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**(2012) 11 P&H CK 0051**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : IT Appeal No. 203 of 2005**

Commissioner of Income Tax

APPELLANT

Vs

Roshan Singh

RESPONDENT

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**Date of Decision :** 02-11-2012

**Acts Referred:**

Income Tax Act, 1961 — Section 132(1), 143(1)(a), 158BC, 260A, 69

**Citation :** (2013) 255 CTR 107

**Hon'ble Judges :** G.S. Sandhawalia, J;Ajay Kumar Mittal, J

**Bench :** Division Bench

**Advocate :** Rajesh Katoch, for the Appellant; Ravish Sood, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Ajay Kumar Mittal, J.—The Revenue is in appeal under s. 260A of the IT Act, 1961 (hereinafter referred to as "the Act") challenging the order dt. 30th Dec, 2004 passed by the Tribunal, Amritsar Bench, Amritsar in IT (SS) No. 30/Asr/2003 for the block period 1st April, 1990 to 6th April, 2000 [reported as Dy. (2005) 95 TTJ 485 --Ed. J, claiming the following substantial question of law:

Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in confirming the CIT(A)'s order deleting addition of Rs. 7,01,690 made by the AO ignoring Notification No. GSR 6(E), dt. 1st Jan., 1999, Indira Vikas Patra (Amendment) Rules, 1999 (under Indira Vikas Patra Rules. 1986), providing for accrual of interest at the end of each year?.

Briefly stated, the facts necessary for adjudication of the present appeal as narrated therein are that the assessee who is an individual is engaged in resale of petrol, diesel and lubricants. On 6th April, 2000 a search was conducted under s. 132(1) of the Act at the premises of the assessee. During the course of said search, besides documents/valuables, Indra Vikas Patras (IVP) worth Rs. 16,20,000 purchased during financial years 1993-94 to 1996-97 were found and seized. In pursuance thereof, notice under s. 158BC of the Act was issued on

29th Dec. 2000. Accordingly, the assessee filed his return for the block period ended 6th April, 2000, declaring an undisclosed income of Rs. 21,00,000 on 22nd Oct., 2001 which was processed under s. 143(1)(a) of the Act. The assessee did not offer for taxation the interest accrued on the IVPs @ 13.43 per cent per annum from the date of purchase till the date of search on the ground that the interest was receivable only at the time of maturity and the IVP cannot be encashed pre-maturely. The AO, vide assessment order dt. 27th April, 2002, Annex. A-1. made an addition of Rs. 7,01,690. Feeling aggrieved, the assessee filed an appeal before the CIT(A). The CIT(A) vide order dt. 23rd July, 2003, Annex. A-2, allowed the appeal and deleted the addition made by the AO. Being dissatisfied, the Department filed an appeal before the Tribunal. The Tribunal vide order dt. 30th Dec., 2004, Annex. A-3, upheld the order passed by the CIT(A) and dismissed the appeal. Hence, the present appeal by the Revenue.

2. Learned counsel for the Revenue submitted that the Tribunal had erred in directing the AO to compute the income on receipt basis in respect of IVPs which were found during the search conducted on the premises of the assessee on 6th April, 2000. Reliance was placed upon r. 8(4) of Indira Vikas Patra Rules, 1986 (in short "the Rules"). According to the learned counsel, the aforesaid rule prescribes that interest @ 13.43 per cent per annum compound on the initial sale value of the certificate shall be deemed to have accrued at the end of each year, calculated from the date of initial purchase of the certificate from the post office upto the end of five years for the purpose of tax payable by a holder in the relevant assessment year under any law for the time being in force. Relying upon the judgment of the Kerala High Court in Dr. R.P. Patel Vs. Commissioner of Income Tax, the order of the Tribunal was assailed.

3. On the other hand, learned counsel for the assessee submitted that the assessee had already paid tax on the interest arising on IVP on receipt basis as has been recorded by the CIT(A) and the Tribunal. It was urged that once the Department has already collected the tax on receipt basis, the Department was not entitled to again add a sum of Rs. 7,01,690 on account of accrued interest on IVP in the block assessment. It was also urged that under the rules, the holder of the IVP was not entitled to receive any amount before the date of maturity; there was no right of premature encashment of IVP and there was no provision for payment of accrued interest before the date of maturity. Learned counsel for the assessee had also placed reliance upon the judgments of the Hon'ble apex Court in The Commissioner of Income Tax, Madras Vs. A. Gajapathy Naidu, and Commissioner of Income Tax, Gujarat Vs. Ashokbhai Chimanbhai, to contend that under cash system of accountancy before the receipt of income, there was no liability for tax thereof. The judgment of the Kerala High Court was sought to be distinguished on the ground that it was recorded therein as a finding of fact that the assessee had not paid any tax on interest received on IVP on receipt basis.

4. After hearing learned counsel for the parties, we do not find force in the submission of the learned counsel for the Revenue.

5. It would be advantageous to reproduce r. 8(4) of the Rules which reads as under:

8(4). In the case of a certificate purchased on or after 1st April, 1987, and on or before 29th Feb., 1988, or on or after 2nd Sept., 1993, and on or before 31st Dec, 1998, interest @ 13.43 per cent per annum compounded on the initial sale value of the certificate shall be deemed to have accrued at the end of each year, calculated from the date of initial purchase of the certificate from the post office upto the end of the fifth year for the purpose of tax payable by a holder in relevant assessment year under any law for the time being in force.

6. A perusal of the said rule shows that a rate has been prescribed to be 13.43 per cent per annum compounded on the initial sale value of the certificate which is to be taken as the accrued interest which is liable for tax.

7. That income under heads "Income from business or profession" and "Income from other sources" are determined on the basis of method of accountancy which is followed by the assessee. Explaining the distinction between "accruing or arising" vis-à-vis "receive", the Hon'ble Supreme Court in Ashokbhai Chimanbhai's case (supra) noticed as under:

5. Under the IT Act, income is taxable when it accrues, arises or is received, or when it is by fiction deemed to accrue, arise or is deemed to be received. Receipt is not the only test of chargeability to tax; if income accrues or arises it may become liable to tax. For the purpose of this case it is necessary to dilate upon the distinction between income "accruing" and arising". But there is no doubt that the two words are used to contradistinction the word "receive". Income is said to be received when it reaches the assessee; when the right to receive the income becomes vested in the assessee, it is said to accrue or arise.

8. Analyzing the salient features of IVPs, it may be noticed that they are bearer certificates" with specified maturity period. It does not allow premature encashment and no loan can be raised or Hen or charge can be marked against these IVPs. Further, no interest is payable on IVPs between the date of issue and the date of maturity. Thus, where the assessee follows mercantile system of accountancy, interest in terms of r. 8(4) of the Rules would be exigible to tax. However, in case of taxability of interest income on receipt basis, the same would be taxable on actual receipt of interest along with principal amount on maturity as r. 8(4) nowhere envisages that it shall cover those cases as well where the assessee is offering interest on IVP to tax on receipt basis.

9. The Tribunal while accepting the plea of the assessee in paras 4 to 7 of its order had recorded as under:

4. We have heard both the parties and given our thoughtful consideration to the rival contentions. From the facts discussed above, it is obvious that the AO has not made addition of Rs. 7,01,690 under s. 69 of the IT Act. Briefly stated, the facts of the case are that during the course of search IVPs of the face value of

Rs. 16.20 lacs were found and seized from locker No. 49 with Oriental Bank of Commerce, Jalandhar. The assessee surrendered income of Rs. 16.20 lacs to cover unexplained investment in IVPs. Such income was also disclosed in the return filed for block assessment. These IVPs can be encashed only on maturity. Therefore, assessee's case was that interest on IVPs did not accrue year to year as the assessee had no right to receive the same before the date of maturity. However, the AO was of the view that interest on IVPs accrue year to year basis and, therefore, accrued interest for the period falling in the block period was includible as undisclosed income of the assessee. Accordingly, the AO made an addition of Rs. 7,01,690 being accrued interest on the IVPs and included the same in the total income for the block period. The addition was not made under s. 69 of the IT Act. On appeal, the learned CIT(A) has deleted the addition on the ground that interest did not accrue prior to the date of maturity and, therefore, there was no income on account of accrued interest liable to be included in the block period. This is being agitated in appeal before us as the original ground relates to the deletion of an addition of Rs. 7,01,690 being accrued interest.

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6. Now the only issue that requires to be adjudicated by the Bench is that whether the learned CIT(A) was justified in deleting addition of Rs. 7,01,690 made on account of accrued interest on IVPs. The facts relating to such additions have already been given in the preceding paras. As mentioned earlier, the case of the Revenue is that interest accrues to the assessee on year to year basis and hence includible in the total income of the block period. However, the case of the assessee is that IVPs can be encashed only on maturity and assessee does not acquire any right to receive any income prior to the date of maturity. The learned counsel contended that until the assessee acquires any right to receive income, no income can be said to have accrued to the assessee. Reliance was placed on the judgments of Hon'ble Supreme Court in the case of Commissioner of Income Tax, Gujarat Vs. Ashokbhai Chimanbhai, , the judgment of Hon'ble Punjab & Haryana High Court in the case of COMMISSIONER OF Income Tax Vs. PUNJAB TRACTORS CO-OPERATIVE MULTIPURPOSE SOCIETY LTD., Besides, it was also submitted that the amount of interest received on maturity was duly reflected in the return filed for block assessment. He also relied on the decision of the Tribunal, Bombay Bench in the case of (2004) 89 ITD 282 . where it has been held that the receipt of maturity amount of IVPs does not involve any transfer of capital assets. He also mentioned that in the said case, the Tribunal has drawn a distinction between IVPs and preference shares. It is like a deposit of money with the post office on interest and the same can be encashed by anyone. No document is necessary for effecting the transfer. The assessee gets his money back, which the post office had promised to pay on maturity. He submitted that no interest has accrued to the assessee prior to the date of maturity.

7. It is trite law that income can be said to accrue or arise to assessee only when he acquires right to receive such income. Now, in the present case, the

undisputed fact is that the amount mentioned in the IVPs is payable to the assessee only on maturity. In case of IVPs, these cannot be encashed under any circumstances before their maturity. Therefore, it cannot be said that interest has accrued to the assessee on year to year basis. We are, therefore, of the opinion that the learned CIT(A) was justified in deleting the impugned addition. We confirm his order and reject this ground of appeal.

10. Examining the judgment of the Kerala High Court in Dr. R.P. Patel's case (*supra*) on which reliance has been placed by the Revenue, it needs to be noticed that it is not applicable to the facts of the present case in as much as the assessee in the instant case has already offered to pay tax on the interest on IVPs on receipt basis whereas that was not the case before the Kerala High Court. In view of the above, we do not find any infirmity in the order passed by the Tribunal which may warrant interference by this Court. Accordingly, the substantial question of law is answered against the Revenue and in favour of the assessee. The appeal stands dismissed.