

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.168/PUN/2016

निर्धारण वर्ष / Assessment Year : 2011-12

Dnyanoba Shajirao Jadhav,
25, Vilas Trading Company,
Malang Galli, Shivaji Nagar,
Latur - 413531

PAN : AAOPJ6840M

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward - 3(3), Latur

.....प्रत्यर्थी / Respondent

Assessee by : N O N E
Revenue by : Shri Achal Sharma

सुनवाई की तारीख / Date of Hearing : 15-01-2018

घोषणा की तारीख / Date of Pronouncement : 29-01-2018

आदेश / ORDER

PER VIKAS AWASTHY, JM :

This appeal has been filed by the assessee assailing the order of Commissioner of Income Tax (Appeals)-2, Aurangabad dated 04-12-2015 for the assessment year 2011-12.

2. The notice of appeal was issued to the assessee on 12-12-2017 through RPAD for 15-01-2018. The notice was duly served on the assessee. A copy of acknowledgment card is on record. The assessee vide letter dated 08-01-2018 has conveyed that the appeal may be decided on the basis of submissions and the papers submitted along with Form No. 36. Thus, the assessee has waived his right to appear before the Tribunal. Accordingly, we proceed on to decide this appeal by the assessee on the basis of material available on record and the submissions of ld. DR.

3. The brief facts of the case as emanating from records are: The assessee is engaged in the business of trading in Coconut and is also a partner of M/s. K.D. Jadhav, Latur. The agricultural land of the assessee was acquired by the State Government for Minor Irrigation Division, Latur in the year 1993. The assessee received compensation for acquisition of land Rs.77,43,080/- including interest Rs.52,96,632/- u/s. 28 of the Land Acquisition Act, 1894 (hereinafter referred to as "the LA Act"). The assessee filed his original return of income for the impugned assessment year on 10-10-2011 declaring total income of Rs.8,06,540/-. Thereafter, the assessee filed revised return of income on 27-03-2012 declaring total income of Rs.34,54,859/-. The assessee again revised his return of income on 25-10-2012 declaring total income of Rs.8,06,543/-. The case of the assessee was selected for scrutiny under CASS and accordingly, notice u/s. 143(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") was issued to the assessee on 07-08-2013. During the course of scrutiny assessment proceedings, the Assessing Officer observed that the assessee in his second revised return of income has claimed total amount of compensation including interest as exempt u/s. 10(37) of the Act. The Assessing Officer following the decision of Hon'ble Supreme Court of India

in the case of Bikram Singh & Ors. Vs. Land Acquisition Collector & Ors. reported as 224 ITR 551 held that the interest received on compensation/enhanced compensation u/s. 28 and 34 of the LA Act are revenue receipt, chargeable to tax u/s. 56(2)(viii) of the Act. The Assessing Officer further held that the assessee is eligible for deduction @ 50% u/s. 57(iv) of such income. Accordingly, after allowing such deduction the Assessing Officer made addition of Rs.26,48,316/-.

Aggrieved by assessment order dated 17-02-2014, the assessee filed appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) vide impugned order upheld the findings of Assessing Officer and dismissed the appeal of assessee. Now, the assessee is in second appeal before the Tribunal.

4. The assessee has raised following grounds of appeal before us :

- “1]. *The CIT(A) has failed to appreciate and consider the scheme of Land Acquisition Act and accordingly the award of interest under the provisions of section 23(1A) & 23(2) r/w Sec. 28 of the Land Acquisition Act covers under the **“Part-III of the LAQ Act, which relates to Reference to court and procedure thereon for enhance the compensation as a value of land and damages for acquisition of land”** and hence, it is not revenue receipt and not liable to tax. Therefore, finding of the CIT(A) may please be vacated and it may please be held that interest received u/s. 28 under LAQ is a capital receipts and not liable to tax in the case of appellant. Thus, addition may please be deleted.*
- 2]. *On the facts and in the prevailing circumstance of the case and in law, the Learned CIT(A) has grossly erred in holding that the elements of Interest received of Rs.26,48,316/-, on account of acquisition of Agricultural land, under the provisions of section 23(1A) & 23(2) r/w Sec. 28 of the Land Acquisition Act as per court order, is liable to tax. Therefore, addition made by the A.O may please be deleted.*
- 3]. *On the facts and circumstances of the case, whether the ld. CIT(A) was right in law and on facts in holding that Interest received under section 28 of the Land Acquisition Act, is a taxable event?*
- 4]. *On the facts and circumstances of the case, and with due respect to the decision relied by the CIT(A), appellant would like to rely upon the decision of Hon. Supreme Court in the case of CIT Vs Ghanshyam*

(HUF) (2009) 315 ITR-1(SC), dt.16-07-2009, which is logically as well as with reference to the scheme of the provision of Sections 23, 23(1A), 23(2), 28 and 34 of the 1894 Act, gives the right view in respect of the taxability of compensation received under these provision, as explained in the decision. Therefore, when there are conflicting decisions, the rule of Judicial Precedence demands that the view favorable to the assessee must be adopted, as held by the Hon'ble Supreme Court in the case of CIT vs. Vegetable Products Ltd., 88 ITR 192. Thus, the finding of the CIT(A) may please be vacated and addition may please be deleted.

5]. *The Appellate craves the permission to add, amend, modify, alter, revise, substitute, delete any or all grounds of the appeal, if deemed necessary at the time of hearing of the appeal.”*

5. The assessee has not filed any separate written submissions before the Tribunal. The only relevant document before us apart from grounds of appeal and orders of authorities below available for consideration on behalf of the assessee are the written submissions dated 14-10-2015 filed before the Commissioner of Income Tax (Appeals). The same are reproduced here-in-below :

*“To
The Commissioner of Income Tax (Appeals)-2,
Aurangabad.*

Hon'ble Sir,

*Sub : Further submission reg.....
Ref : i) PAN : AAOPJ6840 M
ii) Appeal No...../ 13-14
iii) Concise revised Grounds of appeal filed on
-09-2015
iv) Our earlier submission filed on -09-2015*

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Please refer to the above

2] *With reference to the subject cited above, and in continuation of our earlier submission, it is further submitted as under for your honour's kind perusal and sympathetic consideration that :*

*(i) In our earlier submission it was brought to your honour's kind notice, that **“The taxability of the receipt under Land Acquisition Act is defers case to case considering the nature of asset and related facts of the each case.”***

(ii) Let us see by examples, as to how the taxability differs to the facts of each case.

[A] Shri Rama Patil.

He is agriculturist. His agricultural lands situated in the small village having population of 4000, was acquired under LAQ Act and he has received the following compensation. He had claimed the said compensation as exempt, because of the facts that his agricultural land was outside of the purview of definition of Capital Gain, as per provision of section 2(14) of the I.T Act. Therefore, assessee has claimed entire compensation as exempt.

Particulars	Amount of Compensation
Value of land as enhanced	80,60,000
As per Court Compensation for trees	5,78,182
Solatum u/s. 23(2)..	25,91,454
Component... u/s. 23(1A)	35,41,655
Total	1,47,71,291
Less : Com as per original award....	25,38,882
Balance.....	1,22,32,409
Add; Compensation u/s. 28 by interest	2,64,83,163
Total Compensation of the land.....	3,87,15,572
Interest u/s. 34 for delayed payments...say	1,12,84,428
Total amount received under LAQ	5,00,00,000

The Assessing Officer has noted the relevant facts that the said land is situated in the small village having population of 4000 only. A.O has examined the correctness of the claim of the assessee regarding not liable to tax. However, on further verification A.O noted that the said land is a Capital Asset and as it is situated within 8 K,M from the municipality limit and hence, A.O has rejected the claim.

Further, A.O has taxed the entire compensation of Rs.3,87,15,572/- as a Capital Gain and Rs.1,12,84,428/- as a Revenue receipt.

[B] Shri. Gopal Kasat

He is agriculturist. His agricultural lands situated in the small village having population of 4000 only, was acquired under LAQ Act and he has received the following compensation. He had claimed the said compensation as exempt, because of the facts it was disputed at the relevant time before court of law. According to him only interest elements u/s.34 of Rs. 1,12,84,428/- can be taxed on the finality of court matter.

