

आयकर अपीलीय अधिकरण , ' सी ' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"C" BENCH, CHENNAI**

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND**  
**SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

**आयकर अपील सं./ I.T.A. No. 188/Mds/2017**

**&**

**C.O. No. 32/Mds/2017**

**निर्धारण वर्ष/Assessment Year : 2013-14**

The Income Tax Officer,  
Ward 1(2),  
Erode.

Shri S. Narayanan,  
Vs. No. 207, Agraharam Street,  
Erode – 638 001.

**[PAN: BKFPS 9440G]**

**(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent & Cross  
Objector)**

अपीलार्थी की ओर से/Appellant by

: Shri Asish Tripathi, JCIT

प्रत्यर्थी की ओर से/Respondent by

: Shri N.C. Ravikrishnan, Advocate

सुनवाई की तारीख/Date of Hearing

: 12.09.2017

घोषणा की तारीख/Date of Pronouncement

: 31.10.2017

**आदेश/ O R D E R**

**PER S. JAYARAMAN, ACCOUNTANT MEMBER:**

The Revenue filed an appeal against the order of the Commissioner of  
Income Tax (Appeals)-3, Coimbatore, in ITA No. 4/16-17 dated 22.11.2016

for assessment year 2013-14 and the assessee filed the CO in ITA No. 32/2017.

2. Shri. S. Narayanan, the assessee, an individual admitted his income from brokerage. While making the assessment for assessment year 2013-14, the AO found that the assessee's lands in Muthampalayam Village, Erode District belonging to him and others was acquired by the State Government in 1991 and the compensation was sanctioned by the award no. 2/2009 dated 21.06.2000. The assessee went on appeal against the order requesting for enhanced compensation to the High Court, which passed the order on 02.06.2009. Subsequently, Hon'ble Supreme Court has awarded enhanced compensation along with interest. On perusing the calculation sheet duly endorsed by the Executive Engineer as well as the Revenue District Officer, the AO noted that the assessee has been awarded the compensation for the land as well as interest on the compensation and the assessee has received Rs. 2,44,56,449/- total interest. Invoking section 145A(b) r.w.s. 56(iii) r.w.s. 57(iv), the Assessing Officer added 50% of the interest receipt at Rs. 1,22,28,224/- to the return income. Aggrieved, the assessee filed an appeal before the CIT(A). The CIT(A) applying the ratio of the Supreme Court in the case of CIT Faridabad vs Ganshayam (HUF) 315 ITR 1 SC held that since the land compulsorily acquired by the State Government is agricultural

in nature , the interest received is part of enhanced compensation and hence the compensation as well as the enhanced compensation is an income which is exempted u/s. 10(37) . Since it does not form part of the total income, the provisions of section 56 do not apply. Aggrieved, the Revenue filed this appeal. The assessee filed the CO supporting the order of the CIT (A).

3. The Revenue mainly challenged the CIT (A) order for the reason that the assessee has received interest @ 9% as well as 15% p.a. as per the work sheet provided by the Revenue Divisional Officer, Erode . The interest received @ 15% p.a. is in the nature of interest for the delayed payment and hence taxable for which no exemption can be granted. The CIT (A) ought to have appreciated that the interest received by the assessee is in the nature of interest for delayed payment as envisaged in section 34 of the Land Acquisition Act, 1894 which is substantiated by the working sheet issued by the Revenue Divisional Officer, Erode. The AO was right in considering the interest so received which is not part of the compensation as income of the assessee in terms of the provisions of section 56(2)(viii) r.w.s. 145A.

4. We heard the rival contentions, gone through the orders of the lower authorities. The Supreme Court in the case of CIT, Faridabad vs Ganshyam (HUF) 2009, 315 ITR 1 SC after analysing various provisions of

the Land Acquisition Act, 1894 held , inter alia, that Section 23(1A) provides for additional amount. It takes care of increase in the value at the rate of 12 % per annum. Similarly, under Section 23(2) of the 1894 Act , there is a provision for solatium which also represents part of enhanced compensation. Similarly, Section 28 empowers the court in its discretion to award interest on the excess amount of compensation over and above what is awarded by the Collector. It includes additional amount under Section 23(1A) and solatium under Section 23(2) of the said Act. Section 28 of the 1894 Act applies only in respect of the excess amount determined by the court after reference under Section 18 of the 1894 Act. It depends upon the claim, unlike interest under Section 34 which depends on undue delay in making the award. It is true that "interest" is not compensation. It is equally true that Section 45(5) of the (IT) 1961 Act refers to compensation. But as discussed hereinabove, we have to go by the provisions of the 1894 Act which awards "interest" both as an accretion in the value of the lands acquired and interest for undue delay. Interest under Section 28 unlike interest under Section 34 is an accretion to the value, hence it is a part of enhanced compensation or consideration which is not the case with interest under Section 34 of the 1894 Act. So also additional amount under Section 23(1A) and solatium under Section 23(2) of the 1894 Act forms part of enhanced compensation under Section 45(5)(b) of the 1961 Act.

5.1 Section 10 (37) of the Income Tax Act,1961 is extracted as under:

*"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 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 1<sup>st</sup> day of April, 2004.*

*Explanation – For the purpose of this clause, the expression "compensation or consideration" includes the compensation or consideration enhanced or further enhanced by any court, tribunal or other authority;"*

5.2 From the above, it is clear that but for the interest granted u/s. 34 of the Land Acquisition Act, 1894, all other grants/awards under the Land Acquisition Act, 1894 are accretion to the value ie part of the compensation for the agricultural land or consideration towards the agricultural land , chargeable under the head "Capital gains" arising from the

transfer of agricultural land but exempt u/s 10 (37), supra. However, the interest granted u/s. 34 of the Land Acquisition Act, 1894 is not part of compensation or consideration enhanced by any Court, tribunal or other authority and hence the interest received u/s. 34 of the Land Acquisition Act, 1894 becomes an income of the assessee within the scope of section 56(2)(viii) r.w.s. 145A. Neither the Assessing Officer nor the CIT (A) has given the break-up or the components of the compensation including the enhanced compensation or consideration for the agricultural land and the interest received u/s 34 of the Land Acquisition Act, 1894.

6. In the circumstance, we deem it fit to set aside the order of the CIT (A) and restore the matter to the AO. The A O shall re-examine the matter on the above lines and after giving adequate opportunity to the assessee , charge the interest granted u/s. 34 of the Land Acquisition Act, 1894 as an income u/s. 145A r.w.s. 56(2)(viii) r.w.s. 57. To this extent, the Revenue's appeal is treated as allowed. We have considered the CO filed by the assessee , to the extent the Revenue's appeal is treated as allowed , the CO is treated as dismissed.

7. In the result, Revenue's appeal in ITA No. 188/Mds/2017 is treated as allowed and the assessee's C O No. 32/Mds/2017 is treated as dismissed.

Order pronounced on 31<sup>st</sup> October, 2017 at Chennai.

**Sd/-**

(एन.आर.एस. गणेशन)

**(N.R.S. GANESAN)**

**न्यायिक सदस्य/Judicial Member**

**Sd/-**

(एस जयरामन)

**(S. JAYARAMAN)**

**लेखा सदस्य/Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated: 31<sup>st</sup> October, 2017

**JPV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

- |                        |                          |                              |
|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त) अपील(/CIT(A) |
| 4. आयकर आयुक्त/CIT     | 5. विभागीय प्रतिनिधि/DR  | 6. गार्ड फाईल/GF             |