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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 17971 of 2019
Date of decision: February 19, 2020

Mahender Pal Narang

.. Petitioner

v.

Central Board of Direct Taxes, New Delhi and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Pankaj Jain, Senior Advocate with
Mr. Divya Suri and Mr. Sachin Bhardwaj, Advocates
for the petitioner.

Mr. Sandeep Goyal, Senior Standing Counsel for
the respondents.

...

AVNEESH JHINGAN, J.

Aggrieved of the order dated 30.1.2019 dismissing the revision under Section 264 of the Income Tax Act, 1961 (for short, 'the 1961 Act'), the present petition is filed.

The issue involved in narrow circumference is “whether after the insertion of Sections 56(2)(viii) and 57(iv) of the Act w.e.f. 1.4.2010, can the assessee claim that interest received under Section 28 of the Land Acquisition Act, 1894 (for short, 'the 1894 Act') will part take the character of the compensation and would fall under the head “Capital gains” and not “Income from other sources”?”

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The relevant facts are that the land of the petitioner was acquired in the assessment years 2007-08 and 2008-09. The enhanced compensation was received on 21.3.2016. The petitioner filed income tax return for the assessment year 2016-17 treating 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 1961 Act. An application under Section 264 of the 1961 Act was made claiming that by mistake the petitioner treated the interest income as income from other sources whereas the same is part of enhanced compensation. The revisional authority rejected the application on 30.1.219.

The relevant provisions are quoted below:

"Section 10(37) of the 1961 Act

Incomes are not included in total income.

xx xx xx

10. (37) in the case of an assessee, being an individual or a Hindu undivided family, any income chargeable under the head "Capital gains" arising from the transfer of agricultural land, where--

(i) such land is situate in any area referred to in item (a) or item (b) of sub-clause (iii) of clause (14) of section 2;

(ii) such land, during the period of two years immediately preceding the date of transfer, was being used for agricultural purposes by such Hindu undivided family or individual or a parent of his;

(iii) such transfer is by way of compulsory acquisition under

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any law, or a transfer the consideration for which is determined or approved by the Central Government or the Reserve Bank of India;

(iv) such income has arisen from the compensation or consideration for such transfer received by such assessee on or after the 1st day of April, 2004.

Section 56(2)(viii) (inserted by Finance (No.2) Act 2009 w.e.f. 1.4.2010.

Income from other sources.

56(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:--

xx xx xx

(viii) income by way of interest received on compensation or on enhanced compensation referred to in clause (b) of Section 145A.

Section 57(iv) of the 1961 Act

Deductions.

57. The income chargeable under the head "Income from other sources" shall be computed after making the following deductions, namely:-

xx xx xx

(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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Section 145A(b) (inserted by the Finance (No. 2) Act 2009 w.e.f. 1.4.2010.

Method of accounting in certain cases.

145A. Notwithstanding anything to the contrary contained in section 145,--

xx xx xx

(b) interest received by an assessee on compensation or on enhanced compensation, as the case may be, shall be deemed to be the income of the year in which it is received."

Section 10 deals with the incomes not to be included in the total income. Sub-section (37) to Section 10 provides for deduction from capital gain arising from the transfer of agricultural land. Sub-clause (iii) deals with transfer by way of compulsory acquisition. Sub-clause (iv) deals with the income arising from the compensation or consideration for transfer. Section 56(2)(viii) provides that interest received on compensation or enhanced compensation referred to in clause (b) of Section 145A would be chargeable under "income from other sources". Section 57 provides for deduction of income chargeable under the head "Income from other sources" and clause (iv) provides that for income referred to in clause (viii) of sub-section (2) of section 56, there would be deduction of fifty per cent. Section 145 provides for accounting method. Clause (b) of Section 145A provides that interest received on compensation or enhanced compensation shall be deemed to be income for the year in which it is received.

Learned counsel for the petitioner argued that there is no amendment in Section 10(37) of the 1961 Act and by insertion of Sections 56(2)(viii) and 57(iv), the nature of interest under Section 28 of the 1894

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Act will remain that of compensation. To fortify the submission, he relies upon the decision of the Supreme Court in **Commissioner of Income-tax v. Ghanshyam (HUF), (2009) 315 ITR 1.** The contention is that as per the decision of the Apex Court, the interest under Section 28 of the 1894 Act is not compensatory for delay but would be treated akin to compensation. He buttresses his contention by relying upon Central Board of Direct Taxes Circular No. 5 of 2010 to contend that the amendment brought in 2010 was to remove the hardships created by the decision of the Supreme Court in **Rama Bai v. Commissioner of Income Tax, (1990) 181 ITR 400.** Reliance is placed upon the decision of Gujarat High Court in **Movaliya Bhikhubhai Balabhai v. Income Tax Officer (TDS)** (2016) 388 ITR 343.

Before dealing with the contentions, relevant portion of the circular is quoted below:

> "**46. Rationalizing the provisions of taxation of interest received on delayed compensation or on enhanced compensation.**
>
> **46.1** The existing provisions of Income Tax Act provide that income chargeable under the head "Profits and gains of business or profession" or "Income from other sources", shall be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee. Further, the Hon'ble Supreme Court in the case of *Rama Bai vs. CIT (181 ITR 400)* 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.

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46.2 With a view to mitigate the hardship, section 145A is amended to provide that the interest received by an assessee on compensation or enhanced compensation shall be deemed to be his income for the year in which it was received, irrespective of the method of accounting followed by the assessee.

46.3 Further, clause (viii) is inserted in the sub-section (2) of the section 56 so as to provide that income by way of 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.

46.4 ***Applicability-*** This amendment has been made applicable with effect from 1st April, 2010, and will accordingly apply in relation to assessment year 2010-11 and subsequent assessment years."

Section 45 of the 1961 Act deals with capital gains. By Finance Act, 1987, sub-section (5) was inserted in Section 45 and as per its clause (b), the enhanced compensation shall be chargeable under the head "Capital gains" of the previous year in which the amount is received by the assessee. This issue came up before Apex Court in **Ghanshyam's case (supra).** Considering Sections 45(5) and 155(16) of the 1961 Act, it was held that enhanced compensation received under the 1894 Act may be received in multiple stages but the same is to be treated as "deemed income" at the time when it is received and is to be taxed on receipt basis. It was further held, the fact that enhanced compensation is in dispute and the withdrawal is

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conditional will not make a difference. While dealing with the said issue, it was held that interest on enhanced value of land forms part of compensation and is exigible to tax in the year of receipt whereas interest on delayed payment of enhanced compensation is income in a different nature.

The scheme with regard to chargeability of interest received on compensation and enhanced compensation has undergone a sea change with the insertion of Sections 56(2)(viii) and 57(iv) of the 1961 Act. Section 56 deals with income from other sources and a specific provision has been inserted by way of sub-section 2(viii), whereby the interest received on compensation or enhanced compensation, as referred to in clause (b) to Section 145A has been included under the head 'Income from other sources'. In clause (iv) to Section 57, deduction of fifty per cent is provided on interest received on compensation or enhanced compensation.

In view of the amendments, the decision of Apex Court in **Ghanshyam's case (supra)** does not come to the rescue of the petitioner to claim that interest received under Section 28 of the 1894 Act is to be treated as compensation and to be dealt with under “Capital gains”. The fact that there is no amendment carried out under Section 10(37) of the 1961 Act will not change the position. Section 10 deals with deductions and sub-section (37) thereof deals with capital gains arising from transfer of agricultural land, it no where provides as to what is to be included under the head “Capital gains”. The argument raised is not well founded.

Learned counsel has relied on Circular No. 5 of 2010 by merely reading clause 46.1. The said clause talks about undue hardship being caused as arrears of interest being taxable on accrual basis. Clause

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46.2 states that Section 145A is amended to overcome the difficulty, by deeming the income for the year in which it is received. Clause 46.3 has been ignored in which Section 56(2)(viii) is dealt with that interest on compensation or on enhanced compensation referred to in clause (b) of Section 145A shall be assessed as "income from other sources".

Gujarat High Court in **Movaliya Bhikhubhai Balabhai's case (supra)** while dealing with deduction of tax at source relying upon Circular No. 5 of 2010 held that amendment to the provisions of the 1961 Act by Finance Act, 2010 Act was not in connection with the decision of Supreme Court in **Ghanshyam's case (supra)** but to mitigate the hardship caused by the decision of Supreme Court in **Rama Bai's case (supra).** It was held that interest under Section 28 of the 1894 Act continues to part take the character of compensation and will not fall within the ambit of expression "interest". In view of discussion above, we with utmost respect are not in agreement with the view taken by Gujarat High Court. There is another aspect, i.e. the language of Sections 56(2)(viii) and 57(iv) of the 1961 Act is plain, simple and unambiguous. There is no scope of taking outside aid for giving an interpretation to newly inserted sub-sections and clauses. Supreme Court in **M/s I.T.C. Ltd. v. Commissioner of Central Excise, New Delhi and another, 2004(7) SCC 591** held as under:

> "23. ..... These decisions exemplify the general rule of statutory construction that words have to be construed strictly according to their ordinary and natural meaning, particularly when the statute is a fiscal one irrespective of the object with which the provision was introduced. Of course if there is ambiguity in the statutory language, reference may be made to

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the legislative intent to resolve the ambiguity. But if the statutory language is unambiguous then that must be given effect to. The legislature is deemed to intend and mean what it says. The need for interpretation arises only when the words used in the statute are, on their own terms ambivalent and do not manifest the intention of the legislature."

In view of the above, it is held that the interest received on compensation or enhanced compensation is to be treated as "income from other sources" and not under the head "Capital gains".

The writ petition is dismissed.

(AVNEESH JHINGAN)
JUDGE

(AJAY TEWARI)
JUDGE

February 19, 2020
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No

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