said proviso was inserted by Finance Act, 2014 w.e.f. 01.04.2015. In this regard, ld. Assessing Officer has considered the order of Court of Civil Judge, Senior Division, Raigad at Alibag, dated 01.04.2014 as the final order and thus brought to tax the compensation as long-term capital gain u/s.45(5)(b). Controverting this, assessee claimed that the order of Court of Civil Judge, Senior Division, Raigad at Alibag, was challenged by the Government of State of Maharashtra before the Hon'ble High Court of Bombay in its first appeal and the Hon'ble Court had directed the State Government to deposit the entire amount payable as per the order of Court of Civil Judge, Senior Division, Raigad at Alibag, as a condition for grant of stay. The stay was granted on the operation, execution and implementation of the said order and assessee was permitted to withdraw the amount subject to furnishing of security.

7.1. Assessee contended that the order of the Hon'ble High Court of Bombay is an interim order and it is not the final order, since the enhanced compensation awarded by the Court of Civil Judge, Senior Division, Raigad at Alibag, is not acceptable to the Government of State of Maharashtra which may vary depending upon the outcome of the appeal yet to be decided by the Hon'ble High Court of Bombay. Since the uncertainty prevails, assessee was permitted to withdraw subject to providing the bank guarantee of 60% of the said amount and an indemnity bond for the balance 40%. Assessee had to keep 60% of the

said compensation in the bank to obtain bank guarantee and thus asserted that he did not have access to the entire amount of compensation so awarded. The compensation so awarded is not final as assessee may be required to bring back the amount if he loses the appeal, which in the present scenario is subjected to furnishing of bank guarantee and indemnity bond.

7.2. Further, it was strongly submitted that order of Hon'ble High Court of Bombay is an interim order as the stay of the award is till the final disposal of the appeal filed by the Government of State of Maharashtra. Having considered the submissions of the assessee, ld. CIT(A) placed reliance on the decision of Hon'ble Supreme Court in the case of CIT vs. Ghanshyam (HUF) [2009] 315 ITR 1 (SC) which had held that additional amount of compensation or enhanced compensation are taxable u/s.45(5)(b) in the year of receipt. Ld. CIT(A) took similar view in respect of interest received on compensation by holding it taxable in the year of receipt u/s.56(2)(viii) as 'income from other sources' amounting to Rs. 43,08,61,042/-. Thus, the additions made by the ld. Assessing Officer were sustained by ld. CIT(A) while disposing the appeal. Aggrieved, assessee is in appeal before the Tribunal.

8. Before us, ld. Counsel for the assessee reiterated the above stated facts which are not repeated to avoid duplicity. Per contra, ld. CIT DR placed reliance on the orders of the authorities below. We have heard both the parties and perused the material on record. We have given our thoughtful consideration to the submission made both, by way of oral arguments and written submissions along with paper book placed on record.

8.1. The issue to be considered relates to applicability of proviso to section 45(2)(b) for bringing to tax the enhanced compensation received by the assessee in the year under consideration and interest thereon. Before, we delve on the issue, provisions of section 45(5) along with its relevant clauses and proviso to section 45(5)(b) inserted by Finance Act, 2014 having effect from 01.04.2015 are reproduced for ready reference:

“.....(5) Notwithstanding anything contained in sub-section (1), where the capital gain arises from the transfer of a capital asset, being a transfer by way of compulsory acquisition under any law, or a transfer the consideration for which was determined or approved by the Central Government or the Reserve Bank of India, and the compensation or the consideration for such transfer is enhanced or further enhanced by any court, Tribunal or other authority, the capital gain shall be dealt with in the following manner, namely ----

(a) the capital gain computed with reference to the compensation awarded in the first instance or as the case may be the consideration determined or approved in the first instance by the Central Government or the Reserve Bank of India shall be chargeable as Income under the head Capital gains of the previous year in which such compensation or part thereof, or such consideration or part thereof, was first received) and

(b) the amount by which the compensation or consideration is enhanced or further enhanced by the court, Tribunal or other authority shall be deemed to be income chargeable under the head "Capital gains" of the previous year in which such amount is received by the assessee.

