

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DIVISION BENCH 'B', CHANDIGARH**

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER  
AND Dr. B.R.R. KUMAR, ACCOUNTANT MEMBER

**ITA Nos. 1413 to 1415/CHD/2016  
A.Y. : 2007-08 to 2009-10**

Shri Satbir,  
S/o Shri Chhaju Ram,  
Morpatti, Narwana.  
PAN No. CEEPS6223P

Vs.

The ITO,  
Ward – 1,  
Jind.

&

**ITA Nos. 1416 to 1418/CHD/2016  
A.Y. : 2007-08 to 2009-10**

Shri Ved Pal,  
S/o Shri Ram Sarup,  
Morpatti, Narwana.  
PAN No. AMIPP3931D

Vs.

The ITO,  
Ward – 1,  
Jind.

&

**ITA Nos. 1419 to 1421/CHD/2016  
A.Y. : 2007-08 to 2009-10**

Shri Sheo Chand,  
S/o Shri Matu Ram,  
Morpatti, Narwana.  
PAN No. ALHPC5457Q

Vs.

The ITO,  
Ward – 1,  
Jind.

&

**ITA Nos. 1422 to 1424/CHD/2016  
A.Y. : 2007-08 to 2009-10**

Shri Karambir,  
S/o Shri Ram Sarup,  
Morpatti, Narwana.  
PAN No. AJFPB1009E

Vs.

The ITO,  
Ward – 1,  
Jind.

&

**ITA Nos. 1432 to 1434/CHD/2016  
A.Y. : 2007-08 to 2009-10**

Shri Dharam Pal,  
S/o Chhaju Ram,  
Morpatti, Narwana.  
PAN No. AQSPD09641C

Vs.

The ITO,  
Ward – 1,  
Jind.

&

**ITA Nos. 1435 to 1437/CHD/2016  
A.Y. : 2007-08 to 2009-10**

Shri Chandgi Ram,  
S/o Shri Matu Ram,  
Morpatti, Narwana.  
PAN No. AQOPR5528G

Vs.

The ITO,  
Ward – 1,  
Jind.

**ITA Nos. 1429 to 1431/CHD/2016  
A.Y. : 2007-08 to 2009-10**

Shri Amarjeet, S/o Shri Basau Ram, Morpatti, Narwana. PAN No. AHAPA8904C	Vs.	The ITO, Ward – 1, Jind.
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**ITA Nos. 77 to 79/CHD/2017  
A.Y. : 2007-08 to 2009-10**

Shri Krishan Kumar (HUF), Morpatti, Narwana. PAN No. AAJHK1178C	Vs.	The ITO, Ward – 1, Jind
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**ITA Nos. 80 to 82/CHD/2017  
A.Y. : 2007-08 to 2009-10**

Shri Ravi Dutt, S/o Shri Moman, Morpatti, Narwana. PAN No. AQSPD9643A (Appellant)	Vs.	The ITO, Ward – 1, Jind.  (Respondent)
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Appellant by	:	Shri Gaurav Mittal, Adv.
Department by	:	Smt.Lagan Preet Sandhu, Sr.DR

Date of hearing	:	10.04.2018
Date of Pronouncement	:	09.07.2018

**ORDER****Per Bench :**

This bunch of appeals have been preferred by different assesseees for different assessment years. Whereas the respective appeals of S/Shri Satbir and Ved Pal for three years each are directed against the separate orders of CIT (Appeals), Jind dated 02.11.2016, the respective appeals of Shri Sheo Chand, Shri Karambir, Shri Krishan Kumar, HUF and Shri Ravi Dutt for three years each are directed against the orders of the 1d. CIT (Appeals) Hissar dated 02.11.2016. The respective appeals of Shri Dharam Pal and Shri Chandgi Ram for the three years are directed against the separate orders of CIT (Appeals) Faridabad

dated 28.07.2016 and respective appeals of Shri Amarjeet for the three years are directed against the order of the CIT (Appeals) Faridabad of July,2016. All the appeals in the case of each of the assesseees pertain to assessment years 2007-08 to 2009-10.

2. Since the facts and circumstances are identical and even the issue involved in all the appeals is identical, the same were heard together and are being disposed by this common order for the sake of convenience.

3. It is pointed out by the Registry that the appeals of the assessee in ITA Nos.1430 to 1437/Chd/2016 are barred by limitation by 79 days, for which applications for condonation of delay have been filed by the assesseees in the respective appeals, wherein reasons for the delay have been given that due to the difficulty in conducting/engaging concerned Chartered Accountant/representative at Chandigarh for filing the appeals and further delay on the part of the concerned Chartered Accountant because of his over busy schedule and being engaged in of the tax audit reports of other assesseees for which the last date was approaching. The Ld. counsel for assessee has further submitted that the assesseees are agriculturists and illiterate villagers and do not know the complexity of the Income Tax Laws and further they are not regular income tax payees.

4. In view of the above submissions and to meet the ends of justice, the delay in filing of the appeals is, therefore, condoned and we proceed to adjudicate the appeals on merits.

5. First we take up **ITA Nos.1429 to 1437/Chd/2016** against the orders passed by the CIT(Appeals) **u/s 154** of the Act.

**ITA Nos.1429 to 1437/Chd/2016**

6. The brief fact relevant to the issue under consideration are that the lands of the assesseees were compulsorily acquired by the HSIIDC, Sirsa/Government of Haryana in the year 2005. Subsequently the compensation was enhanced by the Court. The enhanced compensation alongwith interest thereupon u/s 28 of the Land Acquisition Act, 1894 was received by the assesseees in the financial year 2008-09 relevant to assessment year 2009-10. The assesseees treated the interest on the enhanced compensation as part of the compensation liable to be taxed under section 45(5) of the income Tax Act and the transferred land being rural agricultural land exempt from capital Gains tax u/s 10(37) of the Income Tax Act, 1961.

Subsequently, from the perusal of the computation of income attached with the return of income filed by the assessee for assessment year 2009-10, the Assessing Officer observed that w.e.f. assessment year 2010-11 the interest received on enhanced compensation was taxable in the year of receipt as per the provisions of section 145A(b) of the Act. However, prior to assessment year 2010-11 interest received on compensation/enhanced compensation was taxable on proportionate basis for the each year in view of the decision of the Hon'ble Supreme Court rendered in the case of Rama Bai Vs. CIT dated 8.11.1989 reported in 181 ITR 400 (SC). The Assessing Officer, therefore, reopened the assessment proceedings of the

assesseees and applied the ratio of the decision of the Hon'ble Supreme Court in the case of Rama Bai (supra) and held that the interest received by the assesseees on the enhanced compensation was to be proportionately allocated to different assessment years as having accrued year after year from the date of delivery of possession of the lands till the date of such order. The Assessing Officer observed that the lands of the assesseees were acquired in the year 2005, whereas the interest on the enhanced compensation had been received in the year 2008. He, therefore, calculated the proportionate interest pertaining to each assessment year and added the same as taxable receipt under the head 'other sources' and accordingly, added the proportionate amount of interest in the impugned years in the reopened assessment proceedings u/s 147 r.w.s. 143(3) of the Act.

7. Before the Ld.CIT (Appeals), the assessee relied upon the decision of the Hon'ble Supreme Court in the case of CIT Vs. Ghanshyam (HUF) (2009) 315 ITR 1 (SC) and contended that as per the ratio laid down in the said decision the interest received u/s 28 of the Land Acquisition Act, 1894 does not partake the character of interest, rather it was a part of compensation of land which was not taxable as per the provisions of section 10(37) of the Income Tax Act. The Ld. CIT(Appeals) after considering the submissions of the assessee as well as considering the nature of compensation and interest thereupon received by the assessee, held that the issue was squarely covered by the decision of the Hon'ble Supreme Court in the case

of Ghanshyam (HUF) (supra) and accordingly, allowed the appeal of the assessee.

8. Subsequently the Assessing Officer moved an application for rectification of the u/s 154 of the Act before the CIT(A) pleading therein that the interest received on enhanced compensation u/s 28 of Land Acquisition Act was chargeable to tax as 'income from other sources' u/s 56(2)(viii) r.w.s. 57(iv) of the Act in the light of the decision of the Hon'ble Punjab & Haryana High Court in the case of 'Manjeet Singh (HUF), Karta Manjeet Singh Vs. Union of India & Others' in CWP No.15506 of 2013, date of decision 14.1.2014, wherein, the Hon'ble High Court has held that the interest received by the assessee u/s 28 as well as u/s 34 of the Land Acquisition Act on the additional compensation received was chargeable to tax u/s 56(2)(viii) r.w.s.57(iv) of the Act. It was further contended that even the SLP filed in that case before the Hon'ble Supreme Court had been dismissed vide order dated 18.12.2014 in SLP No.34642 of 2014. Reliance was also placed on the decision dated 2.2.2016 of the Hon'ble Punjab & Haryana High Court in the case of Jagmal & Another Vs. state of Haryana & Another in RA-CR NO.46 Cll of 2014 in CR No.7740 of 2012, whereby the Hon'ble High Court had recalled its earlier order and held that the interest of the additional award was taxable under u/s 56(2)(viii) r.w.s.57(iv) of the Act.

9. The Ld.CIT(Appeals) considering the aforesaid decisions and also the decision of the Hon'ble Punjab & Haryana High Court in the case of Sunder Lal & Another Vs. Union of India & Others in

CWP No.20014 of 2015, order dated 21.9.2015 and also in the case of CIT Vs. Bir Singh (HUF) in ITA No.209 of 2004, etc. held that in the light of the above decisions, the mistake apparent on record had occurred in his order while allowing the appeal of the assessee while relying upon the decision of the Hon'ble Supreme Court in the case of Ghanshyam (HUF) (supra). He, therefore, vide the impugned order passed u/s 154 of the Act held that the interest received by the assessee on enhanced compensation on account of acquisition of land was taxable as 'income from other sources'. He, therefore, confirmed the additions made by the Assessing Officer passed in the reopened assessment proceedings carried out u/s 147 r.w.s. 143(3) of the Act.

10. Now the assessee has come up in appeal before us agitating the above orders passed by the CIT(Appeals) u/s 154 of the Act.

11. We have heard the rival contentions. It is pertinent to note here that interest under the Land Acquisition Act can be awarded under section 28 or/and under section 34 of the Land Acquisition Act, 1894. Interest awarded under section 28 of Land acquisition Act, 1894 is the interest on the excess amount of compensation awarded by the court over the amount awarded by the collector. It is awarded by the Court payable by the collector from the date on which the collector took the possession of the land to the date of payment of such excess into Court. Whereas interest under section 34 of the Land Acquisition Act, 1894 is given when the amount of compensation awarded by the collector is not paid or deposited on or before taking possession of land,

such interest is payable from the time of so taking possession till the date of payment of compensation. In the case in hand, the Ld. CIT (Appeals) vide his order dated 14.3.2016 had allowed the appeal of the assessee following the decision in case of Ghanshyam (HUF) (supra), wherein it has held Interest u/s 28 of the Land Acquisition Act 1984, unlike interest u/s 34 is an accretion to the value of the land , hence it is part of enhanced compensation or consideration which is not the case with interest u/s 34A. So also additional amount u/s 23(1A) and solatium u/s 23(2) form part of enhanced compensation.

12. The Ld. CIT(A), however, subsequently, while relying upon the decision of the Hon'ble High Court in the case of Bir Singh (HUF) (supra) and Manjeet Singh (HUF) (supra) & Others as noted above, recalled his orders dated 14.3.2016 and confirmed the additions made by the Assessing Officer.

13. Undisputedly, the issue involved in these appeals is regarding the taxability of interest received on enhanced compensation u/s 28 of the Land Acquisition Act, 1894. Now, there are two questions involved in these appeals, first issue is regarding the year of taxability of the interest income whether it has to be taxed in the year of receipt in the light of the decision of the Hon'ble Supreme Court in the case of Ghanshyam (HUF) (supra) or is to be taxed on the basis of apportionment for each year from the date of acquisition of lands till the receipt of the compensation in the light of the decision of the Hon'ble Supreme Court in the case of Rama Bai (supra); the second issue involved is as to whether the interest awarded u/s 28 of the Land

Acquisition Act on enhanced compensation is to be treated as part of the enhanced compensation and will not be taxable separately as interest income under the Head 'income from other sources'?

14. We find that both these issues are covered by the aforesaid decision of the Hon'ble Supreme Court in the case of Ghanshyam (HUF) (supra) holding the same to be in the nature of compensation itself. The Court also dealt with the other aspect namely, the year of tax and answered this question by holding that it has to be tested on receipt basis, which means it would be taxed in the year in which it is received. The said findings given in the case of Ghanshyam (HUF) (supra) have been reiterated by the Hon'ble Supreme Court in the case of Govindbhai Mamaiya (supra) observing as under:

*“In so far as the second question is concerned, that is also covered by another judgment of this Court in Commissioner of Income Tax, Faridabad vs. Ghanshyam (HUF) reported in (2009) 8 SCC 412, 6 albeit, in favour of the Revenue. In that case, the court drew distinction between the “interest” earned under Section 28 of the Land Acquisition Act and the “interest” which is under Section 34 of the said Act. The Court clarified that whereas compensation given to the assessee of the land acquired would be 'income', the enhanced compensation/consideration becomes income by virtue of Section 45(5)(b) of the Income Tax Act. The question was whether it will cover “interest” and if so, what would be the year of taxability. The position in this respect is explained in paras 49 and 50 of the judgment which make the following reading:*

*“49. As discussed hereinabove, Section 23(1-A) provides for additional amount. It takes care of the 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 the 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(1-A) 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.*

*50. It is true that "interest" is not compensation. It is equally true that Section 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 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 (1-A) and solatium under Section 23(2) of the 1961 Act forms part of enhanced compensation under Section 45(5)(b) of the 1961 Act."*

*8. It is clear from the above that whereas interest under Section 34 is not treated as a part of income subject to tax, the interest earned under Section 28, which is on enhanced compensation, is treated as a accretion to the value and therefore, part of the enhanced compensation or consideration making it exigible to tax. After holding that interest on enhanced compensation under Section 28 of 1894 Act is taxable, the Court dealt with the other aspect namely, the year of tax and answered this question by holding that it has to be tested on receipt basis, which means it would be taxed in the year in which it is received. It would mean that converse position i.e. spread over of this interest on accrual basis is not permissible."*

15. The Ld. counsel for assessee has further brought our attention the latest decision of the Hon'ble Supreme Court in the case of CIT Vs. Chet Ram (HUF) dated 12.9.2017 in Civil Appeal No.13053/2017 wherein also the Hon'ble Supreme Court has again reiterated the proposition laid down in the case of Ghanshyam (HUF) (supra), which we find has been further reiterated in the case of Union of India vs. Hari Singh & others in Civil Appeal No. 1504 of 2017 dated 15.9.2017, as under:

*"(2) While determining as to whether the compensation paid was for agricultural land or not, the Assessing Officer(s) will keep in mind the provisions of Section 28 of the Land Acquisition Act and the law laid down by this Court in 'Commissioner of Income Tax, Faridabad v. Ghanshyam (HUF)' [2009*

*(8) SCC 412] in order to ascertain whether the interest given under the said provision amounts to compensation or not.”*

The said decision as rightly pointed out by the Ld. counsel for assessee have been rendered by the Hon'ble Apex Court subsequent to the decision passed by the Hon'ble Jurisdictional High Court in the case of Manjeet Singh(HUF) (supra) which had dealt with the decisions of the Hon'ble Apex Court in Ghanshyam, HUF (supra). Therefore, in view of the same, the proposition laid down in Ghanshyam, HUF (supra) remains and which having been laid down by the Hon'ble Apex Court is the law of the land and has to be followed by all lower authorities. In view of the above, we hold that the interest received by the assessee during the impugned year on the compulsory acquisition of its land u/s 28 of the Land Acquisition Act, is in the nature of compensation and not interest which is taxable under the head income from other sources u/s 56 of the Act as held by the authorities below. The compensation being exempt u/s 10(37) of the Act is not disputed. In view of the same the order passed by the CIT(Appeals) upholding the addition made by the AO on account of interest on enhanced compensation is, not sustainable.

16. Further the issue under consideration regarding the taxability of interest on enhanced compensation is a debatable issue and do not constitute a mistake apparent on record. In view of the limited and restricted powers of rectification u/s 154 or u/s 254 of the Act, as the case may be, it cannot be said that

any mistake apparent on record had occurred in the order of the Tribunal.

In view of the above discussion, these appeals of the assesseees are hereby allowed.

**ITA Nos.1413 to 1424/Chd/2016 & 77 to 82/Chd/2017:**

17. In these appeal the assesseees have agitated the action of the CIT(Appeals) in confirming the orders passed by the Assessing Officer **u/s 147** of the Act and thereby making the impugned additions on similar proposition as discussed above. Almost identical worded orders have been passed by the CIT(Appeals) in these appeals wherein at para 4.3 of the order, the Ld.CIT(Appeals) has made the following observations:

*“4.3 The issue whether the interest paid under the provisions of section 28 of LA Act is part of the enhanced compensation or is it taxable as interest income has been a debatable issue and has been considered by number of judicial authorities.”*

18. A perusal of the above reveals that the Ld.CIT(Appeals) himself has held that the issue under consideration was a debatable issue at time of reopening of assessment and the issue was squarely covered by the decision of the Hon'ble Supreme Court in the case of Ghanshyam (HUF) (supra) which was relied upon by the assessee and has also discussed by the Assessing Officer in the impugned order passed u/s 147 of the Act. The principle laid down by the Hon'ble Supreme Court in the case of Ghanshyam (HUF) (supra) since have been reiterated by the Hon'ble Supreme Court in the case of Govindbhai Mamaiya

(supra) and further in the case of Chet Ram (HUF) (supra) and in the case of Hari Sing (supra), as discussed above.

19. In view of the above discussion, the impugned additions are not sustainable in the light of above referred to decisions of the Hon'ble Supreme Court and they are accordingly ordered to be deleted.

20. These appeals of the assessee are allowed.

In the result, all the appeals preferred by the assessee are allowed.

Order pronounced in the open court on 09.07.2018

**Sd/-**  
**(B.R.R. KUMAR)**  
**ACCOUNTANT MEMBER**

Dated : 09.07.2018

\*Rati\*

Copy to:

1. The Appellant
2. The Respondent
3. The CIT(A)
4. The CIT
5. The DR

**Sd/-**  
**(SANJAY GARG)**  
**JUDICIAL MEMBER**

Assistant Registrar,  
ITAT, Chandigarh