

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

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
and
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No.499/Del./2021
(ASSESSMENT YEAR : 2016-17)

Shri Pranav Saran,
C/o RRR TAXINDIA,
D-28, South Extension Part-1,
New Delhi - 110 049.

vs. ACIT, Circle 32 (1),
New Delhi.

(PAN : ACKPS6842G)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Dr. Rakesh Gupta, Advocate
Shri Somil Agarwal, Advocate
REVENUE BY : Shri Ajay Kumar, Senior DR

Date of Hearing : 15.02.2022
Date of Order : 04.05.2022

O R D E R

PER AMIT SHUKLA, JM

The aforesaid appeal has been filed by the assessee against the impugned order dated 18.03.2021, passed by the Id. National Faceless Appeal Centre (NFAC), Delhi for the quantum of assessment passed under section 143(3) of the Income-tax Act, 1961 (for short 'the Act') for the Assessment Year 2016-17.

2. In the grounds of appeal, the assessee has raised following grounds :-

"1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in not allowing the benefit of exemption claimed by the assessee u/s 10(37) on the compulsory acquisition of agricultural land under the Land Acquisition Act and more so when all the conditions have been complied with by the assessee and further erred in exercising his jurisdiction u/s 251(2) in treating the subject agricultural land as 'Capital Asset' U/S 45(5) and that too by recording incorrect facts and findings and without appreciating the facts and circumstances of the case and in violation of principles of natural justice and without considering the submission filed by the assessee and without providing the entire adverse material available on record.

2. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in not allowing the benefit of exemption claimed by the assessee u/s 10(37) on the compulsory acquisition of agricultural land under the Land Acquisition Act and more so when all the conditions have been complied with by the assessee and further erred in exercising his jurisdiction u/s 251 (2) in treating the subject agricultural land as 'capital asset' u/s 45(5), is bad in law and against the facts and circumstances of the case.

4. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in holding as under:-

(a) That the land in question is a 'Capital Asset', whose acquisition by state Government is a transfer of capital asset wherein the principal compensation received by the appellant is chargeable to under the head 'Capital Gains' u/s 45 of Income Tax Act, 1961.

(b) That interest on enhanced compensation is to be treated as 'Income from Other Sources' u/s 56 of Income Tax Act, 1961.

4. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in treating the interest on enhanced compensation as interest simpliciter whereas such interest is to be treated as part of compensation itself in view

of authoritative judicial decisions and being part of compensation, ought to qualify for exemption u/s 10(37) of Income Tax Act, 1961.”

3. Facts, in brief, are that the assessee has filed his original return of income at Rs.3,34,10,040/- on 03.08.2016. Later on, return was revised at Rs.1,70,83,650/- which was filed on 23.03.2018. The case of the assessee was selected for limited scrutiny under CASS on the following grounds :-

“Sale consideration of property reported by the assessee in schedule CG of ITR is less than the compensation on acquisition of immovable property reported by transferee of property in TDS return (for TDS u/s 194L and 194LA).”

4. The assessee has declared interest received on enhanced compensation u/s 28 under the Land Acquisition Act, 1894, of Rs.3,31,93,013/-. Later on, in the revised return, the assessee has claimed 50% deduction u/s 57 of the Act on the said interest. The AO accepted the interest income at Rs.1,70,83,650/- as shown in revised return. However, during the course of assessment proceedings, the assessee had raised a claim by way of letter that even the balance amount of 50%, i.e., Rs.1,70,83,650/- itself was not taxable as enhanced interest was awarded u/s 28 of the Land Acquisition Act and, therefore, such interest income partakes the nature of compensation as held by Hon'ble Supreme Court in the case of UOI & Ors. Vs. Hari Singh reported in 302 CTR 458 (SC) and CIT vs.

Ghanshyam (HUF) (2009) 315 ITR 1. According to the assessee, since the land was agricultural land being used for agricultural operations in for last many years of acquisition and, therefore, such agricultural land which was acquired by the Government and thus compensation received from the Government is exempt u/s 10(37) of the Act. The AO however did not accept this claim.

5. The assessee then raised this issue before the NFAC. Ld. NFAC however, instead of dealing with the controversy raised in the grounds of appeal and was subject matter of appellate proceedings that amount of interest received on the acquisition of land u/s 28 of the Land Acquisition Act is exempt, has held that the land itself is not agricultural and, therefore, there is no question of any exemption u/s 10(37) of the Act. Accordingly, there was an enhancement. One of the allegations of the first appellate authority is that assessee has not given any other evidence to show that impugned land was agricultural land and merely relied upon the RTC. The entire case of the first appellate authority revolves around the fact that the land, which was the subject matter of award for compensation, was not used for agricultural purposes. All the evidences filed before the first appellate authority to substantiate that it was agricultural land have been rejected and finally, it was held that the land was not agricultural land

albeit it had commercial value having a strategic location and, therefore, exemption u/s 10(37) cannot be allowed. The judgments which was relied upon by the assessee has been distinguished and many judgements have been quoted by him from his side and finally it was concluded as under:-

“44. From the above facts and judicial pronouncements the appellant does not fulfill the conditions for claiming exemptions under section 10(37) of the Income tax Act, 1961. The nature and character of land, as seen from various documents submitted by the appellant during the assessment and appellate proceedings acquired by the Haryana Government under compulsory acquisition cannot be called Agricultural Land under the provisions of the Income-tax Act, 1961. In view of the above facts and circumstances the land in question is a ‘Capital Asset’, whose acquisition by State Government is a transfer of capital asset wherein the principle compensation received by the appellant is chargeable under the head Capital Gains under section 45 of the Income-tax Act, 1961. Interest on the enhanced compensation is to be treated as ‘Income from other sources’ under section 56 of the Income-tax Act, 1961. The AO is directed accordingly.”

6. Before us, ld. counsel for the assessee, Dr. Rakesh Gupta submitted that insofar as the interest on enhanced compensation u/s 28 of the Land Acquisition Act in respect of agricultural land also partakes the character of a compensation and, therefore, he is entitled for compensation u/s 10(37) of the Act. In support, he relied upon various judgments which are as under :-

- (i) *ITO vs. Gordhan, ITA No.3996/2018 dated of order 15.01.2019 (Del.);*
- (ii) *Smt. Sushma Gupta vs. ITO, ITA No.1823/2016, dated of order 31.01.2019 (Del.);*
- (iii) *ITO vs. Shri Vinayak Hari Palled, ITA No.05/2017 date of order 12.10.2018 (Bang.)*
- (iv) *Jagmal Singh vs. ITO, ITA No.2340/2018 date of order 20.09.2018 (Del.);*
- (v) *ITO vs. Shri Basavaraj M Kundarikannur, ITA Nos.1747 & 1750/2017 dated of order 01.06.2018 (Bang.);*
- (vi) *Shri Yashpal Singh vs. ITO, ITA No.755/2013 date of order 18.03.2014 (Asr);*
- (vii) *Sumesh Kumar vs. ITO, ITA No.5207/2017 date of order 05.03.2020 (Del.);*
- (viii) *Shri Baldev Singh vs. ITO, ITA No.2970/2015 date of order 08.03.2019 (Del.);*
- (ix) *ITO vs. Shri Dhanender Kumar HUF, ITA No.1591/2018 date of order 30.09.2019 (Chd);*
- (x) *Shri Ummed Singh & Ors. vs. ITO, ITA Nos.5774-5777/2016 date of order 30.01.2020 (Del.); and*
- (xi) *Mahesh Kumar Gupta vs. DCIT, ITA No.5986/2016 date of order 16.10.2019 (Del.)*

Copies of which have been filed in the paper book before us.

7. Thus, insofar as the assessee's claim for exemption u/s 10(37) is concerned, the same cannot be denied insofar as interest on enhanced compensation received u/s 28 of the Land Acquisition Act. He also

referred to copy of award, as appearing in pages 140 to 146 of the paper book, passed by Land Acquisition Collector where it has been categorically mentioned that the award classified the land as "Chahi" which means irrigated land. The award also mentioned that there were tubewells and trees and the land was under Kharif crop and farmers have requested for permission to harvest the crop after ripening or allowing them due compensation for the same and the Land Acquisition Collector has allowed the owners for harvesting of the crop. He also referred to Form 'D' issued by Land Acquisition Officer which is issued in the case of compulsory acquisition of land which itself goes to show that it was agricultural land only. This Form 'D' issued by LAO has been signed by him and Patwari and Kanungo certifying that it was an agricultural land. He also referred to copy of jamabandi at pages 73 to 75 of the paper book which clearly shows that the land was under self-cultivation and there were tubewells and it was irrigated land establishing the nature of land as agriculture. He also pointed out that in the earlier income-tax returns starting from AY 2004-05 onwards; assessee had shown agricultural income from these land only.

8. Ld. NFAC issued notice u/s 251(2) that land does not fall under the parameter of agricultural land. In response, the assessee had

submitted the entire evidences showing that land acquired was agricultural land and for which copy of jamabandi, Form-D, copy of award, etc. was enclosed. The assessee had also submitted the girdwari which gives the description of the crops produced in various years. Hence, Ld. Counsel submitted that ld. NFAC erred on law and facts in holding that compensation which was awarded on the acquisition of the land by the Government was not an agricultural land. In the light of these evidences and record, he submitted that such a finding should be reversed.

9. On the other hand, ld. DR for the Revenue submitted that first of all, interest received u/s 28 of the Land Acquisition Act is not part of compensation and is taxable and in support decisions of Hon'ble Punjab & Haryana High Court in case of Manjit Singh (2016) 65 taxman.com, Mahender Pal Narang vs. CBDT 423 ITR 13 and Punit Singh vs. CIT (A) 110 taxman 16. Thus, AO has rightly denied the exemption u/s 10(37) of the Act holding that interest received on enhanced compensation u/s 28 of the Land Acquisition Act is taxable. Insofar as observation and the finding of the ld. NFAC that it was not agricultural land, he strongly relied upon the finding and reasoning of the ld. first appellate authority.

10. We have heard rival submissions and also perused the relevant findings given in the impugned order as well as the material referred to before us. Here in this case, the assessee is having agricultural land in Village Gulab Nagar, HB-404, Tehsil Jagadari, District Yamuna Nagar, Haryana. The assessee's land was acquired by the Government of Haryana and Land Acquisition Collector had announced award on 16.07.2007 fixing the market value of the land at Rs.20,00,000/- per acre. Later on, it was awarded enhanced compensation of Rs.95,00,000/- per acre by Hon'ble Supreme Court. The assessee was awarded interest u/s 28 of the Land Acquisition Act of Rs.3,31,93,013/- and had claimed deduction of 50% in the revised return and accordingly, in the return of income, the assessee has shown income on this amount of interest at Rs.1,70,83,650/-. Later on, during the course of assessment proceedings, the assessee claimed that this interest is not taxable at all, because such interest is enhanced income u/s 28 of the Land Acquisition Act and, therefore, it partakes the character of compensation which is held to be not taxable by Hon'ble Supreme Court in the case of CIT vs. Ghanshyam HUF and in the case of UOI vs. Hari Singh (supra). Ld. AO however held that the same is taxable. In the appeal filed before the first appellate authority, NAFC, the first appellate authority changed the entire

nature of controversy and held that the amount on which compensation was awarded itself was not an agricultural land and, therefore, assessee is not entitled for any exemption u/s 10(37) of the Act which was brought into the statute to safeguard the interests of the farmers by the State Government under schemes of compulsory acquisition.

11. First of all, we will deal with the contention raised by the Id. DR for the Revenue that whether interest awarded u/s 28 of the Land Acquisition Act is part of compensation is taxable or not. According to the provisions of Land Acquisition Act, when the land is acquired the Collector may be directed to pay interest on excess compensation to the landowner u/s 28 of the Land Acquisition Act which is by the order of the Court and for the period the till excess compensation is deposited in the court. The said section has following limb :-

Matter	Section	Period	Rate
To be awarded by the court along with the excess compensation award	28	From the date of taking possession of land by the collector to the date of payment of excess award in the court	9%
Court may also direct for payment of this interest if enhanced compensation is paid into court after the date of expiry of. Of one year from the date on which position is taken	28	From the date of expiry of. Of one year of the date of possession till the amount is deposited in the court.	15%

12. In *Bikram Singh vs. Land Acquisition Collector* (1996) 89 taxmann 119 (SC) three judges bench decisions dated September 12, 1996 considered the provisions of Section 2 (28A) of the income tax act and defined the meaning of the interest. The issue before the court was whether interest received on amount of compensation Under the land acquisition act 1894 for the delay in its payment was income receipt or not. The claim before the Hon'ble court by the assessee is that payment of interest is only a payment in consideration of loss of enjoyment of the possession of the land by the owner and not by way of any charge on compensation and therefore it was not exigible to income tax. It was also the claim that definition of interest u/s 2 (28A) is confined only to money lending business between a debtor and the creditor. The Hon'ble High Court of Punjab and Haryana in that case has held that the interest is not part of compensation but it is awarded for depriving assessee of user of such compensation due to delay in payment and such is income. The Hon'ble Supreme Court:

- i. Rejected the contention that definition of interest in Section 2 (28A) is only confined to money lending business. It held that the meaning of the interest Under the income tax act to mean interest payable in any manner in respect of an incurred including a deposit, claim or obligation and includes - - -

- ii. It held that once it is construed that any interest is a revenue receipt unless there is an exemption under the appropriate provision the revenue receipt is exigible to tax. It held that interest received as income on the delayed payment of the compensation determined under the provisions of the land acquisition act is a taxable event and therefore it is a revenue receipt exigible to tax u/s 4.
- iii. The Hon'ble court held that the controversy was decided greatly in the case of Dr sham Lal Narula versus CIT (1964) 53 ITR 151 [another three judges bench of Hon SC] wherein the definition of the interest was considered. It was held that when the title has passed on to the state any statutory interest provided thereafter can only be regarded either as representing the profit which the owner of the land might have made if here the use of the money or the losses suffered because he had not that use it cannot be held to be as damages or compensation. The court in that case held that the interest paid u] s 34 of the act is interest paid for the delayed payment of compensation and therefore it is a revenue receipt liable to tax under the income tax act.
- iv. The court also considered several decisions of the Hon'ble Supreme Court in case of 66 ITR 465, 181 ITR 400 & 181 ITR 408.
- v. The Hon'ble court in para number 10 categorically held that interest received as income on the delayed payment of the compensation determined u/s 28 or 31 [?] {sic 34} of the

land acquisition act is taxable event. It held that it is a revenue receipt chargeable to tax u/ s 4 of the act.

- vi. In that para only the court also hinted that appellants are entitled to spread over the income for which payment came to be made so as to compute the income for assessing tax for the relevant accounting year.
- vii. It upheld the order of the Hon'ble Punjab and Haryana High Court.

13. Then in July 2019 the Hon'ble Supreme Court had another occasion to determine the interest on compensation received by the assessee in case of [2009] 182 Taxman 368 (SC)/[2009] 315 ITR 1 (SC)/[2009] 224 CIT versus Ghanshyam (HUF). The Hon'ble Supreme Court held that:-

- i. Year of taxability of enhanced compensation is the year of receipt.
- ii. Interest is different from compensation
- iii. Interest paid on the excess amount u/s 28 depends upon the claim of the landowner, interest u/ s 34 for compensating delay in making payment.
- iv. Interest u/s 28 is part of the compensation for the reason that it includes within its ambit both the market valuation and solatium.
- v. Interest u/s 34 is only for delay in making payment after the compensation amount is determined.

- vi. Interest u/s 28 is part of the enhanced value of land and is distinct from interest u/s 34 of the act.
- vii. The provisions of the income tax act were not at all considered in that case

15. The Hon'ble Supreme Court was once again seized of the issue in case of Union of India versus Hari Singh and others where the order was passed on September 15, 2017 wherein it has been held that when the compensation is paid the assessing officer should keep into mind the provisions of Section 28 of the land acquisition act and the law laid down by the Hon'ble Supreme Court in case of can sham HUF in order to ascertain whether the interest given Under the said provision amounts to compensation or not.

16. By the Finance Act (Number 2) Act 2009 with effect from 1 April 2010 there is an amendment Under the provisions of Section 56 (2) (viii) which provided that income by way of interest received on compensation or on enhanced compensation referred to in clause (B) of Section 145A is an income. A corresponding provision was also introduced u/s 57 (iv) providing for deduction of a sum equal to the 50% of the income chargeable to tax under the above provision. The provisions of Section 145A (B) was also introduced providing that interest received by the assessee shall be deemed to be the income of the year in which it is received. Subsequently with retrospective effect

from 1.4.2017 The Finance Act 2018 provided that income by way of interest received on compensation or enhanced compensation is chargeable to tax as income from other sources Under the provisions of Section 56 (2) (viii) of the act.

17. Hon'ble High Court of Punjab and Haryana has taken a consistent view that interest received on delayed payment of compensation under either Section 28 or u/s 34 is taxable as income from other sources in the year of the receipt under the act. Such view was after considering the order of the Hon'ble Supreme Court in Dr Shyam Lal Narula, Bikram Singh, (supra). In the cases of Puneet Singh versus CIT (2019) 110 taxmann.com 16 and Manjeet Singh HUF versus Union of India (2016) 65 taxmann.com 160, wherein similar issue was involved, in those decisions the interest received u/s 28 of the land acquisition act was in question and it was held that same is chargeable to tax u/s 56 of the act. It further held that the decision of the Hon'ble Punjab and Haryana High Court in case of CIT versus Bir Singh HUF does not require any consideration in view of the judgment of the Hon'ble Supreme Court in case of Ghanshyam HUF. The Hon'ble High Court also held that in view of the authoritative pronouncement of the Hon'ble Supreme Court in case of Shaymlal Narula, Govindraja Chetty , Amarjit Singh, Sunder and Bikram Singh, Rama Bai and K S

Krishna Rao, the assessee cannot derive any benefit from the observation made by the Hon'ble Supreme Court in the case of Ghanshyam HUF.

18. This issue arose before the Hon'ble Gujarat High Court in case of Movaliya Bhikhubhai Balabhai vs. ITO (2016) 70 taxmann.com 45 (Gujarat), wherein it has been held that interest on compensation or enhanced compensation u/s 28 of the land acquisition act forms part of compensation and not an interest as contemplated Under the provisions of Section 145A of the act and therefore same are not taxable Under the head income from other sources and revenue was not justified in deducting tax at source u/s 194A of the act. Before the Hon'ble Gujarat High Court, revenue placed reliance upon the decision of the Hon'ble Punjab and Haryana High Court in case of Hari Kishan versus Union of India and CIT versus Bir Singh HUF. The reliance was also placed upon the decision of the Hon'ble Supreme Court in case of Dr Sham Lal Narula, Govindaraju and Bikram Singh. The Hon'ble Gujarat High Court after considering all the decisions of the various courts disagreed with the view taken by the Hon'ble Punjab and Haryana High Court and held that interest received u/s 28 of the income tax act is part of the compensation and is not an interest as

contemplated u/s 145A of the income tax act and therefore same is not taxable u/s 56 (2) of the act.

19. An interesting fact was noted by the Hon'ble Gujarat High Court that Hon'ble Punjab and Haryana High Court in case of Jagmal Singh versus State of Haryana in civil revision number 7740 of 2012 on 18 Jul 2013 has clearly held that the interest u/s 28 is part of the compensation unlike u/s 34 of the act which is income. This was the solitary judgment of the Hon'ble Punjab and Haryana High Court taking a view that interest on compensation u/s 28 of the land acquisition act is not an income chargeable to tax as interest but is part of compensation. However, in the latest decision of Hon'ble Punjab & Haryana High Court in the case Mahindra Pal Narang vs. CBDT (2020) 423 ITR 13 dated 19/2/2020 wherein the Hon'ble High Court considered the provisions of Section 10 (37), 56 (2) (viii), 57 (iv), 145A (b) of the income tax act. It rejected the reliance by the assessee on the decision of Hon'ble Supreme Court in Ghanshyam HUF. It further rejected the reliance by the assessee on the decision of the Hon'ble Gujarat High Court in Movaliya's case holding that the Hon'ble Gujarat High Court did not read properly the paragraph number 46.3 of the circular number 5 of 2010 where all interest received on compensation or on enhanced compensation shall be

assessed as income from other sources in the year in which it is received. It further held that in view of the amendment to the provisions of the income tax act decision of the Hon'ble Supreme Court in the case of Ghanshyam does not come to the rescue of the assessee. It further held that the language of the income tax act with respect to the chargeability of interest as income is plain, simple and unambiguous and therefore no scope of taking outside aid for giving any interpretation to this subsection or clauses are required. Thus it held that interest received on compensation or enhanced compensation is to be treated as income from other sources and not under the head capital gains. Special leave petition against this decision has been dismissed by the Hon'ble Supreme Court.

20. Thus, there are divergent views on this taxability of interest on the enhanced compensation awarded u/s 28 of the Land Acquisition Act wherein the Hon'ble Punjab & Haryana High Court has consistently taking a view that it is an income to be treated under the head 'income from other sources'. The Hon'ble Gujarat High Court has decided this issue in favour of the assessee following the decision of Hon'ble Supreme Court in the case of Ghanshyam (supra). Since the AO of the present case falls under the jurisdiction of Hon'ble Delhi High Court, therefore following the dictum that, if one High Court is in

favour of the assessee, then in absence of any jurisdictional High Court, that should be followed in favour of the assessee. Thus, ratio of Hon'ble Punjab & Haryana High Court may not have any binding precedent. Thus, the interest on the enhanced compensation u/s 28 of the Land Acquisition Act is not taxable.

21. Coming to the issue of whether the land was an agricultural land or not, from the bare perusal of various evidences which were filed before the Id. first appellate authority viz. –

- (i) Award showing the land as irrigated land;
- (ii) Existence of tubewells, tress and kharif crops;
- (iii) Form No.D issued by Land Acquisition Officer which was signed by him and also by Patwari & Kanungo clearly mentioned that the amount paid to the assessee is against agricultural land;
- (iv) Jamabandi showing the nature of crops produced; and
- (v) Income-tax returns showing agricultural income;

it cannot be inferred even remotely that the land which was acquired by the Government was not an agricultural land. The observation and the finding of the Id. first appellate authority despite noting down these evidences does not have any basis to negate these evidences nor any independent enquiry has been made to counter these evidences. In fact the entire impugned order revolves around on various case laws

and the facts discussed herein which has been distinguished by Id. counsel before us. However, we do not find it relevant to discuss here, as none of the case laws are relevant for the present case in the light of these evidences. Once the Land Acquisition Officer as well as court have awarded the compensation treating to be an agricultural land and not only that, all the Revenue departments have certified that it was an agricultural land and substantial proof has been given that agricultural activities were being carried out, then to say that it was a commercial land and not an agricultural land, is unjustifiable.

22. Therefore, we hold that firstly, it was an agricultural land on which the compensation has been awarded by the court; and secondly, the interest received on enhanced compensation u/s 28 of the Land Acquisition Act is part of compensation and hence is not taxable, accordingly assessee is entitled for exemption u/s 10(37) of the Act.

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

Order was pronounced on this 4th day of May, 2022.

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Dated: 04.05.2022

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
4. CIT(A)
5. CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.