[Provided that any count of compensation received in pursuance of an interim order of a court, Tribunal or other authority shall be deemed to be income chargeable under the head "Capital gains" of the previous year in which the final order of such court Tribunal or other authority is made]

[(c) where in the assessment for any year, the capital gain arising from the transfer of a capital asset is computed by taking the compensation or consideration referred to in clause (a) or, as the case may be, enhanced compensation or consideration referred to in clause (b), and subsequently such compensation or consideration is reduced by any court, Tribunal or other authority, such assessed capital gain of that year shall be recomputed by taking the compensation or consideration as so reduced by such court, Tribunal or other authority to be the full value of the consideration]

Explanation-For the purposes of this sub-section, -

(i) in relation to the amount referred to in clause (b), the cost of acquisition and the cost of improvement shall be taken to be nil,

(ii) the provisions of this sub-section shall apply also in a case where the transfer took place prior to the 1st day of April, 1988,

(iii) where by reason of the death of the person who made the transfer, or for any other reason, the enhanced compensation or consideration is received by any other person. the amount referred to in clause (b) shall be deemed to be the income, chargeable to tax under the head "Capital gains", of such other person.]”

[emphasis supplied by us by bold, being relevant to the issue in this appeal]

8.2. From the perusal of above, it is noted that Section 45(5) deals with taxability of capital gain arising from transfer by way of compulsory acquisition of capital asset under any law or the consideration for the transfer, which was determined or approved by Central Govt. or the Reserve Bank of India. Clause (a) of section 45(5) deals with a situation where compensation is awarded in the first instance. In such circumstances, the capital gain is taxable in the previous year in which such compensation or part thereof is received.

8.3. Clause (b) of section 45(5) deals with capital gain arising from enhanced compensation or consideration by the Court, Tribunal or other authorities. Such enhanced compensation is chargeable under the head 'capital gain' for the previous year in which such amount is received. Further, as per proviso to clause (b), the enhanced compensation received pursuant to interim order of a Court, Tribunal or other authority is taxable as deemed capital gain in the previous year in which the final order of such Court, Tribunal or other authority is made.

8.4. Further, as noted above, in this clause (b), there is an element of uncertainty as to the year in which the amount of compensation received pursuant to an interim order of the Court is to be charged to tax. In this respect, reference is made to the reasons for introduction of this clause as explained in the memorandum explaining the provisions which is reproduced as under:

**"CAPITAL GAINS ARISING FROM TRANSFER OF AN ASSET BY WAY OF
COMPULSORY ACQUISITION**

The existing provisions contained in section 45 provide for charging of any profits or gains arising from transfer of a capital asset. Sub-section (5) of the said section provides for dealing with capital gains arising from transfer by way of compulsory acquisition where the compensation is enhanced or further enhanced by the court, Tribunal or any other authority. Clause (b) of the said sub-section provides that where the amount of compensation is enhanced or further enhanced by the court it shall be deemed to be the income chargeable of the previous year in which such amount is received by the assessee.

There is uncertainty about the year in which the amount of compensation received in pursuance of an interim order of the court is to be charged to tax, due to court orders.

Accordingly, it is proposed to provide that the amount of received in pursuance of an interim order of the court, Tribunal or other authority shall be deemed to be income chargeable under the head 'Capital gains' in the previous year in which the final order of such court, Tribunal or other authority is made.

This amendment will take effect from 1st April, 2015 and will, accordingly, apply in relation to the assessment year 2015-16 and subsequent assessment years."

[emphasis supplied by us by bold]

8.5. From the above, it is to be noted that reasons for introduction of proviso to clause (b) to section 45(5) refers to the aspect of uncertainty which prevails for bringing to tax the amount of compensation received pursuant to an interim order. It is for mitigating this uncertainty, the said proviso was brought on the statute, making the aforesaid amount of compensation taxable in the year when the final order is passed.

8.6. Clause (c) of section 45(5) deals with computation of capital gain arising from enhanced compensation if such compensation is reduced by any Court, Tribunal or other authority. Under such circumstances, the capital gain of that year is re-computed by taking such reduced compensation.

8.7. *Per se* taxability of amount of enhanced compensation received by order of the Court is in the year of receipt. Proviso to section 45(5)(b) carves out an exception creating a fiction that if such compensation is received on account of an interim order of a Court, then the capital gain will be deemed to be arising in the year when such Court passes final order. Thus, proviso has an important part to play to interpret the provisions of the Act and has to be given a purposive construction while interpreting and implementing the condition so imposed. Thus, after insertion of proviso to clause (b) of section 45(5) which is effective from 01.04.2015 (Assessment Year 2015-16), the scheme of capital gain arising from compensation received on compulsory acquisition of land is to be determined as per the scheme of section 45(5) of the Act.

9. In the case of the assessee, provisions of section 45(5)(b) are applicable. Admittedly it is a fact on record that State of Maharashtra is in appeal on the compensation awarded by the Court of Civil Judge, Senior Division, Raigad at Alibag, which is amenable to a change depending upon the outcome of the decision by the Hon'ble High Court of Bombay in the said appeal. Furthermore, the operation, execution and implementation of the impugned order of the Court of Civil Judge, Senior Division, Raigad at Alibag, has been stayed upon fulfilling of the condition as mandated by the Hon'ble High Court of Bombay. Assessee has been permitted to withdraw the amount of compensation subject to prescribed conditions of providing bank guarantee to the extent of 60% and indemnity bond for the balance 40%. The permission to withdraw the amount of compensation given to the assessee based upon security obtained by the Hon'ble Court itself indicates the uncertainty which prevails on the final outcome which shall be determinative of the amount of compensation ultimately reaching the hands of the assessee. On making assessee deposit the income-tax in the year under

consideration on the enhanced compensation, there exist a possibility of a situation which may arise requiring the Department to refund the amount of tax upon the final outcome in the appeal by the State of Maharashtra if it is unfavourable to the assessee. It is a situation where the assessee does not have full access to the entire amount for his use and enjoyment and at the same time, going by the stand taken by the authorities below, he is required to cough out money from his coffers to meet the tax liability on the said amount. Provisions of the Act discussed above does not envisage putting assessee in such a situation.

9.1. Reference was made to section 144 of the Code of Civil Procedure, 1908 which provides for restitution. According to this, where an order of Court is modified in appeal then, the parties would be placed in the same position as if the order was not passed. Section 53 of the LLA was also referred which provides that provisions of Code of Civil Procedure will apply. Appeal filed by the State Government against the award of additional compensation awarded by the Court of Civil Judge, Senior Division, Raigad at Alibag (supra) is under the provisions of LLA. Thus, on harmonious reading of the Code of Civil Procedure, LLA and proviso to section 45(5)(b) of the Act, the additional compensation paid on account of interim order of the Hon'ble Court has to be deemed to be capital gain of the year in which the final order is passed by the Hon'ble High Court.

9.2. Further, clause (c) to section 45(5) provides that where the award is not stayed and no compensation is paid pursuant to an interim order then, this clause(c) applies. Proviso to clause (b) to section 45(5) has to be read harmoniously with clause (c) whereby when a stay is not granted in an appeal, assessee will receive the compensation pursuant to final judgment and the same would be paid unconditionally. It is

noted that clause (c) to section 45(5) was introduced w.e.f. 01.04.2004 which is much prior to the insertion of proviso to section 45(5)(b) and thus, it does not deal with the situation where an additional compensation is paid on account of an interim order of the Court. Accordingly, what clause(c) of section 45(5) provides is that if the quantum of additional compensation is reduced subsequently then, a rectification order can be passed.

9.3. For the purpose of harmonious construction, we refer to the decision of Hon'ble Apex Court in the case of S. Sundaram Pillal v. V.R. Pattabiraman AIR 1985 SC 582 which observed on the function of a proviso to the main section. The same is reproduced as under:

"A proviso may have three separate functions. Normally, a proviso is meant to be an exception to something within the main enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment."

9.4. Further, on the rules of interpretation, Hon'ble Apex Court in the case of Reserve Bank of India v. Peerless General Finance & Investment Co. Ltd. [1987] 2 SCR I observed as under:

"Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives it the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match with the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at in the context of its enactment, with the glasses of the statute maker provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of

a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place..."

9.5. In view of the above deliberation, stand taken by the authorities below that even after the insertion of proviso to clause (b) of Section 45(5), additional compensation paid on account of an interim order of the High Court will be taxed in the year of receipt makes the letter and spirit of the proviso otiose and a nullity.

9.6. Further, on the reliance placed by the ld. CIT(A) on the decision of Ghanshyam (HUF) (supra), it is noted that the issue before the Hon'ble Court in this case pertained to the interpretation of section 45(5) as it stood prior to 01.04.2004, wherein it is held that compensation even if received pursuant to interim order of High Court and withdrawal being subject to conditions is liable to be taxed in the year of receipt of such conditional compensation. Applicable provisions of the Act having undergone change which have already been discussed in detail in the above paragraphs, this decision does not apply to the present set of facts of the assessee. Hon'ble Court had no occasion to deal with the proviso to section 45(5)(b) as it was inserted by the Finance Act, 2014, effective from Assessment Year 2015-16. By virtue of introduction of proviso to section 45(5)(b), the uncertainty about the year in which the amount of compensation received in pursuance of an interim order of the court is to be charged to tax, due to court orders, no longer persists. This aspect of mitigating the uncertainty was not dealt by the Hon'ble Court.

