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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 13666/2018

MURARI LAL NARANG .... Petitioner

Through: Mr. Rohit Jain, Mr. Samarth Chaudhari and Mr. Aniket D. Agrawal, Advocates.

versus

PR. COMMISSIONER OF INCOME TAX, DELHI-13 ..... Respondent

Through: Mr. Vipul Agrawal, SSC with Mr. Gibran Naushad, JSC and Ms. Sakashi Shairwal, JSC.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE AMIT BANSAL

O R D E R

% 22.05.2024

1. The writ petitioner impugns the order dated 15 March 2018 in terms of which its application seeking to invoke the powers conferred on the Principal Commissioner of Income Tax ["**PCIT**"] by virtue of Section 264 of the Income Tax Act, 1961 ["**Act**"] has come to be rejected. The petitioner has additionally prayed for the framing of a direction requiring the respondents to revise the intimation issued under Section 143(1) and consequently granting exemption under Section 10(37) of the Act in respect of interest on enhanced compensation that was received by it in terms of Section 28 of the Land Acquisition Act, 1894.

2. Insofar as the invocation of the revisional power is concerned, the PCIT has in our opinion rightly observed that the Section 264

power is meant for correction of an order passed by a subordinate authority. It is in the aforesaid context that the PCIT has held that an intimation under Section 143(1) of the Act would not be subject to review under Section 264 of the Act. The authority has, in this respect, observed as follows:

> "**3.1** The purpose of section 264 is to set right any mistake committed in an order passed by a subordinate authority. To interpret it otherwise, i.e. to be wide enough to be able to revise a belated return when no mistake has been committed by any subordinate authority, in the name of benevolent interpretation not only renders restrictions imposed by section 139(5) irrelevant but would also be against the decision of Hon'ble Supreme Court and is not permissible.
> **3.2** Further, the intimation u/s 143(1) is not an order in itself, especially when there is no adjustments or difference in tax/ interest/ refund computation. This is so because the Explanation (b) below section 143(1) states that...
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> > the acknowledgement of the return shall be deemed to be the intimation in a case where no sum is payable by, or refundable to, the assessee under clause (c), and where no adjustment has been made under clause (a).
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> In the case of the appellant, there is neither any adjustment nor any amount payable or refundable. Hence the intimation u/s 143(1) is not even an order and for this reason also beyond the purview of section 264, atleast in the facts of the applicant.
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> **3.3** Further in the case of Vijay Gupta, 386 ITR 443 (Delhi), while holding that an intimation is an order for section 264, the Hon'ble Court also considered the fact that there existed an order u/s 154 and all material was already4on record for the Commissioner to consider when application u/s 264 was made. This is not the case here. From, the records of the appellant upto the time of the making of application u/s 264 it cannot be inferred that there is a mistake or the appellant has been charged excess. The records consist only of the Return of Income and Intimation. It is also not clear whether the returns in the case of Vijay Gupta were filed within or beyond due date u/s 139(1). It may be mentioned that the Hon'ble Court did not have an occasion to consider the provisions of section 139(5) or the explanation (b) below section 143(1) or the decision of the Hon'ble Supreme Court in Kumar Jagdish Chandra Sinha or Goetze (India) Ltd. in which the Hon'ble Court prohibits revision of belated returns and holds that claims can be made only through revised returns. To allow revision of belated return though the section 264 will be against the statute and also the Hon'ble Apex

> Court decisions and therefore I have to differ with the decision in the case of Vijay Gupta and reject the application of the assessee u/s 264."

3. The PCIT thereafter also rendered the following observation in respect of the exemption which was claimed:

> "**3.4** Even on merits, the reliance of the assessee on the decision of Hon'ble Apex Court in Ghanshyam HUF (315 ITR 1) to claim full relief from interest payments received on enhanced compensation is not admissible in view of the insertion of section 57(iv) in the Income Tax Act w.e.f. 01.04.2010. The section allow 50% deduction in respect of interest received on compensation or on enhanced compensation, which the applicant has claimed in Return of Income and been allowed too. The relief now claimed, 100% on interest, is not admissible after insertion of section 57(iv). Therefore, even on merits, no interference is required in the intimation u/s 143(1)."

4. Quite apart from the view as expressed by the PCIT, we find that the question of interest on enhanced compensation and whether it would partake the character of income from other sources is one which has been independently answered by us in **Principal Commissioner of Income Tax-10 vs. Inderjeet Singh Sodhi** [2024 SCC OnLine Del 2532]. While dealing with this aspect we had held as under:

> **"18.** The solitary question which arises for our consideration in the present appeal is whether the interest on enhanced compensation received by the respondent-assessee partakes the character of income from other sources under Section 56(2)(viii) of the Act, to be considered as separable from the enhanced compensation.
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> **19.** At the outset, it is significant to refer to Sections 28 and 34 of the Act of 1894, which deal with the payment of interest on compensation, and read as under:—
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> > **"28. Collector may be directed to pay interest on excess compensation.—**
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> > 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."

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"34. 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.

Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry."

20. A reading of Section 28 of the Act of 1894 indicates that the said provision comes into play in cases where the Court finds that some higher compensation ought to have been provided by the Collector. In such situations, the Court may direct for payment of an interest on the excess awarded amount. Whereas, Section 34 of the Act of 1894 stipulates that the Collector shall award interest on the compensation at the rate of 9% per annum from the date of taking possession. It further lays down the condition that in case of non-payment despite expiry of a period of one year, the said interest on the amount of compensation which remains unpaid, shall be awarded at the rate of 15% per annum, calculable from the date of such expiry.

21. It is the contention of the respondent-assessee that the interest awarded under Section 28 of the Act of 1894, as discussed above, shall constitute a part of the compensation itself. The ITAT has also drawn strength from the observation of the Hon'ble Supreme Court in the case of *Ghanshyam* (supra) and the relevant paragraph of the said decision reads as under:—

"35. To sum up, interest is different from compensation. However, interest paid on the excess amount under Section 28 of the 1894 Act depends upon a claim by the person whose land is acquired whereas interest under Section 34 is for the delay in making payment. This vital difference needs to be kept in mind in deciding this matter. Interest under Section 28 is part of the amount of compensation whereas

interest under Section 34 is only for delay in making payment after the compensation amount is determined. Interest under Section 28 is a part of enhanced value of the land which is not the case in the matter of payment of interest under Section 34."

22. However, *vide* Finance (No. 2) Act, 2009 (with effect from 01.10.2010), Clause (viii) of sub-Section 2 to Section 56 of the Act was inserted and the same is extracted hereunder as:—

"56. Income from other sources.—

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(2) In particular and without prejudice to the generality of the provisions of sub-section (1), the following incomes shall be chargeable to income tax under the head "Income from other sources", namely:—

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[(*viii*) income by way of interest received on compensation or on enhanced compensation referred to in [sub-section (*1*) of Section 145-B].]"

23. For the sake of clarity, Section 145-B of the Act is reproduced as under:—

"[**145-B. Taxability of certain income**.—(1) Notwithstanding anything to the contrary contained in Section 145, the interest received by an assessee on any compensation or on enhanced compensation, as the case may be, shall be deemed to be the income of the previous year in which it is received.

(2) Any claim for escalation of price in a contract or export incentives shall be deemed to be the income of the previous year in which reasonable certainty of its realisation is achieved.

(3) The income referred to in sub-clause (*xviii*) of clause (*24*) of Section 2 shall be deemed to be the income of the previous year in which it is received, if not charged to income-tax in any earlier previous year.]"

24. A conjoint reading of the aforementioned provisions i.e., Sections 56(2)(viii) and 145-B of the Act vividly stipulate that the income received by way of interest on compensation or on enhanced compensation shall be chargeable to tax under the head 'income from other sources'. Therefore, since the position with

respect to the imposition of tax on interest on compensation or enhanced compensation, as it exists today, came into being only in the year 2010, the conclusions drawn from the decision in *Ghanshyam* (supra), which was passed in the year 2009, are unsustainable in the facts of the present case.

25. Further, much reliance has been placed by the ITAT upon the decision of the Hon'ble Supreme Court in the case of *CIT* v. *Govindbhai Mamaiya* [(2014) 16 SCC 449], which relies upon the case of *Ghanshyam* (supra) to hold that the interest on enhanced compensation received under Section 28 of the Act of 1894 is exigible to tax on receipt basis. However, a deeper analysis of the decision in *Govindbhai Mamaiya* (supra) would show that it does not deal with any issue pertaining to the change in the taxability, put in place through the concerned amendment of 2010. Therefore, the said decision lacks any applicability in the facts and circumstances of the present case.

26. Notably, a three-Judges Bench of the Hon'ble Supreme Court in the case of *Sham Lal Narula (Dr.)* v. *CIT* [(1964) 53 ITR 151], while considering the interest under Section 28 of the Act of 1894 to be analogous to the interest under Section 34 of the Act, took the view that the same did not form part of compensation. The relevant extract of the said decision is culled out as under:—

> "9. —
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> As we have pointed out, earlier, as soon as the Collector has taken possession of the land either before or after the award the title absolutely vests in the Government and thereafter the owner of the land so acquired ceases to have any title or right of possession to the land acquired. Under the award he gets compensation for both the rights. **Therefore, the interest awarded under Section 28 of the Act, just like under Section 34 thereof, cannot be a compensation or damages for the loss of the right to retain possession but only compensation payable by the State for keeping back the amount payable to the owner.**
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> __"

[Emphasis supplied]

27. The decision in *Sham Lal Narula* (supra) was subsequently followed by the Hon'ble Supreme Court in the case of *Bikram Singh* v. *Land Acquisition Collector* [(1997) 10 SCC 243], wherein, it was held that interest under Section 28 of the Act of 1894 was in the nature of a revenue receipt and hence, the same was considered

to be taxable. The relevant paragraphs of the said decision read as under:—

> "8. The controversy is no longer res integra. This question was considered elaborately by this Court in *Sham Lal Narula (Dr)* v. *CIT*[(1964) 53 ITR 151 : AIR 1964 SC 1878]. Therein, K. Subba Rao, J., as he then was, considered the earlier case-law on the concept of "interest" laid down by the Privy Council and all other cases and had held at p. 158 as under:
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> > "In a case where title passes to the State, the statutory interest provided thereafter can only be regarded either as representing the profit which the owner of the land might have made if he had the use of the money or the loss he suffered because he had not that use. In no sense of the term can it be described as damages or compensation for the owner's right to retain possession, for he has no right to retain possession after possession was taken under Section 16 or Section 17 of the Act. **We, therefore, hold that the statutory interest paid under Section 34 of the Act is interest paid for the delayed payment of the compensation amount and, therefore, is a revenue receipt liable to tax under the Income Tax Act."**
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> 9. This position of law has been consistently reiterated by this Court in the case of *T.N.K. Govindaraju Chetty* v. *CIT* [(1967) 66 ITR 465 : AIR 1968 SC 129], *Rama Bai* v. *CIT* [1990 Supp SCC 699 : (1990) 181 ITR 400] and *K.S. Krishna Rao* v. *CIT* [(1990) 181 ITR 408 (SC)]. **Thus by a catena of judicial pronouncements, it is settled law that the interest received on delayed payment of the compensation is a revenue receipt exigible to income tax**. It is true that in amending the definition of "interest" in Section 2(28-A), 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. That was explained by the Board in the circular referred to hereinbefore."

[Emphasis supplied]

28. In the case of *Puneet Singh* (supra), the High Court of Punjab and Haryana, while enunciating the effect of Section 145A(b) and Section 56(2)(viii) of the Act, has held as under:—

> **"19. The cumulative effect of section 145A(b) and section 56(2)(viii) would be that any interest received on compensation or on enhanced compensation shall be taxable under the head "Income from other sources" in the year of receipt.**
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> 20. However, by section 27 of the 2009 Act, a new clause (iv) in section 57 has been inserted with effect from April 1, 2010 which lays down that in the case of income of the nature referred to in section 56(2)(viii), a deduction of a sum equal to 50 per cent. of such income would be allowable thereunder and no deduction would be allowed under any other clause of section 57. The said provision reads thus:
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> > "57. Deductions.—The income chargeable under the head 'Income from other sources' shall be computed after making the following deductions, namely : . ..
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> > (iv) in the case of income of the nature referred to in clause
> >
> > (viii) of sub-section (2) of section 56, a deduction of a sum equal to fifty per cent. of such income and no deduction shall be allowed under any other clause of this section."
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> 21. The Assessing Officer in I. T. A. No. 132 of 2018 where the assessee had received Rs. 11,30,561 as interest income, held that the interest payment received on compensation/enhanced compensation to the tune of Rs. 5,65,280 (50 per cent. of Rs. 11,30,561) is taxable as income from other sources as per provisions of sections 56(2)(viii) read with 57(iv) and section 145A(b) of the Act for the assessment year 2010-2011. The Commissioner of Income-tax (Appeals) and the Tribunal had upheld the order of the Assessing Officer in that regard.
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> 22. No illegality or perversity could be pointed out by learned counsel for the assessee in the concurrent findings of fact recorded by the authorities below which may warrant interference by this court. No question of law, much less, substantial question of law arise in these appeals.

23. Accordingly, finding no merit in the appeals, the same are hereby dismissed."

[Emphasis supplied]

29. Considering the foregoing discussion, we affirm the concurrent findings of the AO and CIT(A) and find that the view taken by the ITAT is unsustainable, as the same is based on an incorrect appreciation of law. The 2010 amendment was a conscious departure by the Legislature from the earlier position and the said departure holds good law, as on date. There is no question with respect to the *vires* of the amendment before us or regarding any ambiguity in the language of the amendment. The only concern is regarding the enunciation of the applicable law and we hold the same to unequivocally mean that interest, whether on compensation or on enhanced compensation, shall be considered as income from other sources and shall be exigible to income tax.

30. We, accordingly, answer the substantial question of law which has arisen in the instant appeal in affirmative and in favour of the Revenue. We, thus, hold that the ITAT has erred in relying upon the decision of *Ghanshyam* (supra), ignoring the changes brought about by Finance (No. 2) Act, 2009, which came into effect in the year 2010."

5. In view of the aforesaid we find that the writ petition clearly lacks merit and is accordingly dismissed.

YASHWANT VARMA, J

AMIT BANSAL, J

MAY 22, 2024/kk