Particulars	Amount of Compensation
Value of land as enhanced	80,60,000
As per Court Compensation for trees	5,78,182
Solatum u/s. 23(2)..	25,91,454
Component... u/s. 23(1A)	35,41,655
Total	1,47,71,291
Less : Com as per original award....	25,38,882
Balance.....	1,22,32,409
Add; Compensation u/s. 28 by interest	2,64,83,163
Total Compensation of the land.....	3,87,15,572
Interest u/s. 34 for delayed paymentsay	1,12,84,428
Total amount received under LAQ	5,00,00,000

The Assessing Officer has noted the relevant facts that the said land is situated in the small village having population of 4000 only. A.O has examined the correctness of the claim of the Mr. Gopal Kasat regarding the said compensation is not liable to tax as the said land is outside of the purview of capital assets (Sec.2(14)). However, on further verification A.O noted that the intention of the assessee to purchase the said lands is only to earn the profit and not to cultivate the land and hence, A.O treated the entire Compensation amount as a "adventure nature of trade" invoking the provision of section 2(13) of the I T Act and taxed entire compensation as business income.

On the similar facts as noted above, compensation was taxed u/s. 2(13) of the I T Act, as a business income, in the decision in the case of Gopal Kasat and others of the High Court of Judicature at Bombay, Aurangabad Bench, Aurangabad. Copy of the decision is enclosed herewith. **[Ann-A]**

[C] Shri. Tukaram Patil

He is agriculturist. His agricultural lands situated in the small village having population of 4000, was acquired under LAQ Act and he has received the following compensation. He had claimed the said compensation as exempt, because of the facts that his agricultural land was outside of the purview of definition of Capital Gain, as per provision of section 2(14) of the I.T Act. Therefore, assessee has claimed entire compensation as exempt.

Particulars	Amount of Compensation
Value of land as enhanced	80,60,000
As per Court Compensation for trees	5,78,182
Solatium u/s. 23(2)..	25,91,454
Component... u/s. 23(1A)	35,41,655
Total	1,47,71,291
Less : Com as per original award....	25,38,882
Balance.....	1,22,32,409
Add; Compensation u/s. 28 by interest	2,64,83,163
Total Compensation of the land.....	3,87,15,572
Interest u/s. 34 for delayed payments...say	Nil
Total amount received under LAQ	3,87,15,572

The Assessing Officer has noted the relevant facts that the said land is situated in the small village having population of 4000 only. A.O has examined the correctness of the claim of the assessee regarding not liable to tax and accepted it. However, A.O is of the opinion that the interest of Rs. 2,64,83,163/-u/s.28 of LAQ act is taxable to tax, being revenue receipt and accordingly A.O taxed it.

- 3] Further, the Jurisdictional Bombay High Court has observed in Para 30 in the decision in the case of Gopal Kasat and others, cited supra that:

30. The Apex Court in the case of Commissioner of Income Tax. Vs. Ghanshyam (HUF) ((2009) 26 DTR (SC) 129) has observed thus: ".....It is important to note that compensation, including enhanced compensation/ consideration under the 1894 Act, is based

on the full value of property as on date of notification under Section 4 of that Act. When the Court/Tribunal directs payment of enhanced compensation under Section 23(1A) or Section 23(2) or under Section 28 of the 1894 Act, it is on the basis that award of Collector or the Court, under reference, has not compensated the owner for the full value of the property as on date of notification.”

In the aforesaid judgment, the Apex Court has also held that the 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. However, in the present case, we are not concerned with the interest under Section 34 of the Land Acquisition Act. We are only concerned with the interest under Section 28 which is payable on excess amount of compensation over and above what is awarded by the Collector. The Apex Court has held that the enhanced compensation, including interest under Section 28, becomes payable at different stages, the receipt of such enhanced compensation / consideration is to be taxed in the year of receipt subject to adjustment, if any, under Section 155(16) of the 1961 Act. It has further been held that even in cases where pending appeal, the Court/ Tribunal/ authority before which appeal is pending, permits the claimant to withdraw, against security or otherwise, the enhanced compensation, the same is liable to be taxed under Section 45(5) of the said Act. The Apex Court has further held that when the assessee claimant is in receipt of enhanced compensation, it shall be treated as "deemed income" and taxed on receipt basis.

31.....

32. The Income Tax Appellate Tribunal has held that the interest has to be assessed under the head "income from other sources" since it cannot be brought under any other specified heads of income. However, as already discussed herein above, the Apex Court has held that the enhanced compensation, including the interest under Section 28 of the Land Acquisition Act, 1894, has to be treated "deemed income" as and when the assessee, claimant, is in receipt of enhanced compensation and further held that the interest under Section 28 is also a component of the enhanced compensation and since we have already held that the compensation received on account of acquisition of the lands, in question, was a business income taxable under Section 28 of the Income Tax Act, 1961, we find that the Income Tax Appellate Tribunal has erred in treating the interest as "income from other sources"

..... **The interest which forms component of the compensation, as held by the Apex Court, in the case of Commissioner of Income Tax Vs. Ghanshyam (HUF) (supra),** has to be taxed in the year of receipt. The interest, which has been held to be a component of the compensation, is chargeable to income tax under the head "profit and gains of business or profession".

In the case of Gopal Kasat, as per prevailing circumstance, the said compensation was treated as "Business income"

In the case of appellant, it is not disputed that the said compensation received under LAQ is a Capital receipt. As per court order appellant has received the statutory interest u/s.23 (1A) & 23(2) r.w.s sec. 28 of L. A Act. (as per Para 60 of the order), as compensation. However, A.O merely disputed the compensation awarded u/s.28 of the I.T.Act.

- 4] Therefore, we have to consider the following decisions on the issue involved in the case of appellant.

The Hon Supreme Court decisions in the cases of :

- (1) *Bikram Singh Vs Land Acquisition Collector* (1977) 224 ITR 551 (SC);
 (2) *Commissioner of Income Tax Vs. Ghanshyam (HUF)* ((2009) 26 DTR (SC) 129)

The Hon Jurisdictional Bombay High Court's decision in the cases of :

- (1) *The Dy CIT Vs Gopal Kast and others Tax Appeal No 3 of 2009 dt. 5-11-2009;*
 (2) *Balasaheb R Bidwe and others Tax Appeal No. 5401 of 2013 dt. 27.08.2013*

The Copies of the above decisions are filed on records.

Further, with due respect of the all the above decision, appellant would like to submit again that the decision in the case of *CIT Vs Ghanshyam (HUF)* (2009) 315 ITR-1(SC), dt.16-07-2009, logically as well as with reference to the scheme of the provision of Sections 23, 23(1A), 23(2), 28 and 34 of the 1894 Act, gives the right view in respect of the taxability of compensation received under these provision.

- 5] In such circumstances, when there are conflicting decisions, the rule of Judicial Precedence demands that the view favorable to the assessee must be adopted, as held by the Hon'ble Supreme Court in the case of *CIT vs. Vegetable Products Ltd.*, 88 ITR 192. Recently, Jurisdictional ITAT Pune has followed the above decision and also held in the case of *Add CIT Vs Annasahab Magar Sahakar Bank Maryadit, Bosari-Pune* (ITA No.286 & 287/PN/2014 A.Yrs 2009-10 & 2010-11) dt.29-01-2015 that: "At the time of hearing, it was a common point between the parties that an identical controversy has been considered by the Pune Bench of the Tribunal in the case of *ACIT Vs The Omerga Janta Sahakari Bank Ltd* vide order in ITA No.350/PN/2-13 dated 31-10-2013 and following the proposition that in the absence of any judgment of the Jurisdictional High Court, there being contrary judgments of the non-jurisdictional High Courts, a decision which was favorable to the assessee was to be followed in view of the reasoning laid down by the Hon'ble Supreme Court in the case of *CIT Vs Vegetable Products Ltd*, (1973) 88 ITR 192(SC) and thus the Tribunal decided the issue in favour of the assessee. (Para 4) Copy enclosed **[Ann-B]**.

- 6] In view of the above, and considering entire facts into totality and taking into accounts the ratio laid down in the above relied decisions, the addition made by the A.O cannot be sustained. It is, therefore, requested to your kind honour that addition may please be deleted.

Thanking you Sir, in anticipation.

Yours Sincerely,
 Sd/-

(Dnyanoba S. Jadhav)
 Enclo : As above."

6. Shri Achal Sharma representing the Department vehemently supported the findings of Commissioner of Income Tax (Appeals). The ld. DR submitted that it is a well settled law that interest received on compensation/enhanced compensation under the provisions of LA Act does not form part of compensation. Undisputedly, compensation is exempt from tax u/s. 10(37) of the Act. The assessee is seeking exemption of tax on interest segment as well, it is not permissible. The ld. DR pointed that as per provisions of section 56(1)(viii) income received by way of interest on compensation or enhanced compensation is liable to be taxed as income from other sources. The ld. DR further placed reliance on the decision of Hon'ble Supreme Court of India in the case of Bikram Singh & Ors. Vs. Land Acquisition Collector & Ors. (supra).

7. We have heard the submissions made by the ld. DR and have perused the material available on record. The assessee in appeal has raised 5 grounds. All the grounds are directed towards the solitary issue whether interest received by assessee on compulsory acquisition of land is taxable under the provisions of Income Tax Act. A perusal of grounds of appeal indicate that the assessee has been awarded interest under the provisions of section 23(1A) and 23(2) r.w.s. 28 of the L.A. Act. The assessee has claimed that interest received by assessee u/s. 23(1A) and 23(2) of the L.A. Act is not exigible to Income Tax Act.

A perusal of assessment order shows that the Assessing Officer has rejected the claim of assessee and has assessed the interest income received by assessee on compensation/enhanced compensation as chargeable to tax. However, the Assessing Officer has granted benefit of deduction @ 50% u/s. 57(iv) of the Act and thus, has made addition of Rs.26,48,316/-. The Commissioner of Income Tax (Appeals) has confirmed

the findings of Assessing Officer by placing reliance on the decision of Commissioner of Income Tax Vs. Ghanshyam (HUF) (supra).

8. Before proceeding further it would be relevant to note that the interest awarded u/s. 23(1A) and 23(2) of L.A. Act is different from the interest awarded u/s. 34 of the L.A. Act. The Hon'ble Supreme Court of India in the case of Commissioner of Income Tax Vs. Ghanshyam (HUF) (supra) has brought out the distinction between the award of interest under the two sections. The relevant extract of the judgment of Hon'ble Apex Court in the aforesaid case is as under :

“22. Sec. 23(1A) was introduced in the 1894 Act to mitigate the hardship caused to the owner of the land who is deprived of its enjoyment by taking possession from him and using it for public purpose, because of considerable delay in making the award and offering payment thereof [see : Asstt. Commr. Gadag Sub-division, Gadag vs. Mathapathi Basavannevva & Ors. AIR 1995 SC 2492]. To obviate such hardship, s. 23(1A) was introduced and the legislature envisaged that the owner is entitled to 12 per cent per annum additional amount on the market value for a period commencing on or from the date of publication of the notification under s. 4(1) of the 1894 Act upto the date of the award of the Collector or the date of taking possession of the land, whichever is earlier. The additional amount payable under s. 23(1A) of the 1894 Act is neither interest nor solatium. It is an additional compensation designed to compensate the owner of the land, for the rise in price during the pendency of the land acquisition proceedings. It is a measure to offset the effect of inflation and the continuous rise in the value of properties. [see : State of Tamil Nadu & Ors. vs. L. Krishnan & Ors. AIR 1996 SC 497]. Therefore, the amount payable under s. 23(1A) of the 1894 Act is an additional compensation in respect to the acquisition and has to be reckoned as part of the market value of the land. Sub-s. (1A) of s. 23 was introduced by Land Acquisition (Amendment) Act, 1984. It provides that in every case the Court shall award an amount as additional compensation @ 12 per cent per annum on the market value of the land for the period commencing on and from the date of publication of the notification under s. 4(1) to the date of the award of the Collector or to the date of taking possession of the land, whichever is earlier. In other words sub-s. (1A) of s. 23 provides for additional compensation. The said sub-section takes care of increase in the value @ 12 per cent per annum.

23. In addition to the market value of the land, as above provided, the Court shall in every case award a sum of 30 per cent on such market value, in consideration of the compulsory nature of acquisition. This is under s. 23(2) of the 1894 Act. In short, s. 23(2) talks about solatium. Award of solatium is mandatory. Similarly, payment of additional amount under s. 23(1A) is mandatory. The award of interest under s. 28 of the 1894 Act is

discretionary. Sec. 28 applies when the amount originally awarded has been paid or deposited and when the Court awards excess amount. In such cases interest on that excess alone is payable. Sec. 28 empowers the Court to award interest on the excess amount of compensation awarded by it over the amount awarded by the Collector. The compensation awarded by the Court includes the additional compensation awarded under s. 23(1A) and the solatium under s. 23(2) of the said Act. This award of interest is not mandatory but is left to the discretion of the Court. Sec. 28 is applicable only in respect of the excess amount, which is determined by the Court after a reference under s. 18 of the 1894 Act. Sec. 28 does not apply to cases of undue delay in making award for compensation [see : Ram Chand & Ors. vs. Union of India & Ors. 1994 (1) SCC 44]. In the case of Shree Vijay Cotton & Oil Mills Ltd. vs. State of Gujarat (1991) 1 SCC 262, this Court has held that interest is different from compensation.

24. To sum up, interest is different from compensation. However, interest paid on the excess amount under s. 28 of the 1894 Act depends upon a claim by the person whose land is acquired whereas interest under s. 34 is for delay in making payment. This vital difference needs to be kept in mind in deciding this matter. Interest under s. 28 is part of the amount of compensation whereas interest under s. 34 is only for delay in making payment after the compensation amount is determined. Interest under s. 28 is a part of enhanced value of the land which is not the case in the matter of payment of interest under s. 34.

25. It is clear from reading of ss. 23(1A), 23(2) as also s. 28 of the 1894 Act that additional benefits are available on the market value of the acquired lands under ss. 23(1A) and 23(2) whereas s. 28 is available in respect of the entire compensation. It was held by the Constitution Bench of the Supreme Court in Sunder vs. Union of India (2001) 7 SCC 211, that "indeed the language of s. 28 does not even remotely refer to market value alone and in terms it talks of compensation or the sum equivalent thereto. Thus, interest awardable under s. 28, would include within its ambit both the market value and the statutory solatium. It would be thus evident that even the provisions of s. 28 authorise the grant of interest on solatium as well." Thus solatium means an integral part of compensation, interest would be payable on it. Sec. 34 postulates award of interest at 9 per cent per annum from the date of taking possession only until it is paid or deposited. It is a mandatory provision. Basically s. 34 provides for payment of interest for delayed payment."

[Emphasized by us]

A perusal of the above extract of the judgment indicate that the interest awarded u/s. 23(1A) and 23(2) r.w.s. 28 of the L.A. Act is in the nature of solatium and an integral part of compensation. It is an admitted position that the receipt of compensation awarded under L.A. Act is a

capital receipt. Whereas, interest awarded u/s. 34 of the L.A. Act is on account of delayed payment of compensation and is revenue receipt. Thus, the payment of interest u/s. 23(1A) and 23(2) of the L.A. Act and interest awarded u/s. 34 of the L.A. Act are very different in nature.

9. One of the question before the Hon'ble Supreme Court of India in the case of Commissioner of Income Tax Vs. Ghanshyam (HUF) (supra) was :

“26. The question before this Court is : whether additional amount under s. 23(1A), solatium under s. 23(2), interest paid on excess compensation under s. 28 and interest under s. 34 of the 1894 Act, could be treated as part of the compensation under s. 45(5) of the 1961 Act ?”

Answering the above question along with other questions the Hon'ble Apex Court held :

“33. It is to answer the above questions that we have analysed the provisions of ss. 23, 23(1A), 23(2), 28 and 34 of the 1894 Act. As discussed hereinabove, s. 23(1A) provides for additional amount. It takes care of increase in the value @ 12 per cent per annum. Similarly, under s. 23(2) of the 1894 Act there is a provision for solatium which also represents part of enhanced compensation. Similarly, s. 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 s. 23(1A) and solatium under s. 23(2) of the said Act. Sec. 28 of the 1894 Act applies only in respect of the excess amount determined by the Court after reference under s. 18 of the 1894 Act. It depends upon the claim, unlike interest under s. 34 which depends on undue delay in making the award. It is true that "interest" is not compensation. It is equally true that s. 45(5) of the 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 s. 28 unlike interest under s. 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 s. 34 of the 1894 Act. So also additional amount under s. 23(1A) and solatium under s. 23(2) of the 1961 (sic-1894) Act forms part of enhanced compensation under s. 45(5)(b) of the 1961 Act.”

Thus, it is unambiguously clear that interest received on compulsory acquisition of land u/s. 23(1A) and 23(2) r.w.s. 28 and interest received u/s. 34 of the L.A. Act are on different pedestal and both the interest cannot be equated for tax purpose.

10. The Commissioner of Income Tax (Appeals) while confirming the order of Assessing Officer has observed that the case of assessee is covered by the decision of Hon'ble Apex Court in the case of Bikram Singh & Ors. Vs. Land Acquisition Collector & Ors. (supra) as the said judgment is delivered by Larger Bench and prevails over the decision rendered in the case of Commissioner of Income Tax Vs. Ghanshyam (HUF) (supra) which is though subsequent in time but is rendered by Division Bench. We do not concur with the findings of Commissioner of Income Tax (Appeals) to make the addition. Undisputedly, while rendering the decision in the case of Commissioner of Income Tax Vs. Ghanshyam (HUF) (supra) the judgment of Larger Bench in the case of Bikram Singh & Ors. Vs. Land Acquisition Collector & Ors. (supra) was not considered. However, we find that there is no conflict of law laid down in both the cases. The Hon'ble Supreme Court in the case of Commissioner of Income Tax Vs. Ghanshyam (HUF) (supra) has clearly marked the distinction between the interest received u/s. 23(1A) and 23(2) r.w.s. 28 of the L.A. Act vis-à-vis interest on delayed payment of compensation u/s. 34 of the L.A. Act. The Larger Bench of Hon'ble Supreme Court of India in the case of Bikram Singh & Ors. Vs. Land Acquisition Collector & Ors. (supra) has held that the interest received u/s. 34 of the Act on delayed payment of compensation is a revenue receipt and is exigible to tax. Both the judgments rendered by the Hon'ble Apex Court have held that payment of interest on delayed

payment of compensation u/s. 34 of the L.A. Act are liable to tax under the provisions of Income Tax Act.

11. A perusal of material available on record does not clearly indicate whether the interest component which is subject matter of dispute in the present appeal was received by assessee under the provisions of section 23(1A) and 23(2) r.w.s. 28 of the L.A. Act or u/s. 34 of the L.A. Act. The assessment order indicates that the assessee has received interest on compensation/enhanced compensation u/s. 28 and 34. The order of Commissioner of Income Tax (Appeals) is silent on the fact whether the interest component which is subject matter of dispute was received by assessee u/s. 23(1A) and 23(2) or u/s. 34 of the L.A. Act. However, the Commissioner of Income Tax (Appeals) has given findings on the presumption that the assessee has received interest under L.A. Act u/s. 34.

A perusal of Form 35 shows that the assessee in grounds of appeal before the Commissioner of Income Tax (Appeals) has not specified that the interest received by assessee on compulsory acquisition of land is u/s. 23(1A) and 23(2) or u/s. 34 of the L.A. Act. It is for the first time before the Tribunal that assessee in grounds of appeal has clearly stated that assessee has received interest u/s. 23(1A) and 23(2) r.w.s. 28 of the L.A. Act. However, the assertions made by assessee in the grounds of appeal are not supported by any cogent evidence. In the absence of complete facts it would not be possible to adjudicate the issue in hand. Therefore, in our considered opinion this issue needs re-visit to the file of Assessing Officer. The Assessing Officer after examining the facts of the case and determining the nature of interest received by assessee under the provisions of Land Acquisition Act shall decide this issue de-novo, in accordance with law laid

down by the Hon'ble Apex Court. Needless to say that the Assessing Officer shall follow principles of natural justice while re-adjudicating the issue.

12. In the result, appeal of assessee is allowed for statistical purpose.

Order pronounced on Monday, the 29th day of January, 2018.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 29th January, 2018

RK

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-2, Aurangabad
4. The Pr. Commissioner of Income Tax-2, Aurangabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune