

**IN THE INCOME TAX APPELLATE TRIBUNAL
DEHRADUN BENCH 'F', DEHRADUN**

Before Dr. B. R. R. Kumar, Accountant Member

Sh. Yogesh Kumar US, Judicial Member

ITA No. 1391/Del/2017 : Asstt. Year : 2011-12

Manjeet Singh, Parvesh Kumar Sharma, 493-L, Model Town, Karnal	Vs	ITO, Ward-2, Karnal
(APPELLANT)		(RESPONDENT)
PAN No. ABFPG9436Q		

ITA No. 1389/Del/2017 : Asstt. Year : 2011-12

Puneet Singh, Parvesh Kumar Sharma, 493-L, Model Town, Karnal	Vs	ACIT, Karnal
(APPELLANT)		(RESPONDENT)
PAN No. BCLPS2035R		

Assessee by : Sh. Aditya Srinivasan, CA

Sh. Rishabh Kanojia, CA

Revenue by : Sh. K. K. Mishra, Sr. DR

Date of Hearing: 08.12.2022

Date of Pronouncement: 25.01.2023
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeals have been filed by the assesseees against the orders of Id. CIT(A), Karnal dated 06.01.2017.

2. Since, the issues involved in both the appeals are identical, they were heard together and being adjudicated by a common order.

3. In ITA No. 1391/Del/2017, the assessee has raised the following grounds of appeal:

- "1. That order of Id CIT(Appeal) is arbitrary, illegal and against the facts.
2. That the Id CIT(A) erred in law in confirming the orders of ITO treating the interest received on enhanced compensation as Income of the appellant where as the Apex Court in the case of CIT Vs. Govind Bhai Mamaiya has clearly held that interest received on compensation is not income."

4. Brief facts of the case are that the assessee filed the return of income declaring total income of Rs.3,26,91,026/- received from LAO as interest being claimed as exempt u/s 10(37) of the Income Tax Act, 1961. The assessee was owner of agricultural land and the same was taken under compulsory acquisition by Government of Haryana. The assessee claimed the entire enhanced compensation inclusive of interest as residual part of compulsory acquisition of agricultural land and claimed it as exempted u/s 10(37). However, the AO did not accept the contention of the assessee and held that the interest income as taxable income under the head "income from other sources u/s 56(2)(viii) of the Act. The Id. CIT (A), relying on the order of the Hon'ble Supreme Court in the case of Bikram Singh & others Vs Land Acquisition Collector 224 ITR 551 and wherein it was held that interest received on compensation/enhanced compensation u/s 28 and 34 of the Land Acquisition Act are revenue receipts. The ratio of the judgment relied upon by the Id. CIT (A) is as under:

"The contention that the definition of 'interest' in section 2(28A) is confined only to money-lending business between debtor and the creditor and when interest is paid under provisions of the Land Acquisition Act, it is only a payment in consideration of loss of enjoyment of the possession by the owner and it is not by way of any charge on compensation determined under section 23(1) of the Land Acquisition Act and, therefore, it is not exigible to tax, could not be accepted It is true that in amending the definition

of "interest" in section 2(28A), interest was defined to mean interest payable in any manner in respect of any money borrowed or debt incurred including a deposit, claim or other similar right or obligation and includes any service, fee or other charges in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised. It is seen that the word "interest" for the purpose of the Act was interpreted by the inclusive definition. A literal construction may lead to the conclusion that the interest received or payable in any manner in respect of any moneys borrowed or a debt incurred or enumerated analogous transaction would be deemed interest. But the question is: whether the interest on delayed payment on the acquisition of the immovable property under the Acquisition Act would be exigible to income-tax? The Court had consistently taken the view that it is a revenue receipt. The amended definition of "interest" was not intended to exclude the revenue receipt of interest on delayed payment of compensation from taxability. Once it is construed to be a revenue receipt, necessarily, unless there is an exemption under the appropriate provisions, the revenue receipt is exigible to tax. The amendment was only to bring within its tax net income received from the transaction covered under the definition of interest. It would mean that the interest received as income on the delayed payment of the compensation determined under provisions of the Land Acquisition Act is a taxable event. Therefore, it is a revenue receipt exigible to tax under section 4."

5. The Id. CIT (A) also relied on the provisions of the Act of Section 56 amended vide Finance Act, 2009 w.e.f. 01.04.2010 wherein the provision was introduced in the Act "56(2)(viii) - income by the way of interest received on compensation or enhanced compensation referred to in clause (b) of Section 145A."

6. Aggrieved, the assessee filed appeal before the ITAT.

7. During the arguments before us, the Id. AR argued that the issue before us stands covered by the orders of the higher Courts, Coordinate Benches mentioned under:

Supreme Court

- *CIT vs. Ghanshyam (HUF) 315 ITR 1 (SC) (dated 16.7.2009)*
- *CIT vs. Govindbhai Mamaiya 367 ITR 498(SC) (dated 4.9.2014)*
- *CIT vs. Chet Ram (HUF) in C.A. No. 13053/2017 (dated 12.9.2017)*
- *UOI vs. Hari Singh and ors. In C.A. No. 15041/2017 (dated 15.9.2017)*
- *ITO v. Muktanandgiri Maheshgiri in C.A. No. 18475/2017 (dated 10.11.2017)*

Punjab & Haryana

- *Risal Singh Vs Union of India 321 ITR 251 (P&H)*
- *HUDA vs Mandir Nar Singh Puri & Others in CR No. 7953 of 2013 dated 24.12.2013*
- *Ajay Kumar Vs State of Haryana & Others CR No. 3236 of 2014 dated 08.05.2014*
- *Haryana State Industrial Development Corporation Ltd. Vs Savitri and Another*
- *The New India Assurance Co. Ltd. Vs Savitri Devi and Another in CR No. 6784/2016 dated 04.04.2018*
- *CIT Vs Vaibhav Choudhary in ITA No. 160/2015 dated 14.07.2015*
- *CIT Vs Nishant Choudhary in ITA No. 437/2014 dated 14.07.2015*

Delhi High Court

- *Surjit Kumar Chetal Vs CIT 86 Taxmann.cm 121 dated 11.09.2017*

Gujarat High Court

- *Movaliya Bhikhubhai Balabhai Vs ITO 388 ITR 343*

Income Tax Appellate Tribunal- Chandigarh Bench

- *ITO Vs Pawan Giri in ITA No. 405/Chd/2013 dated 02.08.2013*

- *Baldev Singh Vs ITO in ITA No. 313/Chd/2015 dated 02.02.2016*
- *ITO Vs Sh. Nachhattar Singh in ITA No. 564/Chd/2014 dated 07.02.2018*
- *Sh. Satbir Singh & Others Vs ITO in ITA No. 1413 to 1415/Chd/2016 dated 09.07.2018*

Delhi Bench

- *Rajender Singh Vs ITO in ITA No. 473/Del/2015 dated 20.07.2018*
- *DCIT Vs Dinsh Sharma 165 ITD 684 dated 21.04.2017*

Hyderabad Bench

- *Smt. P. Susheela Vs ITO in ITA No. 100/Hyd/2016 dated 07.12.2016*

Bangalore Bench

- *ITO Vs Basavaraj M. Kudarikannur 95 taxmann.com 106 dated 01.06.2018*
- *ITO Vs Sangappa S. Kudarikannur 96 taxmann.com 541 dated 20.07.2018*

Pune Bench

- *Dnyanoba Shajirao Jadhav Vs ITO 90 Taxmann.com 285 dated 29.01.2018*

8. Heard the arguments of both the parties and perused the material available on record.

9. The moot issue to determine is whether the interest on the compensation received by the assessee is in the nature of compensation exempt from tax u/s 10(37) or taxable under Section 56(2)(viii) as interest under the head "income from other sources".

10. This matter has been argued at length and carefully analyzed by various judicial forums. For the sake of ready reference, the composite order titled Shri Satbir Vs. ITO, Jind

in ITA No. 1413 to 1415/CHD/2016 for the A.Ys. 2007-08 to 2009-10 vide order dated 09.07.2018 is reproduced here under:

"6. The brief fact relevant to the issue under consideration are that the lands of the assesseees were compulsorily acquired by the HSI IDC, Sirsa/Government of Haryana in the year 2005.

Subsequently the compensation was enhanced by the Court. The enhanced compensation alongwith interest thereupon u/s 28 of the Land Acquisition Act, 1894 was received by the assesseees in the financial year 2008-09 relevant to assessment year 2009-10. The assesseees treated the interest on the enhanced compensation as part of the compensation liable to be taxed under section 45(5) of the income Tax Act and the transferred land being rural agricultural land exempt from capital Gains tax u/s 10(37) of the Income Tax Act, 1961.

Subsequently, from the perusal of the computation of income attached with the return of income filed by the assessee for assessment year 2009-10, the Assessing Officer observed that w.e.f. assessment year 2010-11 the interest received on enhanced compensation was taxable in the year of receipt as per the provisions of section 145A(b) of the Act. However, prior to assessment year 2010-11 interest received on compensation/enhanced compensation was taxable on proportionate basis for the each year in view of the decision of the Hon'ble Supreme Court rendered in the case of Rama Bai Vs. CIT dated 8.11.1989 reported in 181 ITR 400 (SC). The Assessing Officer, therefore, reopened the assessment proceedings of the assesseees and applied the ratio of the decision of the Hon'ble Supreme Court in the case of Rama Bai (supra) and held that the interest received by the assesseees on the enhanced compensation was to be proportionately allocated to different assessment years as having accrued year after year from the date of delivery of possession of the lands till the date of such order. The Assessing Officer observed that the lands of the assesseees were acquired in the year 2005, whereas the interest on the enhanced compensation had been received in the year

2008. He, therefore, calculated the proportionate interest pertaining to each assessment year and added the same as taxable receipt under the head 'other sources' and accordingly, added the proportionate amount of interest in the impugned years in the reopened assessment proceedings u/s 147 r.w.s. 143(3) of the Act.

7. Before the Ld.CIT (Appeals), the assessee relied upon the decision of the Hon'ble Supreme Court in the case of CIT Vs. Ghanshyam (HUF) (2009) 315 ITR 1 (SC) and contended that as per the ratio laid down in the said decision the interest received u/s 28 of the Land Acquisition Act, 1894 does not partake the character of interest, rather it was a part of compensation of land which was not taxable as per the provisions of section 10(37) of the Income Tax Act. The Ld. CIT(Appeals) after considering the submissions of the assessee as well as considering the nature of compensation and interest thereupon received by the assessee, held that the issue was squarely covered by the decision of the Hon'ble Supreme Court in the case of Ghanshyam (HUF) (supra) and accordingly, allowed the appeal of the assessee.

8. Subsequently the Assessing Officer moved an application for rectification of the u/s 154 of the Act before the CIT(A) pleading therein that the interest received on enhanced compensation u/s 28 of Land Acquisition Act was chargeable to tax as 'income from other sources' u/s 56(2) (viii) r.w.s. 57(iv) of the Act in the light of the decision of the Hon'ble Punjab & Haryana High Court in the case of 'Manjeet Singh (HUF), Karta Manjeet Singh Vs. Union of India & Others' in CWP No.15506 of 2013, date of decision 14.1.2014, wherein, the Hon'ble High Court has held that the interest received by the assessee u/s 28 as well as u/s 34 of the Land Acquisition Act on the additional compensation received was chargeable to tax u/s 56(2) (viii) r.w.s. 57(iv) of the Act. It was further contended that even the SLP filed in that case before the Hon'ble Supreme Court had been dismissed vide order dated 18.12.2014 in SLP No.34642 of 2014. Reliance was also placed on the decision dated 2.2.2016 of the Hon'ble Punjab & Haryana High Court in the case of Jagmal & Another Vs. state of Haryana

& Another in RA-CR NO.46 C11 of 2014 in CR No.7740 of 2012, whereby the Hon'ble High Court had recalled its earlier order and held that the interest of the additional award was taxable under u/s 56(2) (viii) r.w.s.57(iv) of the Act.

9. The Ld.CIT(Appeals) considering the aforesaid decisions and also the decision of the Hon'ble Punjab & Haryana High Court in the case of Sunder Lal & Another Vs. Union of India & Others in CWP No.20014 of 2015, order dated 21.9.2015 and also in the case of CIT Vs. Bir Singh (HUF) in ITA No.209 of 2004, etc. held that in the light of the above decisions, the mistake apparent on record had occurred in his order while allowing the appeal of the assessee while relying upon the decision of the Hon'ble Supreme Court in the case of Ghanshyam (HUF) (supra). He, therefore, vide the impugned order passed u/s 154 of the Act held that the interest received by the assessee on enhanced compensation on account of acquisition of land was taxable as 'income from other sources'. He, therefore, confirmed the additions made by the Assessing Officer passed in the reopened assessment proceedings carried out u/s 147 r.w.s. 143(3) of the Act.

10. Now the assessee has come up in appeal before us agitating the above orders passed by the CIT(Appeals) u/s 154 of the Act.

11. We have heard the rival contentions. It is pertinent to note here that interest under the Land Acquisition Act can be awarded under section 28 or/and under section 34 of the Land Acquisition Act, 1894. Interest awarded under section 28 of Land acquisition Act, 1894 is the interest on the excess amount of compensation awarded by the court over the amount awarded by the collector. It is awarded by the Court payable by the collector from the date on which the collector took the possession of the land to the date of payment of such excess into Court. Whereas interest under section 34 of the Land Acquisition Act, 1894 is given when the amount of compensation awarded by the collector is not paid or deposited on or before taking possession of land, such interest is payable from the time of so taking possession till the date of payment of compensation.

In the case in hand, the Ld. CIT (Appeals) vide his order dated 14.3.2016 had allowed the appeal of the assessee following the decision in case of Ghanshyam (HUF) (supra), wherein it has held Interest u/s 28 of the Land Acquisition Act 1984, unlike interest u/s 34 is an accretion to the value of the land, hence it is part of enhanced compensation or consideration which is not the case with interest u/s 34A. So also additional amount u/s 23(1A) and solatium u/s 23(2) form part of enhanced compensation.

12. The Ld. CIT(A), however, subsequently, while relying upon the decision of the Hon'ble High Court in the case of Bir Singh (HUF) (supra) and Manjeet Singh (HUF) (supra) & Others as noted above, recalled his orders dated 14.3.2016 and confirmed the additions made by the Assessing Officer.

13. Undisputedly, the issue involved in these appeals is regarding the taxability of interest received on enhanced compensation u/s 28 of the Land Acquisition Act, 1894. Now, there are two questions involved in these appeals, first issue is regarding the year of taxability of the interest income whether it has to be taxed in the year of receipt in the light of the decision of the Hon'ble Supreme Court in the case of Ghanshyam (HUF) (supra) or is to be taxed on the basis of apportionment for each year from the date of acquisition of lands till the receipt of the compensation in the light of the decision of the Hon'ble Supreme Court in the case of Rama Bai (supra); the second issue involved is as to whether the interest awarded u/s 28 of the Land Acquisition Act on enhanced compensation is to be treated as part of the enhanced compensation and will not be taxable separately as interest income under the Head 'income from other sources'?

14. We find that both these issues are covered by the aforesaid decision of the Hon'ble Supreme Court in the case of Ghanshyam (HUF) (supra) holding the same to be in the nature of compensation itself. The Court also dealt with the other aspect namely, the year of tax and answered this question by holding that it has to be taxed on receipt basis, which means it would be taxed in the year in which it is received. The said findings given in the case of Ghanshyam (HUF)

(supra) have been reiterated by the Hon'ble Supreme Court in the case of *Govindbhai Mamaiya (supra)* observing as under:

"In so far as the second question is concerned, that is also covered by another judgment of this Court in Commissioner of Income Tax, Faridabad vs. Ghanshyam (HUF) reported in (2009) 8 SCC 412, 6 albeit, in favour of the Revenue. In that case, the court drew distinction between the "interest" earned under Section 28 of the Land Acquisition Act and the "interest" which is under Section 34 of the said Act. The Court clarified that whereas compensation given to the assessee of the land acquired would be 'income', the enhanced compensation/consideration becomes income by virtue of Section 45(5)(b) of the Income Tax Act. The question was whether it will cover "interest" and if so, what would be the year of taxability. The position in this respect is explained in paras 49 and 50 of the judgment which make the following reading:

"49. As discussed hereinabove, Section 23(1-A) provides for additional amount. It takes care of the increase in the value at the rate of 12% per annum. Similarly, under Section 23(2) of the 1894 Act there is a provision for solatium which also represents part of the enhanced compensation. Similarly, Section 28 empowers the court in its discretion to award interest on the excess amount of compensation over and above what is awarded by the Collector. It includes additional amount under Section 23(1-A) and solatium under Section 23(2) of the said Act. Section 28 of the 1894 Act applies only in respect of the excess amount determined by the court after reference under Section 18 of the 1894 Act. It depends upon the claim, unlike interest under section 34 which depends on undue delay in making the award.

50. It is true that "interest" is not compensation. It is equally true that Section 45(5) of the 1961 Act refers to compensation. But as discussed hereinabove, we have to go by the provisions of the 1894 Act which awards "interest" both as an accretion in the value of the lands acquired and

interest for undue delay. Interest under Section 28 unlike interest under Section 34 is an accretion to the value, hence it is a part of enhanced compensation or consideration which is not the case with interest under Section 34 of the 1894 Act. So also additional amount under Section 23 (1-A) and solatium under Section 23(2) of the 1961 Act forms part of enhanced compensation under Section 45(5)(b) of the 1961 Act."

8. It is clear from the above that whereas interest under Section 34 is not treated as a part of income subject to tax, the interest earned under Section 28, which is on enhanced compensation, is treated as a accretion to the value and therefore, part of the enhanced compensation or consideration making it exigible to tax. After holding that interest on enhanced compensation under Section 28 of 1894 Act is taxable, the Court dealt with the other aspect namely, the year of tax and answered this question by holding that it has to be tested on receipt basis, which means it would be taxed in the year in which it is received. It would mean that converse position i.e. spread over of this interest on accrual basis is not permissible."

15. The Ld. counsel for assessee has further brought our attention to the latest decision of the Hon'ble Supreme Court in the case of CIT Vs. Chet Ram (HUF) dated 12.9.2017 in Civil Appeal No.13053/2017 wherein also the Hon'ble Supreme Court has again reiterated the proposition laid down in the case of Ghanshyam (HUF) (supra), which we find has been further reiterated in the case of Union of India vs. Hari Singh & others in Civil Appeal No. 1504 of 2017 dated 15.9.2017, as under:

"(2) While determining as to whether the compensation paid was for agricultural land or not, the Assessing Officer(s) will keep in mind the provisions of Section 28 of the Land Acquisition Act and the law laid down by this Court in 'Commissioner of Income Tax, Faridabad v. Ghanshyam (HUF)' [2009 (8) SCC 412] in order to ascertain whether the interest given under the said provision amounts to compensation or not."

The said decision as rightly pointed out by the Ld. counsel for assessee have been rendered by the Hon'ble Apex Court subsequent to the decision passed by the Hon'ble Jurisdictional High Court in the case of Manjeet Singh(HUF) (supra) which had dealt with the decisions of the Hon'ble Apex Court in Ghanshyam, HUF (supra) . Therefore, in view of the same, the proposition laid down in Ghanshyam, HUF (supra) remains and which having been laid down by the Hon'ble Apex Court is the law of the land and has to be followed by all lower authorities. In view of the above, we hold that the interest received by the assessee during the impugned year on the compulsory acquisition of its land u/s 28 of the Land Acquisition Act, is in the nature of compensation and not interest which is taxable under the head income from other sources u/s 56 of the Act as held by the authorities below. The compensation being exempt u/s 10(37) of the Act is not disputed. In view of the same the order passed by the CIT(Appeals) upholding the addition made by the AO on account of interest on enhanced compensation is, not sustainable.”

11. Before parting, the salient features of the orders of the Hon'ble Supreme Court are mentioned below:

- The order of the Bikram Singh Vs Land Acquisition Collector is dated 12.09.1996 – Interest of any nature is taxable irrespective of its receipt.
- The order of Ghanshyam (HUF) is dated 16.07.2009
 “It is to answer the above questions that we have analysed the provisions of sections 23, 23(1A), 23(2), 28 and 34 of the 1894 Act. As discussed hereinabove, section 23(1A) provides for additional amount. It takes care of increase in the value at the rate of 12 per cent per annum. Similarly, under section 23(2) of the 1894 Act, there is a provision for solatium which also represents part of enhanced compensation. Similarly, section 28 empowers the Court in its discretion to award interest on

the excess amount of compensation over and above what is awarded by the Collector. It includes additional amount under section 23(1A) and solatium under section 23(2) of the said Act. Section 28 of the 1894 Act applies only in respect of the excess amount determined by the Court after reference under section 18 of the 1894 Act. It depends upon the claim, unlike interest under section 34 which depends on undue delay in making the award. It is true that "interest" is not compensation. It is equally true that section 45(5) of the 1961 Act, refers to compensation. But as discussed hereinabove, we have to go by the provisions of the 1894 Act, which awards "interest" both as an accretion in the value of the lands acquired and interest for undue delay. Interest under section 28 unlike interest under section 34 is an accretion to the value, hence it is a part of enhanced compensation or consideration which is not the case with interest under section 34 of the 1894 Act. So also additional amount under section 23(1A) and solatium under section 23(2) of the 1961 Act forms part of enhanced compensation under section 45(5)(b) of the 1961 Act. In fact, what we have stated hereinabove is reinforced by the newly inserted clause (c) in section 45(5) by the Finance Act, 2003 with effect from 1-4-2004."

- The order in the case of Manjit Singh (HUF) has been considered in the case of Ghanshyam (HUF).
- The order in the case Hari Singh & Others in CA No.1504/2017 dated 15.09.2007 - held - While determining as to whether the compensation paid was for agricultural land or not, the Assessing Officer(s) will keep

in mind the provisions of Section 28 of the Land Acquisition Act and the law laid down by this Court in CIT v. Ghanshyam (HUF) [2009] 182 Taxman 368/315 ITR 1 (SC) in order to ascertain whether the interest given under the said provision amounts to compensation or not.

- The order in the case Govindbhai Mamaiya 367 ITR 498 (SC) dated 04.09.2014 – Reiterated that “it is equally true that Section 45(5) of the 1961 Act refers to compensation. But as discussed hereinabove, we have to go by the provisions of the 1894 Act which awards "interest" both as an accretion in the value of the lands acquired and interest for undue delay. Interest under Section 28 unlike interest under Section 34 is an accretion to the value, hence it is a part of enhanced compensation or consideration which is not the case with interest under Section 34 of the 1894 Act. So also additional amount under Section 23 (1-A) and solatium under Section 23(2) of the 1961 Act forms part of enhanced compensation under Section 45(5)(b) of the 1961 Act.”
- In the case of Ghanshyam (HUF), the Hon’ble Supreme Court equated the interest received u/s 28 of LA with compensation. It was held that the interest is accretion to the value of compensation and hence it is a part of compensation.
- In the case of Hari Singh (HUF), the Hon’ble Supreme Court reiterated the above proposition.

12. In the result, the appeals of the assessee are allowed.

Order Pronounced in the Open Court on 25/01/2023.

Sd/-
(Yogesh Kumar US)
Judicial Member

Sd/-
(Dr. B. R. R. Kumar)
Accountant Member

Dated: 25/01/2023

Ajay Kumar, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR