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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA 471/2003**

COMMISSIONER OF INCOME TAX DELHI Appellant
Through: Mr. Rohit Madan with Mr. Zoheb
Hussain, Advocate.

versus

SHARDA SINHA Respondent
Through: Mr. M.P. Rastogi and Mr. K.N.
Ahuja, Advocates.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE VIBHU BAKHRU

ORDER
22.12.2015

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Dr. S. Muralidhar, J.:

1. This appeal is directed against the order dated 5th March 2003 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 5140/Del/1997 for the Assessment Year ('AY') 1994-95.
2. The Respondent is the successor-in-interest and legal representative of the deceased Assessee. The Assessee was a journalist by profession and was appointed as the Foreign Correspondent in India of a German news magazine *Der Spiegel* by an agreement dated 14th December 1970 at a monthly flat rate honorarium of \$250 in addition to a further payment for any published contributions whose copyright would be with the German publisher. Either party could terminate the contract at the end of a calendar quarter by giving notice of six weeks. *Der Speigel*

terminated the contract with effect from 1st December 1993 and paid compensation of DM 3,00,000 (Rs.53,82,000) for the association of the past 23 years and loss of work space.

3. In the original return the assessee claimed this amount as a revenue receipt but on revising the return, it was claimed to be a capital receipt. In the course of the assessment proceedings, the AO by means of a notice under Section 142(1) asked the assessee to furnish the following details:

"i) Copy of Agreement with M/s. *Der Spiegel*.

ii) Was your professional association with M/s. *Der Spiegel* for a stipulated tenure? If so, what was the agreed tenure?

iii) All correspondence between you and M/s. *Der Spiegel* that took place one year before and after the receipt of Rs.53.82000/- by you from M/s. *Der Spiegel*.

iv) Was the sum of Rs.53.82,000/- from M/s. *Der Spiegel* received by you due to the professional services rendered by you to the German Magazine. If so, the basis of the statement.

v) Why this sum has been claimed as compensation? Was the German magazine legally bound to allow you to continuously render professional services to it? If so, what forced the German Magazine to discontinue your professional services?"

4. Apart from giving the explanations as sought, the Assessee also filed a copy of letter received from the German publisher with reference to the amount in question. The said letter reads as under:

"Due to operational reasons and on the initiative of the *Spiegel* -Publishers, the working arrangement with Mr. S.P.Sinha and with goodwill on 31st December, 1993.

Due to the loss of his work place and in consideration of his long time association, *Der Spiegel* Publishers will pay a compensation of DM 3,00,000/- (in words Three Hundreds thousands) to Mr. Sinha in accordance with Clause 9.10 of K Sch C. The whole amount is due on 31st Dec., 1993."

5. Reliance was also placed on a letter dated 28th December 1993, from the German publisher wherein it was stated as under:

"We are transmitting DM 3 lacs to your bank account in New Delhi as sign off compensation for performance of authorship/professional services for a continuous period of 23 years."

6. The Assessing Officer (AO) by the order dated 20th February, 1995 negated the plea that the aforementioned amount was a capital receipt. It was held that the termination of contract with *Der Spiegel* did not mean that the Assessee had lost his right of authorship in future "for all the publications in the universe". It was observed that since the Assessee was free to contribute his article/stories etc. to any other magazine, publication, the Assessee "neither had any right/ claim over the sum so received from *Der Spiegel*, nor it was anticipated by him."

7. The Assessee then filed an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)], who by order dated 4th July, 1997 held in favour of the Assessee. The CIT(A) observed *inter alia* as under:

“3.1 The appellant was working exclusively for *Der Spiegel* in terms of the contract dated 14.12.1970 and the receipt of remuneration from *Der Spiegel* was the appellant's only source of income from January 1971 till the termination of the contract on 31.12.1993. *Der Spiegel* was under no obligation to pay any compensation to the appellant on terminated of the contract. However, compensation of Rs.53,82,000/- was paid for loss of work place and in consideration of long time association. It was paid to the appellant to compensate for the abrupt loss of source of income. It is therefore quite apparent that the compensation was an ex-gratia payment as a gesture of goodwill which cannot be regarded as payment for past services for which the contractual remuneration had already been paid. Similarly, the compensation cannot also be treated to constitute future profit remuneration as the remuneration which was largely dependent on published contribution was indetermined in the first instance. On the contrary, the termination of contract had fatally injured the appellant's only source of income for the last 20 years. The contract with *Der Spiegel* appointing the appellant as its foreign correspondent in India was a capital asset and the compensation received for the loss of asset constitutes the receipt of capital nature. The compensation of Rs.53,82,000/- is therefore directed to be excluded from the appellant's total income.”

8. By the impugned order dated 5th March, 2003, ITAT confirmed the order of CIT(A).

9. This Court has heard the learned counsel for the parties. While admitting the appeal on 23rd February, 2004, the Court framed the following question for consideration:

"Whether the Income Tax Appellate Tribunal was correct in law in holding that the compensation of Rs.53,82,000/- received by the assessee from the German publisher was a capital receipt not chargeable to tax under Income Tax Act?"

10. It is urged by Mr. Rohit Madan, learned standing counsel for the Revenue, that since the Assessee was free to work for other magazines, contribute articles and be remunerated therefor, the amount received from the *Der Spiegel*, consequent upon the termination of the contract, could only be treated as revenue income. He also made a reference to the decision in *Kettlewell Bullen and Co. Ltd. v. CIT (1964)53 ITR 261 (SC)*.

11. Certain facts of the present case are not disputed by the Revenue. First, that the Assessee was a journalist by profession and was appointed as the foreign correspondent in India of a German news magazine *Der Spiegel*. The second is that the German publisher was paying a lumpsum amount upon termination as sign off compensation for performance of authorship/professional services for a continuous period of 23 years". Thirdly, the letter written by the publisher acknowledges that the compensation was being paid "Due to the loss of his work place and in consideration of his long time association". These factors have a bearing on the character of the receipt in the hands of the Assessee. Indeed this was compensation for loss of an income-generating asset.

12. The Court concurs with the conclusion of the CIT (A) that the sum paid to the Assessee was "to compensate for the abrupt loss of source of

income"" and that the termination of contract had fatally injured the appellant's only source of income for the last 20 years." The mere fact that the Assessee was free to earn through other sources would not make a difference to this position. Recently this court in ***Khanna and Annadhanam v. Commissioner of Income Tax [2013] 351 ITR 110 (Del)*** was considering the nature of a receipt in the hands of the Assessee, a firm of Chartered Accountants for the termination of an arrangement by which it was receiving referral work from abroad. After discussing the decisions of the Supreme Court in ***Kettlewell Bullen and Co. Ltd.*** (supra) and ***Oberoi Hotel Pvt. Ltd. v. CIT [1999] 236 ITR 903 (SC)***, this court held as under:

“What appears to be the ratio of the judgment is that if the receipt represents compensation for the loss of a source of income, it would be capital and it matters little that the assessee continues to be in receipt of income from its other similar operations.”

13. It was further observed in ***Khanna and Annadhanam (supra)*** as under:

"The arrangement with DHS was in vogue for a fairly long period of time (13 years) and had acquired a kind of permanency as a source of income. When that source was unexpectedly terminated, it amounted to the impairment of the profit-making structure or apparatus of the assessee-firm. It is for that loss of the source of income that the compensation was calculated and paid to the assessee. The compensation was thus a substitute for the source. In our opinion, the Tribunal was wrong in treating the receipt as being revenue in nature."

14. In the considered view of the Court the ratio of the above decision applies to the case on hand on all fours. The court is satisfied that the

question framed has to be answered in affirmative i.e. in favour of the Assessee and against the Revenue.

15. The appeal is according dismissed.

S.MURALIDHAR, J

VIBHU BAKHRU, J

DECEMBER 22, 2015/n

