

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए" चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH "A" CHANDIGARH

श्री संजय गर्ग, न्यायिक सदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE: SH. SANJAY GARG, JUDICIAL MEMBER &
SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 597/CHD/2018
निर्धारण वर्ष / Assessment Year : 2013-14

Shri Bharat Bhushan, S/o Shri Nanak Chand, Village-Dhani Natar, Distt. Sirsa.	बनाम	The Pr. CIT, Aayakar Bhawan, Sector 14, Hisar.
स्थायी लेखा सं./PAN NO: AYDPB8160F		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

&

आयकर अपील सं./ ITA No. 598/CHD/2018
निर्धारण वर्ष / Assessment Year : 2013-14

Shri Ganesh Dass, HUF, 64, Dwarkapuri, Sirsa.	बनाम	The Pr. CIT, Aayakar Bhawan, Sector 14, Hisar.
स्थायी लेखा सं./PAN NO: AAEHG7940P		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

&

आयकर अपील सं./ ITA No. 599/CHD/2018
निर्धारण वर्ष / Assessment Year : 2013-14

Shri Gurdit Singh, House No. 55, Gali No. 2, Village-Khairpur Distt. Sirsa.	बनाम	The Pr. CIT, Aayakar Bhawan, Sector 14, Hisar.
स्थायी लेखा सं./PAN NO: DYRPS3121J		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

&

आयकर अपील सं./ ITA No. 600/CHD/2018
निर्धारण वर्ष / Assessment Year : 2013-14

Shri Duni Chand, HUF, Street No. 6, MITC Colony, Khairpur, Sirsa.	बनाम	The Pr. CIT, Aayakar Bhawan, Sector 14, Hisar.
स्थायी लेखा सं./PAN NO: AAFHD9845K		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ ITA No. 602/CHD/2018

निर्धारण वर्ष / Assessment Year : 2013-14

Shri Amarjeet Singh, R/o HSMITC Street, Ward-3, Khairpur, Distt. Sirsa.	बनाम	The Pr. CIT, Aayakar Bhawan, Sector 14, Hisar.
स्थायी लेखा सं./PAN NO: ATBPS3276J		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

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

राजस्व की ओर से/ Revenue by : Dr. Gulshan Raj, CIT-DR

सुनवाई की तारीख/Date of Hearing : 15.10.2018

उदघोषणा की तारीख/Date of Pronouncement : 11.01.2019

आदेश/Order**PER ANNAPURNA GUPTA, A.M.**

All the above appeals have been filed by different assesseees against separate orders passed by the Principal Commissioner of Income Tax, Hisar [in short referred to as Pr.CIT] all dated 26.02.2018 u/s 263 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') and all relating to assessment year 2013-14.

2. The order passed u/s 263 of the Act in all the above cases, it was common ground, was on account of identical issue relating to taxability of interest received u/s 28 of the Land Acquisition Act,(in short referred to as "LAA) 1894. Since common issue was involved in all the above appeals, they were taken up together for hearing and are being disposed of by way of this common order.

3. We shall be dealing with the facts in the case of appeal of the assessee in ITA 597/CHD/2018 and our decision rendered in this appeal would apply mutatis-mutandis to all the other appeals.

4. The assessee has raised the following grounds of appeal in ITA 597/CHD/2018 :

1.1 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 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. 1361614/- representing 50% of the enhanced compensation of Rs. 27232257-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.

5. Briefly stated the facts relating to the case are that the Id. Pr. CIT noted from the assessment record of the assessee that during the impugned year, certain land belonging to it was acquired by the Land Acquisition Officer, HUDA and compensation, enhanced compensation and interest thereon were awarded in lieu thereof by HUDA/various Courts. As a result, the assessee received interest on enhanced compensation amounting to Rs. 27,23,225/- u/s 28 of the Land Acquisition Act during the year under consideration and claimed whole of the interest exempt as capital gains earned from sale of rural agricultural land, in view of the judgement of the Hon'ble Apex Court delivered in the case of Ghanshyam, HUF reported at 315 ITR 1 (2009). The Pr. CIT noted that the Hon'ble Punjab & Haryana High Court in its judgement in the case of Manjit Singh Vs Union of India & others in CWP No. 15006 of 2013 had observed that the benefit of two Judges Bench decision of the Apex Court in the case of Ghanshyam, HUF could not be derived by the assessee and held that the said interest awarded by the Court on enhanced compensation u/s 28 of the Land Acquisition Act fell for taxation u/s 56 of the Income Tax Act, 1961 as 'income from other sources' in the year of receipt. The Id. Pr. CIT further noted that SLP against the above order had been dismissed by the Hon'ble Supreme Court vide their order dated 18.12.2014. The Id. Pr. CIT, therefore, noted that the issue of taxability of interest awarded u/s 28 of the L.A. Act, 1894 had become final. He, therefore, confronted the assessee as to why the assessment order passed in the present case was not erroneous since the AO had not subjected the same to tax. Detailed reply was filed by the assessee, reproduced at para 3 of the order after considering which the Id. Pr. CIT held that the

interest received u/s 28 of the L.A. Act, 1894 was taxable as in view of the amended provisions of Section 56 sub-section (2) sub-clause (viii), 57(iv) and Section 145A(b) of the Act and in view of the larger Bench decision of the Apex Court in the case of Dr. Shamlal Narula Vs CIT (1964) 53 ITR 151, Bikram Singh Vs Land Acquisition Collector (1997) 224 ITR 551 and Sunder Vs Union of India JT 2001 (8) SC 130 (Constitution Bench) which had held that interest u/s 28 was akin to interest u/s 34 and did not form part of the compensation but was taxable as revenue receipt. The ld. Pr. CIT held that these decisions had been followed by the jurisdictional High Court in the case of Manjit Singh (supra) while holding that the decision of the Apex Court in the case of Ghanshyam, HUF was not good law and hence would not apply. The ld. Pr. CIT further held that the Hon'ble jurisdictional High Court in another case i.e. Naresh Kumar Jain & Ors. Vs State of Haryana & Ors. in CWP 14728 of 2017 dated 12.07.2017 had again held that no benefit can be derived by assesseees from the decision of the Apex Court in the case of Ghanshyam, HUF. Considering the same, the ld. Pr. CIT held that the assessment order passed by the AO u/s 143(3) of the Act, having failed to add 50% of the interest income as per the provisions of Section 56(2)(viii), 57(iv) and 145A(b) of the Act under the head 'income from other sources', and having 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, was erroneous in so far as it was prejudicial to the interests of the Revenue. He, therefore, set aside the order passed by the AO restoring it to the AO for making fresh assessment with the direction

to add 50% of interest income to the assessed income of the assessee.

6. During the course of hearing before us, ld. counsel for the assessee pointed out that subsequent to the decision passed by the Hon'ble jurisdictional High Court in the case of Naresh Jain (supra), which was heavily relied upon by the ld. Pr. CIT in his order for stating that the proposition laid down by the Apex Court in the case of Ghanshyam, HUF stood overruled, and that interest u/s 28 was liable to tax as 'income from other sources', the Hon'ble Apex Court had categorically reiterated its decision rendered in the case of Ghanshyam, HUF in the case of Union of India & Ors. Vs Hari Singh & Ors. in CA No. 15041/2017 dated 15.09.2017. It was pointed out that the decision of the jurisdictional High Court in the case of Naresh Jain was dated 12.07.2017, while the Apex Court had reiterated the decision rendered in the case of Ghanshyam, HUF subsequently in September, 2017 and therefore, the proposition laid down by the Apex Court was the law of the land following which interest u/s 28 of the LAA, 1894, was in the nature of enhanced compensation and not in the nature of interest and therefore, had been rightly not returned to tax by assessee. It was pointed out that in view of the same, there was no error in the order of the AO and the jurisdiction assumed by ld. Pr. CIT, therefore, was erroneous.

7. The ld. DR on the other hand, relied on the order of the ld. Pr. CIT.

8. Having heard the rival contentions. We find merit in the contention of the ld. counsel for the assessee. Undoubtedly the ld.

Pr. CIT had heavily relied on the decision of the jurisdictional High Court in the case of Manjit Singh (supra) and more specifically in the case of Naresh Jain (supra) to hold that the proposition laid down by the Apex Court in the case of Ghanshyam, HUF that interest received u/s 28 of the Land Acquisition Act, 1894 was part of the enhanced compensation, was not good law. As rightly pointed out by the ld. counsel for the assessee the Hon'ble Apex Court has reiterated the aforesaid proposition in the case of Hari Singh (supra) subsequent to the decision passed by the Hon'ble High Court in the case of Naresh Jain (supra). We have gone through the order of the Apex Court in the case of Hari Singh and find that the Union of India had come before the Supreme Court against the decision of the High Court in writ petition filed by the assessee before the High Court. The issue before the High Court was that the assessee had received enhanced compensation on which tax had been deducted at source as per the provision of Section 194LA of the Act. The assessee had contended that no tax was deductible on the same as land was agricultural land and without examining these facts, taxes had been deducted at source. The Hon'ble High Court had directed refund of the taxes to the assessee and had directed the Land Acquisition Officer/Collector to examine whether their lands were agricultural or not and decide whether taxes were liable to be deducted therefrom as per the provisions of the Act. The Union of India had come in appeal before the Hon'ble Supreme Court against this order of the High Court stating that it was the Assessing Officer who was capable of determining the nature of land as being agricultural or not for the purposes of taxability under the Income Tax Act, 1961. The same was agreed to by the Hon'ble Apex Court

and they had, therefore, directed the AO to examine this aspect and further categorically stated that the proposition laid down by it in Ghanshyam, HUF(supra) vis a vis interest received u/s 28 of the LAA,1894 be kept in mind to ascertain whether the interest received amounts to compensation or not. The relevant findings of the Hon'ble Supreme Court in this regard are as under :

We find force in the submission of the learned Additional Solicitor General insofar as the challenge to the direction given to the Land Acquisition Collector to determine as to whether the land in question is agricultural land or not. Since the Land Acquisition Collector had . already deducted tax at source and deposited with the Income Tax Department, in such circumstances, better course of action, which is in consonance with the provisions of [Income Tax Act](#), is for the respondents to approach the concerned Assessing Officer(s) and to raise the issue that no tax is payable on the compensation/enhanced compensation which is received by them as their land was agricultural land. Once such an issue is raised before the Assessing Officer(s), it is for the Assessing Officer(s) to examine the facts of each case and then apply the law as contained in the [Income Tax Act](#) to determine the aforesaid question. Insofar as these cases are concerned, we allow these appeals by setting aside the directions contained in paragraph 7 and substitute the same with the following directions: (1) The respondents shall file appropriate returns before the Assessing Officer(s) in respect of Assessment Years in question within a period of two months from today in case they feel that the compensation in respect of land belonging to them which had been acquired was agricultural land, and claim refund of the tax which was deducted at source and deposited with the Income Tax Department. On the filing of these returns, the Assessing Officer(s) shall go into the aforesaid question and wherever it is found that the compensation was received in respect of agricultural land, the tax deposited with the Income Tax Department shall be refunded to these respondents. (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. (3) The direction to refund the amount of Tax Deducted at Source (TDS) to the Land Acquisition Collector is, accordingly, set aside. However, in those cases where the amount has already been refunded, no interference is called for and it will be for the Income Tax Department to proceed in accordance with the provisions of [Income Tax Act](#).

(4) Where such notices have not already been issued or assessments have not already been made, if such an action is taken within a period of two months from today, issue of limitation would not come in the way of the Income Tax Department. This order is passed having regard to the fact that the present proceedings were pending in this Court because of which it was not possible for the Income Tax Department to issue these notices earlier.

9. In view of the categorical affirmation of the proposition laid down by the apex court in the case of Ghanshyam HUF(supra) ,in its latest decision in the case of Hari singh (supra), we hold that there is no error in the order of the AO treating the interest received by them u/s 28 of the LAA,1894,as compensation following the proposition laid down by the apex court in Ghanshyam HUF(supra).The order passed by the Ld.Pr.CIT u/s 263 is therefore set aside.

10. The appeal of the assessee therefore stands allowed.

11. Since it was common ground that the issues involved in the rest of the appeals was identical to that in the present appeal, our decision rendered herein will apply mutatis mundis to the other appeals also following which we allow the rest of the appeals filed by the assessees.

12. In effect all the appeals of the assessees stand allowed.

Order pronounced in the Open Court on 11th Jan.,2019.

Sd/-

Sd/-

(संजय गर्ग)
(SANJAY GARG)

न्यायिक सदस्य/ Judicial Member

(अन्नपूर्णा गुप्ता)
(ANNAPURNA GUPTA)

लेखा सदस्य/ Accountant Member

आदेश की प्रतिलिपि अद्येषित/ 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

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar