

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC-1' NEW DELHI**

**BEFORE SHRI R. K. PANDA ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A. No. 5206/DEL/2017 (A.Y 2014-15)
(THROUGH VIDEO CONFERENCING)**

Nariender Kumar House No. 11/6, Patel Nagar, Tohana, Fatehabad, Haryana DLLPK1764E (APPELLANT)	Vs	ITO Ward-1 Fatehabad, Haryana (RESPONDENT)
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Appellant by	Sh. Ankit Gupta, Adv
Respondent by	Ms. Shivani Bansal, Sr. DR

Date of Hearing	10.03.2021
Date of Pronouncement	12.04.2021

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against order dated 19/05/2017 passed by CIT (A)-Hissar, for assessment year 2014-15.

2. The grounds of appeal are as under:-

"1. It has been held by Honble 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. Honble Apex Court in the case of CIT Vrs 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 assessee 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. Notice issued is against law and facts of the case, hence, be quashed.

4. 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 Land Acquisition Act, 1894 is a Capital Receipt. Hon'ble Apex Court in case of CIT v/s 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 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. Hon'ble Supreme Court has, in the case of Padmaraje R. Kndambandc 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.

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

3. The return declaring an income of Rs. 12,250/- and agricultural income of Rs.3,50,000/- was filed on 24/7/2014 by the assessee who is an individual. The Assessing Officer assessed the income at Rs. 42,88,380/- thereby making addition of Rs. 42,88,380/- relating to compensation and interest received u/s 28 of the Land Acquisition Act, 1894 and taxing the same as per Section 56(2)(viii) as it is coming to 50% of the actual interest of Rs.85,32,259/-.

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 the Hon'ble Supreme Court in case of CIT Vs. Ghanshyam Das (HUF) 315 ITR 1, held that interest awarded u/s 28 of the Land Acquisition Act is a capital receipt and the same is 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 the Income Tax Act, 1961. Thus, the Ld. AR submitted that capital receipt unless specifically taxable u/s 45 under the head capital gain, in principle, is outside the scope of income chargeable to tax and cannot be taxed as income unless it is in the nature of Revenue receipt or specifically brought within the ambit of income by way of specific provision of the Income Tax Act. Thus, the Ld. AR submitted that the interest received on compensation to the assessee is nothing but a capital receipt and the addition is against the law. The Ld. AR further submitted that the Hon'ble Supreme Court in case of Padmaraje R. Kadambande. CIT(A) 19 195 ITR 877 (S.C) 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 the meaning of Section 2(24) of the Act and the addition has to be deleted. The Ld. AR also relied upon the decision of the Union of India Vs. Hari Singh (Civil Appeal No. 1504/Del/2017 order dated 15th September, 2017 as well as the decision of the Tribunal in case of Sumesh Kumar Vs. ITO ITA No. 5207/Del/2017 order dated 5/3/2020).

6. The Ld. DR submitted that as under:-

“On hearing dated 10.3,2021, the Ld. Counsel for the assessee relied upon judgment of Hon'ble Supreme Court in case of Hari Singh passed in 2017. He further contented that on the basis of this decision, the Hon'ble ITAT, Delhi in case of co-owner allowed the appeal and thus it is a covered matter in favour of assessee. On the basis of the same, the Hon'ble bench had directed the Department to submit Written Statement in the case and the matter has been kept as HEARD.

In this regard, it is humbly submitted that the assessee has not supplied the copy of the judgment or the citation during the hearing. However, the undersigned has found the case of UOI vs Hari Singh dated 15.09.2017 in Appeal No. 15041 of 2017 arising out of SLP © No. 28069 of 2010 dated 15.09.2017.

Also, it is pertinent to mention here that the assessee has taken upon the plea of this judgment for the first time during the hearing and didn't mention about the same in grounds of appeal anywhere, in fact in ground of appeal the Ld. Counsel referred to the SC judgment of Ghanshyam Das HUF which pertains to judgment of 2009 (which is countered separately at the end of submission).

However, on detailed analysis of the judgment referred by assessee in case of Hari Singh, it is found that the said appeal is totally on different facts as in present case. In that case, the Hon'ble Supreme Court has decided on single issue as to whether the IDS is to be deducted on amounts which are paid as compensation or enhanced compensation. The judgment didn't deal with the taxability of Interest; received on compensation on land acquisition."

From the above discussion, it is observed that the judgment talks about whether the TDS on land acquisition compensation is to be made Whereas in the present case the issue is totally different as to whether the interest received on enhanced compensation is taxable under Sec 56(2)(viii)/ 57(iv) of the IT Act, 1961.

Apart the above, the undersigned humbly place reliance on the judgment of Jurisdictional High Court of Punjab and Haryana in case of Puneet Singh Vs. Pr. CIT(A) Karnal dated 19th November, 2018 ITA-132-2018 (O & M)."

7. We have heard both the parties and perused the material available on record. It is pertinent to note that the assessee had received Rs. 1.42 crore on account of enhanced compensation of land acquisition, which included compensation of Rs. 56.90 lakhs and interest of Rs. 85.32 Lakhs. The Assessing Office had made addition of Rs. 42.66 Lakhs being 50% of interest of

Rs. 85.32 lakhs u/s 56(2)(viii) r.w. Section 57(iv) of the Income Tax Act, 1961. The capital receipt unless specifically taxable u/s 45 under the head capital gain, in principle, is outside the scope of income chargeable to tax and cannot be taxed as income unless it is in the nature of Revenue receipt or specifically brought within the ambit of income by way of specific provision of the Income Tax Act. Thus, the interest received on compensation to the assessee is nothing but a capital receipt and the addition is against the law. 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 the addition. 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 this 12th Day of April, 2021

Sd/-

(R. K. PANDA)
ACCOUNTANT MEMBER

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated : 12/04/2021

*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT

4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI