



ITA No.5134/Mum/2017 & CO. No. 319/Mum/2018

Shri Anil Gulabdas Shah
Assessment Year :2012-13.

आयकर अपीलीय अधिकरण “ए” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI

माननीय श्री महावीर सिंह, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकरअपील सं./ I.T.A. No.5134/Mum/2017 &
CO. No. 319/Mum/2018
(निर्धारण वर्ष / Assessment Year: 2012-13)

ACIT – 24(1) Room No. 604, 6 th Floor, Piramal Chamber, Parel Mumbai.	बनाम/ Vs.	Shri Anil Gulabdas Shah, B-1601, Titanium Towers 16 th Floor, Jai View CHSL Sahakar Nagar, Andheri (W) Mumbai – 400 058
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. BMFPS-8959-E		
(अपीलार्थी/ Appellant)/Respondent	:	(प्रत्यर्थी / Respondent)/Appellant

Revenue by	:	Shri Satish Chandra Rajore- Ld. DR
Assessee by	:	Shri Anil G. Shah – Assessee-in-Person

सुनवाई की तारीख/ Date of Hearing	:	05/08/2019
घोषणा की तारीख / Date of Pronouncement	:	09/08/2019

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member): -

1. Aforesaid appeal by revenue for Assessment Year [in short referred to as ‘AY’] 2012-13 contest the order of Ld. Commissioner of Income-Tax (Appeals)-36, Mumbai, [in short referred to as ‘CIT(A)’], *Appeal No. CIT(A)-36/IT-217/ACIT-24(1)/15-16* dated 26/05/2017 on following grounds of appeal: -



ITA No.5134/Mum/2017 & CO. No. 319/Mum/2018
Shri Anil Gulabdas Shah
Assessment Year :2012-13.

1. Whether on the facts and circumstances of the case and in law the Ld. CIT(A) is justified in deleting the addition of Rs.9,00,00,000/- by stating that it is in the nature of compensation, while the fact is that the assessee gave away the conveyance of the land only after the receipt of this amount and acceptance of the consent terms by the court.
2. Whether on the facts and circumstances of the case and in law the Ld. CIT(A) is justified in deleting the addition of Rs.9,00,00,000/- by ignoring the fact that this amount is closely linked to the transaction and is not an independent term.

The assessee upon receipt of notice of hearing, has filed cross-objections which is in support of the impugned order.

2.1 Facts in brief are that the assessee being resident individual, a lawyer by profession, was assessed for year under consideration u/s 143(3) of the Act on 28.03.2015, wherein the income of the assessee was determined at Rs.939.87 Lakhs after certain additions as against returned income of Rs.39.87 Lakhs e-filed by the assessee on 30.08.2012. As evident from grounds of appeal, the sole subject matter of present appeal before us is the nature of compensation of Rs.900 Lakhs received by the assessee during impugned AY pursuant to certain consent terms as approved by Hon'ble Supreme Court.

2.2 During assessment proceedings, it transpired that the assessee had sold a plot at Gaoli, Village Gundavalli, Andheri (E), Mumbai on 31.12.2011 for a sale consideration of Rs.4 Crores. The indexed cost of plot was taken at Rs.66.02 lakhs. The assessee invested Rs.250.62 lakhs in a new residential flat and further Rs.50 lakhs in REC bonds and offered the balance amount of Rs.33.34 lakhs as long-term capital gains on sale of this property.

2.3 Upon perusal of factual matrix, it was noted that the aforesaid land was under dispute and subject matter of extensive litigation which



ITA No.5134/Mum/2017 & CO. No. 319/Mum/2018
Shri Anil Gulabdas Shah
Assessment Year :2012-13.

ultimately got culminated by consent terms dated 03/01/2012 between the assessee and the purchaser before Hon'ble Supreme Court. Upon perusal of consent terms, it was noted that the assessee received additional sum of Rs.9 Crores as compensation which was not considered as a part of sale consideration while computing the capital gains. Accordingly, the assessee was show-caused as to why capital gains should not be charged on amount received as compensation of Rs. 9 crores.

2.4 The assessee, on the strength of legal opinion obtained from CA Bansi Mehta, submitted that the compensation was for giving-up of the litigation and not to pursue the litigation further before Hon'ble Supreme Court. As per the opinion, since the assessee was a professional lawyer and not engaged in the real estate business, the amount so received would be capital receipt in his hands. At the same time, the assessee disputed the cost of acquisition of the property. However, not convinced, disregarding assessee's submissions, the said additional compensation was treated as part of sale consideration and accordingly brought to tax as Long-Term Capital Gains which enhanced the assessee's income by Rs.9 Crores.

3.1 Aggrieved, the assessee contested the stand of Ld. A.O before learned first appellate authority by way of elaborate written submissions, which has already been reproduced in the impugned order and hence not repeated here for the sake of convenience and gravity. The remand report was also called for against additional evidences submitted by the assessee in the shape of suit filed by assessee's cousin and certain order of Bombay High Court. In sum and substance, it was pleaded that



ITA No.5134/Mum/2017 & CO. No. 319/Mum/2018

Shri Anil Gulabdas Shah

Assessment Year :2012-13.

the additional compensation was for time, effort and cost put in by the assessee over a decade to challenge the acquisition of the said property and the same could not be, in any manner, be termed as consideration for sale of property. It was also submitted that right to sue could not be considered as capital asset for the purpose of taxation and even if it was treated as capital asset, its cost was indeterminable and the charging section would fail in terms of the decision of Hon'ble Supreme Court rendered in **CIT V/s B.C.Srinivasa Shetty [128 ITR 294]**.

3.2 The Learned CIT(A), after due consideration of factual matrix and assessee's submissions concurred with the same and allowed the claim by observing as under: -

6.3. HELD: I have carefully considered the impugned assessment order, written submission of the appellant and remand report. The moot question need to be addressed is the nature of receipt of compensation of Rs.9 Crores received by the appellant on account of time and effort and cost put in by him alone in the Court of Law and further warding off of his right to sue at any forum/authority/court of law. At the outset, it is apparent from the assessment order that this issue has not been addressed at all. The AO has mechanically considered this amount as part of sale consideration.

6.4 it is pertinent to glimpse of chronology of events that lead to present situation of the instant case, may instant issue at hand. In 1969 Appellant's father wanted to develop the aforesaid properties but could not get plan approved from Bombay Municipal Corporation, as property was reserved for Public Purpose. In 1973, property was encroached by some slum lords, who constructed chawls & shops with commercial structures [as claimed by the appellant] and gave small rooms on rent to various persons and the said encroachment on the land continued till the end of the litigation. In 1977, appellant's (Anil Shah) father expired. In Govt Notification dated 15th October 1977, appellants and other's properties were declared Slum Clearance Area due to overcrowding & densely populated due to over construction. In 1980 Appellant filed Suit No.4109 of 1980 in Bombay City Civil Court for vacating encroachment to preserve property. Hon'ble Court was pleased to appoint Court Receiver of High Court. The Govt of Maharashtra by notification dated "1977, declared Appellant's property as Slum Clearance Area as property was densely overcrowding. In 1998 both Properties were declared under Slum Redevelopment Project with Extra three times FSI permission and was acquired by the Govt of Maharashtra for Akruti City Pvt Ltd. (Hub Town Ltd). Appellant in the year 1999, filed Writ Petition No.974 of 1999 in Bombay High Court challenging acquisition of CTS No.449 (the part of aforesaid land). Appellant in the year 2000 filed another Writ



ITA No.5134/Mum/2017 & CO. No. 319/Mum/2018

Shri Anil Gulabdas Shah

Assessment Year :2012-13.

Petition 1113 of 2000 in Bombay High Court Challenging acquisition of CTS 429 (the other part of aforesaid land). In the year 2000, both the Petitions for area of land 1168.5 Sq Mt. & 1064.3 Sq. Mt. at Gundavali Village were clubbed and ordered "to be heard together". Appellant, individually nay singlehandedly without any legal aid, fought for 32 years from 1980 till 2012 which resulted in culmination of Consent Terms before the Hon'ble Supreme Court which ended all litigations. Various Petitions filed by appellant or against the appellant by Akruti City Ltd (Hub Town Ltd.) are listed as under: [These petitions are in addition to various complaints/petitions etc. filed by the appellant at lower authorities and police authorities etc. at various levels.]

1. Bombay City Civil Court Suit No. 4109 of 1980
2. High Court A. 0 605 of 1999 In Suit No. 4109 of 1980
3. High Court WP No.974 of 1979
4. High court WP No. 1113 of 2000
5. Sectary to Govt of Mah No 13 of 2000
6. High court WP No. 1919 of 2000
7. Review Petition No. 15 of 2002
8. Notice of Motion 184 of 2002 in WP 974 of 1999
9. Notice of Motion 183 of 2002 in WP 2000 of 2000
10. Supreme court SLP No 4344 of 2003 -
11. Supreme court SLP No.5999 of 2006
12. Supreme court SLP No.6735 of 2006
13. Supreme court SLP No. 19344 of 2006
14. Criminal Contempt Petition No. 1 of 2007
15. Criminal contempt Petition 2 of 2007
16. N/M No..256 of 2007 in BCC Suit No.4109/1980
17. N/M A/o.257 of 2007 in BCC Suit No.4109/1980
18. N/M A/o.258 0/2007 in BCC Suit No.4109/1980
19. N/M No. 833 of 2007 in BCC Suit No.4109/1980
20. Supreme court SLP No. 25501 of 2008
21. Supreme court SLP No.2758 of 2010
22. Supreme court SLP No.2749 of 2010
23. Contempt Petition No 31 of 2010
24. High court Suit No.870 of 2010 (Rupees 100 Crore Claim by Akruti City Ltd against Assess for defamation)
25. Criminal Writ Petition No. 1977 of 2010
26. Supreme court SLP No.35188 of 2010
27. Supreme court SLP No.35441 of 2010.
28. Supreme court SLP No.445 of 2011.
29. Supreme Court SLP No.446 of 2011
30. Supreme court SLP No. 80 of 2011
31. Supreme court SLP No. 81 of 2011

6.5. It is pertinent to note that all these single-handed efforts of the appellant over a long period of time seems to be very rare and unique fact. Such efforts have culminated to amicable resolution of the dispute by 'way of filing Consent Terms by both the parties before the Hon'ble Supreme Court, The Consent Terms were taken



ITA No.5134/Mum/2017 & CO. No. 319/Mum/2018

Shri Anil Gulabdas Shah

Assessment Year :2012-13.

on record after accepting the same the Apex Court disposed of the SLPs in terms of settlement arrived between the parties. Apex Court also disposed of all other pending applications. The appellant has executed as per Consent Terms the Conveyance Deed dated 2nd January, 2012 by transferring his entire share, claim, right, title and interest including the right to receive compensation from Government of Maharashtra for acquisition of the suit properties bearing C.T.S. No. 429 and C.T.S. No. 449 for the consideration of Rs.4,00,00,000/- in favour of the Petitioner i.e. Akruti City Ltd. The appellant undertakes to Hon'ble Supreme Court to remain bound at all times by the terms of the Conveyance Deed. Hence, it is evident that the consideration received by the appellant for sale of the property is Rs.4,00,00,000 only. Paragraph 5 of the Consent Terms mentions that the appellant contends that he has an additional claim over and above the same consideration already paid to him under the Conveyance Deed. He contends that from the very beginning and over a period of more than a decade, he alone has expended time, money and effort to challenge the acquisition of the suit properties and pursued litigation before the Authorities, Hon'ble Bombay High Court and Hon'ble Supreme Court at the cost of his own work and business. He further contends that he has taken assistance [not legal] of many persons to pursue this challenge to the acquisition of suit properties and will be required to pay compensation to all those who assisted him. Moreover, it is due-to his efforts that the writ petitioners/co-owners were successful before the Hon'ble Highest Court of the land. On account thereof, the appellant has made a separate claim of Rs.9,00,00,000/- (Rupees Nine Crores Only) towards time, effort, and cost etc. and which claim is special to him alone and in the Consent Terms as agreed and accepted by the Apex Court, the appellant has accepted the payment of Rs.9 Crore in full and final settlement. It is apparently clear that Rs.9,00,00,000 was paid only to the Appellant and not the other parties to suit and hence is not consideration received for sale of property. It is consideration for time, effort and cost put in by the Appellant for over a decade to challenge the acquisition of the suit properties. The above consent terms have also been approved by the Hon'ble Supreme Court by holding that "In view of the above development, the LA. is allowed, the consent terms - Annexure I, are taken on record and the Special Leave Petitions are disposed of in terms of the settlement arrived at between the parties." These facts clearly establish that the Hon'ble Supreme Court has duly approved that the Appellant must receive Rs.4,00,00,000/- as consideration for sale of property and Rs.9,00,00,000/- for time and effort put in by him over decades in challenging the acquisition of suit properties. This claim is special to the appellant as per para 5 of the Consent Terms.

6.6 On careful perusal of Consent Terms and the Conveyance Deed it clear that by agreeing into these terms and conditions the appellant along with other petitioners have unconditionally withdraw all the claims in or arising out of all the petitions at various forums be it the Supreme Court, the High Court, Maharashtra Govt. or various other authorities like the Slum Rehabilitation Authority, Corporation, Environmental Authorities, and Police Authorities etc. Breach of this may lead to contempt of court before the Apex Court. Above all, the Consent Terms shall be binding on both the parties and also their legal heirs, successors, administrators, executors, and assignees etc. All these facts clearly establish that the Sale Value of



ITA No.5134/Mum/2017 & CO. No. 319/Mum/2018

Shri Anil Gulabdas Shah

Assessment Year :2012-13.

the Land is determined at Rs.4 crore which has been offered by the appellant for tax as Long Term Capital Gain. On the other hand, Rs.9 crores is a compensation in the nature of damages granted by the Apex Court to the appellant on account of time, effort and cost put in by the Appellant singlehandedly for over a decade to challenge the acquisition of the suit properties. By accepting this compensation, he has foregone the "right to sue" or contest the case further at any forum whatsoever. This is also an undisputed fact that the cost of such efforts on account of time, effort and cost put in by the Appellant cannot be ascertained in definite terms. It is further pertinent to mention here that the consent terms may constitute an agreement or contract between the parties, however, a consent decree is passed after the agreement is placed before the Court and the Court applies its mind and records a satisfaction that the terms are not contrary to law or public policy. That they can be accepted and based on that a decree can be passed. Therefore, it is not an agreement between the parties, by which the suit was disposed of but on that agreement, there is a seal of approval or satisfaction of the Apex Court. In such circumstances, in the present case eventually the suit ended in the appellant's claim for additional compensation. In the consent terms, which are drawn up and based on which the suit is decreed by the Court, it does not deal with the rival cases on merits. There is no requirement of the Court then passing an order and judgment on merits of the claim of the parties. The Court is required to apply its mind and consider as to whether the arrangement reached by the parties can be accepted by it. Once it is accepted and an order or decree is passed in terms thereof, then, it is an order of the Court. Thus, the Court has not undertaken any mechanical exercise or has not casually and lightly accepted the terms and approved the same. It has performed a conscious act and in terms of Order in the four corners of law of the land. This issue has not been addressed by the AO in the assessment order. He has simply treated the compensation as part of Sale Consideration.

6.7. Let us visit various provisions of the Income Tax Act, 1961 and of Transfer of Property Act 1882.

6.7.1. Section 2 (14) defines Capital Asset as under:

Capital asset means property of any kind held by an assessee.....

{Explanation:- For the removal of doubts, it is clarified that property includes and shall be deemed to have included any rights in or in relations to an Indian company,, including rights of Management or control or any other rights whatsoever,}

Further Section 2(24) provides as under:

"(24) "income" includes—

(vi) any capital gains chargeable under section 45"

6.7.2. Section 2 (47) defines transfer as under:

"transfer", in relation to a capital asset. includes,—



ITA No.5134/Mum/2017 & CO. No. 319/Mum/2018

Shri Anil Gulabdas Shah

Assessment Year :2012-13.

- (i) the sale, exchange or relinquishment of the asset; or
- (ii) the extinguishment of any rights therein; or

Explanation 2.—For the removal of doubts, it is hereby clarified that "transfer" includes and shall be deemed to have always included disposing of or parting with an asset or any interest therein, or creating any interest in any asset in any manner whatsoever, directly or indirectly, absolutely or conditionally, voluntarily or involuntarily, by way of an agreement (whether entered into in India or outside India) or otherwise, notwithstanding that such transfer of rights has been characterised as being effected or dependent upon or flowing from the transfer of a- share or shares of a company registered or incorporated outside India"

6.7.3. Section 6 of the Transfer of Property Act, 1882 reads as under:

Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force:

(a).....

(e) A mere right to sue cannot be transferred"

6.7A. Section 45 as charging section defines capital gains as under:

"Capital gains.

45. (1) Any profits or gains arising from the transfer of a capital asset effected in the previous year shall, save as otherwise provided in sections 54, 54B, 54D, 54E, 54EA, 54EB, 54F, 54G and 54H, be chargeable to income-tax under the head "Capital gains", and shall be deemed to be the income of the previous year in which the transfer took place.

(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 amount of compensation 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;



ITA No.5134/Mum/2017 & CO. No. 319/Mum/2018

Shri Anil Gulabdas Shah

Assessment Year :2012-13.

(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:

(//) 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;

(//') 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."

6.7.5. Section 48 lays down Mode of Computation:

"48. The income chargeable under the head "Capital gains" shall be computed, by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset the following amounts, namely :—

(/) expenditure incurred wholly and exclusively in connection with such transfer; (//) the cost of acquisition of the asset and the cost of any improvement thereto:

Provided further that where long-term capital gain arises from the transfer of a long-term capital asset, other than capital gain arising to a non-resident from the transfer of shares in, or debentures of, an Indian company referred to in the first proviso, the provisions of clause (if) shall have effect as if for the words "cost of acquisition" and "cost of any improvement", the words "indexed cost of acquisition" and "indexed cost of any improvement" had respectively been substituted:

Explanation. —For the purposes of this section, —

(Hi) "indexed cost of acquisition" means an amount which bears to the cost of acquisition the same proportion as Cost Inflation Index for the year in which the asset is transferred bears to the Cost Inflation Index for the first year in which the asset was held by the assessee or for the year beginning on the 1st day of April, [1981], whichever is later;

(/V) "indexed cost of any improvement" means an amount which bears to the cost of improvement the same proportion as Cost Inflation Index for the year in which the asset is transferred bears to the Cost Inflation Index for the year in which the improvement to the asset took place;

(v) "Cost inflation Index", in relation to a previous year, means such Index as the Central Government may, having regard to seventy-five per cent of average rise in the Consumer Price Index (urban) for the immediately preceding previous year to such previous year, by notification²⁰ in the Official Gazette, specify, in this behalf."



ITA No.5134/Mum/2017 & CO. No. 319/Mum/2018

Shri Anil Gulabdas Shah

Assessment Year :2012-13.

6.8. Now we may consider whether the compensation amount of Rs.9 crore in the form of damages received by the appellant on account of time and effort and cost put in by him alone in the Court of Law and further warding off of his right to sue at any forum/authority/court of law can be treated as capital gains in the hands of appellant. Section 2(24) of the Act specifically includes "(vi) any capital gains chargeable under section 45" within the ambit of income. Thus, a capital receipts would be chargeable to tax only if it falls under section 45 of the Act (as capital gains) though capital receipt as such is not taxable. This principle was described by the Income Tax Appellate Tribunal (Mumbai) in Dhruv A. Shah v. Commissioner of Income Tax [20041 88 ITD 118] as follows:

"Further, all receipts are not taxable under the Income Tax Act. Section 2(24) defines "income". It is no doubt that this is an inclusive definition. However, a capital receipt is not income under section 2(24) unless it is chargeable to tax as capital gain under section 45. It is for that reason that under section 2(24) (vi), the Legislature has expressly stated, inter alia, that income shall include capital gain chargeable under section 45. Under section 2(24) (vi), the Legislature has not included all capital gains as income. It is only capital gain chargeable under section 45 which has been treated as income under section 2(24). Further under section 2(24)(vi), the Legislature has not stopped with the words "any capital gains". On the contrary it is obviously stated that only capital gains which are taxable under section 45 could be treated as "income". In other words, capital gains not chargeable to tax under section 45 fall outside the definition of "income" in section 2(24). Therefore, the words "chargeable under section 45" are very important. So, whenever an amount which is otherwise a capital receipt is to be charged under section 2(24), and when specifically so provides for not charging to capital gain for any reason under section 45, the same cannot be brought to tax as income by applying the general connotation under section 2(24)....."

6.9. In the instant case, it is to be considered whether "right to sue" is property and a capital asset as defined u/s 2(14) of the Act and whether it is chargeable to tax. Section 2(14) defines Capital Asset to mean "property of any kind held by an assessee, whether or not connected with his business or profession". Section 6 of the Transfer of Property Act states that "property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force" Section 6 (e) notes that "a mere right to sue cannot be transferred". Therefore, a "right to sue" is property and thus Capital Asset as defined under section 2(14) of the Act, but is not transferable. There cannot be any transfer of a "right to sue" under Indian Law and any capital receipt arising from a right to sue cannot thus be considered capital gains under section 45. While examining the treatment of capital receipt from settlement and extinguishment of right to sue as gains the Gujarat High Court in Baroda Cement and Chemicals V/s CIT (158 ITR 636) held as under:

'The amendment of clause (e) of section 6 by the deletion of the italicized words has brought into sharp focus the distinction between property and a mere right to sue. Before the amendment, only the right to sue for damages arising out of a tortious act fell within the ambit of the said clause. The right to sue arising ex-contractual, therefore, did not fall within the mischief of the clause even if it were a mere right to



ITA No.5134/Mum/2017 & CO. No. 319/Mum/2018

Shri Anil Gulabdas Shah

Assessment Year :2012-13.

sue. After the amendment, a mere right to sue, whether arising out of tortuous act or ex- contractual is not transferable."

6.10. As already stated, the only right which the present appellant has is the right to go to court of law and recover damages of acquisition of property. Now, damages are the compensation which a court of law gives to a party for the injury which he has sustained over the year. Here, the Apex Court has agreed that the Cost of Sale of Property is Rs.4 crore and additional compensation in the form of damages of Rs.9Crore has been given to the appellant alone for time, effort, and cost incurred by him over the years for being engaged in litigation in order to get justice. He gets compensation as a result of the fiat of the court. Therefore, no pecuniary liability arises till the court has determined that the party complaining of the breach is entitled to compensation/damages. Therefore, when compensation/damages are assessed, it would not be true to say that what the court is doing is ascertaining a pecuniary liability which already existed. The court in the first place must decide that the defendant is liable and then it proceeds to assess what that liability is. But till that determination, there is no liability at all upon the defendant. In view of above, the "right to sue" can be considered for the purpose of capital gains. This has been further clarified by explanation 2 of Section 2(47) inserted by Finance Act, 2012 but effective from 1.4.1962. This explanation reads as under:—

"Explanation 2 - For the removal of doubts, it is hereby clarified that "transfer" includes and shall be deemed to have always included disposing of or parting with an asset or any interest therein, or creating any interest in any asset in any manner whatsoever, directly or indirectly, absolutely or conditionally, voluntarily or involuntarily, by way of an agreement (whether entered into in India or outside India) or otherwise, notwithstanding that such transfer of right has been characterized as being effected or dependent upon or flowing from the transfer of a share or shares of a company registered or incorporated outside India."

6.11. So right to sue may be considered for the purpose of capital gains within the terms of section 45 of the IT Act which is a charging section. However, the charging section and the computation provisions under Section 48 of the Act must go together. The Apex Court in the case of CIT B.C. Srinivasa Setty (1981 128 ITR 294) had considered this issue and held that the "Charging section and the computation provisions together constitute an integrated code. When there is a case to which the computation provisions cannot apply at all, it is evident that such a case was not intended to fall within the charging section". The Apex Court also held that "none of the provisions pertaining to the head 'capital gains' suggests that they include an asset in the acquisition of which no cost of acquisition at all can be conceived". It is clear that if right to sue is considered as a capital asset covered under the definition of transfer within the meaning of section 2(47) of the IT Act, its cost of acquisition cannot be determined. In the absence of such cost of acquisition, the computation provisions failed and capital gains cannot be calculated. Therefore, "right to sue" cannot be subjected to income tax under the head 'capital gains'. Above point of view is extensively discussed in the case of Aberdeen Claims Administration Inc by the Authority for Advance Rulings (Income Tax), New Delhi (2016) 65 taxmann.com246 (AAR-New Delhi.) The Jaipur ITAT Bench in the case of Satyam Food Specialities (P.) Ltd. v. Deputy Commissioner of Income-tax, Central Circle-2, Jaipur, [2015] 57 taxmann.com 194 (Jaipur - Trib.) has held as under: "2.19



ITA No.5134/Mum/2017 & CO. No. 319/Mum/2018

Shri Anil Gulabdas Shah

Assessment Year :2012-13.

Assessee has vehemently denied having anywhere admitted that part of the compensation was for non-competition. In our considered view, the compensation in question was meant, intended and paid for withdrawal of aforesaid litigation instituted by assessee which could have resulted in many adverse consequences for the reputation of Coca Cola/Atlantic besides entailing huge cost and efforts of litigation. Relinquishment of right to sue is neither a capital asset nor taxable u/s 28 which provides specific types of receipt to be held taxable as business income. Relinquishment of right to sue does not find any mention therein. In this eventuality, we have no hesitation to hold that the impugned amount of Rs. 8,16,22,040/- is a capital receipt not liable to Income Tax. The addition is deleted, assessee's grounds in this behalf are allowed." Meaning thereby that relinquishment of "right to sue" is neither a capital asset nor taxable under section 28 of the Act and receipt of any sum against relinquishment is a capital receipt. Further, Authority for Advance Rulings held in the case of Lead Counsel of Qualified Settlement Fund (QSF), USA vide order dated 12.01.2016 has held that it is clear that even if right to sue is considered as capital asset covered under the definition of transfer within the meaning of section 2(47), its cost of acquisition cannot be determined. In the absence of such cost of acquisition, the computation provisions failed and capital gains cannot be calculated. Therefore, right to sue cannot be subjected to income tax under the head 'capital gains'. Further the income in the nature of settlement amount in lieu of surrender of 'right to sue'¹ is not covered in section 56 (1) of the Act. Therefore, the question of treating the same as income from other sources would not arise at all.

6.12. In view of these facts and circumstance and above referred detailed discussion, I find force in the arguments presented by the appellant. Rs.9 Crore is a compensation in the nature of damages granted by the Apex Court to the appellant on account of time, effort and cost put in by the Appellant single handedly for over a decade to challenge the acquisition of the suit properties. By accepting this compensation, he has foregone the "right to sue" or contest the case further at any forum whatsoever. This is also an undisputed fact that the cost of such efforts on account of time, effort and cost put in by the Appellant cannot be ascertained in definite terms. The consent terms took the form of a consent decree which is passed by the Apex Court after the agreement is placed before the Court and the Court applied its mind and recorded a satisfaction that the terms are not contrary to law or public policy. That they can be accepted and based on that a decree can be passed. Therefore, it is not an agreement between the parties, by which the suit was disposed of but on that agreement, there is a seal of approval or satisfaction of the Apex Court. In such circumstances, in the present case eventually the suit ended in the appellant's claim for additional compensation. In the consent terms, which are drawn up and based on which the suit is decreed by the Court, it does not deal with the rival cases on merits. There is no requirement of the Court then passing an order and judgment on merits of the claim of the parties. The Court is required to apply its mind and consider as to whether the arrangement reached by the parties can be accepted by it. Once it is accepted and an order or decree is passed in terms thereof, then, it is an order of the Court. Thus, the Apex Court has not undertaken any mechanical exercise or has not casually and lightly accepted the terms and approved the same. It has performed a conscious act and in terms of Order in the four corners of law of the land. There cannot be any transfer of a "right to sue" under



ITA No.5134/Mum/2017 & CO. No. 319/Mum/2018

Shri Anil Gulabdas Shah

Assessment Year :2012-13.

Indian Law and any capital receipt arising from a right to sue cannot thus be considered capital gains under section 45 of the Act. It is amply clear that when the cost of acquisition of the capital receipts are indeterminable, the computation provision of Section 48 of the Act fails and consequently, the charging provision of Section 45 of the Act also fails. Further, relinquishment of "right to sue" is neither a capital asset nor taxable under section 28 of the Act and receipt of any sum against relinquishment is a capital receipt. Furthermore, the income in the nature of settlement amount in lieu of surrender of 'right to sue' is not covered in section 56 (1) of the Act. Therefore, the question of treating the same as income from other sources would not arise at all. Therefore, right to sue cannot be subjected to income tax under the head 'capital gains'. The fact brought to my knowledge by the AO in the remand report that in nutshell, ongoing through set aside order of the Hon'ble Supreme Court and Suit filed by Paresh G, Shah (admitted by the Hon'ble Bombay High Court) it is clear that the issue of capital gains in the hands of the assessee has not come to its finality and Hon'ble Supreme Court has set aside the matter to the file of Hon'ble Bombay high Court., has no bearing on the issue at hand as the appellant has disclosed the entire amount of compensation of Rs.9 crore in his return of income along with his share of sale consideration of land amounting to Rs.4 crore and AO has nowhere disputed this fact. Additional evidence filed by the appellant is admitted under rule 46A of the IT Rules, 1962 as these judicial decisions on Writ Petitions have clarified the issue at hand and moreover admission of these has also not been objected by the AO, In view of above discussion, the amount of Rs.9 crore cannot be treated as part of sale consideration. AO is directed to delete the addition. The grounds of appeal are allowed.

Aggrieved, the revenue is in further appeal before us.

4. The Ld. Departmental Representative [DR] relying upon the stand of Ld. AO submitted that additional compensation was to be considered as part and parcel of the same transaction and the same arose in the course of sale of property and therefore, the same has rightly been brought to tax in the hands of the assessee. On the other hand, assessee-in-person reiterated the stand taken before Ld. CIT(A) and relied upon the adjudication in the impugned order.

5. We have carefully considered the rival submissions and perused relevant material on record. The undisputed position that emerges is the fact that the property under consideration was subject matter of extensive litigation which ultimate got culminated into sale of the property



ITA No.5134/Mum/2017 & CO. No. 319/Mum/2018
Shri Anil Gulabdas Shah
Assessment Year :2012-13.

by the assessee in terms of consent terms dated 03/01/2012 between the assessee and certain other parties. The assessee, along with others, has executed deed of conveyance on 31/12/2011 in favor of Hubtown Limited for aggregate sale consideration of Rs.4 Crores. The additional compensation of Rs.9 Crores was payable to the assessee only pursuant to consent terms dated 03/01/2012 filed before Hon'ble Supreme Court. As per Clause-5 of the consent terms, the assessee was to be paid the said compensation for time, money and effort put in by him to challenge the acquisition of the suit property and for pursuing litigation before the Authorities, Hon'ble Bombay High Court and Hon'ble Supreme Court. The additional compensation was towards time, cost and effort of the assessee in pursuing the litigation. This being so, we are unable to concur with the submissions of Ld. DR that the said compensation was part and parcel for the sale transaction and received by the assessee as a consideration of sale of property. On the other hand, the learned CIT(A), in our considered opinion, has clinched the issue in the proper perspective. As rightly held, there could not be any transfer of a "right to sue" under Indian Law and any capital receipt arising from a right to sue cannot thus be considered capital gains under Section 45. Additionally, the cost of the said right being indeterminable, the charging Section would fail as per the cited decision of Hon'ble Supreme Court rendered in **CIT V/s B.C.Srinivasa Shetty [supra]**. Therefore, no infirmity could be found on the issue in adjudication done by learned CIT(A). The same is further fortified by the decision of this Tribunal rendered in **Sushmita Sen V/s ACIT [ITA No. 4351-52/Mum/2015 dated 14/11/2018]** wherein it has been held that



ITA No.5134/Mum/2017 & CO. No. 319/Mum/2018

Shri Anil Gulabdas Shah

Assessment Year :2012-13.

compensation received for loss of reputation and not to initiate civil or criminal proceedings would be capital in nature. Similar is the decision in **ACIT V/s Jackie Shroff [ITA No.2792/Mum/2016 dated 23/05/2018]** wherein it has been held that compensation / damages received for withdrawal of criminal complaint would be capital receipt and could not be treated as income u/s 2(24). This decision places reliance on the decision of Hon'ble Bombay High Court rendered in **CIT V/s Amar Dye Chem Ltd. [74 Taxman 254]**.

6. Considering the entirety of facts and circumstances, we concur with the stand of learned first appellate authority and dismiss the revenue's appeal which makes assessee's cross-objections infructuous.

7. In result, the appeal as well as cross-objections stands dismissed.

Order pronounced in the open court on 09th August, 2019

Sd/-

(Mahavir Singh)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 09.08.2019
KRK, PS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File