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IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'E' NEW DELHI)

BEFORE SH.SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SH. YOGESH KUMAR U.S., JUDICIAL MEMBER

ITA No. 1674/Del/2023 (A.Y. 2017-18)

Om Prakash 45 Matana Majra, Fatehabad, Haryana **PAN: CMSPP7173D**	Vs.	Principal CIT Rohtak Haryana
Appellant		**Respondent**

Assessee by	Shri Lalit Mohan, CA
Revenue by	Sh. Subhra Jyoti Chakraborty, CIT DR

Date of Hearing	08/04/2024
Date of Pronouncement	19/04/2024

ORDER

PER YOGESH KUMAR, U.S. JM:

This appeal is filed by the Assessee against the order of Learned Pr. Commissioner of Income Tax (Appeals) Rohtak ["Ld. PCIT", for short], dated 28/03/2023 for the Assessment Year 2017-18.

2. Grounds of the Assessee are as under:-

> *"1. That order Cordatedion28.3.2023 w/s 263 of the Act by the learned Pr. Commissioner of Income Tax, Rohtak hath bee Amade without satisfying the statutory preconditions contained in has been made therefore Swithout jurisdiction and thus, deserves to be quashed as such.*

2. That initiation of proceedings u/s 263 of the Act on the basis of proposal of learned Assessing Officer is void-ab-initio therefore basis of proposal land consequent order u/s 263 of the Act without jurisdiction and thus, deserves to be quashed as such.

3. That initiation of proceedings u/s 263 of the Act on the basis of unsigned show cause notice by learned Pr. Commissioner of Income Tax, Rohtak is void-ab-initio therefore both initiation and consequent order u/s 263 of the Act without jurisdiction and thus, deserves to be quashed as such.

4. That the learned Pr. Commissioner of Income Tax has failed to appreciate that action u/s 263 of the Act is not permissible on intimation/orders passed by learned Assistant Director of Income Tax, CPC u/s 154 of the Act

5. That the learned Pr. Commissioner of Income Tax has failed to appreciate that once the learned Assessing Officer on examination of the facts on record and after making all possible enquiries had accepted claim of the appellant then such an order of assessment could not be regarded as erroneous in as much as prejudicial to the interest of revenue merely because the learned Commissioner of Income Tax had a different opinion and that too, without having established in any manner that, view adopted by the learned Assessing Officer was an impossible or unsustainable view.

6. That the learned Principal Commissioner of Income Tax has failed to appreciate that action u/s 263 of the Act is otherwise too inapplicable on the factual matrix of the facts of the instant case since it is not a case of "lack of enquiry" or "lack of investigation" and therefore the invocation u/s 263 of the Act is not in accordance with law. "

3. Brief facts of the case are that, the assessee is an individual. Return declaring income of Rs.5,88,178/- for the A.Y. 2017-18 was filed by the assessee on 31.07.2017. The CPC while processing the return u/s 143(1) of the Income Tax Act, 1961 ('Act' for short) assessed the total income at Rs.1,93,65,172/- by making addition on account of interest received on enhanced compensation from HUDA after the compulsory acquisition of Agricultural Land of the assessee. In the return of income, the assessee claimed interest income of Rs.47,75,510/- as exempt and claimed refund of TDS also. However, the CPC had raised a demand of Rs. 47,75,510/- as against claim of refund of Rs. 18,77,150/- by the assessee. An application u/s 154 of the act was moved by the assessee seeking deletion of addition made by CPC on account of interest received on enhanced compensation, which was rejected by the CPC vide its order dated 06.09.2019. The assessee preferred an appeal against the order dated 06.09.2019 before the Ld. CIT(Appeals) and simultaneous application u/s 154 to the CPC seeking deletion of addition which was made on account of interest on enhanced compensation. The CPC vide its order dated 07.07.2020 accepted

the Assessee's application u/s 154 of the act and granted a refund of Rs. 19,53,280/- as against demand raised originally at Rs.47.75,510/- deleting the addition made on account of interest on enhanced compensation.

4. The Ld. PCIT by exercising the power conferred u/s 263 of the act, initiated proceedings u/s 263 of the Act and was of the opinion that the order passed u/s 154 of the Act is erroneous so far as judicial to the interest of the revenue in terms of Explanation 2 of Section 263 of the Act, accordingly, the order of the CPC dated 07/07/2020 passed u/s 154 of the Act was set aside with a direction to pass a fresh order. Aggrieved by the order of the Ld. PCIT dated 28/03/2023 the assessee preferred the present Appeal on the grounds mentioned above.

5. The Ld. Counsel for the assessee vehemently submitted that the order passed u/s 263 of the Act is contrary to the provision as the Section u/s 263 of the Act is not permissible on an intimation/order passed by the Assistant Director of Income Tax, CPC u/s 154 of the Act. Further submitted that, the issue of

taxability of the interest on the enhanced compensation is subject to two views by the Judicial Orders and when the two views are plausible, the Ld. PCIT cannot pass order u/s 263 of the Act, therefore, sought for allowing the present Appeal.

6. Per contra, the Ld. Departmental Representative made following written submission:-

> *"The assessee has cited ITAT's order in ITA No.1391/Del/2017 and 1389/Del/2017 in case of Manjeet Singh and Puneet Singh wherein ITAT has relied on the decision of Apex Court in the case of Ghanshyam HUF (2nd last para of Pg 14 of ITAT Order). The said decision of Apex Court is dt. 16.07.2009 and deals with A.Y.1999-2000.*
>
> *Subsequently to said judgment of Apex Court, special provision has been made by way of Finance Act, 2009 applicable w.e.f. AY 2010-11, introducing clause (viii) in Section 56(2) and as such, Ghanshyam HUF case is no longer applicable. Further, subsequent to above amendment, Hon'ble Punjab and Haryana High Court, in Mahender Pal Narang Vs CBDT, New Delhi ([2020] 120 taxmann.com 400) dt. 19.02.2020 (AY 2016-17), has examined the matter in view of the amendment brought in by Finance Act, 2009 and held that Apex Court's Judgment in Ghanshyam HUF case will no longer come to the rescue of the assessee (para 10 on Pg 5 of order). Moreover, SC vide order dt.04.03.2021 (120211 126 taxmann.com 105), dismissed SLP filed against said order of HC.*

> *Further, Assessee's claim that proceedings u/s 263 is invalid as there was no lack of enquiry or investigation, since as per Section 263, an order passed by the AO shall also be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the PCIT or CIT, the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any Other person."*

7. We have heard both the parties and perused the material available on record. The undisputed facts are that the CPC while processing the return u/s 143(1) of the Act made addition of Rs. 1,93,65,172/- on account of interest received on enhanced compensation from HUDA after compulsory acquisition of agriculture land of the assessee. An application u/s 154 of the Act was moved by the assessee seeking for deletion of addition made by the CPC on account of interest received on enhanced compensation, which was rejected by the CPC vide order dated 06/09/2019, the assessee filed an Appeal against the order dated 06/09/2019 before the CIT(A) and simultaneously filed an application u/s 154 of the Act to the CPC seeking deletion of addition which was made on account of interest on enhanced compensation. The CPC vide its order dated 07/07/2020, accepted the Assessee's application u/s 154 of the Act and granted refund of

Rs. 19,53,280/- as against the demand raised originally at Rs. 47,75,510/- by deleting the addition made on account of interest on enhanced compensation.

8. It is the case of the Departmental Representative that the Judgment of Apex Court in the case of Ghanshyam HUF (2009) 315 ITR 1 is not applicable to the case in hand as after the said Judgment of the Apex Court, special provision has been made by way of Finance Act, 2009 applicable w.e.f. 2010-11, introducing clause (viii) in Section 56(2) and as such, Ghanshyuam HUF case is no longer applicable. The similar contention of the Department has been considered in detail by the Coordinate Bench of the Tribunal in the case of Gulshan Kumar Vs. PCIT in ITA 1676/Del/2023 (A.Y 2018-19) vide order dated 13/02/2024 wherein held against the Department as under:-

> "*12. We have notice that the CBDT Circular No. 5, dated 03.06.2010 reported in (2010) 324 ITR (St.) 293, it is stated that the Hon'ble Supreme Court in the case of Rama Bai Vs. CIT (supra) has held that arrears of interest computed on delayed or enhanced compensation shall be taxable on accrual basis. This has caused undue hardship to the taxpayers. With a view to mitigate the hardship section 145A has been substituted and clause (viii) in sub- section (2) of section 56 has been inserted by the Finance (No.2) Act, 2009 so as to provide that the interest received on compensation or on enhanced compensation referred to in clause (b) of section 145A shall be assessed as income from other sources in the year in*

which it is received. It is thus evident that the amended provisions of section 56(2)(viii) of the Act r.w. section 145A were brought on the statute to nullify the effect of Hon'ble Supreme Court's ruling in the case of Rama Bai and not Ghanshyam HUF. Moreover, it is brought to our notice by the Ld. AR that the decision in Ghanshyam HUF was pronounced in July, 2016 and the Finance Bill proposing amendment to section 56 was laid in February 2016. So the intention of the legislature could never be the overruling of the ratio laid down in Ghanshyam HUF case. The issue in Rama Bai case involved the taxability in the year of receipt. The facts and questions for determination in Rama Bai's case were different from those of Ghanshyam HUF's case. The position in Ghanshyam HUF'a case has been affirmed by the Hon'ble Supreme Court in Hari Singh's case. Further, the Ld. AR submitted before us that SLP filed by the Revenue in Hari Singh's case has been withdrawn by the Revenue meaning thereby that now the issue has attained certainty.

13. We have gone through the decision of the Hon'ble P & H High Court in the case of Mahender Pal Narang (supra). In that case the land of the assessee was acquired in AY 2007-08 and 2008-09. The enhanced compensation was received on 21.03.2016. In his return filed for AY 2016-17 he treated the interest received under section 28 of the 1894 Act as income from other sources and claimed deduction for 50% as per section 57(iv) of the 1961 Act. The return was processed under section 143(1) of the Act. An application under section 264 was made claiming that by mistake the assessee treated the interest income as income from other sources whereas the same is part of enhanced compensation. The revisional authority rejected the application under section 264 on 30.1.2019. It was in this factual matrix that the assessee filed writ petition before the Hon'ble P & H High Court. The question for consideration was "whether after the insertion of section 56(2)(viii) and 57(iv) of the Act w.e.f. 01.04.2010, can the assessee claim that interest received under section 28 of the Land Acquisition Act, 1894 will partake the character of the compensation and would fall under the head "capital gain" and not "income from other sources ? It was argued by the assessee that there is no amendment in section 10(37) and by insertion of sections 56(2)(vui) and 57(iv), the nature of interest under section 28 of the 1894 Act will remain that of compensation and decisions of the Hon'ble Supreme Court in the case of Ghanshyam (HUF) and the decision of Hon'ble Gujrat High Court in Movaliya Bhikhubhai Balabhai vs ITO TDS (2016) 388 ITR 343 were relied upon.

14. It may be mentioned that the Hon'ble Supreme Court has affirmed its view taken in Ghanshyam HUF's case and the decision of Gujrat High

Court in Movaliya's case in its decision in the case of UOI vs. Hari Singh (2018) 91 taxmann.com 20 (SC). The decision of the Hon'ble Supreme Court in Hari Singh's case (supra) was not brought to the notice of Hon'ble P & H High Court while rendering decision in Mahender Pal Narang's case (supral Hon'ble P&H High Court has thus rendered the decision in Mahender Pal Narang's case in its peculiar facts and circumstances. Accordingly, the opinion of the Ld. PCIT that the Ld. AO should have passed the assessment in accordance with the amended law and binding decision in Mahender Pal Narang's case (supra) overlooking the decision of Hon'ble Supreme Court in Ghanshyam's HUF's case is not sustainable. Reliance of the Ld. CIT-DR on the decision in Mahender Pal Narang's case is misplaced. Needless to emphasis that in V.M. Salgaocar and Bros Pvt. Ltd. vs. CIT 243 ITR 383 (SC), the Hon'ble Supreme Court has held that an order dismissing the SLP at the threshold without detailed reasons does not constitute any declaration of law or a binding precedent. Therefore, overemphasising the fact of dismissal of SLP in limine by the Hon'ble Supreme Court in Mahender Pal's case by the Revenue is not of any legal assistance to it.

15. Record reveals that the order of the Ld. PCIT was prompted solely by the audit objection. Hon'ble P & H High Court has held in CIT vs. Sohana Woollen Mills (2008) 296 ITR 238 (P&H) that mere audit objection cannot lead to an inference that the order of the Ld. AO is erroneous or prejudicial to the interest of the Revenue."

9. Thus, considering the above, we find no merit in the contention of the Ld. D.R. Further, the taxability of interest received by the Assessee on the enhanced compensation u/s 28 of the Land Acquisition Act is a debatable issue, wherein two views are plausible. The A.O. while passing the order u/s 154 of the Act by accepting one of the views, deleted the addition. It is well settled law that when two views are plausible and the issue is also a debatable one, the PCIT cannot assume jurisdiction as held by

the Jurisdictional High Court in the case of CIT Vs. Hindustan Coca Cola Beverages Pvt. Ltd. (2011) 331 ITR 192 (Del), in view of the above discussion, we find no error in the order made under Section 154 of the Act by rectifying the mistake apparent from the record and the Ld. PCIT committed error in quashing the said order by invoking the provision of Section 263 of the Act. Accordingly we quash the impugned order of the Ld. PCIT by allowing the Grounds of appeal of the Assessee.

10. In the result, the Appeal filed by the Assessee is allowed.

Order pronounced in the open court on 19th April, 2024

Sd/-	**Sd/-**
(SHAMIM YAHYA) **ACCOUNTANT MEMBER**	**(YOGESH KUMAR U.S.)** **JUDICIAL MEMBER**

Date:- 19 .04.2024

*R.N, Sr.P.S

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI