

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A", NEW DELHI**

**BEFORE
SH. R.K.PANDA, ACCOUNTANT MEMBER
AND
SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
ITA No. 685/Del/2017
Assessment Year 2013-14**

Rameshwar C/o. YSR & Associates, SF-14, Vyapar Kendra, Sushant Lok-1 Gurgaon PAN : AJSPR6942D	Vs.	ITO Ward-3(4) Gurgaon
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**ITA NO. 686/Del/2017
Assessment Year : 2013-14**

Rattan Singh HUF C/o. YSR & Associates, SF-14, Vyapar Kendra, Sushant Lok-1 Gurgaon PAN : AAPHR1848F	Vs.	ITO Ward-3(4) Gurgaon
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**ITA No. 6042/Del/2016
Assessment Year : 2013-14**

Om Prakash Dhankhar C/o. Satyendra Jain & Associates, D-1, IInd Floor, Defence Colony New Delhi	Vs.	ITO Ward-3(1), 5 th Floor, HSIIDC Building, Udyog Vihar, Gurgaon
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PAN : AHWPD5422E		
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ITA No. 4163/Del/2017
Assessment Year : 2013-14

Sanjay Gupta, C/op. YSR & Associates, SF-14, Vyapar Kendra, Sushant Lok -I, Gurgaon PAN : AMWPG3091R	Vs.	ITO Ward-4(1), Gurgaon
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ITA No. 6615/Del/2016
Assessment Year : 2013-14

Shamsher Singh C/o. YSR & Associates, SF-14, Vyapar Kendra, Sushant Lok-1, Gurgaon PAN : ACRPL1498C	Vs.	ITO Ward-4(2), Income Tax Office, 6 th Floor, HSIIDC Building, Udyog Vihar Gurgaon
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ITA No. 5765/Del/2016
Assessment Year : 2013-14

Ashok Kumar Gupta S/o. Sh. Puran Sukh Gupta, House No. 216, Sector-15, Part-1 Gurgaon PAN : ABJPG8590R	Vs.	ITO Ward-1(2), Gurgaon
Appellant		Respondent

Assessee by : Sh. Satyendra Jain, CA, Sh. Sudhir Yadav,
CA

Revenue by : Sh. N.K.Bansal, Sr. DR

Date of hearing : 26.09.2018

Date of pronouncement : 27.09.2018

ORDER

PER SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER:

All the six appeals have been preferred by the assesseees and they involve identical issue. Accordingly, they were heard together and are being disposed of by this common order for the sake of convenience.

2. The brief facts are as under:-

(I) **ITA No. 685/Del/2017** has been preferred against order dated 24.06.2016 passed by the Ld. CIT (A)-I, Gurgaon for assessment year 2013-14. The assessee is an agriculturalist and the rural agricultural land of the assessee was acquired by the Haryana State Industrial & Infrastructure Development Corporation Ltd. (HSIIDC) under section 4 of the Land Acquisition Act, 1894 for developing industrial area in Manesar, Gurgaon. Since, HSIIDC had not paid the compensation at the prevailing market rate, the

assessee had approached the Ld. Additional District Judge, Gurgaon who awarded enhanced compensation u/s 19, read with sections 23(1A), 23(2) and 28 of the Land Acquisition Act. The assessee claimed this amount as exempt income u/s 10(37) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') but the Assessing Officer denied the claim of the assessee and made addition of Rs. 62,92,124/- under the head income from other sources as interest income after allowing deduction of 50% u/s 57(iv) of the Income Tax Act, 1961. The assessee's appeal before the Ld. CIT (A) was dismissed and now the assessee has approached the ITAT challenging the order of the Ld. CIT (A).

(II) **ITA No. 686/Del/2017** is the assessee's appeal against order dated 28.11.2016 passed by the Ld. CIT (A)-I, Gurgaon for assessment year 2013-14. In this case the compensation awarded was Rs. 1,37,80,721/- which was claimed as exempt u/s 10(37) of the Income Tax Act, 1961 and the AO made addition of Rs. 68,90,360/- under the head income from other sources as interest income after allowing deduction of 50% u/s 57(iv) of the Income Tax Act, 1961. Since the assessee's appeal was dismissed by the Ld. CIT

(A), the assessee has now approached the ITAT challenging the order of the Ld. CIT (A).

(III) **ITA No. 6042/Del/2016** is preferred by the assessee against order dated 15.09.2016 passed by the Ld. CIT (A)-I, Gurgaon for assessment year 2013-14 and in this case the total compensation awarded by the Ld. Additional District Judge was 1,37,80,721/- which was claimed as exempt by the assessee in the return of income and the AO made an addition of Rs. 68,90,361/- which, on appeal, was upheld by the Ld. CIT (A) against which the assessee has now approached the Tribunal.

(IV) **ITA No. 4163/Del/2017** is the assessee's appeal against order dated 08.08.2016 passed by the Ld. CIT (A)-I, Gurgaon. In this case, the Ld. Additional District Judge, Gurgaon had awarded compensation of Rs. 1,15,98,011/- which was claimed as exempt by the assessee and the AO had proceeded to make an addition of Rs. 57,99,005/- which was upheld by the Ld. CIT (A). Consequently, the assessee is now before the ITAT challenging the action of the Ld. CIT (A) in upholding the addition.

(V) **ITA No. 6615/Del/2016** is the assessee's appeal against order dated 14.10.2016 passed by the Ld. CIT (A)-I, Gurgaon for assessment year 2013-14. The compensation awarded in this case amounted to Rs. 1,82,38,736/- which was claimed as exempt and the AO made an addition of Rs. 91,19,368/- which was upheld by the Ld. CIT(A). The assessee is now before the ITAT challenging the order of the Ld. CIT (A) in upholding the addition.

(VI) **ITA no. 5765/Del/2016** is preferred by the assessee against order dated 29.08.2016 passed by the Ld. CIT (A)- I, Gurgaon for assessment year 2013-14. The compensation awarded in this case was Rs. 2,33,13,515/- which was claimed as exempt by the assessee u/s 10(37) of the Act and the AO denied the claim of the assessee making an addition of Rs. 1,16,56,757/- under the head 'income from other sources' as interest after allowing deduction @ 50% u/s 57(iv) of the Income Tax Act, 1961.

3. In all the appeals the assesseees have challenged the action of the Ld. CIT (A) in confirming the action of the assessing officer in treating the compensation received as interest income of the

assesseees and not considering the same as part of the compensation received u/s 28 of the Land Acquisition Act, 1894.

4. The Ld. Authorised Representative submitted that the only issue for consideration in all the appeals was whether the interest received u/s 28 of the Land Acquisition Act was in the nature of interest or was a part of the enhanced compensation and further whether the same was taxable under the head 'income from other sources'. It was submitted that provisions of section 56(2)(viii) were not applicable in cases where agricultural land is involved. The Ld. Authorised Representative submitted that the assesseees had, before the lower authorities, placed reliance on the judgment of the Hon'ble Apex Court in the case of CIT vs. Ghanshyam (HUF) reported in 315 ITR 1 (SC) wherein the Hon'ble Apex Court had held that the interest allowed on compensation was part of the total compensation and was, therefore, exempt from levy of Income Tax. It was further submitted that although there was an amendment in the Income Tax Act with effect from 01.04.2010 so as to tax the interest in the year of receipt but in view of the judgment of the Hon'ble Apex Court in the case of Ghanshyam HUF (supra) interest

continued to be part of the compensation and, therefore, this amendment did not change the legal position regarding interest and the same was to be treated as part of compensation notwithstanding the amendment. The Ld. Authorised Representative also placed reliance on the judgment of the Hon'ble Apex Court in the case of Union of Income & Ors. Vs. Hari Singh & Ors. [In Civil Appeal No. 15041/2017] wherein vide judgment dated 15th September, 2017 the Hon'ble Apex Court in a bunch of 34 Civil Appeals and 2 Writ Petitions has held that 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 the Apex Court in CIT vs. Ghanshyam (HUF) (supra) in order to ascertain whether the interest given under the said provision amounts to compensation or not. The Ld. Authorised Representative submitted that in view of this judgment of the Hon'ble Apex Court it was very much evident that the interest was part of the compensation and was not taxable. It was prayed that the impugned orders of the Ld. CIT (A) be set aside and the AO be directed to delete the additions.

5. The Ld. Sr. Departmental Representative vehemently supported the orders of the Lower Authorities and argued that it was not clear from the judgment relied upon by the Ld. AR as to whether the interest was in the nature of compensation or not.

6. On a query from the Bench the Ld. Authorised Representative as well as the Ld. Sr. Departmental Representative agreed that the issue can best be examined and verified by the Assessing Officer.

7. Accordingly, we restore all the six appeals to the office of the respective Assessing Officer (s) with the direction to determine as to whether the interest paid amounted to compensation or not and follow the judgment of the Hon'ble Apex Court as rendered in the case of CIT vs. Ghanshyam HUF (supra) as has been directed in Civil Appeal no. 15041 of 2017 in the case of Union of India & Ors. Vs. Hari Singh & Ors. (supra). We also direct the respective Assessing Officer(s) to provide reasonable opportunity to the assessee before adjudicating the issue as per law and as per the directions of the Hon'ble Apex Court as aforesaid. We also direct

the respective assesseees to fully co-operate with the assessment proceedings.

8. In the final result, all the six appeals of the respective assesseees stand allowed for statistical purposes.

Order pronounced in the open court on 27th September, 2018.

Sd/-

Sd/-

(R.K.PANDA)

(SUDHANSHU SRIVASTAVA)

ACCOUNTANT MEMBER

JUDICIAL MEMBER

Date: 27th September, 2018

Binita

Copy of order to: -

- 1) The Appellant;
- 2) The Respondent;
- 3) The CIT;
- 4) The CIT(A)-, New Delhi;
- 5) The DR, I.T.A.T., New Delhi;

True Copy

By Order
ITAT, New Delhi

Date of dictation	27.09.2018
Date on which the typed draft is placed before the dictating Member	27.09.2018
Date on which the typed draft is placed before the Other Member	27.09.2018
Date on which the approved draft comes to the Sr. PS/PS	27.09.2018
Date on which the fair order is placed before the Dictating Member for pronouncement	27.09.2018
Date on which the fair order comes back to the Sr. PS/PS	28.09.2018
Date on which the final order is uploaded on the website of ITAT	28.09.2018
Date on which the file goes to the Bench Clerk	.09.2018
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	