

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

श्री संजय गर्ग, न्यायिक सदस्य एवं डा. बी.आर.आर. कुमार, लेखा सदस्य  
BEFORE: Sh. SANJAY GARG, JM & DR. B.R.R. KUMAR, AM

आयकर अपील सं./ ITA NO. 648/Chd/2018  
निर्धारण वर्ष / Assessment Year : 2013-14

Sh. Balwinder Singh S/o Sh. Amar Singh Vill. Khairpur, Sirsa	बनाम	Pr. CIT Aaykar Bhawan Sector-14, Hisar
स्थायी लेखा सं./PAN NO: DXGPS3816E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ ITA NO. 649/Chd/2018  
निर्धारण वर्ष / Assessment Year : 2013-14

Sh. Lakhvinder Singh S/o Sh. Amar Singh Dhani Amar Singh Vill. Khairpur, Sirsa	बनाम	Pr. CIT Aaykar Bhawan Sector-14, Hisar
स्थायी लेखा सं./PAN NO: DXGPS3423B		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ ITA NO. 651/Chd/2018  
निर्धारण वर्ष / Assessment Year : 2013-14

Sh. Gurdeep Singh S/o Sh. Kartar Singh Dhani Amar Singh Vill. Khairpur, Sirsa	बनाम	Pr. CIT Aaykar Bhawan Sector-14, Hisar
स्थायी लेखा सं./PAN NO: DNXPS9334C		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ ITA NO. 652/Chd/2018  
निर्धारण वर्ष / Assessment Year : 2013-14

Sh. Balbir Singh S/o Sh. Lakhwinder Singh R/o Vaidwala Road Sirsa	बनाम	Pr. CIT Aaykar Bhawan Hisar, Haryana
स्थायी लेखा सं./PAN NO: BQTPS6206A		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ ITA NO. 653/Chd/2018  
निर्धारण वर्ष / Assessment Year : 2013-14

Sh. Kuldeep Singh S/o Sh. Lakhwinder Singh Khairpur, Sirsa	बनाम	Pr. CIT Aaykar Bhawan, Sector-14 Hisar
स्थायी लेखा सं./PAN NO: DXGPS3422A		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri. Gautam Jain, Sh. Lalit Mohan  
राजस्व की ओर से/ Revenue by : Dr. Gulshan Raj  
सुनवाई की तारीख/Date of Hearing : 20/09/2018

आयकर अपील सं./ ITA NO. 603/Chd/2018

निर्धारण वर्ष / Assessment Year : 2013-14

Sh. Baldev Singh S/o Sh. Gurdayal Singh Vill-Khairpur, Sirsa	बनाम	Pr. CIT Aaykar Bhawan, Sector-14 Hisar
स्थायी लेखा सं./PAN NO: BNIPS7284N		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ ITA NO. 604/Chd/2018

निर्धारण वर्ष / Assessment Year : 2013-14

Sh. Chadat Singh S/o Sh. Mohan Singh, Dhani Amar Singh, Sirsa Haryana	बनाम	Pr. CIT Aaykar Bhawan, Hisar Haryana
स्थायी लेखा सं./PAN NO: DTBPS4489C		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ ITA NO. 605/Chd/2018

निर्धारण वर्ष / Assessment Year : 2013-14

Sh. Joginder Singh S/o Sh. Thakar Singh, Dhani Amar Singh Khairpur, Sirsa Haryana	बनाम	Pr. CIT Aaykar Bhawan, Hisar Haryana
स्थायी लेखा सं./PAN NO: DTBPS5180N		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ ITA NO. 607/Chd/2018

निर्धारण वर्ष / Assessment Year : 2013-14

Sh. Bant Singh R/o 14/81, Ram Colony Sirsa, Haryana	बनाम	Pr. CIT Hisar, Haryana
स्थायी लेखा सं./PAN NO: EBAPS9194A		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ ITA NO. 609/Chd/2018

निर्धारण वर्ष / Assessment Year : 2013-14

Sh. Ganesh Dass Mehta 64, Dwarkapuri Opp. Post Office, Sirsa	बनाम	Pr. CIT Aaykar Bhawan Hisar, Haryana
स्थायी लेखा सं./PAN NO: ADRPM6606Q		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ ITA NO. 610/Chd/2018

निर्धारण वर्ष / Assessment Year : 2013-14

Sh. Jagtar Singh S/o Sh. Mohan Singh Dhani Amar Singh Khairpur, Sirsa	बनाम	Pr. CIT Aaykar Bhawan Hisar, Haryana
स्थायी लेखा सं./PAN NO: DTBPS5178G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ ITA NO. 612/Chd/2018  
निर्धारण वर्ष / Assessment Year : 2013-14

Sh. Baldev Raj S/o Sh. Hari Chand H.No. 769, Ward-4 Sirsa	बनाम	Pr. CIT Aaykar Bhawan Hisar, Haryana
स्थायी लेखा सं./PAN NO: AXOPR4266L		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri. Tej Mohan Singh

राजस्व की ओर से/ Revenue by : Dr. Gulshan Raj

सुनवाई की तारीख/Date of Hearing : 03/10/2018

उद्घोषणा की तारीख/Date of Pronouncement : 31/10/2018

### आदेश/Order

#### **PER BENCH:**

All the above appeals have been filed by different assessee against the order of the Pr. CIT, Haryana.

2. Since the issues raised in all the above appeals are common therefore they are being decided by way of this common order for the sake of convenience. For dealing we shall take ITA No. 648/CHD/2018 as a lead case wherein Assessee has raised the following grounds:

*1 That order dated 26.2.2018 u/s 263(1) of the Act by learned Principal Commissioner of Income Tax, Hisar has been made without satisfying the statutory preconditions contained in the Act and is therefore without jurisdiction and thus, deserves to be quashed as such.*

*1.1 That the learned Pr. Commissioner of Income Tax has failed to appreciate that once the learned Assessing Officer on examination of the facts on record and after making all possible enquiries had accepted claim of the appellant then such an order of assessment could not be regarded as erroneous in as much as prejudicial to the interest of revenue merely because the learned Principal Commissioner of Income Tax had a different opinion and that too, without having established in any manner that, view adopted by the learned Assessing Officer was an impossible view.*

*1.2 That various adverse findings and observations made by the learned Pr. Commissioner of Income Tax in order are based on fundamental misconception of facts and law, arbitrary and unjustified and therefore untenable.*

*1.3 That the finding that "assessment order has not been passed in accordance with the provisions of the Income Tax Act, 1961 and in accordance with the decision rendered by jurisdictional High Court and Supreme Court by rejecting the SLP, therefore the order is erroneous in so far as it is prejudicial to the interest of revenue" is also not based on correct appreciation of facts on record and hence unsustainable.*

*1.4 That the learned Principal Commissioner of Income Tax otherwise has failed to appreciate that once an order has been made u/s 143(3)7147 of the Act then, no*

notice can be issued to revise an order u/s 143(3) of the Act as order u/s 143(3) of the Act merges with an order u/s 143(3)7147 of the Act.

2. That further the order made u/s 263 by invoking Explanation 2(d) of section 263 of the Act has been made without granting any opportunity as to the application of the explanation and therefore such an order is otherwise vitiated.

3. That the learned Principal Commissioner of Income Tax has also erred both in law and on fact in giving direction to Assessing officer to add the interest income of Rs. 3780155/- representing 50% of the enhanced compensation of Rs. 75603107- eligible for exemption u/s 10(37) of the Act.

3.1 That while making the aforesaid addition the learned Principal Commissioner of Income Tax has erroneously relied on the judgment of Hon'ble Punjab and Haryana High Court in the case of Manjit Singh v. UOI CWP No. 15506/2013 dated 14.1.2014 and overlooking the following judgments of Apex Court:

i)315 ITR 1 (SC) CIT vs. Ghanshyam (HUF) (dated 16.7.2009)

ii)367 ITR 4 98(SC) CIT vs. Govindbhai Mamaiya (dated 4.9.2014)

iii)C.A. No, 13053/2017 CIT vs. Chet Ram (HUF) (dated 12.9.2017)

iv)C.A. No. 15041/2017 Union of India and ORS vs. Hari Singh and ORS

v) C.A. No. 18475/2017 Income Tax Officer TDS-2 Rajkot vs. Muktanandgiri Maheshgiri

3.2 That the learned Principal Commissioner of Income Tax has further erred both in law and on fact in invoking section 56(2)(vii) read with section 57(iv) of the Act to make the impugned addition.

It is therefore prayed that, impugned order made under section 263(1) of the Act dated 26.2.2018 be held to be without jurisdiction and, therefore be quashed and appeal of the appellant be allowed. Furthermore addition so made be deleted and appeal of the appellant be allowed.

3. The order of the Ld. Pr. CIT passed under section 263 giving the facts of the case amendment in the Section 56, case laws relied on, and the rationale of the decision is reproduced below:

Return declaring an income of Rs. 4,66,040/- plus agri. Income at Rs. 2,00,000/- was filed by assessee on 29.03.2014 for the Assessment Year 2013-14. Apart from it, assessee has also shown the exempt income of Rs. 1,61,14,384/- in Schedule EI of the Income-tax return (enhanced compensation of Rs. 85,54,074/- and interest thereon at Rs. 75,60,310/-). and claimed exemption at Rs. 75,60,310/- u/s 10(37) of the Income-tax Act, 1961. The assessment proceedings u/s 143(3) of the Act were finalized by the AO vide order dated 24.11.2015 assessing total income on returned income.

2. Assessment record for the above mentioned assessment year was called upon and examined. During the year, certain land belonging to the assessee was acquired by the Land Acquisition Officer, HUDA and compensation, enhanced compensation and interest thereon were awarded in lieu thereof by the HUDA/various courts. As a result, assessee received interest on enhanced compensation amounting to Rs. 75,60,310/- u/ s 28 of the Land Acquisition Act during the year under consideration and claimed whole of the interest exempt in view of the Judgment of Hon'ble Apex Court delivered in the case of Ghanshyam HUF reported at 315ITR 1(2009).

2.1 In this connection, division Bench of the Hon'ble Punjab & Haryana high Court in its judgment dated 14.01.2014 in the case of Manjeet Singh (HUF) Karta Manjeet Singh Vs. Union of India & Others, CWP No. 15006 of 2013, after considering the decision of the Hon'ble Supreme Court in the case of CIT Vs

Ghanshyam (HUF)(supra), observed that the benefit of two Judges Bench's decision of the Hon'ble Supreme Court in the case of CIT Vs Ghanshyam (HUF) cannot be derived by the assessee u/s 28 of the Land Acquisition Act and held that the element of interest awarded by the Court on enhanced compensation u/s 28 of the Land Acquisition Act, 1894 falls for taxation u/s 56 of the Income-tax Act, 1961 as "Income from Other Sources" in the year of receipt.

2.2. Further the Special Leave Petition No. 34642 of 2014 filed against the above order of Hon'ble Punjab and Haryana High Court has also been dismissed by the Hon'ble Supreme Court vide order No.34642 of 2014 dated 18.12.2014 and thus issue of taxability of interest awarded u/s 28 of the L.A. Act, 1894 has become final.

2.3. Further, as per the amended provision of the Income-tax Act, 1961, introduced by Finance (No. 2) Act, 2009 as clause (viii) in sub section 2 of section 56, clause (iv) in Section 57 and Clause (b) in Section 145A inserted w.e.f. 01.04.2010, the interest received u/s 28 of the Land Acquisition Act, 1894, on the amount of compensation or enhanced compensation is eligible to tax as "Income from Other Sources" after allowing deduction of a sum equal to 50% of such income in the year of receipt.

2.4 In view of the above, the interest of Rs. 75,60,310/- received by assessee during the year under consideration u/s 28 of the L.A. Act, 1894 on compensation/enhanced compensation is taxable as income from other sources, after deduction @ 50% of the said interest. However, the A.O. has failed to tax the same in the assessment order under section 143(3). Such failure on the part of the A.O prima facie renders the assessment order erroneous in so far as it is prejudicial to the interest of revenue and the same is, therefore, required to be modified/cancelled u/s 263 of the Act. Therefore, show cause notice was issued to the assessee on 01.02.2018 as to why an appropriate order under section 263(1) should not be passed.

3. In response thereto, Sh. S.K. Jain, CA and AR of the assessee appeared and filed written submission as under :-

3.1 That assessee has furnished return of income on 29.03.2014 declaring an income of Rs. 4,66,040/- and agriculture income of Rs. 2,00,000/- for the instant year. That perusal of the return of income would show that assessee has duly disclosed that, he has received exempt income of Rs. 1,61,14,384/- in schedule EI (Exempt Income) of the Income tax return, which comprises of enhanced compensation of Rs. 85,54,0747-on compulsory acquisition of agricultural land and interest thereon amounting to Rs. 75,60,310/- on it.

3.2 Thereafter during the assessment proceedings u/s 143(3) of the Act, in response to the query of learned Assessing Officer, assessee furnished reply where in detail regarding enhanced compensation on compulsory acquisition of agriculture land has been submitted before learned Assessing Officer.

3.3 That on 24.11.2015, after considering the above said reply return of income filed by the assessee stood accepted as such vide order of assessment u/s 143(3) of the Act. (Thereafter, a notice was issued under section 148 of the Act by recording reasons as have also been extracted in the show cause notice.

3.4 That in response thereto assessee has filed his objections to the validity of the 1 initiation of proceedings u/s 147 of the Act in terms of the judgement of Hon'ble Supreme ; Court in the case of M/s G.K.N. Driveshafts (India) limited vs. ITO reported in 259 ITR 19(SC).

4 At the outset, it is respectfully submitted that once an order has been made u/s 143(3)/147 of the Act then, no notice can be issued to revise an order u/s 143(3) of the Act as order u/s 143(3) of the Act merges with an order u/s 143(3)/147 of the Act. It is thus submitted that notice u/s 263 of the Act cannot be issued to modify/cancel an order u/s 143(3) of the Act as the same stands merged with an order made u/s 143(3)/147 of the Act on the same issue for which notice u/s 263 has been issued. Reliance is placed on the judgement of Hon'ble Allahabad High Court in the case of L.G. Electronics India (P) Ltd. vs. PCIT reported in 388 ITR 135.

5 In any case and without prejudice, the factual matrix remains that now the claim stands accepted and allowed after due enquiry in two separate orders, one u/s 143(3) of the Act and another u/s 147/143(3) of the Act. A copy of the order u/s 143(3)7147 of the Act is placed at page 54 of Annexure to this Reply, wherein it has been stated as under:

"Proceedings u/s 147 of the Income Tax Act, 1961 for the assessment year 2013-14 are hereby dropped.

5.1 It is also evident from the impugned notice it has not been alleged that the claim has been allowed without examination of the issue. It is thus neither a case of lack of enquiry by the Assessing Officer or inadequate enquiry during the proceedings. Infact in the objection u/s 147 of the Act assessee had objected to reopening of the assessment on the ground that since issue has been examined and allowed u/s 143(3) of the Act as the issue is squarely covered by the judgments of Hon'ble Apex Court.

6 It is next submitted that when the reasons recorded for reopening the assessment were the very same reasons for which notice u/s 263 of the Act then invocation of section 263 of the Act is not tenable. It is submitted that in support of the above submission assessee seeks to place reliance on following judgements:

- i) 2 taxmann.com 260 (Del.) CIT vs. Suresh Paul Bansal
- ii) 287ITR 286 (Del) CIT vs. Vikram Aditya and Associated
- iii) ITA 170/2017 (Del) CIT vs. Prudent Advisory Services (P) Ltd.

7 That in the impugned notice it has been alleged that element of interest awarded by the Court on enhanced compensation u/s 28 of the Land Acquisition Act, 1894 falls for taxation u/s 56 of the Income Tax Act, 1961 as "Income from Other Sources"

7.1 It is submitted that aforesaid allegation is based on the judgement of Hon'ble Punjab and Haryana High Court in its judgement dated 10.01.2014 in the case of Manjeet Singh (HUF) Karta Manjeet Singh Vs. Union of India and Others, CWP No. 15006 of 2013. It is submitted that aforesaid judgement has been distinguished by Hon'ble Gujarat High Court in the case of Movaliya Bhikhubhai Balabhai vs. Income-tax Officer-TDS-1-Surat, dated 31.3.2016 reported in 388 ITR 343 (Guj).

7.2 That, assessee also seeks to rely on the following judgements:

- i) C.A No. 13053/2017 (SC) dated 12.09.2017 CIT Vs. Chet Ram (HUF)
- ii) 315 ITR 1(SC) dated 16.07.2009 CIT vs. Ghanshyam HUF
- iii) 367 ITR 498(SC) dated 04.09.2014 CIT vs. Govindbhai Mamaiya
- iv) C.A. No, 15041/2017 Union Of India And ORS. vs. Hah Singh And ORS.
- v) C.A. No, 18475/2017 Income Tax Officer TDS-2 Rajkot. vs. Muktanandgiri Maheshgiri
- vi) CR No. 2509 of 2012 (P&H) dated 29.11.2013 HSIDC Ltd. Vs. Savitri
- vii) CR No. 7953 of 2013 (P&H) dated 21.12.2013 HUDA vs. Mandir Nar Singh Puri and anothers
- viii) ITA No. 160/ CHD/2015 dated 14.07.2015 CIT Hisar vs. Vaibhav Choudhary
- ix) ITA No. 437/CHD/2015 dated 14.07.2015 CITHisarvs. Nishant Choudhary
- x) ITA No. 405/CHD/2013 dated 2.8.2013 ITO vs. Pawan Girl
- xi) ITA No. 313/CHD/2015 dated 20.02.2016 Baldev Singh vs. ITO
- xii) ITA No. 131/CHD/2016 dated 30.06.2016 The DCIT (TDS), Ludhiana vs. Dedicated Freight Corridor Corporation Ltd.
- xiii) ITA No. 100/HYD/2016 dated 07.12.2016 Smt. P. Susheela vs. ITO
- xiv) 83 taxmann.com 304 dated 21.04.2017 DCIT vs. Dinesh Sharma

8.1 The provisions of section 56(2)(viii) of the Act, the provisions of section 145A and the provisions of section 57 of the Act amended by Finance (No. 2) Act 2009. From the reading of the provisions, memorandum and notes to clause of the above amendment it is evident that aforesaid amendments are introduced to mitigate the hardship that arrears of interest computed on delayed or enhanced compensation shall be taxable on accrual basis as held by Apex Court in the case of Rama Bai vs. CIT reported in 181 ITR 400. The amendments are for arrears of interest computed on delayed or enhanced compensation shall be taxable

on accrual basis. Thus by making amendment in section 56(2), 57 and 145A, legislation makes the arrear of interest computed on delayed or enhanced compensation shall be taxable in the year of receipt, which does not have any effect on the binding decision of Apex court in the case of CIT Vs. Ghanshyam Dass (HUF) reported in 315 ITR 1 further affirmed in CIT vs. Govindbhai Mamaiya reported in 367 ITR 498 (SC) wherein it has been held that the interest earned under Section 28 of Land Acquisition Act, which is on enhanced compensation, is treated as an accretion to the value and therefore, part of the enhanced compensation.

8.2 In view of the aforesaid it is thus submitted that claim of the assessee is in accordance with law.

4. **I have carefully considered the submission of the AR of the assessee.** The AR of the assessee relied heavily on the decision of Hon'ble Apex High Court in the case of Ghanshyam HUF (Supra) dated 16.07.2009. In this context, subsequent to the above decision, the following 3 (three) amended provisions of Income Tax Act, 1961 were introduced by the Finance Act, 2009 w.e.f. 01.04.2010 :-

**1. Clause (viii) of sub-section 2 of Section 56:**

"Income by way of interest received on compensation or on enhanced compensation referred to in clause (b) of section 145A."

**2. Clause (iv) Section 57:**

"In the case of income of nature referred to in clause (viii) of sub section (2) of section 56, a deduction of a sum equal to fifty per cent of such income and no deduction shall be allowed under any other clause of this section."

**3. Clause (b) of section-145A:**

"Interest received by an assessee on compensation or on enhanced compensation, as the case may be, shall be deemed to be the income of the year in which it is received."

In view of the above amended provisions introduced w.e.f. 01.04.2010, 50% of the interest on enhanced compensation is assessable as interest income under the head of income from other sources in the year the interest is received by the assessee. In this regard, the contention of the AR that the amendments were introduced to tax the interest on compensation and enhanced compensation in the year of receipt to mitigate the hardships consequent to decision Hon'ble Apex Court in the case of Rama Bai (supra), is not relevant in the instant issue. Earlier, there was no specific provision in 56 to tax interest received on compensation or on enhanced compensation. In view of the above specific provision introduced by the Finance Act, 2009, interest on enhanced compensation is clearly taxable under the Act in the year it is received.

5. Further, Hon'ble Supreme Court in the case of **State of Punjab vs. Amarjit Singh**, JT 2011 (2) SC 393 dated 08.02.2011 held that the decision in the case of Ghanshyam HUF (Supra) is contrary to the Constitution bench decision of Hon'ble Supreme Court in the case of **Sunder vs. Union of India** JT 2001 (8) SC 130 (Constitution Bench) as under :-

"8. Learned counsel for the respondents placed reliance on the following observations of this Court in Commissioner of Income Tax. Faridabad v. Ghanshyam (HUF) -(2009) 8 SCC 412:

'The additional amount payable under Section 23(1 A) 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. Therefore, the amount payable under Section 23(1 A) 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.'

The learned counsel for respondents submitted that as this court has treated additional amount under Section 23(1 A) as part of the market value, additional amount is payable on the solatium. There is no logic in the contention as the decision nowhere holds that solatium is part of market value nor holds that additional amount under Section 23(1 A) is payable on the solatium amount. Be that as it may. More importantly, what requires to be noticed is that the entire consideration and analysis in that decision was with reference to the question whether solatium, additional amount and interest are part of 'enhanced compensation' for the purposes of Section 45(5) (b) of the Income Tax Act, 1961. The observations therein should be understood in the context of the provisions of the Income Tax Act. For example the decision also holds that interest payable under Section 28 of the Act is 'enhanced compensation' for the purposes of Section 45(5) (b) of Income Tax Act, which if taken as the interpretation with reference to the Land Acquisition Act, 1894, will be contrary to the Constitution bench decision in *Sunder (supra)*. We may also note that the decision clearly holds that additional amount is awardable only against the market value and not solatium:

'It is clear from reading of Sections 23(1 A), 23(2) as also Section 28 of the 1894 Act that additional benefits are available on the market value of the acquire lands under Section 23(1A) and 23(2) whereas Section 28 is available in respect of the entire compensation.'

9. In view of the above, the appeal is allowed, the orders of the High Court and the Executing Court, in so far as they hold that additional amount under Section 23(1 A) is payable on solatium, are set aside. It is declared that additional amount under section 23(1 A) is awardable only on the market value determined under the first factor of Section 23 (1) of the Act and cannot be calculated on the solatium payable under Section 23(2) of the Act."

6. Reliance placed by the AR in the decision of two Judges Bench of Hon'ble Apex Court in *Ghanshyam HUF (Supra)* is also not sustainable in view of various contrary larger bench decisions of Hon'ble Apex Court. In the case of *Ghanshyam HUF (Supra)* the two Judges Bench of Hon'ble Apex Court held that interest u/s 28 of 1894 Act is part of the amount of compensation, which is not the case in the matter of payment of interest u/s 34. That interest u/s 34 is for delay in making payment after the compensation amount is determined. As against the above, contrary decisions were held by the Apex Court in *Dr. Shamlal Narula vs. CIT, [1964] 53 ITR 151 (three Judges Bench)*, *Bikram Singh vs. Land Acquisition Collector, (1997) 224 ITR 551 (three Judges Bench)*, *Sunder vs. Union of India JT 2001 (8) SC 130 (Constitution Bench)* and *State of Punjab vs. Amarjit Singh JT 2011 (2) SC 393* as observed by the Hon'ble Punjab & Haryana High Court in the case of *Manjet Singh (HUF) Karta Manjet Singh vs. Union of India & Other, CWP No. 15506 of 2013 dated 14.01.2014*. The three Judges Bench Hon'ble Apex Court referred to above have held that interest u/s 28 are akin to interest u/s 34 which do not form part of compensation and the same is a revenue receipt and taxable, as under :-

(i) Hon'ble Apex Court in its three judge bench in the case of *Bikram Singh (supra)* held :

"the question is: whether the interest on delayed payment on the acquisition of the immovable property under the Acquisition Act would not be eligible to income-tax?"

It is seen that this Court has consistently taken the view that it is a revenue receipt. The amended definition of "interest" was not intended to exclude the revenue receipt of interest on delayed payment of compensation from taxability. Once it is construed to be a revenue receipt, necessarily, unless there is an exemption under the appropriate provisions of the Act, the revenue receipt is exigible to tax. The amendment is only to bring within its tax net, income received from the transaction covered under the definition of interest. It would mean that the interest received as income on the delayed payment of the compensation determined under Section 28 or 31 of the Acquisition Act is a taxable event."

(ii) Hon'ble Apex Court in its three judge bench in the case of *Dr. Sham Lai Narula (supra)* held :

Therefore, the interest awarded under s. 28 of the Act, just like under s. 34 thereof, cannot be a compensation or damages for the loss of the right to retain possession but only compensation payable by the State for keeping back the amount payable to the owner."

7. In view of the authoritative pronouncements of the Apex Court in the case of Dr. Shamlal Narula vs. CIT (Supra), Bikram Singh vs. Land Acquisition Collector, (Supra), Sunder vs. Union of India (Supra) and State of Punjab vs. Amarjit Singh (Supra), Hon'ble Punjab & Haryana High Court in Manjet Singh (Supra) held that the benefit of two Judges Bench's decision in the case of Ghanshyam (HUF) cannot be derived by the assessee u/s 28 of the Land Acquisition Act and held that the element of interest awarded by the Court on enhanced compensation u/s 28 of the Land Acquisition Act, 1894 falls for taxation u/s 56 of the Income-tax Act, 1961 as "Income from Other Sources" in the year of receipt. The observation of Hon'ble Punjab & Haryana High Court in the case of Manjet Singh (Supra) is reproduced as under :-

"12. Adverting to the case law on the subject, inevitably, reference is made to the judgment by the three Judges bench of the Supreme Court in the case of Dr. Shamlal Narula v. CIT, [1964] 53 ITR 151, which had considered the issue regarding award of interest under the 1894 Act. Interest under Section 28 of the 1894 Act was considered akin to interest under Section 34 thereof as both were held to be on account of keeping back the amount payable to the owner and did not form part of compensation or damages for the loss of the right to retain possession. It was noticed as under:-

"As we have pointed out earlier, as soon as the Collector has taken possession of the land either before or after the award the title absolutely vests in the Government and thereafter owner of the land so acquired ceases to have any title or right of possession to the land acquired. Under the award he gets compensation for both the rights. Therefore, the interest awarded under s. 28 of the Act, just like under s. 34 thereof, cannot be a compensation or damages for the loss of the right to retain possession but only compensation payable by the State for keeping back the amount payable to the owner."

The principle of Dr. Shamlal Narula's case (supra) had subsequently been applied by three Judges Bench of the Apex Court in a later decision in T.N.K. Govindaraju Chetty v. CIT, (1967) 66 ITR 465.

13. Further Section 2(28A) of the Act defines "interest" and was inserted by Finance Act, 1976 to be effective from 1.6.1976. It reads thus:-

"'interest' means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) and includes any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised."

The expression 'interest' occurring in sub-section (28A) of Section 2 of the Act widens the scope of the term 'interest' for the purposes of the Act.

14. Another three Judges bench of the Apex Court in Bikram Singh vs. Land Acquisition Collector, (1997) 224 ITR 551 following Dr. Shamlal Narula's case (supra) and taking into consideration definition of "interest" in Section 2(28A) of the Act had recorded that interest under Section 28 of the 1894 Act was a revenue receipt and is taxable. It was held as under:-

"The controversy is no longer res integra. This question was considered elaborately by this Court in Dr. Shamlal Narula vs. Commissioner of Income-tax, Jammu [51 ITR 151]. Therein, K. Subba Rao, J., as he then was, considered the earlier case law on the concept of "interest" laid down by the Privy Council and all other cases and had held at page 158 as under: "In a case where title passes to the State, the statutory interest provided thereafter can only be regarded either as representing the profit which the owner of the land might have made if he had the use of the money or the loss he suffered because he had not that use. In no sense of the

term can it be described as damages or compensation for the owner's right to retain possession, for he has no right to retain possession after possession was taken under Section 16 or Section 17 of the Act. We, therefore, hold that the statutory interest paid under Section 34 of the Act is interest paid for the delayed payment of the compensation amount and, therefore, is a revenue receipt liable to tax under the Income tax Act."

This position of law has been consistently reiterated by this Court in the case of *TMK Govindaraju Chetty vs. Commissioner of Income-tax, Madras* [66 ITR 465], *Rama Rai & Ors. vs. CIT, Andhra Pradesh* [181 ITR 400] and *K.S.Krishna Rao vs. CIT, A. P.* [181 ITR 408]. Thus by a catena of judicial pronouncements, it is settled law that the interest received on delayed payment of the compensation is a revenue receipt eligible to income tax. It is true that in amending the definition of "interest" in Section 2(28A) interest was defined to mean interest payable in any manner in respect of any money borrowed or debt incurred including a deposit, claim or other similar right or obligation and includes any service, fee or other charges in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised. It is seen that the word "interest" for the purpose of the Act was interpreted by the inclusive definition. A literal construction may lead to the conclusion that the interest received or payable in any manner in respect of any moneys borrowed or a debt incurred or enumerated analogous transaction would be deemed interest. That was explained by the Board in the circular referred to hereinbefore. But the question is: whether the interest on delayed payment on the acquisition of the immovable property under the Acquisition Act would not be eligible to income-tax? It is seen that this Court has consistently taken the view that it is a revenue receipt. The amended definition of "interest" was not intended to exclude the revenue receipt of interest on delayed payment of compensation from taxability. Once it is construed to be a revenue receipt, necessarily, unless there is an exemption under the appropriate provisions of the Act, the revenue receipt is exigible to tax. The amendment is only to bring within its tax net, income received from the transaction covered under the definition of interest. It would mean that the interest received as income on the delayed payment of the compensation determined under Section 28 or 31 of the Acquisition Act is a taxable event."

15. Now, we advert to the judgment of the Apex Court in *Ghanshyam (HUF)'s case (supra)* on the basis of which learned counsel for the assessee had sought reconsideration of judgment of this Court in *CIT v. Bir Singh, ITA No. 209 of 2004* decided on 27.10.2010 where Division Bench of this Court has held that element of interest awarded by the court on enhanced amount of compensation under Section 28 of the 1894 Act falls for taxation under Section 56 as 'income from other sources' in the year of receipt.

16. The reliance was placed upon following observations in *Ghanshyam (HUF)'s case (supra)*:-

"To sum up, interest is different from compensation. However, interest paid on the excess amount under Section 28 of the 1894 Act depends upon a claim by the person whose land is acquired whereas interest under Section 34 is for delay in making payment. This vital difference needs to be kept in mind in deciding this matter. Interest under Section 28 is part of the amount of compensation whereas interest under Section 34 is only for delay in making payment after the compensation amount is determined. Interest under Section 28 is a part of the enhanced value of the land which is not the case in the matter of payment of interest under Section 34."

17. In view of the authoritative pronouncements of the Apex Court in *Dr. Sham Lai Narula, T.N.K.Govindaraja Chetty, Amarjit Singh, Sunder, Bikram Singh's cases (supra)*, *Rama Bai vs. CIT (1990) 181 ITR 400* and *K.S.Krishna Rao v. CIT, (1990) 181 ITR 408*, the assessee cannot derive any benefit from the aforesaid observations quoted above."

8. Further SLP filed against the above decision of Hon'ble Punjab & Haryana High Court has also been dismissed by Hon'ble Supreme Court on 18.12.2014 as under :-

"Heard learned counsel for the petitioners and perused the relevant material.

We do not find any legal and valid ground for Interference. The Special Leave Petitions are dismissed."

9. In this regard, reliance placed by the AR of the assessee in the cases of (i) *Movaliya Bhikhubhai Balabhai (supra)*

(ii) *C.A No. 13053/2017 (SC) dated 12.09.2017 CIT Vs. Chet Ram (HUF)*

(iii) *CIT Vs. Govindbhai Mamaiya (2014) 367 ITR 0498 (SC),*

(iv) *C.A. No, 15041/2017 Union Of India And ORS. vs. Hah Singh And ORS.,*

(v) *C.A. No, 18475/2017 Income Tax Officer TDS-2 Rajkot. vs. Muktanandgiri Maheshgiri,*

(vi) *CR No. 2509 of 2012 (P&H) dated 29.11.2013 HSIDC Ltd. Vs. Savitri,* (vii) *CR No. 7953 of 2013 (P&H) dated 21.12.2013 HUDA vs. Mandir Nar Singh Puri and another,*

(viii) *ITA No. 160/ CHD/2015 dated 14.07.2015 CIT Hisar vs. Vaibhav Choudhar,*

(ix) *ITA No. 437/ CHD/2015 dated 14.07.2015 CIT Hisar vs. Nishant Choudhary,*

(x) *ITA No. 405/CHD/ 2013 dated 2.8.2013 ITO vs. Pawan Giri,*

(xi) *ITA No. 313/CHD/2015 dated 20.02.2016 Baldev Singh vs. ITO,*

(xii) *ITA No. 131/CHD/2016 dated 30.06.2016 The DCIT (TDS), Ludhiana vs. Dedicated Freight Corridor Corporation Ltd.,*

(xiii) *ITA No. 100/HYD/2016 07.12.2016 Smt. P. Susheela vs. ITO,*

(xiv) *83 taxmann.com 304 dated 21.04.2017 DCIT vs. Dinesh Sharma are also not sustainable in view of the decision of Hon'ble Punjab & Haryana High Court in the case of Naresh Kumar Jain & others Vs. State of Haryana and others in CWP No. 14728 of 2017 dated 12.07.2017. In all the above decisions relied upon by the AR, the judgement in Ghanshyam HUF (Supra) case was followed, for the reason of which the above judgements would be of no advantage on the issue of taxability of interest on enhanced compensation as held by Hon'ble Punjab & Haryana High Court in Naresh Kumar Jain & others (Supra) as under:-*

"9. In view of the above and also the amendments made by the Finance (No. 2) Act, 2009 w.e.f. 1.4.2010 noticed hereinbefore, no advantage can be derived by the petitioners from the judgment in Ghanshyam's case (supra).

10. Similarly, the judgment in Govindbhai Mamaiya's case (supra) relied upon by the learned counsel would be of no help to the petitioners as in the said case, the judgment in Ghanshyam's case (supra) was followed.

11. Examining the issue of taxability of interest under Section 28 of the Act, in *Commissioner of Income Tax v. Bir Singh (HUF)*, ITA No.209 of 2004 decided on 27.10.2010, it was held by the Division Bench of this Court that the interest awarded by court on enhanced compensation under Section 28 of the Act was chargeable to tax as income from other sources in the year of receipt. Division Bench of this Court again in *Commissioner of Income Tax, Panchkula v. Prem Singh* decided on 16.12.2010 while considering identical issue recorded as under: -

"11. In this view of the matter, the interest component on enhanced compensation under Section 28 is liable to be taxed under Section 56 of the Act even when compensation is treated as agricultural income and is not covered by Section 45(c) of the Act. We thus answer the questions in favour of the revenue and modify our order dated 5.7.2010 accordingly. The amount of interest on enhanced compensation is held to be taxable in the year of receipt irrespective of pendency of proceedings against award of enhanced compensation.

12. Adverting to the judgment of the Gujarat High Court in *Movaliya Bhikhubhai Balabhai's case (supra)*, it may be noticed that since the *Jagmal Singh's case (supra)* on the basis of which the said case was decided, has

been overruled by this Court in CWP No. 10125 of 2015 (Attar Singh and others v. State of Haryana and others) decided on 3.9.2015 to which one of us (Ajay Kumar Mittal, J.) was a member, with the following observations:-

"The judgment of learned Single Judge in Jagmal Singh's case (supra) (Annexure P-5) on which reliance has been placed by the petitioners being contrary to the aforesaid pronouncements cannot be taken to be interpreting the legal provisions correctly and is, thus, overruled."

Thus, we are unable to concur with the view expressed by the Gujarat High Court in Movaliya Bhikhubhai Balabhai's case (supra).

13. Still further, this Court in Sarti v. Haryana State Industrial and Infrastructure Development Corporation Ltd. and others, CWP No. 9739 of 2011 decided on 30.5.2011 dealing with the issue of tax deducted at source under similar circumstances had recorded as under:-

"8. This Court, in Income Tax Appeal No. 209 of 2004, decided on 27.10.2010 (Commissioner of Income Tax, Faridabad v. Bir Singh (HUF), Ballabgarh) had held that interest paid to the assessee under Section 28 of the Land Acquisition Act, 1894 (for brevity, "1894 Act") on enhanced amount of compensation in respect of the acquired land falls for taxation under Section 56 of the Act as "income from other sources" and is exigible to tax in the year of receipt under cash system of accountancy. It had also been observed that where the assessee is not maintaining books of accounts by adopting any specific method, it shall be treated to be cash system of accountancy. In the present case, the interest received by the petitioner was on account of delay in making the payment of enhanced compensation and, therefore, would fall under Section 28 of the 1894 Act. Such payment could not partake the character of compensation for acquisition of agricultural land and, thus, was not exempt under the Act. Once that was so, the tax at source had been rightly deducted by the payer."

14. In view of the above, the tax at source has been rightly deducted and the petitioners can claim the refund, if any, admissible to them by filing the income tax returns in accordance with law."

10. As against the provisions of Section 56(2)(viii) read with Section 57 (iv) and Section 145A(b) and the judicial position as discussed above, the assessment order passed by the AO u/s 143(3) of the Income Tax Act, 1961 failed to add the interest income of Rs. 37,80,155/- being 50% of the total interest income of Rs. 75,60,310/- under the head of "Income from other sources".

11. In this context Explanation 2 of the Section 263 of the IT. Act, 1961 inserted by the Finance Act, 2015 w.e.f. 01/06/2015 reproduced as under :-

"Explanation 2 :For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interest of the revenue, if, in the opinion of the Principal Commissioner or Commissioner :-

- (a) the order is passed without making inquiries or verification which should have been made;
- (b) the order is passed allowing any relief without inquiring into the claim;
- (c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or
- (d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of assessee or any other person."

In view of the above clear provisions of the Act, as the assessment order has not been passed in accordance with the provisions of the Income Tax Act, 1961 and in accordance with the decision rendered by jurisdictional High Court and Supreme Court by rejecting the SLP, therefore, the order is erroneous in so far as it is prejudicial to the interest of revenue.

12. In this regard, the decisions relied on by the AR in the case of L.G. Electronics India (P) Ltd. (supra) is not applicable in the instant case because in the said decision it has been held that limitation for revision of order u/s 263 would run

from the date of regular order of the assessment. In the instant case, the assessment was made on 24.11.2015 and limitation for order u/s 263 is yet to expire.

12.1 Further contention of the AR is that the claim of exemption stands accepted and allowed after due enquiry in two separate orders, one u/s 143(3) of the Act and another u/s 147/143(3) of the Act. AR contended that it is thus neither a case of lack of enquiry by the Assessing Officer or inadequate enquiry during the proceedings. The above contention of the AR is also not sustainable. As in the assessment made u/s 143(3), the AO erroneously allowed the exemption u/s 10(37) to the assessee on the basis of decision in the case of Ghanshyam (supra), therefore, the AO initiated proceedings u/s 147 which was dropped subsequently after objection by the assessee. As AO was of the view that issue could not be resolved u/s 147, therefore, proposal was sent for revision u/s 263 of the Income Tax Act, 1961. Although the proposal was received from the AO, the notice u/s 263(1) was issued by the undersigned after examining the record and after being satisfied that the assessment order u/s 143(3) passed by the AO is prima facie erroneous in so far as it is prejudicial to the interest of revenue and it is a fit case to issue notice u/s 263. There is no provision under the Income Tax Act, 1961 which prohibits initiation of proceedings u/s 263 on the basis of proposal from the AO. There is also no provision under the Income Tax Act, 1961 that prohibits action u/s 263 after dropping the proceedings u/s 147 of the Income Tax Act, 1961. In this context, it is not material whether AO could have proceeded to complete the assessment u/s 143(3)/147 instead of dropping the proceedings. As proceedings u/s 147 were dropped and escapement of income could not be brought to tax by the AO by recourse to action u/s 147, therefore, proposal for action u/s 263 was sent by the AO. The action u/s 263 is called for, not because of lack of enquiry but because the assessment order was not passed in accordance with the provisions of the Income Tax Act, 1961 and in accordance with the decision rendered by jurisdictional High Court and Supreme Court by rejecting the SLP. Therefore, legal and valid action u/s 263 was warranted in the instant issue and accordingly proceedings u/s 263 were initiated as per law.

12.2 The decisions Suresh Paul Bansal (supra), Vikram Aditya and Associates (supra) and Prudent Advisory Services (P) Ltd. (supra) relied on by the AR are also not applicable in the instant case. The above decisions are related to different views taken by the CIT in the order u/s 263 as against the order u/s 147/143(3) made by the AO. In the instant case, there is no difference in views taken by the AO while dropping the proceedings u/s 147 and the action taken u/s 263. As discussed above, in view of the objection by the assessee, the proceedings u/s 147 were dropped and as the escapement of income could not be brought to tax by the AO by recourse to action u/s 147, therefore, proposal for action u/s 263 was sent by the AO.

13. The order u/s 143(3) passed by the AO is in clear violation of the legal provision with IT. Act as well as the judicial position laid down. It is evident that the Assessing Officer had not properly examined the facts of the case and accepted the version of the assessee without due examination of the issue of interest on enhanced compensation as discussed above. Had the consequent additions been made, there would have been substantial tax effect and thus the cause of the revenue has suffered. Therefore, I am of the view that the assessment order under consideration passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interest of the revenue and, therefore, it needs to be suitably revised. Therefore, the assessment order passed by the AO u/s 143(3) of the IT. Act for the AY 2013-14 is set-aside u/s 263(1) of the IT. Act, 1961 and restored to the AO for making fresh assessment with direction to add the interest income of Rs. 37,80,155/- being 50% of total interest at Rs. 75,60,310/-, to the assessed income of the assessee.

4. **The Ld. Pr. CIT relied on the following for passing of order under section 263.**
  - i. **The assessment record**
  - ii. **Judgment of Hon'ble Punjab & Haryana High Court in the case of Manjit Singh(HUF) CWP 15006/2015**

- iii. Amended provisions of Income Tax Act,1961, introduced by Finance (No.2) Act, 2009 as clause (viii) in sub section 2 of section 56, clause (iv) in Section 57 and Clause(b) in Section 145A inserted w.e.f 01/04/2010.
- iv. Tried to differentiate the Apex Court judgment in the case of Ghanshyam (HUF) with reference to Section 28 and 34.
- v. Relied on pronouncement of Apex Court in the case of Shyam Lal Narula Vs. CIT, Bikram Singh Vs. Land Acquisition Collector(LAC), Rama Bhai Vs. CIT, K.S. Krishna Rao Vs. CIT
- vi. Explanation 2 of Section 263 of Income Tax Act,1961.

This similar issue has been dealt in number of cases by this Tribunal after following the developments over the period of time. The various cases are as under:

Sr. No	Particulars
1	<p><b><u>PROPOSITION: THAT INTEREST U/S 28 TO BE TREATED AS AN ACCRETION TO VALUE AND THEREFORE SAME WILL BECOME PART OF ENHANCED COMPENSATION</u></b></p> <p><b><u>SUPREME COURT</u></b></p> <p>i) 315 ITR 1 dated 16.07.2009 CIT v. Ghanshyam (HUF)  ii) 367 ITR 498 dated 04.09.2014 CIT v. Govindbhai Mamaiya  iii) C. A. No. 13053/2017 dated 12.09.2017 CIT v. Chet Ram  iv) C. A. No. 18475 of 2017 dated 10.11.2017 ITO v. Muktanandgiri Maheshgiri  v) C. A. No. 15041 of 2017 dated 15.09.2017 Union of India and ORS. v. Hari Singh and ORS</p> <p><b><u>PUNJAB AND HARYANA HIGH COURT</u></b></p> <p>i) 321 ITR 251 dated 11.01.2010 Risal Singh v. Union of India  ii) C.R. No. 7953 of 213 dated 21.12.2013 HUDA v. Mandir Nar Singh Puri and others  iii) CR No. 3236/2014 dated 08.05.2014 Ajay Kumar v. State of Haryana and others  iv) CR No. 2509/2012 dated 29.11.2013 Haryana State Industrial Development Corporation Ltd. vs. Savitri and another  v) CR No. 6784 /2016 dated 04.04.2018 The New India Assurance Co. Ltd. v. Savitri Devi and another  vi) ITA No. 160/2015 dated 14.07.2015 CIT v. Vaibhav Choudhary  vii) ITA No. 437/2014 dated 14.07.2015 CIT v. Nishant Choudhary</p> <p><b><u>DELHI HIGH COURT</u></b></p> <p>i) 86 taxmann.com 121 dated 11.09.2017 Surjit Kumar Chetal v. CIT</p> <p><b><u>GUJRAT HIGH COURT</u></b></p> <p>i) 388 ITR 343 dated 31.03.2016 Mc. aliya Bhikhubhai Balabhai v. ITO</p> <p><b><u>INCOME TAX APPELLATE TRIBUNAL</u></b></p> <p><b><u>Chandigarh Bench</u></b></p> <p>i) ITA No. 405/Chd/2013 dated 02.08.2013 ITO v. Pawan Giri in  ii) ITA No. 313/Chd/2015 dated 02.02.2016 Baldev Singh v. ITO  iii) ITA No. 564/Chd/2014 dated 07.02.2018 ITO v. Sh. Nachhattar Singh  iv) ITA No. 1413 to 1415/Chd/2016 dated 09.07.2018 Sh. Satbir Singh &amp; others v. ITO</p>

	<p><b><u>Delhi Bench</u></b> i) ITA No 473/D/2015 dated 20.07.2018 Rajender Singh v. ITO ii) 165 ITD 684 dated 21.04.2017 DCIT v. Dinesh Sharma</p> <p><b><u>Hyderabad Bench</u></b> i) ITA No. 100/HYD/2016 dated 07.12.2016 Smt. P. Susheela v. ITO</p> <p><b><u>Bangalore Bench</u></b> i) 95 taxmann.com 106 dated 01.06.2018 ITO v. Basavaraj M Kudarikannur ii) 96 taxmann.com 541 dated 20.07.2018 ITO vs. Sangappa S. Kudarikannur</p> <p><b><u>Pune Bench</u></b> i) 90 taxmann.com 285 dated 29.07.2018 Dnyanoba Shajirao Jadhav vs. ITO</p>
2	<p><b><u>PROPOSITION: WHEN THE REASONS RECORDED FOR REOPENING THE ASSESSMENT WERE THE VERY SAME REASONS FOR WHICH NOTICE U/S 263 OF THE ACT THEN INVOCATION OF SECTION 263 OF THE AC IS NOT TENABLE</u></b></p> <p><b><u>DELHI HIGH COURT</u></b> i) 287 ITR 268 dated 10.07.2006 CIT v. Vikram Aditya &amp; Associates (P) Ltd. ii) 2 taxmann.com 260 dated 28.11.2008 CIT v. Suresh Paul Bansal iii) ITA No. 170/2007 dated 28.02.2007 CIT v. Prudent Advisory Services P. Ltd.</p>
3	<p><b><u>PROPOSITION: THAT ONCE AN ORDER HAS BEEN MADE U/S 143(3)/147 OF THE ACT THEN, NO NOTICE CAN BE ISSUED TO REVISE AN ORDER U/S 143(3) OF THE ACT AS ORDER U/S 143(3) OF THE ACT MERGES WITH AN ORDER U/S 143(3)/ 147 OF THE ACT</u></b></p> <p><b><u>ALLAHABAD HIGH COURT</u></b> i) 388 ITR 135 dated 03.08.2016 L.G. Electronics India (P) Ltd. v. PCIT</p>
4	<p><b><u>PROPOSITION: JUDGMENT RELIED UPON BY PRINCIPAL COMMISSIONER INCOME TAX</u></b></p> <p>i) 181 ITR 400 dated 08.11.1989 Rama Bai v. CIT ii) C. A. No. 1494/2011 dated 08.02.2011 State of Punjab v. Amrjit Singh &amp; Anr iii) (2001) 7 SCC 211 Sunder v. Union of India iv) 53 ITR 151 dated 09.04.1964 Dr. Shamlal Narula v. CIT v) 224 ITR 551 dated 12.09.1996 Bikram Singh v. Land Acquisition Collector vi) 65 taxmann.com 160 dated 14.01.2014 Manjeet Singh (HUF) Karta Manjeet Singh v. Union of India recalling previous order CWP No. 15506/2013 dated 18.12.2014 Manjeet Singh (HUF) Karta Manjeet Singh v. Union of India and others (233) vii) 66 ITR 465 dated 17.04.1967 T.N.K. Govindaraju Chetty v. CIT viii) CWP No. 14728/2017 dated 12.07.2017 Naresh Kumar Jain and other</p>

5. The Tribunal after considering all the case laws mentioned above by the Ld. Pr. CIT and also by the AR before the Ld. Pr. CIT has held that the interest received on enhanced compensation was held to be in the nature of compensation and not interest which is taxable under the head income from other sources under section 56 of the Income Tax Act, 1961. The relevant part of the order in the case of Satbir & Others Vs. ITO, Ward-1, Jind in ITA No. 1429/CHD/2016 dt. 09/07/2018 is as under:

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 taxed 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.*

6. Since the core issue of taxing of interest received on enhanced compensation stands adjudicated in the above referred cases in accordance with the decisions of the Hon'ble Supreme Court and treated as part of compensation exempt from tax, we hereby hold that the order passed by the Assessing Officer cannot be held to be erroneous so far as it is prejudicial to the interests of revenue. The order passed by the Ld. PCIT under section 263 is therefore quashed.

7. As a result, all the above appeals of the Assessee's are allowed.

**Sd/-**  
**संजय गर्ग**  
**(SANJAY GARG)**  
**न्यायिक सदस्य/ Judicial Member**  
**AG**  
**Date: 31/10/2018**

**Sd/-**  
**डा. बी.आर.आर, कुमार,**  
**(DR. B.R.R. KUMAR, AM)**  
**लेखा सदस्य/ Accountant Member**

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File