10. In the present case, the enhanced compensation received by the assessee is with an embargo, thereby leading to a likelihood of returning the same or part of the same, depending upon the outcome of the appeal

by the judgment of Hon'ble High Court of Bombay. Grant of stay changes the character of the order and is to be treated accordingly. On this aspect, reference is made to the judgment of Hon'ble Jurisdictional High Court of Bombay in the case of T.V. Patel (P) Ltd. vs. DCIT [2023] 157 taxmann.com 108 (Bom), where on similar issue, it held that if a dispute is pending before a Civil Court, no income could be said to have accrued or arisen to an assessee pending adjudication of said dispute for the purpose of section 5 of the Act. In para 29 of this judgement, Hon'ble Court noted that if the matter is pending before the judicial forum and pending adjudication, if certain amount is deposited in the said judicial forum or the amount is allowed to be withdrawn by the party, the consistent view in such a scenario taken by the Courts is that till the case is decided finally by the judicial forum, it cannot be said that the assessee has acquired a right to receive the income for the purposes of section 5 of the Act. According to the Hon'ble Court, the time of accrual for taxing income gets postponed till the dispute is adjudicated by the Civil Court.

10.1. While making these observations, Hon'ble Court referred to the decision of Hon'ble Supreme Court in the case of E.D. Sassoon and Co. Ltd. [1954] 26 ITR 27 (SC), whereby it observed that there was no absolute right to receive the amount at the time of withdrawing the sum because if the appeal of the State Government was allowed in its entirety, the right to payment of the enhanced compensation would fall altogether. Further, Hon'ble Supreme Court referred to the observation of the Hon'ble Andhra Pradesh High Court in the case of Khan Bahadur Ahmed Alladin and Sons vs. CIT [1969] 74 ITR 651 (AP) whereby it held that *"Income-tax is not levied on a mere right to receive compensation; there must be something tangible, something in the nature of debt, something in the nature of an obligation to pay an ascertained amount."*

Till such time, no income can be said to have accrued”. It was thus held that since the right to receive itself was in dispute, no income accrued to the assessee in that case.

11. Considering the facts on record and judicial precedents referred above and the deliberation on applicable provisions to the issue in hand, we find that the taxability of additional compensation along with interest thereon received by the assessee falls in the proviso to section 45(5)(b) making it subject to tax in the year when the final order is passed by the Hon'ble High Court of Bombay against the appeal filed by the State of Maharashtra challenging the award given by the Court of Civil Judge, Senior Division, Raigad at Alibag. Interest component of the additional compensation has to be treated similarly for the year of taxability and therefore similar view is taken for the same though it is chargeable to tax u/s.56(2)(viii) under head 'Income from other sources'. Accordingly, addition made by the ld. Assessing Officer and sustained by the ld. CIT(A) for bringing it to tax in the year under consideration is deleted which in fact is to be brought to tax in the year when the final order is passed by the Hon'ble High Court of Bombay.

12. Since in the quantum appeal, addition has been deleted, the penalty imposed u/s. 271(1)(c) on the said addition loses its ground. Sub clause (iii) to section 271(1)(c) provides for imposition of penalty on the amount of tax sought to be evaded by reason of concealment of particulars of income or furnishing of inaccurate particulars of income. In the present case, since the addition made by the ld. Assessing Officer which tantamount to amount of tax to be evaded has been deleted, there is no occasion for imposition of penalty and hence the appeal in ITA No. 4661/Mum/2024 contesting on imposition of penalty has a

consequential bearing, making it liable to be deleted. The appeal filed by the assessee against imposition of penalty is thus allowed.

13. In the result, both the appeals by the assessee are allowed.

Order is pronounced in the open court on 19th May, 2025

Sd/-
(Amit Shukla)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 19th May, 2025

MP, Sr.P.S.

Copy to :

- 1 The Appellant
- 2 The Respondent
- 3 DR, ITAT, Mumbai
- 4 Guard File
- 5 CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai