

आयकर अपीलीय अधिकरण "एक-सदस्य" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" 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. 1386/PUN/2017

निर्धारण वर्ष / Assessment Year : 2010-11

Vitthal Gurunath Patil,
Masobachi Wadi,
Nilanga, Latur-413 512
PAN : BBYPP0821N

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-2, Latur.

.....प्रत्यर्थी / Respondent

Assessee by : None (Written submission)

Revenue by : Shri Achal Sharma

सुनवाई की तारीख / Date of Hearing : 20.06.2018

घोषणा की तारीख / Date of Pronouncement : 22.06.2018

आदेश / ORDER

PER VIKAS AWASTHY, JM

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-2, Aurangabad dated 25.01.2017 for the assessment year 2010-11.

2. The issue in appeal is taxability of interest received on compulsory acquisition of agricultural land under Land Acquisition Act, 1984. The assessee in appeal has raised following grounds:

“1. The Ld. AO erred in treating (Ld.CIT(A) erred in confirming) amount of Rs.24,32,294/- received by me u/s.28 of Land Acquisition Act, 1984, as interest instead of part and parcel of consideration.

2. As the prime asset does not fall under the category of capital asset, the Ld. AO (as well as Ld.CIT(A)) ought not to have levied tax on amount received by me u/s. 28 of Land Acquisition Act, 1984.

3. The appellant craves its right to add to or alter the Grounds of Appeal at any time before or during the course of hearing of the case.”

3. Neither the assessee nor any Authorized Representative of the assessee is present in the court despite service of notice. However, we find that written submissions have been filed on behalf of assessee.

4. The written submission filed by assessee are reproduced herein below:

“As regards non-taxability of Interest received u/s. 28 of Land Acq. Act-

I rely of Pune ITAT decision in case of Dnyanoba Shajirao Jadhav v. (2018) 169 ITD 291 (Pune) (Trib.). Copy of the decision is attached.

In this decision, Hon. Pune Tribunal, had considered all the relevant decisions of Apex court and other high courts on the subject including landmark decision of Bikram Singh & Ors. Vs. Land Acquisition Collector & Ors, Commissioner of Income Tax. Vs. Ghanshyam (HUF) ((2009) 26 DTR (SC) 129) and decided the issue as under - 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-a-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 ITA No. 168/PUN/2016, A.Y. 2011-12 payment of compensation u/s.34 of the L.A. Act are liable to tax under the provisions of Income Tax Act.

Therefore, in view of Binding decision of Hon. Pune Tribunal, we pray your honor to delete the addition made by the Ld. AO."

5. Shri Achal Sharma representing the Department submitted that the assessee has received compensation to the tune of Rs.1,01,87,600/- on acquisition of land. The assessee has also received interest Rs.48,64,588/-. The assessee filed return of income on 31.03.2012 declaring total income as 'Nil'. The assessee has claimed interest received on enhanced compensation as exempt. On the other hand, the Assessing Officer held the interest income as taxable. However, the Assessing Officer allowed deduction of 50% u/s.57(iv) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') on the interest component. The Commissioner of Income Tax (Appeals) has upheld the findings of Assessing Officer. The ld. DR fairly admitted that the issue raised in the present appeal is similar to one adjudicated by the Tribunal in the case of Dnyanoba Shajirao Jadhav Vs. ITO, in ITA No.168/PUN/2016 for assessment year 2011-12 decided on 29.01.2018.

6. We have heard the submissions made by the ld. DR and have perused the orders of Authorities below. The assessee in appeal has assailed the order of Commissioner of Income Tax(Appeals) in confirming the addition of Rs.24,32,294/- received as interest u/s.28 of the Land Acquisition Act,1984. The agricultural land of the assessee comprising in Survey No.6, Village - Masobachiwadi was acquired by the State Government for Hangerga Minor Irrigation Tank Project. The assessee received compensation of Rs.1,50,52,188/- including interest component of Rs.48,64,588/-. The stand of assessee is that interest component is part of compensation and hence, exempt from tax. However, the Department has taxed the interest after allowing

deduction of 50% as provided u/s.57 (iv) of the Act. From perusal of the orders of the Authorities below, it is not emanating whether the interest received by the assessee is part of compensation received on acquisition of land u/s.23(1A), 23(2) or u/s. 34 of the Land Acquisition Act, 1984. Similar issue had come up before the Co-ordinate Bench of Tribunal in the case of Dnyanoba Shajirao Jadhav Vs. ITO (supra.). The Tribunal after taking into consideration decisions of Hon'ble Supreme Court of India in the case of CIT Vs. Ghanshyam (HUF) reported as 315 ITR 1 (SC) and in the case of Bikram Singh & Ors Vs. Land Acquisition Collector & Ors, reported as 224 ITR 551 held as under:

“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 Basavanneewa & 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 following principles of natural justice while re-adjudicating the issue.”

Since the issue raised in present appeal is identical and the nature of interest is not decipherable from the facts recorded by Authorities below, we deem it appropriate to remit this issue back to the file of Assessing Officer with directions to decide the issue de-novo in line with directions given in ITA No.168/PUN/2016 (supra.). Accordingly, grounds raised by assessee in appeal are allowed for statistical purpose.

7. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced on Friday, the 22nd day of June, 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 : 22nd June, 2018

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-2, Aurangabad.
4. The Pr. CIT-2, Aurangabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक-सदस्य" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

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आदेशानुसार / BY ORDER,

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