

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकरअपीलसं./ITA No.2714/AHD/2014
(निर्धारणवर्ष / Assessment Year: (1998-99))

(Virtual Court Hearing)

Broach Textile Mills Ltd., 16, ankur Tower IV, Nr Central Bank, M.G.Road, Bharuch – 392 001.	V s.	The Deputy Commissioner of Income Tax, Bharuch Circle, Bharuch.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAACB 6244 J		
(Assessee)		(Respondent)

आयकरअपीलसं./ITA No.558/SRT/2018
(निर्धारणवर्ष / Assessment Year: (1998-99))

(Virtual Court Hearing)

Broach Textile Mills Ltd., 16, ankur Tower IV, Nr Central Bank, M.G.Road, Bharuch – 392 001.	V s.	The Assistant Commissioner of Income Tax, Circle-1, Bharuch.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAACB 6244 J		
(Assessee)		(Respondent)

Assessee by : Shri Rajesh C.Shah - CA
Respondent by : Mrs. Anupama Singla – Sr.DR

सुनवाईकीतारीख/ Date of Hearing : 29/06/2021

घोषणाकीतारीख/Date of Pronouncement: 16/07/2021

आदेश / O R D E R

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

Captioned two appeals filed by the assessee pertaining to assessment year 1998-99, are directed against the separate orders passed by the Id. Commissioner of Income Tax (Appeals), which in turn arise out of separate orders passed by the

Assessing officer, under sections, 143(3) and 271(1) (c) of the Income Tax Act, 1961 (herein after referred to as 'the Act') .

2. First, we shall take the assessee's appeal in ITA No.2714/AHD/2014, wherein the grounds of appeal raised by the assessee are as follows:

"1 That the C.I.T. (Appeals) erred in confirming the taxing of the compensation of Rs. 11,44,692/- and interest of Rs. 1,73,059/- (pertaining to the year under appeal) awarded by the Bharuch City Civil Court in respect of the land unauthorizedly taken over by the Bharuch Municipality and the State Govt, of Gujarat in the assessment year under appeal though there was no 'Transfer' of the property during the year under appeal within the meaning of sec. 2(47) of the I. T. Act and though there was no real income during the year. It is, therefore, submitted that the taxing of compensation of Rs. 11,44,692/- and interest of Rs. 1,73,059/- in the year under appeal and consequential addition of Rs. 5,39,491/- and Rs. 1,73,059/- be deleted.

2.That the C.I.T. (Appeals) further erred in taxing the aforesaid compensation and interest in the year under appeal although the share of compensation and interest receivable from the Bharuch Municipality was adjusted by the said Municipality in the Asst. yr. 2004-05 and 2005-06 and consequently the same was offered for taxation in the said assessment years as per the provisions of sec. 45(5) of the Act which has been accepted by the A.O. in these years which amounts to double taxation of the same income and that too, on substantive basis which is not permitted under the law. It is, therefore, submitted that the addition is against the basic principles of taxation which do not permit double taxation and, hence, the same be deleted."

3. The relevant material facts, as culled out from the material on record, are as follows. The solitary grievance of the assessee, in this appeal is that assessing officer erred in taxing the compensation of Rs.11,44,692/- and interest of Rs. 1,73,059/- (pertaining to the year under appeal) awarded by the Bharuch City Civil Court in respect of the land unauthorizedly taken over by the Bharuch Municipality and the State Govt. of Gujarat in the assessment year under appeal.

4. Learned Counsel for the assessee submits before us that in view of the assessee's facts the compensation cannot be taxed in the Assessment Year 1998-99 as there was no "Transfer" of the property during the year under appeal within the meaning of section 2(47) of the IT Act. It is therefore, submitted that the

taxing of compensation of Rs.11,44,692/- and interest of Rs.1,73,059/- in the year under appeal be deleted.

The Id Counsel further submits that assessing officer further erred in taxing the aforesaid compensation and interest in the year under appeal although the share of compensation and interest receivable from the Bharuch Municipality was adjusted by the said Municipality in the Assessment Year 2004-05 and 2005-06 and consequently the same was offered for taxation in the said assessment years as per the provisions of section 45(5) of the Act which has been accepted by the assessing officer in these years which amounts to double taxation of the same income and that too, on substantive basis which is not permitted under the law.

5. The Id Counsel also submits that the City Civil Court, Bharuch passed the order awarding compensation with interest and such order of Civil Court was furnished to the assessee on 18/11/1997. As per the Id Counsel, pursuant to this order, assessee was not paid any amount during the year 1997-98 relevant to AY 1998-99 or even subsequently till 2001 and the assessee had to file another suit for obtaining the decree for recovery of the said amount which was ultimately passed on 17/10/2001. As per the Id Counsel, merely because the order was passed by the Civil Court on 18/11/1997, it cannot be said that the assessee had given the legal possession during FY 1997-98 and thus, had relinquished the right and therefore there was 'transfer' in the year 1997-98 relevant to AY 1998-99 by virtue of relinquishment/extinguishment of right so as to be deemed as a transfer. As per the assessee, so long as the compensation was not fully paid with interest, it cannot be said that there was a legal transfer by virtue of extinguishment or relinquishment even in the absence of consideration passing over to the assessee. The Id Counsel submitted that in the AY 2004-05 and 2005-06, when the Bharuch Municipality had set-off the outstanding Municipal Tax dues to the extent of Rs. 12,10,616/- and Rs. 4,21,006/- respectively against the amount payable by the Municipality to the assessee, the assessee had offered the same for taxation as per provisions of section 45(5) of the IT Act and the same has actually been taxed in its scrutiny

assessment for AY 2004-05 and 2005-06 after proper examination in respect thereof. As per the assessee in the letter dated 21/11/2007 it was categorically told that if the assessing officer wishes to tax in AY 1998-99, he should reduce the income of AY 2004-05 (the assessment for AY 2005-06 was pending) failing which the addition made by him will be void-ab-initio. As per Id Counsel, in spite of this, the assessing officer had not reduced the compensation of Rs. 5,57,144/- and interest of Rs. 6,53,472/- shown in the ITR for AY 2004-05. As per the AR set-off of Rs.4,21,006/- given by the Bharuch Municipality is the FY 2004-05 was also not excluded from the income while making the assessment for AY 2005-06. In view of this, taxing the compensation and interest in A.Y. 1998-99 amounts to double taxation of the same income in the case of same assessee in different years which is not at all permitted.

6. On the other hand, Id DR for the Revenue submits that there is ambiguity about the compensation received and amount adjusted by Bharuch Municipality and amount which had been set-off against the outstanding Municipal Tax dues. The assessee has not produced the figures that how much Municipal Taxes were adjusted against the compensation. It is also not clear from the statement of total income submitted by the assessee in the paper book page no. 61 and paper book page no.74 that assessee has, in fact, offered the compensation for taxation in assessment year 2004-05 and assessment year 2005-06, therefore, the matter may be remitted back to the file of the assessing officer for verification of assessee's claim.

7. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. Learned Counsel submitted before us written submissions wherein he has stated that assessee has shown income of Rs.12,10,616/- and Rs. 4,21,006/- for assessment years 2004-05 and 2005-06 respectively and has paid the taxes thereon. The said incomes of

Rs.12,10,616/- and Rs. 4,21,006/- had also been taxed by the assessing officer in the assessment year 1998-99, which is tantamount to double taxation. Therefore, Id Counsel prayed the Bench that additions made by the assessing officer in assessment year 1998-99 should be deleted.

However, we have noticed that assessee has submitted statement of total income for assessment year 2004-05, vide paper book page no.62 wherein interest adjusted by Bharuch Municipality has been shown by the assessee at Rs.6,53,472/- which does not tally with the figure submitted by the Id Counsel in his written submission. We have also gone through the statement of total income for assessment year 2005-06 wherein we did not find the amount of capital gain offered for taxation. Therefore, we are of the view that this issue may be remitted back to the file of the assessing officer for verification. Hence, we set aside the order of Id CIT(A) and remit the issue back to the file of the assessing officer with a direction to verify the capital gain offered by the assessee in assessment years 2004-05 and 2005-06, and on verification, if the assessing officer finds that assessee has offered the capital gain tax in assessment years 2004-05 and 2005-06, then he should delete the addition made in assessment year 1998-99. The assessee is also directed to file the computation of capital gain for assessment years 2004-05 and 2005-06, and assessment year 1998-99 along with necessary evidences, as required by law, for verification of assessing officer. Statistical purposes, the assessee's appeal is treated to be allowed.

8. In the result, appeal filed by the assessee (in ITA No. 2714/Ahd/2014) is allowed for statistical purposes.

9. Now, we shall take assessee's penalty appeal under section 271(1)(c) of the Act in ITA No.558/SRT/2018.

10. This penalty under section 271(1) (c) relates to the quantum addition sustained in ITA No. 2714/Ahd/2014) for A.Y.1998-99. Since we have remitted back the quantum appeal of the assessee (in ITA No. 2714/Ahd/2014) for

A.Y.1998-99, to the file of the assessing officer for verification, therefore the penalty appeal under section 271(1)(c) of the Act (in ITA No.558/SRT/2018) for A.Y.1998-99, does not survive and hence becomes infructuous.

Order is pronounced on 16/07/2021 by placing result on Notice Board.

Sd/-

(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-

(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

Surat /दिनांक/ Date: 16/07/2021 /sgr

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat