

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No.2970/Del/2015
Assessment Year 2011-12**

**Shri Baldev Singh,
R/o 493-L, Model Town,
Karnal.
PAN: ASCPS1945A**

vs Income-tax Officer,
Ward-2, Karnal.

Appellant

Respondent

**Assessee by Shri Gurjeet Singh, CA
Revenue by Shri S.S. Rana, CIT DR**

**Date of Hearing 20.02.2019
Date of Pronouncement 08.03.2019**

ORDER

PER K. NARASIMHA CHARY, JM

The present appeal filed by the assessee is directed against the order dated 25.3.2015 in Appeal No.IT/89/KNL/CIT(A)/KNL/2013-14 passed by the Learned Commissioner of Income-tax(Appeals), Rohtak {"CIT(A)"} in relation to Assessment Year 2011-12.

2. Brief facts of the case are that the assessee is an agriculturist and inherited land from his parents as an agricultural property. Such land was acquired by the Government and the assessee had received enhanced compensation of Rs.4,69,20,146/- including interest thereon and claimed

exemption u/s 10(37) of the Income-tax Act, 1961 (“the Act”) and claimed refund of Rs.33,84,464/- in the return of income. Learned AO found that as per Form D issued by the Land Acquisition Officer, Panchkula, the assessee had received enhanced compensation of Rs.4,69,20,146/- which includes principal amount of Rs.2,70,33,074/- and interest amount of Rs.1,98,85,972/- from the LAO, Panchkula, during the year and on the enhanced compensation received, TDS amounting to Rs.93,84,030/- was deducted out of which amount of Rs.74,45,433/- was refunded to the assessee and credited in his account on 1.7.2011.

3. Learned AO passed order u/s 143(3) of the Act, basing on the amendment of sub section (2) of Section 56 and consequent amendment under clause (b) of Section 145A and simultaneous amendment u/s 57(iv) of the Act by the Finance (No.2) Act, 2009 w.e.f. 1.4.2010 applicable relevant to the AY 2010-11, according to which the interest received by the assessee on compensation or enhanced compensation amount is taken to be an income in which year it has been received, irrespective of the method of accounting followed by the assessee subject to deduction 50% u/s 57(iv) of the Act of such interest income referred to in clause (viii) of sub section (2) of Section 56 of the Act. He accordingly taxed 50% of interest received, which worked out at Rs.99,42,986/- He added such amount back to the income of the assessee.

4. Assessee challenged the said addition before the learned CIT(A) stating that the interest received by the assessee u/s 28 of the Land Acquisition Act is part of compensation and is exempt u/s 10(37) of the Act in view of the judgment of the Hon’ble Apex Court in the case of CIT vs Ghanshyam Dass & V Ors, 315 ITR 1 (SC) followed by the Hon’ble Apex Court in the case of CIT vs Gobind Bhai Mamaiya, 367 ITR 498 (SC). The assessee, therefore, contended that the ld. AO treated the interest on enhanced compensation as

interest income and has taxed it as interest income received u/s 57(iv) of the Act read with Section 145A of the Act whereas the interest on enhanced compensation has been held by the Hon'ble Apex court as part of the compensation and is not interest income as has been treated by the AO. Assessee, therefore, prayed before the learned CIT(A) that the levy of tax on the interest received u/s 28 of the Land Acquisition Act is illegal and has to be deleted.

5. Learned CIT(A) clearly found that this is a case of receipt of interest on enhanced compensation u/s 28 of the Land Acquisition Act. However, learned CIT(A) held that the decision of the Hon'ble Supreme Court in the case of Gobind Bhai Mamaiya (supra) vide para 8 holds that the interest earned u/s 28 of the Land Acquisition Act is on enhanced compensation and be treated as an accretion to the value and part of the compensation making it eligible to tax. On this premise, learned CIT(A) held that inasmuch as the said judgment did not deal with the exemption u/s 10(37) of the Act, and, therefore, is not applicable to the facts of the case. He accordingly dismissed the appeal and confirmed the addition.

6. Assessee is, therefore, before us stating that the judgment of the Hon'ble Apex Court in the case of Ghanshyam Dass (supra) and Gobind Bhai Mamaiya (Supra) and also in the case of Union of India vs Hari Singh and Ors., 302 CTR 458 (SC) classify the receipt of interest u/s 28 of the Act as capital receipt to be dealt with under the provisions of Section 45(5) of the Act and the consequences under the Act shall follow thereafter; that merely because the Hon'ble Apex Court had stated that the compensation and the enhancement of the compensation has to be dealt with u/s 45(5) of the Act, does not take away the effect of provisions of Section 10(37) of the Act; and that, therefore, it is just and proper to look into the provisions involved in this matter in a holistic

way but the decision of the Hon'ble Apex court shall not be read to have denied the assessee the benefit u/s 10(37) of the Act.

7. Per contra, it is the submission of the learned DR that in CIT vs Chet Ram (HUF), (2018) 400 ITR 23 (SC), CIT vs GovindbhaiMamaiya (2014) 367 ITR 498 (SC) and Smt. PremlataPurshottamPaldiwal vs CIT (2017) 84 taxmann.com 317 (Bom), the it was held that interest has to be taxed in the year of receipt and not to be spread over the years on actual basis and the enhanced compensation with interest thereon received under the interim order passed by the High Court in pending appeals relating to the land acquisition has to be assessed for tax not in the year in which the said amount had been received. Learned DR further submitted in the case of Ghanshyam (supra) the Hon'ble Apex Court held that even in cases where appeal is pending, the forum permits claimant to withdraw against security or otherwise, enhanced compensation, which is in dispute, the same is liable to be taxed u/s 45(5) in the year of receipt. Basing on this, he argued that the matter is squarely covered by the above decision in favour of the revenue and in all the matters, the Hon'ble Supreme Court stated that the interest on the enhanced compensation is also liable to be taxed u/s 45(5) of the Act in the year of receipt and nowhere the Hon'ble Supreme Court had dealt with the exemption u/s 37 of the Act and, therefore, there is no strength in the contention put forth by the assessee and the appeal is liable to be dismissed.

8. We have gone through the orders of the authorities below in the light of the arguments on either side and the decisions of the Hon'ble Apex Court cited above. In the case of Ghanshyam (supra), the Hon'ble Supreme Court held in unequivocal terms that the additional amount u/s 23(1A), solatium under section 23(2) and interest on excess compensation u/s 28 of the Land Acquisition Act form part of enhanced compensation u/s 45(5)(b) and, therefore, is subject to tax

u/s 45(5) in the year of receipt. No contrary view is taken by the Supreme Court in the subsequent judgments and as on the date, law is fairly settled that the amount of interest received u/s 28 of the Land Acquisition Act is in the nature of capital gain. In the case of Hari Singh (supra) while dealing with the similar question under identical set of facts while setting aside the matter to the file of the AO to examine the facts of the case and to apply the law as contained in the Income-tax Act, Hon'ble Supreme Court specifically directs that in case the learned AO finds that the compensation was received in respect of the agricultural land, the tax deposited with the Income-tax Department shall be refunded to the assessee. Hon'ble Supreme Court gave the above direction after noticing the decision in the case of Ghanshyam (supra).

9. In this set of circumstances, it does not admit of any doubt as to the nature of amount by way of interest u/s 28 of the Land Acquisition Act in the hands of the assessee or the applicability of the Income-tax Act to such amount. When the Hon'ble Supreme Court specifically directs in the case of Hari Singh (supra), the learned AO shall examine the facts of the case and then apply the law as contained, CIT(A) has not stated that such an amount shall be brought to tax u/s 45(5) without applying the provisions under 10(37) of the Act, which exempts such receipts from being taxed. It could be noted that Section 45(5) makes no reference to the nature of property that is acquired but it deals with the category of cases which falls in the description of "capital assets". However, Section 10(37) exempts specifically an income chargeable under the head "capital gains" arising from the transfer of agricultural land. It is, therefore, clear that once the Hon'ble Supreme court directed the AO in the case of Hari Singh (supra) that after examining the facts to apply the provisions contained in the Income-tax Act with a specific reference to the agricultural land stating that in case if it is found that the compensation was received in

respect of the agricultural land, the tax deposited with the Income-tax Department shall be refunded to these depositors.

10. We, therefore, do not have any doubt in our mind as to the law in this aspect and while respectfully following the ratio laid down by the Hon'ble Supreme Court in the case of Ghanshyam (supra) and Hari Singh (supra) above, direct the ld. AO to refund the TDS amount that was deducted on account of the enhanced compensation. With these directions, we allow the appeal of the assessee.

11. In the result, the appeal of the assessee is allowed.

Order pronounced in the Open Court on 8th March, 2019.

**sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

**sd/-
(K.NARASIMHA CHARY)
JUDICIAL MEMBER**

Dated: 8th March, 2019.
VJ

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

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