

आयकर अपीलिय अधिकरण पुणे न्यायपीठ "SMC" पुणे में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
SMC BENCH, PUNE**

श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष  
**BEFORE SHRI D. KARUNAKARA RAO, AM**

आयकर अपील सं. / **ITA No.1891/PUN/2014**  
निर्धारण वर्ष / **Assessment Year : 2001-02**

Kalyanchand Manakchand Lalwani (HUF),  
Mahavir Path, A/P. Manmad,  
Dist. Nashik – 423 104  
Maharashtra  
PAN : AAAHL6657A

.... अपीलार्थी/Appellant

Vs.

Income-tax Officer,  
Ward-3(3), Malegaon

.... प्रत्यर्थी / Respondent

आयकर अपील सं. / **ITA No.1892/PUN/2014**  
निर्धारण वर्ष / **Assessment Year : 2001-02**

Kamlesh Kalyanchand Lalwani (HUF),  
Mahavir Path, A/P. Manmad,  
Dist. Nashik – 423 104  
Maharashtra  
PAN : AADHK3386G

.... अपीलार्थी/Appellant

Vs.

Income-tax Officer,  
Ward-3(3), Malegaon

.... प्रत्यर्थी / Respondent

आयकर अपील सं. / **ITA No.1893/PUN/2014**  
निर्धारण वर्ष / **Assessment Year : 2001-02**

Manglesh Kalyanchand Lalwani (HUF),  
Mahavir Path, A/P. Manmad,  
Dist. Nashik – 423 104  
Maharashtra  
PAN : AAAHL7117F

.... अपीलार्थी/Appellant

Vs.

Income-tax Officer,  
Ward-3(3), Malegaon

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant(s) by : Ms. Deepa Khare  
प्रत्यर्थी की ओर से / Respondent by : Dr. Vivek Aggarwal, CIT-DR

सुनवाई की तारीख /  
**Date of Hearing : 12.02.2018**

घोषणा की तारीख /  
**Date of Pronouncement:23.02.2018**

**आदेश / ORDER**

**PER D. KARUNAKARA RAO, AM :**

There are 3 appeals filed by different assessees under consideration against the separate orders of CIT(A)-I, Nashik commonly dated 18-08-2014 for the common A.Y. 2001-02. All these appeals are filed with identical grounds as well as an additional ground.

2. Ld. Counsel for the assessee brought my attention to the additional ground and submitted that the legal issue raised in it relates to the applicability of provisions of the proviso to section 147 of the Act. As per the Ld. Counsel for the assessee, there is no failure on part of the assessee in matters of true and full disclosure of fact. Therefore, the reasons recorded by the AO that revolves around the applicability of Supreme Court judgment in the case of CIT Vs. Ghanshyam (HUF) 315 ITR 1 (SC), are unsustainable and therefore, the reassessment proceedings are bad in law.

**ITA No.1891/PUN/2014 – Shri Kalyanchand Manakchand Lalwani (HUF)**  
**(A.Y. 2001-02)**

3. Giving brief facts of the case, which are culled from the appeal filed by Shri Kalyanchand Manakchand Lalwani (HUF) for the A.Y. 2001-02, Ld. Counsel for the assessee submitted that the assessee filed the return of income and offered the long term capital gains and interest income for taxation. Assessee earned long term capital gains relating to the income of enhanced compensation of land. Assessee owns a land and the Government acquired the same @ Rs.15/- per sq. mtr. Assessee disputed the compensation and filed a case before the District Court. Vide the order dated 30-06-1999, the compensation was increased to Rs.340/- per unit. AO reopened the assessment by issue of notice u/s.148 of the Act on 22-03-2005 and AO passed reassessment order dated 28-11-2005. In the appeal by the Government before the High Court, the Hon'ble High Court passed an order

determining the rate at Rs.53/- per sq.mtr. AO considered the same in the reassessment. However, the matter travelled to the Supreme Court on the issue of correctness of the enhanced compensation. Eventually, the Supreme Court vide its judgment dated 25-03-2010 enhanced the compensation awarded by the High Court which was determined the compensation at Rs.53 per sq. mtr. Supreme Court enhanced the same to Rs.66.25 per sq.mtr. On finding the enhanced compensation, AO proposed to treat the said enhanced compensation as income of the assessee for the A.Y. 2001-02. On this issue, AO opined the said consideration was not offered by the assessee even in the year A.Y. 2010-11 and therefore the AO re-assessed the income of the assessee for the year 2001-02 invoking the provisions of the proviso to section 147 of the Act. The reasons recorded by the AO refer to his reliance on the judgment of Supreme Court in the case of CIT Vs. Ghanshyam (HUF) (supra). Eventually, the AO proceeded to make the reassessment taxing the enhanced income and interest in the A.Y. 2001-02, the 'year of acquisition of land by the Government'.

4. During the second round of the reassessment proceedings, assessee took objection to the validity of the re-opening u/s.147 of the Act. Further, assessee also questioned the proposed taxability of the enhanced compensation in the 'year of receipt', i.e. A.Y. 2010-11 not in the year of sale - 2001-02. To that extent, considering the fact that Supreme Court judgment enhancing the compensation from Rs.53 per sq.mtr to Rs.66.25 per sq.mtr is crystallised only on 25-03-2010 and, therefore the sum is taxable in the A.Y. 2010-11 on receipt basis, was argued. Further, assessee submitted that he did not have the benefit of the revised figures Rs.66.25 per sq.mtr ordered by the Supreme Court at the time when the assessments/reassessments were finalised in the past under various provisions of the Act. According to the assessee, when the assessee disclosed the facts fully and truly in the return of income that are necessary for completion of the assessment, the AO cannot invoke the provisions of proviso to section 147 of the Act based on the subsequent developments on that issue. Further, assessee reasoned that the

Supreme Court judgment in the case of CIT Vs. Ghanshyam (HUF) (supra) is not applicable in view of the fact that bifurcation of interest under various sections of The Land Acquisition Act, 1894 were also not available. Assessee also relied on the provisions of section 45(5) and the provisions of section 155(16) of the Act, which advocates for taxation of such compensation in the A.Y. 2010-11 on receipt basis only. However, AO dismissed the said arguments and held that the matter of taxation of compensation, enhanced compensation and interest is taxable in the A.Y. 2001-02. Interestingly, AO cites that such receipts are taxable on the 'receipt basis' and the interest is part of the compensation (Para 5.4 of the Assessment order) and however taxed the same in the A.Y. 2001-02 on the basis of date of acquisition of the land by the Government.

5. During the First Appellate proceedings, the assessee made elaborate submissions vide his letter dated 20-02-2013. It is the submission of assessee that the original compensation received by the assessee for Acquisition of the land was already offered to tax in the year under consideration on the basis of the binding High Court judgment. The interest portion of the same was also offered and taxed. When it comes to the enhanced compensation, assessee raised various objections and argued that the completed assessment for A.Y. 2001-02 cannot be reopened for taxing the enhanced compensation in view of the practical difficulties that may arise, which are mentioned by the Supreme Court against reopening of the completed assessments considering the taxational difficulties involved therein. Further, assessee submitted that the proposal to reopen the assessment constitutes 'a change of opinion' in the matter. Further, assessee submitted that there is no failure on the part of the assessee when it comes to full and true disclosure of the facts necessary for completion of the assessment. Further, it is submitted that the Supreme Court judgment in the case of CIT Vs. Ghanshyam (HUF) (supra) is inapplicable in view of the fact of non-availability of bifurcation of interest and enhanced compensation out of the said enhanced compensation. As per the assessee, when the interest portion

is not determined by the Supreme Court, the AO cannot assume jurisdiction for taxing the same in A.Y. 2001-02 on the basis of receipt by reopening the completed reassessment. Further, it is submitted that the said Supreme Court judgment in the case of CIT Vs. Ghanshyam (HUF) (supra) is dated 16-07-2009 and the final order of assessment was passed on 29-12-2008 u/s.143(3) r.w.s. 254 of the Act. Therefore, as per the assessee, on the ground of debatability also, the provisions of section 148 of the Act should not be invoked. On this legal issue, the CIT(A) referred to the said Supreme Court judgment (supra) on one side and the amended provisions of section 45 of the Act which provides for taxation of the enhanced compensation in the year in which the final judgment of the Supreme Court is passed, on the other. Finally, CIT(A) observed that the amended provision apply to the A.Y. 2015-16 and subsequent years. Eventually, the CIT(A) dismissed the submission of the assessee and held the taxability of the enhanced compensation in the A.Y. 2001-02. Contents of Para No.6 of the CIT(A) are relevant in this regard.

6. Aggrieved with the same, the assessee is in appeal before the Tribunal with the following grounds :

*"1. On the facts and in the circumstances of the case and in law the Learned CIT (A) -I is not justified in not disposing of the grounds of appeal. The same may please be considered in its proper perspective along with the number of decisions quoted in support of grounds of appeal and the appellant's contention may be accepted and the order of the Learned Assessing Officer may please be cancelled.*

*2. On the facts and in the circumstances of the case and in law the Learned the CIT (A)-I in confirming the action of Learned Assessing Officer's action of reopening the assessment when no escapement of income is occurred / found. The assessment may please be cancelled.*

*3. On the facts and in the circumstances of the case and in law the Learned CIT (A)-I is not justified in confirming the action of Learned Assessing Officer of reopening the assessment on the basis of change of opinion. The assessment may be cancelled.*

*4. On the facts and in the circumstances of the case and in law the Learned CIT (A)-I is not justified in confirming the assessment order dated 23.12.2011 in violation of the principle laid down in the decision of the Bombay High Court in the case Asian Paints Ltd. vs. DCIT (2008) 296 ITR 90 (Bom.) The order may be cancelled.*

5. On the facts and in the circumstances of the case and in law the Learned Assessing Officer and the Ld. CIT(A) is not justified in ignoring the provisions of Section 45(5)(b) providing the settled law that the enhanced compensation is taxable in the year of receipt and not in the year of transfer. The addition may please be cancelled.

6. On the facts and in the circumstances of the case and in law the Learned CIT (A)-I is not justified in confirming the action of Learned Assessing Officer in taxing the enhanced compensation in the year under consideration when the enhanced compensation was crystallized in F.Y. 2009-10 i.e. A.Y. 2010-11. The order may be cancelled.

7. On the facts and in the circumstances of the case and in law the Learned CIT (A)-I is not justified in confirming the action of taxing the enhanced compensation in the year under consideration i.e. A.Y.2001-02 when as per Section 45(5)(b) it is taxable in the year of Receipt of enhanced compensation. The enhanced compensation is received in A.Y. 2010-11. The assessment may please be cancelled.

8. On the facts and in the circumstances of the case and in law the Learned CIT (A)-I is not justified in confirming the action of Learned Assessing Officer in taxing the entire interest component in the year under consideration i.e. A.Y.2001-02 when enhanced component of interest is taxable in the year of receipt i.e. A. Y. 2010-11. The order may please be cancelled.

9. On the facts and in the circumstances of the case and in law the Learned Assessing Officer is not justified in rejecting the applicability of amended provisions of proviso to section 45(5)(b) when the same are of declaratory and curative nature. The benefit of such provisions should have been extended to the appellant and the additions made may please be cancelled.

**Without prejudice to the above:**

10. On the facts and in the circumstances of the case and in law the Learned CIT (A)-I is not justified confirming the action of the Learned Assessing Officer in not allowing the deduction of interest of Rs.1,69,097 which is already taxed in earlier years. There is double taxation. The deduction may be allowed.

11. On the facts and in the circumstances of the case and in law the Learned is not justified in confirming the levy of the interest under section 234A, 234B as the appellant could not foresee the final amount of compensation. The same may please be cancelled.

7. Before me, assessee raised an additional ground and the same reads as under:

*"Whether on facts and circumstances of the case, the reassessment proceedings u/s 147 initiated by issue of notice/s served on 08/03/2011 after expiry of four years in absence of reason to believe that there was failure to disclose fully and truly all material facts necessary for his assessment within the meaning of first proviso to Section 147.*

8. Before me, Ld. Counsel for the assessee brought my attention to the additional ground and mentioned that the same is required to be admitted and

adjudicated in favour of the assessee. Ld. Counsel submitted that there is no failure of disclosure on part of the assessee as per the Supreme Court judgment in the case of the assessee in a subsequent development. Further, relying on the considering the filing of Supreme Court judgment in the case of CIT Vs. Ghanshyam (HUF) (supra). Ld. Counsel submitted that the ratio supports the taxability in the year of receipt. In this regard, Ld. Counsel for the assessee filed the following written submissions to demonstrate the inapplicability of the provisions of section 147 of the Act. For the sake of completeness the same are extracted here as under :

*"In identical context Delhi High Court in case of Central India Electric Supply Company V ITO reported in 333 ITR 237 (Page 31 of legal compilation) held that there was no lack of disclosure by the assessee. That was, of course, apart from the fact that the assessee could hardly disclose as to what would be the compensation, which he might get ultimately if the plea of enhancement was sustained. The fact remained that copy of the report of the board of directors had been filed in which the fact of pending arbitration proceedings for enhancement of compensation had been mentioned. It is not the duty of the assessee to pinpoint what inference has to be drawn by the assessing authority as long as full, complete and truthful disclosure has been made of, primary facts', which, in fact, was made in the instant case. Thus, there was nothing, which was not set out, which ought to have been set out as the factum of appeal pending was disclosed. There was no finality emerging in matters of enhancement of compensation as none of the parties could contemplate in advance as to what would be the fate of the appeal proceedings. The facts of the instant case showed that the award was interfered with in appeal and again by the Supreme Court. The final picture emerged only when the Supreme Court pronounced its judgment.*

*Punjab & Haryana High Court in case of Mukhtiar Singh Sandhu V ITO reported in 160 ITR 526 (Page 27 of legal compilation) held that Certain lands of assessee were acquired and compensation was paid in 1974. High Court enhanced compensation in November, 1981. Interest on enhanced compensation was paid on 15-6-1982 - ITO therefore, issued notices under section 147/148 that amount of interest received by assessee for period 5-10-1974 to 6-5-1982 should be spread over different assessment years. Till amount of interest had become due or was actually paid to assessee on 15-6-1982, he could not be held guilty of not disclosing truly and correctly material facts, therefore, impugned notices were not valid in law.*

*Supreme Court in case of Associated Stone Industries (Kotah) Ltd V CIT reported in 224 ITR 560 (Page 14 of legal compilation) held that The primary fact in the instant case was the lease agreement entered into by the appellant with the Kotah State dated 2-5-1945. It was placed before the ITO at the time of original assessments. It was not the duty of the assessee to draw the attention of the ITO to any particular clause or portion of the document and invite him to draw any particular inference therefrom, Moreover, in the suit the Union of India and the State of Rajasthan were parties. The interim injunction passed by the Court from assessing or levying any income-tax against the assessee-company was varied on the representation made by the Union of India, by later orders. Indeed, the Union of India and the Commissioner had filed written statements in the suit.*

*The order of injunction was within the knowledge of the ITO, as could be seen from the original assessments. The ITO was aware of the triangular dispute between the assessee- company, State of Rajasthan and Union of India pending before the District Court. What was more, the order of injunction to refrain from proceeding with the assessments was served on the ITO which was later modified. In view of these salient features, the High Court totally erred in holding that there was any omission on the part of the appellant-company to fully and truly disclose material or primary facts necessary for the assessments for the years in question. Thus, the reassessment proceedings for the assessment years 1950-51 to 1956-57 under section 34(1)(a) were invalid.*

*It is therefore respectfully submitted that there being no failure on the part of the assessee to disclose fully all the material and primary facts and the reasons recorded being do not speak of such failure, the reassessments are invalid in law in view of the settled principle of law as decided by various Courts including Jurisdictional High Court.*

9. From the above, the reopening is held invalid in many of such cases with special reference to the Delhi High Court judgment in the case of Central India Supply Company Vs. ITO 333 ITR 237 is very close to the facts of the present case.

10. On the other hand, Ld. DR for the Revenue relied heavily on the orders of the AO and the CIT(A) on merits. Regarding the additional ground/legal issue, Ld. DR relied on the reasons recorded by the AO and brought my attention to the contents of Para No.6.1 of the order of CIT(A). He submitted that the issuance of notice u/s.148 for the second time for giving effect to the judgment of Supreme Court delivered on 25-03-2010 is sustainable as the same is intended for taxing the enhanced compensation in the year of Acquisition of land by the Government. However, there is no explanation as to how the year of said Supreme Court judgment dated 25-03-2010 creates liability of taxation on the enhanced compensation in the A.Y. 2001-02, the year of Acquisition of land by the Government.

11. I have heard both the sides and perused the written submissions filed by both the sides. I have also gone through the orders of the Revenue and the reasons recorded by the AO for reopening of the completed assessment u/s.148 of the Act. The issue which requires my attention in this appeal relates to, if



*Malegaon*  
*Date : 05-01-2011*

*Sd/-*  
*Income-tax Officer, Ward-3(3),*  
*Malegaon*

From the above, it is clear that the immediate reason for reopening the completed assessment u/s.147/148 of the Act is the judgment of Hon'ble Supreme Court dated 25-03-2010 which enhanced the compensation already awarded by the High Court, from Rs.53/- per sq. mtr to Rs.66.25 per sq. mtr which includes interest portion as well. For taxing the said enhanced compensation and interest in the year under consideration, the AO cited the judgment of Supreme Court in the case of CIT Vs. Ghanshyam (HUF) 315 ITR 1 which advocates for taxing the interest on enhanced compensation in the 'year of receipt'.

12. Considering the above view of the AO on the taxability of interest on compensation in the assessee's own case for the A.Y. 2001-02, I need to examine the ratio of the judgment of Hon'ble Supreme Court in the case of CIT Vs. Ghanshyam (HUF) (supra). The judgment in this case deals with explaining the provisions of section 45(5)(b) and 45(5)(c) and provisions of section 155(16) which is brought into statute w.e.f. 01-04-2004. In principle, these provisions do not apply to the year under consideration. Nevertheless, these provisions were explained by the Supreme Court in connection with the A.Y. 1999-2000 and also in connection with the enhanced compensation/interest as relevant from the inception of the said provisions. The Hon'ble Supreme Court observed that the compensation under the Land Acquisition Act, 1894 arises and is normally payable in multiple stages. Therefore, as and when assessee claimant is in receipt of the enhanced compensation, it shall be treated as 'deemed income' and taxed on 'receipt basis'. Hence, the year in which enhanced compensation is received is the 'year of taxability'. However, the issue under dispute relates to the assessee's failure in matters of disclosure of facts and applicability of the proviso to section 147 of the Act. Even before the amendment to section 45 and 155(16) of the Act (i.e. prior to

01-04-2004), the enhanced compensation was taxable in the 'year of receipt' only u/s.45(5)(b) of the Act and this approach is reinforced by the amendment to clause (c) of section 45(5) of the Act. Further, this scheme of taxation in the year of receipt was inserted by way of section 45(5) of the Act right from 1988. Therefore, in principle, the 'year of taxability' all through the assessment years is always on 'receipt basis'. Relevant finding of the Apex Court is extracted as under :

*"35. It was urged on behalf of the assessee that section 45(5)(b) of the 1961 Act deals only with reworking, its object is not to convert the amount of enhanced compensation into deemed income on receipt. We find no merit in this argument. The scheme of section 45(5) of the 1961 Act was inserted with effect from April 1, 1988, as an overriding provision. As stated above, compensation under the L. A. Act, 1894, arises and is payable in multiple stages which does not happen in cases of transfers by sale, etc. Hence, the Legislature had to step in and say that as and when the assessee-claimant is in receipt of enhanced compensation it shall be treated as "deemed income" and taxed on receipt basis. Our above understanding is supported by insertion of clause (c) in section 45(5) with effect from April 1, 2004, and section 155(16) which refers to a situation of a subsequent reduction by the court, tribunal or other authority and recomputation/amendment of the assessment order. Section 45(5) read as a whole (including clause (c) not only deals with reworking as urged on behalf of the assessee but also with the change in the full value of the consideration (computation) and since the enhanced compensation/consideration (including interest under section 28 of the 1894 Act) becomes payable/paid under the 1894 Act 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, later on. **Hence, the year in which enhanced compensation is received is the year of taxability.** Consequently, 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 (which is in dispute), the same is liable to be taxed under section 45(5) of the 1961 Act. This is the scheme of section 45(5) and section 155(16) of the 1961 Act. We may clarify that even before the insertion of section 45(5)(c) and section 155(16) with effect from April 1, 2004, the receipt of enhanced compensation under section 45(5)(b) was taxable in the year of receipt which is only reinforced by insertion of clause (c) because the right to receive payment under the 1894 Act is not in doubt. 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 the Collector or the court, under reference, has not compensated the owner for the full value of the property as on date of notification.*

*36. Having settled the controversy going on for last two decades, we are of the view that in this batch of cases which relate back to the assessment years 1991-92 and 1992-93, possibly the proceedings under the Land Acquisition Act, 1894, would have ended. In a number of cases we find that proceedings under the 1894 Act have been concluded and taxes have been paid. **Therefore, by this judgment we have settled the law but we direct that since matters are decade old and since we are not aware of what has happened in the Land Acquisition Act proceedings in pending appeals, the recomputation on the basis of our judgment herein, particularly in the context of type of interest under section 28 vis-a-vis interest under section 34, additional compensation under section 23(1A) and***

*solatium under section 23(2) of the 1894 Act, would be extremely difficult after all these years, **will not be done.***

*Subject to what is stated hereinabove, we allow the civil appeal of the Department with no order as to costs."*

13. Further, I have also considered the written submissions filed by the assessee's counsel and find they revolve around the need for taxing of the same in the A.Y. 2010-11, which is the 'year of receipt' and certainly not A.Y. 2001-02, which is the year of acquisition. Apart from others, the judgment of Hon'ble Punjab & Haryana High Court in the case of Mukhtiar Singh Sandhu Vs. ITO & Another 160 ITR 0526 is found relevant for the legal proposition that reopening of the completed assessments based on the judgments delivered subsequently after completion of assessments are invalid as the assessee cannot be held guilty of not disclosing all the material facts truly and fully necessary for making the assessment. This is the case where earlier returns were already filed and the judgment of Court was delivered on 19-11-1981 and the amount was actually paid to assessee on 15-06-1982. The assessment years under review of the Hon'ble Supreme Court are the ones prior to A.Yrs. 1975-76 to 1979-80. Relevant lines from Para 6 of the judgment are extracted as follows :

"6. . . . .  
 . . . . .

*So it is patent that till the amount of interest referred to above had become due to the petitioner as per the judgment of this Court dated November 19, 1981, or was actually paid to him on June 15, 1981, he could not possibly be held guilty of not disclosing truly and correctly the material facts for the assessment years referred to above."*

Therefore, it is undisputed fact that the assessee filed the return of income originally on 17-01-2001 declaring total income of Rs.1,20,140/-. The same was processed on 09-10-2002. On finding the escapement of income qua the judgment of High Court relating to enhanced compensation/interest, a notice u/s.148 of the Act was issued on 22-03-2005 and the income was reassessed determining the total income at Rs.28,44,104/-. Primarily, this reassessment was made for taxing the enhanced compensation and giving effect to the judgment of High Court which fixed

the enhanced compensation at Rs.53/- per sq. mtr. The current proceedings u/s.147 of the Act for second time revolves around the reopening of the said completed assessment u/s.147/148 of the Act in order to tax the enhanced compensation from Rs.53/- per sq. mtr to Rs.66.25 per sq. mtr as per the Hon'ble Supreme Court judgment dated 25-03-2010 in the assessee's own case.

Therefore, as per the provisions of proviso to section 148 of the Act, the AO can assume jurisdiction only when there is failure on part of the assessee *"to disclose fully and truly all material facts necessary for his assessment for that assessment year"*. Therefore, to adjudicate the additional ground raised before me, in our view, what is to be seen is if there exists the failure of the assessee to disclose fully and truly all material facts relating to the enhanced compensation/interest. There is no dispute on the date of the judgment of Hon'ble Supreme Court dated 25-03-2010 and the relevant A.Y. 2001-02 is not the year of receipt of the compensation. Considering the above cited ratios laid down by the judgment of Hon'ble Supreme Court in the case of CIT Vs. Ghanshyam (HUF) (supra) which is categorical in stating the 'year of taxation' in this kind of situation is the 'year of receipt', A.Y. 2010-11 constitutes the 'year of receipt' in this case. Coming to the validity of reopening proceedings, we find the judgment of Punjab & Haryana High Court in the case of Mukhtiar Singh Sandhu Vs. ITO & Another (supra) did not approve such reopening on the fact the date of filing of return prior to the said judgment of High Court, therefore, the failure cannot be attributed to the assessee in the matters pertaining to the disclosure of fully and truly all material facts necessary for making the assessment.

Further, the judgment of Delhi High Court in the case of Central India Electric Supply Co. Ltd. Vs. ITO 333 ITR 237 is relevant for the same legal proposition. This is the case where some of the units engaged in generation and supply of electricity were acquired by the State Government in 1964 granting compensation and the

same was offered to tax for the A.Y. 1965-1966. Subsequently, the higher compensation was received by virtue of Hon'ble Supreme Court judgment dated 24-07-1985. On these facts, the Delhi High Court held that there is no lack of disclosure by the assessee in as much the issue of enhanced compensation was settled only when the Supreme Court pronounced the judgment and on receipt of the enhanced compensation assessee had disclosed the same in the return. In this case, the reopening of the assessment for A.Y. 1965-66, like in the present case, was held invalid and without jurisdiction.

14. Considering all these settled legal propositions, I am of the view that the assessee cannot be held guilty of failure to disclose fully and truly all the relevant facts relevant to the enhanced compensation or interest on compensation in the return. Therefore, the additional ground raised by the assessee has to be allowed in favour of the assessee. Therefore, the additional ground raised by the assessee is allowed.

15. Regarding the other grounds on merits, considering my decision on additional ground, in my view, the adjudication of other grounds raised by the assessee on merits becomes an academic exercise. Therefore, the same are dismissed as academic. Accordingly, the grounds raised by the assessee are partly allowed.

16. In the result, appeal of the assessee is partly allowed.

**ITA No.1892/PUN/2014 – Shri Kamlesh Kalyanchand Lalwani (HUF)**  
**(A.Y. 2001-02)**

**ITA No.1893/PUN/2014 – Shri Manglesh Kalyanchand Lalwani (HUF)**  
**(A.Y. 2001-02)**

17. At the outset, Ld. Counsel for the assessee submitted that the issues raised by the assesseees in these 2 appeals are also identical on merits as well as on law. Further, he submitted that the additional ground raised by the assesseees are also identical and it revolves around the jurisdiction issues of the AO in reopening of the

assessments and applicability of the provisions of proviso to section 147 of the Act. He also submitted that the arguments and submissions made in connection with the appeal in ITA No.1891/PUN/2014 in the case of Shri Kalyanchand Manakchand Lalwani (HUF) are common and applicable to these 2 appeals too.

18. Considering the above submissions, I am of the opinion that the additional ground raised by these 2 assesseees has to be admitted and allowed in their favour. Further, the other grounds raised by the assesseees on merits have to be dismissed as academic. Accordingly, the grounds raised by the assesseees on merits are dismissed as academic.

19. In the result, both the appeals filed by the assesseees are partly allowed.

20. To sum up, all the appeals of the respective assesseees are partly allowed.

Order pronounced on this 23<sup>rd</sup> day of February, 2018.

**Sd/-**  
**(D.KARUNAKARA RAO)**  
**लेखा सदस्य / ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक Dated : 23<sup>rd</sup> February, 2018.  
*Satish*

**आदेश की प्रतिलिपि अग्रहित/Copy of the Order is forwarded to :**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-I, Nashik
4. आयकर आयुक्त / The CIT-I, Nashik
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "SMC" / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune