

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'I(2) + SMC' NEW DELHI**

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER,
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 5207/DEL/2017 (A.Y 2014-15)

Sumesh Kumar H. O. 110/6, Patel Nagar, Tohana, Fatehabad, Haryana. ADEPK4697A (APPELLANT)	Vs	ITO Ward-2 Fatehabad, Haryana (RESPONDENT)
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Appellant by	Sh. Ankit Gupta, Adv
Respondent by	Sh. Pradeep Singh Gautam, Sr. DR

Date of Hearing	03.03.2020
Date of Pronouncement	05 .03.2020

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 26/5/2017 passed by CIT(A) Hisar, for Assessment Year 2014-15.

2. The grounds of appeal are as under:-

"1.It has been held by Hon'ble Supreme Court in case of CIT v/s Ghanshyam Dass HUF that interest awarded u/s 28 of the Land Acquisition Act is a capital receipt. Hon'ble Apex Court in the case of CIT Vs Ghanshyam HUF(2009) 315 ITR 1 has held that Interest awarded u/s 28 of Land Acquisition Act, 1894 is nothing but an accretion to the value of compensation and hence it is part and parcel of compensation. Thus taxability of such interest is of Capital nature and should be included to Consideration received for the purpose of computation of capital gain u/s 45 of Income Tax Act,

1961. Hence, addition made of Rs 32,14,916/- be deleted.

2. This clearly implies, as is the settled law, that a capital receipt, unless specifically taxable under section 45 under the head Capital Gain, in principle, is outside the scope of income chargeable to tax and a receipt cannot be taxed as income unless it is in (the nature of a revenue receipt or is specifically brought within ambit of income by way of specific provisions of the Income Tax Act. In view of the facts state above, the interest received on compensation to the asses see is nothing but a capital receipt. In view of above the reopening of the assessment u/s 147 is against law. Hence, the assessment proceedings initiating ultra vires and be quashed.

3. No order has been passed on objection raised for reopening of assessment u/s 147, hence, the assessment proceedings are Vires and be quashed.

4. Notice issued is against law and facts of the case, hence, be quashed.

5. It has been held by Hon'ble Supreme Court in case of CIT v/s Ghanshyam Dass HUF that interest awarded u/s 28 ' Land Acquisition Act, 1894 is a Capital Receipt. Hon'ble Apex Court in case of CIT v/s Ghanshyam HUF (2009) 315 TR 1 has held that interest awarded u/s 28 of Land Acquisition Act, 1894 is nothing but an accretion to the value compensation and hence it is part and parcel of compensation. Thus taxability of such interest is of Capital nature and should be included to consideration received for the purpose of computation of capital gain u/s 45 of Income Tax Act. 1961. Honble Supreme Court has, in the ease of Padmaraje R. Kadambande vs. CIT(1992) 195 ITR 877 (SC), observed that the amounts received by the assessee during the financial years in question have to be regarded as capital receipts and, therefore, are not income within meaning of sec 2(24) of the Income Tax Act. The addition made be deleted.

6. The appeal may be modified at the time of hearing.”

3. The return declaring in income of Rs.6,716/- and agricultural income of Rs. 87,500/- was filed on 24/07/2014 by the assessee. The Assessing Officer observed that the assessee received enhanced compensation of Rs. 42,88,140/- and interest of Rs. 64,29,833/- from Haryana State Cooperative Supply and Marketing Federation Ltd. and, therefore, claimed the said as exempt u/s 10(37) of the Income Tax Act, 1961. In view of the decision of Hon'ble Supreme Court in CIT(A) Vs. Ghanshyam (HUF) 315 ITR 1 stating that the interest awarded on enhanced compensation u/s 28 of the acquisition proceedings is not taxable at all. The Assessing Officer made addition of Rs. 32,14,916/-.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that Hon'ble Supreme Court in case of CIT vs. Ghansyam HUF (supra) held that interest awarded u/s 28 of the Land Acquisition Act is capital receipt and is nothing but an accretion to the value of compensation. Thus, it is part and parcel of the compensation, hence is not taxable. The Ld. AR further submitted that no order has been passed on objection raised for re-opening of assessment u/s 147 of the Act. The Ld. AR also relied upon the decision in case of Union of India Vs. Hari Singh (Civil Appeal No. 15041/2017 order dated 15th September 2017). Thus, the Ld. AR submitted that the additions made by the Assessing Officer is not valid and are not sustainable.

6. The Ld. DR relied upon the assessment order and the order of the CIT(A).

7. We have heard both the parties and perused the material available on record. From the perusal of the order of the CIT(A), it can be seen that the CIT(A) has not given a separate finding as to why the Assessing Officer is justified in making an addition. The Assessing Officer as well as the CIT(A) have not given any finding as to the fact that the assessee has not received interest u/s 28 of the Land Acquisition Act, 1894. This issue has been decided by the

Hon'ble Apex Court in case of Union of India Vs. Hari Singh (Civil Appeal No. 15041/2017 order dated 15th September 2017) wherein it is held that on agricultural Land no tax is payable when the compensation/enhanced compensation is received by the assessee as their land were agricultural land. The compensation was received in respect of agricultural land belonging to the assessee which had been acquired by the state government. The CIT(A) has not taken cognizance of the decision of the Apex Court in case of Hari Singh (supra). The ratio of the said decision is applicable in the present case. Thus, the appeal of the assessee is allowed.

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

Order pronounced in the Open Court on 05th March, 2020.

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

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 05/03/2020
R. Naheed

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	03.03.2020
Date on which the typed draft is placed before the dictating Member	03.03.2020
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	05 .03.2020
Date on which the final order is uploaded on the website of ITAT	05 .03.2020
Date on which the file goes to the Bench Clerk	05 .03.2020
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	