

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

श्रीमती दिवा सिंह, न्यायिक सदस्य एवं, डा. बी.आर.आर. कुमार, लेखा सदस्य  
BEFORE: SMT. DIVA SINGH, JM & Dr. B.R.R. KUMAR, AM

आयकर अपील सं./ ITA NO. 601/Chd/2018

निर्धारण वर्ष / Assessment Year : 2013-14

Sh. Nand Lal S/o Sh. Nanak Chand Vill. Dhani Natar, Distt. Sirsa	बनाम	Pr. CIT Aayakar Bhawan Sector-14, Hisar
स्थायी लेखा सं./PAN NO: AIJPL1384P		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ ITA NO. 606/Chd/2018

निर्धारण वर्ष / Assessment Year : 2013-14

Smt. Suresh Rani W/o Sh. Ganesh Dass H.No. 64, Dwarka Puri, Sirsa	बनाम	Pr. CIT Aayakar Bhawan Sector-14, Hisar
स्थायी लेखा सं./PAN NO: AEXPR3886A		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ ITA NO. 608/Chd/2018

निर्धारण वर्ष / Assessment Year : 2013-14

Sh. Sukhdev Singh S/o Sh. Gurdoyal Singh #55, Gali Baldev Singh Wali Khairpur, Sirsa	बनाम	Pr. CIT Aayakar Bhawan Sector-14, Hisar
स्थायी लेखा सं./PAN NO: DZFPS5546Q		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ ITA NO. 611/Chd/2018

निर्धारण वर्ष / Assessment Year : 2013-14

Sh. Sucha Singh S/o Sh. Kartar Singh Dhani Amar Singh, Khairpur Sirsa	बनाम	Pr. CIT Aayakar Bhawan Sector-14, Hisar
स्थायी लेखा सं./PAN NO: DNXPS9337B		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ ITA NO. 650/Chd/2018

निर्धारण वर्ष / Assessment Year : 2013-14

Sh. Raj Kumar Kamboj S/o Sh. Gopi Ram VPO: Sikandarpur, Khairpur Sirsa	बनाम	Pr. CIT Aayakar Bhawan Sector-14, Hisar
स्थायी लेखा सं./PAN NO: DNXPS9337B		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

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

सुनवाई की तारीख/Date of Hearing : 09/10/2018  
उदघोषणा की तारीख/Date of Pronouncement : 01/01/2019

### आदेश/Order

#### **PER BENCH:**

All the above appeals have been filed by different assessee against the order of the Pr. CIT, Hisar, Haryana dt. 26/02/2018.

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. 601/CHD/2018 as a lead case wherein Assessee has raised the following grounds:

Grounds of ITA No. 601/Chd/2018:

*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)/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.

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. 1361613/- representing 50% of the enhanced compensation of Rs. 2723226/- 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.

#### Grounds of ITA No. 606/Chd/2018:

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.

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. 33,66,367/- representing 50% of the enhanced compensation of Rs. 67,32,734/- 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)(viii) read with section 57(i) of the Act to make the impugned addition.

#### Grounds of ITA No. 608/Chd/2018:

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.

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. 1,55,45,624/- representing 50% of the enhanced compensation of Rs. 3,10,91,248/- 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)(viii) read with section 57(iv) of the Act to make the impugned addition.

Grounds of ITA No. 611/Chd/2018:

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.

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. 29,54,393/- representing 50% of the enhanced compensation of Rs. 59,08,786/- 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)(viii) read with section 57(iv) of the Act to make the impugned addition.

Grounds of ITA No. 611/Chd/2018:

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 Sl.P. 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.

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. 5,58,718/- representing 50% of the enhanced compensation of Rs. 11,17,435/- 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))
- hi) 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)(viii) read with section 57(iv) of the Act to make the impugned addition.

3. The issues arising out of the above appeals stands adjudicated on the similar issue and hence fully covered by the order of this Tribunal in case of Shri Surinder Kumar and Others in ITA No. 539/CHD/2006 dt. 04/10/2018.

4. For the sake of brevity the relevant portion of the above mentioned order is reproduced below:

7. The core ground 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'?

8. 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 1894 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 an 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."

9. The Ld. counsels 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."

9.1 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. The ratio of the order laid down vide order dt. 09/07/2018 in a group of cases in ITA No. 1413 to 1437/CHD/2016 would apply mutatis-mutandis to the core issue of taxability of interest received on enhanced compensation.

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

Order pronounced in the open Court.

Sd/-

दिवा सिंह  
(DIVA SINGH)

न्यायिक सदस्य/ Judicial Member

AG

Date: 01/01/2019

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
- Guard File

Sd/-

डा. बी.आर.आर. कुमार,  
(Dr. B.R.R. KUMAR)

लेखा सदस्य/ Accountant Member