

## **Compensation received for termination of construction of railway siding was capital receipt: ITAT**

**Summary – The Raipur ITAT in a recent case of Rishabh Infrastructure (P.) Ltd., (the Assessee) held that where assessee-company was formed for construction of way track and railway siding on behalf of a company, in view of fact that due to certain disputes arose between parties work was stalled by assessee, compensation paid by said company to assessee for closure of business activity was to be treated as capital receipt not chargeable to tax**

### **Facts**

- Company LIPL engaged in the cement business, had commissioned a cement plant and for the purpose of streamlining the transportation cost, it planned to construct a railway siding. The assessee company was formed with sole objective of developing, constructing and erecting and roads, bridges, railway sidings etc. on behalf of LIPL. A MOU was entered into between LIPL and the assessee for construction of railway siding to facilitate transportation of clinker and cement. LIPL continued to remain unresponsive as to problems faced by assessee in execution of construction of railway siding work due to which disputes arose between both the parties. The said work was stalled by the assessee and, accordingly, same came to a standstill. Another MOU was entered wherein in lieu of cancellation/termination of the earlier MOU resulting into termination/closure of the business activity of the assessee compensation was given to the assessee by LIPL.
- The assessee treated the compensation received as capital receipt not chargeable to tax and, accordingly, had shown the same under the head 'reserve and surplus'. The Assessing Officer after analyzing the various clauses of the MOU noted that the payment received by the assessee was in consideration of the efforts made by the assessee for the services rendered by it although in the MOU the word used was 'compensation' but in fact it had to be the word 'consideration'. Therefore, he held that the impugned amount, although nomenclated as 'compensation' in the MOU was a normal business receipt which was clearly a revenue receipt liable to tax.
- On appeal, the Commissioner (Appeals) deleted the addition made by the Assessing Officer holding that the impugned amount had rightly been termed and treated as 'compensation' which in effect, was determined and paid by LIPL to the assessee in lieu of cancellation/termination of the earlier MOU and determination of rights of the assessee attached to the said MOU whereby the entire work of construction of railway track & siding was awarded to the assessee and, accordingly, the said determination which represented compensation for the loss of source of income (business of the assessee, in the instant case, itself was eliminated) leading to impairment or sterilization of the profit making structure itself would certainly constitute a 'capital receipt' not chargeable to tax.
- On revenue's appeal to the Tribunal:

### **Held**

- A MOU was executed between the assessee and LIPL with an object of construction of railway track and siding by the assessee for LIPL. The construction of railway track & siding involved complex work

right from procurement of land, civil work/earth work, laying of railway tracks, electrifications, signaling arrangement etc. The assessee had been formed with the sole objective of undertaking the infrastructure development activity of construction of railway track & siding on behalf of LIPL which fact is also recorded in the assessment order passed under section 143(3) for the assessment year 2003-04. It is found from records that the assessee had only acquired a part of the lands (including some development works) required for the said railway track and siding which were subsequently transferred to LIPL and income arising thereof was shown under the head 'profits & gains of business or profession'. It is found from the correspondences filed on record between the assessee and LIPL that LIPL was indecisive as to execution of the entire work of construction of railway track & siding from the assessee on turnkey or build-operate-transfer basis and subsequently, owing to various constraints, the balance works assigned to the assessee as per the scope of work as stipulated in the aforesaid MOU were not got executed by LIPL. After a considerable amount of time, another MOU was executed between LIPL & assessee and in pursuance of the said MOU, the aforesaid 'compensation' has been determined by LIPL. There is merit in the submission of the assessee that the entire work of construction of the railway track and siding was its sole business and the isolated activity of acquisition of land for such railway siding was never visualized by it and further, that since LIPL continued to remain indecisive as to execution of entire work by the assessee & also unresponsive to problems faced by them, the execution of the work was stalled by the assessee and, accordingly, came to a standstill. Subsequently, after numerous rounds of deliberations & meetings between LIPL and the assessee company, aforesaid MOU was executed on leading to determination of compensation in lieu of cancellation/termination of the earlier MOU or in lieu of determination of its rights in the said MOU ultimately leading to loss of source of income. It is the construction of this subsequent MOU which ultimately decides the nature of receipt of the impugned amount termed as 'compensation'.

- There is no infirmity in the order of the Commissioner (Appeals) on this issue. The assessee during the course of appeal proceedings had filed a certificate issued by LIPL wherein they have certified that the compensation had been determined and paid by them for stalling the execution of the agreed work as above in terms of the earlier MOU. The above clarification issued by LIPL clearly shows that the compensation received by the assessee is for sterilization of the profit making apparatus of the assessee company.
- Accordingly, the order of the Commissioner (Appeals) is upheld and the grounds raised by the revenue are dismissed.