

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI**

**BEFORE SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

ITA No.357/Del/2023, A.Y.2018-19

Sanjay Kumar Sharma Village Om Nagar P.O.Budhera Gurgaon-122001(Haryana) PAN : BALPS0709Q	Vs.	Pr. Commissioner of Income Tax C.R.Building Faridabad
(Appellant)		(Respondent)

Appellant by	Sh. K. Sampath, Adv. & Sh. V. Rajkumar, Adv.
Respondent by	Sh. Sanjay Gupta, CIT-DR

Date of Hearing	03/01/2024
Date of Pronouncement	24/01/2024

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal is filed by the Assessee against the order of Learned Pr. Commissioner of Income Tax, Faridabad ["Ld. PCIT", for short], dated 30/12/2022 for the Assessment Year 2018-19.

2. The Grounds of the assessee is as under :-

"That on the facts and in the circumstances of the case and in law the Pr. Commissioner of Income Tax, Faridabad erred in passing order under section 263 of the Income Tax Act, 1961 ('the Act' for short) holding the order passed by the National e-assessment Centre, Delhi to be erroneous

and prejudicial to the interest of revenue and directing the Assessing officer to make a fresh assessment de novo. The order being without jurisdiction, arbitrary, misconceived, erroneous and unlawful must be quashed.”

3. Brief facts of the case are that, the assessee filed return of income for the Assessment Year under consideration claiming refund of Rs. 1,39,820/-. The case of the assessee was selected for complete scrutiny on following issues:-

- (i) Income from other sources
- (ii) Refund claim
- (iii) Winnings from Lottery/Crossword Puzzle/House Races.

The assessment was completed u/s 143(3) read with Section 143(3A) & 143(3B) of the Income Tax Act, 1961 ('Act' for short) vide order dated 24/03/2021 accepting the returned income filed by the assessee. Later on, on perusal of the assessment record, the Ld. PCIT noticed that the assessee received interest of enhanced compensation to the tune of Rs. 1,86,42,030/- u/s 28 of the Land Acquisition Act, 1894 and the A.O. did not conduct enquiry on the said issue, therefore, initiated proceedings u/s 263 of the Act. The order u/s 263 of the Act came to be passed on 30/12/2022, wherein held that the assessment order dated 24/03/2021 passed for the Assessment Year 2018-19 is erroneous, in so far as it is prejudicial to the interest of the Revenue. Accordingly, set aside the assessment order and directed to pass fresh assessment order. Aggrieved by

the order of the Ld. PCIT dated 30/12/2022, the assessee preferred the present Appeal on the Grounds mentioned above.

4. The Ld. Counsel for the assessee submitted that the receipt of interest related to the additional compensation u/s 23 (1A) of the Land Acquisition Act has been duly declared exempt income by the assessee in the return filed on 11/08/2018, therefore, it cannot be construed that such income was undisclosed by the assessee. Further submitted that, the amount in question being additional compensation falls u/s 23(1A) of the Act, the position of law that any amount so received under the Land Acquisition Act, 1894 may be assigned u/s 28 of the Act for interest, is not interest simplicitor but is in the nature of capital, relating as it does to the root of the Compensation as originally granted. The Ld. Counsel for the assessee relied on the Judgment of the Apex Court in the case of CIT Vs. Ghanshyam (HUF) (2009) 315 ITR 1(S.C), and the case of Union of India Vs. Hari Singh. The Ld. Counsel further submitted that the said issue of exemption of interest u/s 28 of Land Acquisition Act, 1894 has been considered by the A.O. and relying on the various judicial precedents not made any addition.

5. The Ld. Counsel for the assessee has also submitted that the A.O. has taken a specific stand based on the settled position of law including Hon'ble Supreme Court, that cannot be interfered u/s 263 of the Act, therefore, sought for allowing the Appeal filed by the assessee.

6. Per contra, the Ld. Departmental Representative relying on the findings and the conclusion of the Ld. PCIT submitted that interest received on the compensation of land acquisition are taxable, therefore, the Ld. CIT(A) rightly invoked the provision of Section 263, therefore, sought for dismissal of the Appeal filed by the assessee.

7. We have heard both the parties and perused the material available on record. The assessee filed return declaring exempt income in so far as the additional compensation received u/s 23 (1A) of the Land Acquisition Act and also claimed refund. During the original assessment proceedings initiated u/s 143(2) of the Act, a notice dated 21/09/2019 u/s 143(2) has been issued by calling upon the assessee to submit the response for which the scrutiny has been selected which are as under:-

- (i) Income from other sources
- (ii) Refund claim
- (iii) Winnings from Lottery/Crossword Puzzle/House Races.

8. The assessee filed reply to the said notice on the issue of 'refund claim' and also other issues. The relevant portion of the reply given by the assessee in respect of the issue of 'refund claim' are as under:-

"4. (ii) Refund Claim

Interest u/s 28 of Land Acquisition Act 1894:

4.1 It may be noted that interest u/ 28 of the Land Acquisition Act 1894 awarded by the Court is a capital receipt being an integral

part of enhanced compensation and is exempt u/s 10(37) of the Income Tax 1961 (the Act).

In this case, the assessee owned ancestral agricultural land situated villages Om Nagar Budhera in the district of Gurgaon, The agricultural land belonging to the assessee had been acquired by the Government of Haryana for Master Water treatment plant. The Land Acquisition Collector by an award no 64 dated 21.12.2009 determined the compensation for the land. On a reference made by the landowners, including the Assessee, the Additional District Judge, by an order dated 16-11-2011, enhanced the compensation. This led to further appeals being filed before the Punjab & Haryana High Court where the compensation was further enhanced along with the statutory benefits. On further appeals by Landowners, the Hon'ble Supreme Court determined the compensation along with the statutory benefits as provided under Sections 23(1A), 23(2) and 28 of the Land Acquisition Act, 1894. The assessee was also awarded enhanced compensation by the Hon'ble High Court in RFA No.311 of 2012 (O&M) order dated 24-05-2016 relying on the Supreme Court decision in Civil Appeal No. 15041 of 2017 (Union of India and ORS vs. Hari Singh and others) order and judgment dated 15.09.2017 holding that the claimants whose land was situated in village Om Nagar Budhera were found entitled to a compensation of Rs. 2,38,00,000/- per acre'. Accordingly, the assessee has received enhanced compensation including interest u/s 28 of the Land Acquisition Act 1894 during F.Y. 2017-18. The assessee has received interest u/s 28 of Land Acquisition Act of Rs. 1,86,42,032/- on which TDS of Rs. 18,64,203/- was deducted. Copy of Form D, copy of certificate confirming acquisition of land of assessee and copy of judgment of Hon'ble High Court of Punjab and Haryana dated 24.05.2016 are enclosed.

4.2. The enhanced compensation awarded by the appellate authority/court to an assessee on acquisition of a capital asset is chargeable as capital gains in the year of receipt u/s 45(5) of the Income Tax Act. But in the case of an individual or HUF such capital gain arising from acquisition of agricultural land being capital asset is exempt from tax u/s 10(37) of the Act. Section 10(37) of the Income Tax Act, 1961 provides that in the case of an assessee being individual or a HUF, capital gains arising from the transfer of agricultural land, being capital asset, by way of compulsory acquisition under any law, or a transfer the consideration for which is determined or approved by the Central Government of the Reserve Bank of India is exempt from tax.

4.3. In such cases, where a land owner files reference/appeal against award on compensation granted by the Land Acquisition Officer, the Court may also award additional amount under Section 23(1-A), solatium under Section 23(2) and interest u/s 28 of the Land Acquisition Act to the assessee apart from enhanced compensation. The assessee may also be entitled to interest u/s 34 of Land Acquisition Act if there is delay in payment at either original or enhanced compensation.

4.4. Interests under section 34 and section 28 of the Land Acquisition Act, 1894 are defined as under

Section 34 of the 1894 Act reads as under: -

"Payment of interest. When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of nine per centum per annum from the time of so taking possession until it shall have been so paid or deposited."

The award of interest under section 34 of the 1894 Act is mandatory and is determined where there is delay in payment of either original or enhanced compensation. Interest under section 34 is for delay in making payment after the compensation amount is determined.

Therefore, the interest awarded under section 34 of the Land Acquisition Act, 1894 is awarded for delay in payment of either original or enhanced compensation being mandatory in nature is revenue receipt and chargeable to tax as 'Income from Other Sources' u/s 56 of the Income Tax Act.

Section 28 of the 1894 Act reads as under: -

"Collector may be directed to pay interest on excess compensation. If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of nine per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court."

The award of interest under section 28 of the 1894 Act is discretionary and is determined by the Court. Section 28 applies when the amount of original compensation has been paid or deposited and when the Court awards excess compensation. Section 28 empowers the Court to award interest on the excess amount of compensation awarded by it over the amount of compensation

awarded by the Collector along with the additional amount u/s 23(1A) and solatium u/ 23(2) of the Land Acquisition Act 1894, forming part of enhanced compensation. Interest paid on the excess amount under section 28 of the 1894 Act depends upon a claim by the person whose land is acquired, and quantum of interest was determined by the Court.

Thus, interest under section 28 of the Land Acquisition Act, 1894 is awarded by the discretionary power of the Court for accretion in the value of the lands, hence, it is part of enhanced compensation or consideration and, therefore, receipt is capital in nature.”

9. The assessee has also relied on the ratio laid down in the case of

- CIT Vs. Ghanshyam (HUF) [2009] 182 Taxman 368/315 ITR 1(S.C)
- CIT Vs. Rajkot Vs. Govindbhai Mamaiya [2014] 52 taxmann.com 270 [2015] 229 Taxman 138/[2014]367
- CIT Vs. Joginder Singh [2013] 37 taxmann.com 43/217 Taxman208
- Movaliya Bhikubhai Balabhai Vs. ITO [2016] 70 Taxmann.com 45/388 ITR
- Surjit Kuamr Chetal Vs. CIT(A)-XV [2017] 86 Taxmann.com 121 (Delhi)

The assessee has also relied on the the plethora of other Judgments and contended before the A.O. that interest u/s 28 of the Land Acquisition Act 1894 awarded by the Court forms part of compensation/enhanced compensation for acquisition of agriculture land. Therefore, prayed for refund of the TDS.

10. Further, the A.O. has also issued one more notice on 03/12/2020 i/s 142(1) of the Act calling upon the assessee to furnish bank account statement highlighting the receipt of “enhanced compensation” received during the year in respect of land acquisition. The assessee vide reply dated 06/01/2021 has given the particular of the enhanced compensation which reads as under:-

“3. Enhance Compensation:

The assessee has received of Land Acquisition Act of Rs.3,32,27,840/- enhanced compensation the cheque received in Bank of Baroda. In which interest amount of Rs. 1,86,42,032/- on which TDS of Rs. 18,64,203/- was deducted. The assessee agricultural land situated in villages Om Nagar Budhera in the district of Gurgaon.

The assessee received interest u/s 28 of the Land Acquisition Act 1894 awarded by the Court is a capital receipt being an integral part of enhanced compensation and is exempt u/s 10(37) of the Income Tax Act 1961”.

11. After considering the reply given by the assessee, the Ld. A.O. satisfied that the amount so received under the Land Acquisition Act, 1894 has not been brought to the tax. By going through the above facts and circumstances, it is found that in the original assessment proceedings, the A.O. has already examined the issue of the refund claim which includes the issue of amount received by the assessee under the Land Acquisition Act.

12. From the above, it is observed that it is not a case wherein the Assessing Officer failed to conduct enquiry rather it is the case wherein the Assessing Officer has conducted an elaborate enquiry and adopted one of the two views which was plausible view. The question would be as to whether in such circumstances the power u/s 263 of the Act would be invoked or not. The above said question is no longer res-integra and the said issue is well settled in several decisions. In the case of Malabar Industrial Co. Ltd. vs. Commissioner

of Income Tax, (2000) 243 ITR 83 (SC). The Hon'ble Supreme Court held as follows :-

“The phrase “prejudicial to the interests of the Revenue” has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the Revenue. For example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of Revenue ; or where two views are possible and the Income-tax Officer has taken one view which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue, unless the view taken by the Income-tax Officer is unsustainable in law.”

13. Further, the Hon'ble Supreme Court in the case of Pr. CIT vs. Canara Bank Securities Ltd., S.L.P.(C) No. 25651 of 2019, vide order dated 14th October, 2019 dismissed the Department's appeal affirming the view taken by the Bombay High Court in ITA No.1761 of 2016, dated February 11, 2019, wherein the High Court held that the question whether the income should be taxed as business income or has arisen from other source was a debatable issue and the Assessing Officer had taken the plausible view that it was a business income after due enquiries and therefore not open for the Commissioner to take such an order in revision. Even in the present case,

whether the receipt of interest related to the additional compensation granted under Land Acquisition Act, 1894 is a part of exempt u/s 10 (37) of the Act or not is a debatable issue, therefore, following the ratio laid down by the Hon'ble Supreme Court in Malabar Industrial Co. Ltd. vs. Commissioner of Income Tax (supra) and other decisions mentioned above, we are of the considered opinion that the impugned order of the Ld. PCIT is found to be erroneous, accordingly, order impugned of the Ld. PCIT is hereby quashed.

14. In the result, appeal filed by the Assessee is allowed.

Order pronounced in open Court on 24th January, 2024.

Sd/-

(N.K.BILLAIYA)
ACCOUNTANT MEMBER

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Dated: 24/01/2024
Binita/R.N, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI

