

आयकर अपीलीय 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.1724/PUN/2017  
निर्धारण वर्ष / Assessment Year : 2012-13

Ramchandra Nivruti Barure,  
Harangal (BK),  
Taluka and Dist. Latur – 413531  
PAN : BCIPB1170K

.... अपीलार्थी/Appellant

Vs.

Income-tax Officer,  
Ward-3, Latur

.... प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.1725/PUN/2017  
निर्धारण वर्ष / Assessment Year : 2012-13

Harishchandra Nivruti Barure,  
Harangal (BK),  
Taluka and Dist. Latur – 413531  
PAN : ASJPB7772P

.... अपीलार्थी/Appellant

Vs.

Income-tax Officer,  
Ward-3, Latur

.... प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.1726/PUN/2017  
निर्धारण वर्ष / Assessment Year : 2012-13

Sanjay Nivruti Barure,  
Harangal (BK),  
Taluka and Dist. Latur – 413531  
PAN : ASJPB7773P

.... अपीलार्थी/Appellant

Vs.

Income-tax Officer,  
Ward-3, Latur

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : None (written submissions)  
प्रत्यर्थी की ओर से / Respondent by : Shri M.K. Verma

सुनवाई की तारीख / Date of Hearing : 01.10.2018	घोषणा की तारीख / Date of Pronouncement: 03.10.2018
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**आदेश / ORDER**

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

There are 3 appeals under consideration filed by 3 different assesseees namely (1) Ramchandra N. Barure; (2) Harishchandra N. Barure; and (3) Sanjay B. Barure involving common A.Y. 2012-13. They are filed against the separate orders of CIT(A)-2, Aurangabad, commonly dated 01-05-2017.

2. In these appeals, the facts, additions, arguments, submissions of the assessee, decision of AO/CIT(A) are identical. Therefore, all these appeals are clubbed and adjudicated in this composite order. However, we shall first proceed to take up the appeal in respect of Ramchandra N. Barure for want of facts and arguments as a standard one.

**ITA No.1724/PUN/2017 – Mr. Ramchandra N. Barure**  
**A.Y. 2012-13**

3. Briefly stated relevant facts of the assessee and the issues include that the assessee is an individual and filed the return of income on 21-11-2016 declaring total income of Rs.5,83,305/-. Before this AO issued notice u/s.148 of the Act on 14-10-2015 for opining the cash deposits in the bank accounts in Latur as concealed income of the assessee for the year under consideration. During the re-assessment proceedings, the assessee did not appear and however, he filed written submissions. Considering the said submissions, the re-assessment proceedings was completed determining the total income at Rs.41,55,425/-. AO made addition of Rs.40,97,120/- ( i.e.50% of the interest and the land compensation received by the assessee. In the process, AO invoked the provisions of section 56(2)(viii) and 56(2)(vi) of

the Act. During the re-assessment proceedings, it is the case of the assessee that the same is not taxable receipt and the interest received by the assessee u/s.28 of Land Acquisition Act is nothing but part of the enhanced value of the land exempt from tax and relied on various judgments. Rejecting the same, the AO treated the amount of Rs.81,24,240/- received by the assessee as interest of land acquisition payment. AO examined the provisions which provides for taxation of said income by way of interest received on compensation or enhanced compensation. These amended provisions of section 56(2)(viii) of the Act and the provisions of section 145A(b) are brought into statute w.e.f. 01-04-2010 by the Finance (No.2) Act, 2009. AO also analysed the provisions of section 23(1A), 28 and 34 of Land Acquisition Act, 1984 and held that these amounts are chargeable to income tax. AO also analysed the Hon'ble Supreme Court judgment in the case of CIT Vs. Ghanshyam Das (HUF) 224 CTR 522, Manjet Singh (HUF) Karta Manjeet Singh Vs. Union of India 65 taxman.com 160, Sunderlal and another Vs. UOI and others vide CWP No.2014 of 2015, dated 21-09-2015 and eventually held as under :

*"12. Decision :*

*Viewed in this context, in section 56(2)(viii) of the Act, the aim, scope and object of the income chargeable to tax under the head "income from other sources" is clearly mentioned. The words are clear and unambiguous and if there is nothing in the Act detracting from the width of the said terms, it is clear that, the interest received on enhanced compensation is taxable u/s.56(2)(viii) of the Act. As the assessee has not offered the interest of Rs.81,94,240/- for taxation and the same is added to his total income, subject to the deduction of 50% as provided u/s.57(iv) of the Act. Further, as he has concealed the particulars of his income and also not filed the return of income deliberately to evade the tax, penal proceedings u/s.274 r.w.s.271(1)(c) are initiated separately.*

*13. Subject to these remarks, the total income is computed as under :*

<i>Income returned</i>	<i>Rs.58,305</i>
<i>Interest on land compensations</i>	<i>Rs.81,94,240</i>
<i>Less : Deduction @50%</i>	<i>Rs.40,97,120</i>
<i>Taxable interest u/s.56(2)(viii)</i>	<i>Rs.40,97,120</i>

*Total income*

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*Rs.41,55,425/-*  
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From the above, it is evident that this is a case of the assessee where the amount of Rs.81,94,240/- received by the assessee constitutes “interest on the compensation or enhanced compensation” taxable u/s.56(2)(viii) of the Act.

Similarly, AO made addition of Rs.35,84,468/- in the case of Mr.Harishchandra N. Barure and Rs.26,19,000/- in the case of Mr. Sanjay B. Barure (50% of the interest and the land compensation).

4. Aggrieved with the same, assessee filed an appeal before the CIT(A). Assessee argued before him stating that assessee received sum of Rs.71,68,936/- against the total amount of Rs.2,86,75,746/- and not Rs.81,94,240/-. Giving break up for said sum of Rs.71,68,936/-, assessee submitted that the compensation amount out of that works out to Rs.19,69,307/- only and the interest segments amount works out to Rs.51,99,629/-. Assessee also relied on various judgments in the context of section 28 of the Land Acquisition Act and submitted that the order of the AO requires rectification. However, assessee argued before the CIT(A) about the meaning of solatium payment, interest amount on excess compensation and compensation etc. and stated for deletion of the addition made by the AO. On considering the assessee’s submissions and case laws relied upon by the assessee, the CIT(A) confirmed the order of AO and the invoking of the provisions of section 56(2)(viii) of the Act in respect of amount of interest on compensation received by the assessee u/s.28 of the Land Acquisition Act. Relevant lines from the contents of Para No.13 of the order of CIT(A) are extracted here as under :

“13. In view of the decisions of the Hon’ble Apex Court in *Bikram Singh* case (*supra*) wherein it has been held that the interest received on the delayed payment of the compensation determined u/s.28 to 31 of the Land Acquisition Act is income, and a taxable event, *Manjeet Singh (HUF)* case which has been approved by the Hon’ble Supreme Court and *Balasaheb Raosaheb Bidwe and others* (*supra*) cited above, I hold that there is no infirmity in the order passed by the Assessing Officer, whereby compensation received u/s.28 of the L.A. Act was brought to tax in terms of section 56(2)(viii) of the I.T. Act. However, it appears that there is a difference in the amount treated as interest received by the assessee in the assessment order and as stated by the assessee in the course of appellate proceedings. In assessment order, the assessing officer has treated the amount of Rs.81,94,240/- as the quantum of interest received whereas the assessee states that he had received only an amount of Rs.51,99,629/- as interest. Therefore, I direct the assessing officer to verify the facts and bring the correct amount of interest to tax as per my decision.”

From the above, it is evident that the CIT(A) confirmed the addition, in principle, and however, directed the AO to adopt the correct figure and facts and confirm the taxation of interest income under the provisions of section 56(2)(viii) of the Act. In the process, the CIT(A) relied heavily on the Apex Court judgment in the case of *Bikram Singh Vs. Land Acquisition Collector* 224 ITR 551 for the proposition that interest received on the delayed payment of compensation determined u/s.28 or 31 of the Land Acquisition Act constitutes taxable income. He also mentioned the said judgment, the Apex Court confirmed the other judgments delivered in the context of *Manjet Singh (HUF) Karta Manjeet Singh Vs. Union of India* and *Balasaheb Raosaheb Bidwe and others Vs. State of Maharashtra*.

5. Aggrieved with the same, assessee filed the present appeal before us with the following grounds :

“On facts and in law & without prejudice to each other :

1. The Ld. AO erred in treating the amount of Rs.81,94,240/- received by me u/s.28 of Land Acquisition Act, 1984, as interest instead of part and parcel of consideration.

1.1 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.

2. The Ld. AO erred (Ld.CIT(A) erred in confirming) in taxing the income which was effectively not received by the assessee.

3. The assessee craves the liberty to add, alter or amend any of the grounds of appeal or to take fresh ground of appeal at the time of hearing.”

As evident from the above, the solitary argument of the assessee is that the sum of Rs.81,94,240/- does not constitute interest income in its entirety and the same constitutes consideration and the same is in the nature of capital asset. In this regard, Ld. Counsel filed the following written submissions :

I. Rely of Pune ITAT decision in case of Dnyanoba Shajirao Jadhav V (2018) 169 ITD 291 (Pune) (Trib.)

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 eligible to tax. Both the judgments rendered b 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 provisionis 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.”

From the above, it is evident that the assessee did not chose to appear before the Tribunal but merely relied on the decision of Pune Bench of the Tribunal in the case of *Dnyanoba Shajirao Jadhav Vs. ITO (supra)* which is relevant for the following proposition :

*“interest awarded u/s.28 of the Land Acquisition Act is in the nature of solatium and an integral part of compensation and receipt of said compensation is a capital receipt whereas, interest awarded u/s.34 of Land Acquisition Act is on account of delayed payment of compensation and is receive receipt exigible to tax.”*

Therefore, any assessee could have received either u/s.28 of u/s.34 of the Land Acquisition Act, 1984.

6. Ld. DR for the Revenue submitted that the interest u/s.28 is taxable under section 56 of the I.T. Act and prayed for confirming the orders of AO/CIT(A). Ld. DR relied on the following judgments :

1. *Manjet Singh (HUF) Karta Manjeet Singh Vs. Union of India* 65 taxman.com 160 (Punjab & Haryana)
2. *CIT Vs. Chet Ram (HUF) – Civil Appeal No.13053/2017, dated 12-09-2017*
3. *Shivajirao S/o. Dnyanoba Ghanwat and others Vs. The State of Maharashtra and others - Writ Petition No.5402 of 2013 and others dated 27-08-2013*

6.1 Referring to the judgment of Hon’ble Supreme Court in the case of CIT Vs. Chet Ram (HUF) (supra) he submitted that in the said judgment, the Hon’ble Apex court after dealing with the judgment delivered in the context of CIT Vs. Ghanshyam (HUF) held as under :

*“Respectfully following the above decision, we allow these civil appeals, set aside the orders of the High Court as also the Income Tax Appellate Tribunal and hold that the respondents are liable to tax on the enhanced amount of compensation and interest received by them during the year in question.”*

7. I have heard the Ld. DR for the Revenue and the written submissions filed by the assessee on this issue of taxability of interest income. Considering the fact that the assessee has not appeared before

the Tribunal, there is no way to know the basic facts relating to the interest received by the assessee if the same is received u/s.28 or 34 of the Land Acquisition Act, 1984. As such, there are no facts as to what is the interest amount, what is the compensation or enhanced compensation etc. Assessee never filed the copies of the relevant orders directing the payments. No details of various sections of Land Acquisition Act (supra) are available before me. The orders of AO/CIT(A) are silent on these details/facts. For want of facts, I am of the opinion that this issue requires to revisit the file of AO for fresh adjudication after considering not only the order of Pune Bench of the Tribunal in the case of *Dnyanoba Shajirao Jadhav Vs. ITO (supra)* but also the Hon'ble Supreme Court judgment in the case of *CIT Vs. Chet Ram (HUF) (supra)* and any other law in force. Accordingly, the grounds raised by the assessee are allowed for statistical purposes.

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

**ITA Nos. 1725 and 1726/PUN/2017 – Mr. Harishchandra N. Barure  
and Mr. Sanjay N. Barure -A.Y.2012-13**

9. The facts, issues, decision of AO/CIT(A), assessee's submissions and the arguments of Ld. DR in the above appeals are same. Since the issue is remanded to the file of AO in the case of Mr. Ramchandra N. Barure, I am of the opinion that the grounds in these two appeals being identical in principle should also be remanded to the file of AO. Accordingly, the grounds raised by the assessees in their appeals are allowed for statistical purposes.

10. In the result, both the appeals of the assessees are allowed for statistical purposes.

11. To sum up, all the appeals of the assesseees are allowed for statistical purposes.

Order pronounced on this 03<sup>rd</sup> day of October, 2018.

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

पुणे / Pune; दिनांक Dated : 03<sup>rd</sup> October, 2018.  
Satish

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-2, Aurangabad
4. आयकर आयुक्त / The Pr.CIT-2, Aurangabad
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