

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।  
**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE**

**BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER  
AND  
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER**

आयकर अपील सं. / ITA No.1805/PUN/2017  
निर्धारण वर्ष / Assessment Year : 2011-12

Sahebrao Kishanrao More,  
At Post - Kopegaoon,  
Taluka & Distt. - Latur

PAN : BFWPM8056E

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer,  
Ward - 1, Latur

.....प्रत्यर्थी / Respondent

Assessee by : S/Shri Sharad A. Shah & Rohit S. Tapadiya  
Revenue by : Shri M.G. Jasnani

सुनवाई की तारीख / Date of Hearing : 16-12-2022

घोषणा की तारीख / Date of Pronouncement : 09-02-2023

**आदेश / ORDER**

**PER S.S. VISWANETHRA RAVI, JM :**

This appeal by the assessee against the order dated 01-05-2017 passed by the Commissioner of Income Tax (Appeals)-2, Aurangabad [‘CIT(A)’] for assessment year 2011-12.

2. The assessee raised two grounds of appeal amongst which the only issue emanates for our consideration is as to whether the CIT(A) justified in confirming the addition made by the AO u/s. 56(2)(viii) of the Act treating

the interest received u/s. 28 of Land Acquisition Act, 1894 as chargeable to tax.

3. We note that the assessee is an agriculturist. The agriculture land of the assessee was compulsorily acquired. The assessee filed return of income on 07-12-2011 declaring a total income of Rs.Nil along with a claim of refund of TDS of Rs.16,80,040/-. No information is emanating from the record of both the authorities below whether the said return of income processed u/s. 143(1) of the Act or completed assessment under scrutiny, but however, it is noted the respondent-revenue issued notice u/s. 148 of the Act requesting the assessee to file return of income. The assessee requested the AO to treat the original return of income as filed on 07-12-2011, in response to the said notice u/s. 148 of the Act. According to the AO, the assessee received enhanced compensation of Rs.21,22,110/- and interest on compensation of Rs.48,25,620/- from the Special land Acquisition Officer, M.I.W., Latur. The interest received on such enhanced compensation is liable to be taxed in terms of amended provision u/s. 56 of the Act w.e.f. 01-04-2010, further thereto, amendment of section 145A of the Act. We note that the assessee contended that the interest received u/s. 28 of the Land Acquisition Act is nothing but part of enhanced value of land which is exempt from tax in terms of the decision of Hon'ble Supreme Court in the case of CIT Vs. Ghanshyamdas (HUF) reported in 315 ITR 1 (SC). The AO was of the opinion that the interest received by the assessee on the compensation is chargeable to tax considering section 57(iv) of the Act, deduction of a sum equal to 50% of such income was allowed and taxed the alleged remaining 50% of Rs.76,36,543/- (50% of Rs.1,52,73,087/-) as chargeable to tax which is evident from the

computation made by the AO vide para 6 of his order passed u/s. 144 r.w.s. 147 of the Act.

4. We note that the AO concluded the reassessment to his best judgment u/s. 144 of the Act and admittedly, there was no representation on behalf of the assessee, but however, considering the copies of bank statements, 7/12 extracts, the AO determined the total income of the assessee at Rs.76,36,540/- as against Nil income. We note that the AO observed that the assessee received enhanced compensation of Rs.21,22,110/- and interest on such compensation of Rs.48,25,620/- vide para 3 of the assessment order, whereas, in the computation at para 6 of the assessment order, the AO stated that the assessee received interest on compensation to a sum of Rs.1,52,73,087/-. The figure of such interest admittedly is not matching with the figures of amounts mentioned by the AO in para 3 of the assessment order. The AO concluded the reassessment without there being any concrete details in respect of compensation, enhanced compensation, interest u/s. 28 and 34 of the Land Acquisition Act. It is also not forthcoming the exact details of acquisition and payment of compensation, interest, etc. from the orders of both the authorities below. The AO concluded the said reassessment only on the ground that the assessee received interest during the year under consideration under Land Acquisition proceedings and by applying the provisions u/s. 56(2)(viii) and 145A(b) r.w.s. 57(iv) of the Act by holding that the interest is chargeable to tax under the head income from other sources. Before concluding that the said 50% or deduction u/s. 57(iv) of the Act on alleged interest on enhanced compensation, the AO ought to have brought on record the every detail concerning the acquisition i.e., award of Land Acquisition Officer, reference to court by Collector, excess compensation

granted by the court, interest if any paid u/s. 28 and 34 of the Land Acquisition Act, dates of payment of excess compensation and interest if any u/s. 28 and 34 of the Land Acquisition Act, etc., but no detail as such concerning the same referred by the AO in his assessment order. The AO simply proceeded in view of amendment carried out to provision u/s. 56 and 145 of the Act without there being any concrete evidence in support of his view, in our opinion, is not justified.

5. Coming to the First Appellate order which is impugned before us, we note that the CIT(A) simply confirmed the order of AO by holding that the decision as relied on by the assessee is not applicable. On perusal of the impugned order, it is noted that the CIT(A) did not refer any detail concerning the addition made by the AO under the head income from other sources. Before holding the decision as relied on by the assessee in respect of alleged interest u/s. 28 of the Act is not chargeable to tax, the CIT(A) ought to have appreciated the facts and circumstances of the case leading to acquisition, grant of excess compensation and interest if any u/s. 28 and 34 of the Act. On careful examination of the impugned order, we note that the CIT(A) held the ratio laid down by the Hon'ble Supreme Court in the case of Bikram Singh Vs. Land Acquisition Collector reported in 224 ITR 551 (SC) is applicable to the facts on hand and confirmed the order of AO. We note that as discussed above in order to come to such conclusion of applicability of ratio laid down by the Hon'ble Supreme Court in the case of Bikram Singh (supra) or in the case of Ghanshyamdas (HUF) (supra) the CIT(A) ought to have worked out the date of acquisition, award compensation and interest thereon etc. leading to addition made by the AO. It is pertinent to note that no detail whatsoever are neither referred nor discussed by the AO and the CIT(A) in their orders, in our opinion, the

addition made by the AO u/s. 56(2)(iii) of the Act as confirmed by the CIT(A) is not maintainable in the absence of relevant facts leading to such addition.

6. The ld. AR and ld. DR adopted the same arguments made in ITA No. 532/PUN/2017 for A.Y. 2013-14.

7. Heard both the parties and perused the material available on record. In the present case there is no dispute with regard to taxability of interest u/s. 34 of the Land Acquisition Act as the assessee himself offered the same for taxation. The only issue emanates for our consideration is as to whether the interest u/s. 28 of the Land Acquisition Act is taxable or not being part and parcel of compensation. We note that, after the preliminary survey u/s. 3A of the Land Acquisition Act by the Government, to determine whether the land in any locality is needed, or is likely to be needed for any public purpose, issues preliminary notification for acquisition of any such land under the provisions of section 4 of the Land Acquisition Act. Any person interested in any land published u/s. 4(1) of the Land Acquisition Act, can make objection within 30 days for such Acquisition u/s. 5A of the Land Acquisition Act. After hearing the objections the appropriate Government may declare that the land is required for a public purposes u/s. 6 of the Land Acquisition Act. Thereafter, the Collector has to take order for the acquisition of land u/s. 7 of the Land Acquisition Act. If such lands are not already marked out u/s. 4, the Collector causes the land to be measured and make a plan for the same u/s. 8 of the Land Acquisition Act. The Collector u/s. 9 of the Land Acquisition Act issues public notice stating that the Government intends to take possession of the land and claims may be made to him u/s. 10 of the

Land Acquisition Act. The Collector requires to make the statement containing names of every person possessing any interest in the land. The Collector conducts enquiry and passes order u/s. 11 of the Land Acquisition Act. Any person interested who has not accepted the award passed by the Collector may, by written application to the Collector requesting the matter be referred for determination of Court u/s. 18 of the Land Acquisition Act in respect of amount of compensation etc. within six weeks from the date of the Collector's award. It is pertinent to note that granting of additional amount of compensation is the subject matter under reference u/s. 18 of the Land Acquisition Act. We note that section 25 explains amount of compensation awarded by the Court not to be lower than the amount awarded by the Collector. If Court opines the Collector ought to have awarded as compensation in excess of the sum already awarded as compensation, may direct the Collector to pay interest on such excess compensation @ 9% from the date of possession to the payment of such excess compensation into the Court. Therefore, the main point to be decided in the present appeal is the interest on excess compensation from the date of possession to date of payment into the Court is part and parcel of compensation?

8. Vide order dated 29-01-2018, the Co-ordinate Bench of this Tribunal in the case of Dnyanoba Shajirao Jadhav in ITA No. 168/PUN/2016 for A.Y. 2011-12 in para 10, observed that the decision in the case of Bikram Singh & Ors. (supra) by three Judges Bench of Hon'ble Supreme Court was not considered by the two Judges Bench of Hon'ble Supreme Court in the case of Ghanshyam (HUF) (supra). The Tribunal further observed that there was no conflict of law laid down in the said decisions of Hon'ble Supreme Court as both the judgments held the payment of interest on

delayed payment of compensation u/s. 34 of the Land Acquisition Act is chargeable to tax. Further, also observed that two Judges Bench in the case of Ghanshyam (HUF) (supra) is clearly marked the distinction between the interest received u/s. 23(1A) and 23(2) r.w.s. 28 of the L.A. Act vis-à-vis interest on delayed payment of compensation u/s. 34 of the L.A. Act, by holding so remanded the issue to the file of AO for examination of facts of the case and determine the nature of interest received by the assessee under the provisions of Land Acquisition Act de-novo.

9. Vide order dated 11-09-2019, the Co-ordinate Bench of this Tribunal in the batch of case of Shri Satish Wamanrao Honerao and Others held the interest received u/s. 28 of the Land Acquisition Act is part of compensation not chargeable to tax by placing reliance in the case of Ghanshyam (HUF) (supra).

10. Vide order dated 26-06-2020, the Co-ordinate Bench of this Tribunal in the case of Bhaguram Pandurang Komatwad in ITA No. 1723/PUN/2017 and in the case of Dnyanoba Shajirao Jadhav in ITA No. 168/PUN/2016 remanded such issues to the file of AO to decide the issue in terms of law laid down by the Hon'ble Supreme Court in the case of Ghanshyam (HUF) (supra).

11. Vide order dated 05-10-2020, the Co-ordinate Bench of this Tribunal in the case of Bashewar Mallikarjun Bidwe in ITA No. 1012/PN/2017 for A.Y. 2013-14 confirmed the order of CIT(A) in holding that the interest u/s. 28 of the Land Acquisition Act is chargeable to tax by placing reliance in the case of Shivajirao of Hon'ble High Court of Bombay at Aurangabad

along with statutory amendment carried out to section 56(2) inserting Clause (viii) w.e.f. 01-04-2010.

12. Vide order dated 28-04-2022, the Co-ordinate Bench of this Tribunal in the case of Madhav Pandharinath Kande reported in 140 taxmann.com 105 (Pune-Trib.) by following the decision of Hon'ble Supreme Court rendered by three Judges Bench in the case of T.N.K. Govindaraju Chetty reported in 66 ITR 465 and insertion of 56(2)(viii) through Finance Act, 2009 w.e.f. 01-04-2010 held the law laid down by the Ghanshyam (HUF) (supra) is not applicable and interest received on enhanced compensation referred to in clause (b) of section 145A is income from other sources, chargeable to tax.

13. Vide order dated 27-08-2013, the Division Bench i.e. two Judges Bench of Hon'ble High Court of Bombay at Aurangabad in batch of cases lead case being Shivajirao in Writ Petition No. 5402 of 2013 decided a dispute whether in facts TDS has been deducted only on amount of compensation or then on amount of interest also. The Hon'ble High Court while dealing the said issue referred to the decision of Hon'ble Supreme Court in the case of Bikram Singh (supra) and Ghanshyam (HUF) (supra) and pleased to hold by following the decision of larger Bench in the case of Bikram Singh (supra) held the interest paid u/s. 28 is not by way of any charge on compensation determined u/s. 23(1) of the Land Acquisition Act.

14. Vide order dated 31-03-2016, the Division Bench i.e. two Judges Bench of Hon'ble High Court of Gujarat in the case of Movaliya Bhikhubhai Balabhai reported in 388 ITR 343 (Guj.) by following the decision of Hon'ble Supreme Court in the case of Ghanshyam (HUF) (supra) held the amount



paid u/s. 28 of the Land Acquisition Act forms part of the compensation which partakes the character of compensation.

15. Vide order dated 08-08-2019, the Division Bench i.e. two Judges Bench of Hon'ble High Court of Bombay in the case of Rupesh Rashmikant Shah reported in 417 ITR 169 (Bom), while dealing with a question under Motor Vehicles Act, held interest awarded in the motor accident claim cases from the date of the claim petition till the passing of the award or in case of appeal, till the judgment of the High Court in such appeal, could not be exigible to tax, not being an income vide para 57. The Hon'ble High Court, since the question involved complex issues, requested a senior counsel as *amicus curie*. The said *amicus curie* opined the taxability of the interest would depend on the nature and the purpose for grant of interest. If it is held that the interest is compensatory in nature and forms part of the compensation, the same may not be exigible to tax. Further, none of the provisions under Sections 194A(3)(ix), 145A(b) and 56(2)(viii) make such interest chargeable to tax if it is otherwise not taxable vide para 17. Considering the decision of Hon'ble High Court of Gujarat in the case of Movaliya Bhikhubhai Balabhai (supra) which held the ratio of Hon'ble Supreme Court in the case of Ghanshyam (HUF) (supra), would continue to apply post amendment in section 145A by virtue of Finance Act, 2009. Further, considering the decision of Hon'ble Supreme Court in the cases of Abati Bezbaruah, Kaushnuma Begum, Patricia G. Mahajan and Dharampal, in the context of motor accident claims, opined the nature of interest awarded in motor accident claims would be that such interest is compensatory in nature and will thus, form part of the compensation itself. The Hon'ble High Court in order to come to such conclusion observed that there was three crucial dates i.e. (i) is the date of accident, (ii) is date of

filing of the claim petition and (iii) is date of passing of the award by Claims Tribunal vide para 56. The Hon'ble High Court was pleased to hold that the interest awarded in the motor accident claims cases from the date of the Claim Petition till the passing of the award or in case of Appeal, till the judgment of the High Court in such Appeal, would not be exigible to tax, not being an income. Further, categorically held the said position would not change on account of clause (b) of section 145A of the Act as it stood at the relevant time amended by Finance Act, 2009 which provision now finds place in sub-section (1) of section 145B of the Act. Neither clause (b) of section 145A, as it stood at the relevant time, nor clause (viii) of sub-section (2) of section 56 of the Act make the interest chargeable to tax whether such interest is income of the recipient or not vide para 57 of the said decision.

16. Vide order dated 16-07-2009, two Judges Bench of Hon'ble Supreme Court in the case of Ghanshyam (HUF) (supra) observed that the provisions of Land Acquisition Act 1894, awards "interest" both as an accretion in the value of the lands acquired and interest for undue delay, interest u/s. 28 of Land Acquisition Act is an accretion to the value of land, hence, it is a part of enhanced compensation or consideration. Interest u/s. 34 is only for delay in making payment after the compensation amount is determined. Having said that opined while dealing the interest u/s. 28 and 34 of the Land Acquisition Act, the vital difference between these two sections needs to be kept in mind while dealing the issues relating to interest u/s. 28 and 34 of the Land Acquisition Act.

17. Vide order dated 15-09-2017, two Judges Bench of Hon'ble Supreme Court in the case of Hari Singh (supra) 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 in the case of Ghanshyam (HUF) (supra) to ascertain whether interest given under the said provisions amounts to compensation or not.

18. Vide order dated 12-09-1996, three Judges Bench of Hon'ble Supreme Court in the case of Bikram Singh & Ors. (supra) observed that the interest received as income on delayed payment of compensation determined u/s. 28 and 34 of the Land Acquisition Act is a revenue receipt and is exigible to tax.

19. Having referred to the various case laws placed reliance by the Id.AR and Id. DR, as discussed by us in the above referred paragraphs of this order, we find the Hon'ble Jurisdictional High Court of Bombay in the case of Rupesh Rashmikant Shah (supra) discussed the issue in detail with reference to effect of substitution of section 145A with effect from 01-04-2010 read with amendment by inserting clause (viii) in section 56(2) of the Act, as the AO in the present case proceeded to allow 50% deduction u/s. 57(iv) and brought to tax remaining 50% u/s. 56(2)(viii) of the Act which is evident from the computation made in para 6 of the assessment order. The Hon'ble High Court was pleased to agree with the ratio laid down by the Hon'ble High Court of Gujarat in the case of Movaliya Bhikhubhai Balabhai (supra), where, it held, the ratio of Hon'ble Supreme Court in the case of Ghanshyam (HUF) (supra) would continue to apply post amendment in section 145A by virtue of Finance Act, 2009. We note that the Hon'ble High Court of Gujarat in the case of Movaliya Bhikhubhai Balabhai (supra) held the substitution of section 145A by Finance (No. 2)

Act, 2009 was not in connection with the decision of Hon'ble Supreme Court in the case of Ghanshyam (HUF) (supra), but was brought into with a view to mitigate the hardship caused to the assessee on account of the decision of Hon'ble Supreme Court in the case of Smt. Ramabai reported in 181 ITR 400 (SC), taking into account Circular No. 5/2010 dated 03-06-2010 issued by the CBDT. It is pertinent to note the law laid down by the Hon'ble Supreme Court in the case of Ghanshyam (HUF) (supra) held, interest u/s. 28 is not like interest granted u/s. 34, the interest granted u/s. 28 is an accretion to the value of land and is a part of enhanced compensation. Further, it also held additional amount granted u/s. 23(1A) and solatium u/s. 23(2) of the Land Acquisition Act is also forms part of enhanced compensation. The Hon'ble High Court of Bombay in view of law laid down by the Hon'ble Supreme Court in the case of Ghanshyam (HUF) (supra) which was followed by the Hon'ble High Court of Gujarat in the case of Movaliya Bhikhubhai Balabhai (supra) observed there are three crucial dates in the context of determination of interest under motor accident claims i.e. date of accident, date of filing of the claim petition and date of passing of the award by Claims Tribunal, while observing so, held the AO had committed an error in levying tax on the interest components of the compensation awarded to the claimant till the date of judgment of the High Court, further held, any interest paid to the claimant post the judgment tax had to be collected as income from other sources. Therefore, it is clear from the judgment of Hon'ble Jurisdictional High Court that no interest could be brought to tax from the date of claim petition till the judgment of High Court. Applying the same principle to the present facts of the case that the interest granted u/s. 28 of Land Acquisition Act on enhanced compensation/compensation by the reference court u/s. 18 of Land Acquisition Act, from the date of possession of land and till the

judgment of High Court, is part of compensation, could not be taxed in view of amendments by substitution of section 145A read with clause (iii) of section 56(2) of the Act.

20. In the present case, the AO simply proceeded on the premise that the amendments to provisions u/s. 145A which bears the heading *method of accounting in certain cases*, section 145A(b) provides that *notwithstanding anything to the contrary contained in section 145, interest received by an assessee on compensation or on enhanced compensation shall be deemed to be the income of the year in which it is received read with section 56(2)(viii) of the Act which provides income by way of interest on compensation or on enhanced compensation referred to in sub-section (1) of section 145B of the Act shall be chargeable to income tax under the head "Income from other sources"*. Therefore, we hold that the interest granted by the reference Court u/s. 28 of the Land Acquisition Act from the date of possession of land till the date of judgment of High Court is an accretion of the value of the land acquired, not chargeable to tax. Thus, we reject the arguments of Id. DR, Shri M.G. Jasnani that the principle laid down by the Hon'ble Jurisdictional High Court of Bombay in the context of motor accident claims is not applicable to the present facts of the case. Therefore, respectfully following the decision of Hon'ble Jurisdictional High Court of Bombay in the case of Rupesh Rashmikant Shah (supra), we hold the interest received u/s. 28 of the Land Acquisition Act would not fall within the ambit of the expression interest as envisaged u/s. 145A(b) of the Act, further, hold that the amendment by way of substitution of section 145A by Finance (No. 2) Act, 2009 w.e.f. 01-04-2010 and amendment by way of insertion of clause (iii) in section 56(2) by Finance Act, 2009 would have no applicability to the facts of the present case and in view of the same the

order of CIT(A) in confirming the order of AO is not justified. Thus, ground Nos. 1 and 2 raised by the assessee are allowed.

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

Order pronounced in the open court on 09<sup>th</sup> February, 2023.

Sd/-  
(Inturi Rama Rao)  
ACCOUNTANT MEMBER

Sd/-  
(S.S. Viswanethra Ravi)  
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 09<sup>th</sup> February, 2023.  
रवि

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-2, Aurangabad
4. The Pr. CIT-2, Aurangabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune