

**In the Income-Tax Appellate Tribunal,
Delhi Bench 'F', New Delhi**

**Before : Shri H.S. Sidhu, Judicial Member And
Shri L.P. Sahu, Accountant Member**

**ITA No. 1823/Del/2016
Assessment Year: 2010-12**

Smt. Sushma Gupta, C/o Vijay Kumar Gupta, Advocate, Opp. Jain Mandir, Main Bazar, Ballabgarh, Faridabad. PAN: ACGPG 7553G (Appellant)	vs.	Income-tax Officer, Ward 1(3), Faridabad. (Respondent)
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Appellant by	Sh. Vijay Kumar Gupta, Adv.
Respondent by	Sh. Surender Pal, Sr. DR

Date of Hearing	29.01.2019
Date of Pronouncement	31.01.2019

ORDER

Per L.P. Sahu, A.M.:

This is an appeal filed by the assessee against the order of Id. CIT(A)-Faridabad dated 28.01.2016 for the assessment year 2010-11 on the following grounds :

"1. That the appellant undisputedly received interest u/s. 28 of the Land Acquisition Act, 1894, which was held to be part of compensation by the Hon'ble Supreme Court in the case of Ghanshyam (HUF) (315-ITR-01-SC), therefore, exempt u/s. 10(37) of the Income Tax Act, 1961 with effect from 01.04.2005.

2. That in the present case the Ld. CIT(A) has wrongly applied the provisions of sections 145A(b), 56(2)(viii) and 57(iv) of the Income Tax Act, 1961."

2. The brief facts of the case are that the assessee filed return of income on 30.03.2011 declaring income of Rs.2,68,460/-. The case was selected for scrutiny and statutory notices were issued to the assessee. The assessee derived income from transportation of goods, rental income and income from interest. In the assessment proceedings, on questionnaire dated 09.07.2012 at Sl. No. 22, the assessee was specifically asked to furnish the positive evidence in respect of addition made to her capital account. In response, the assessee filed reply as under :

“Sir, Sh Bhoa Gupta, late husband of the assessee was holding agriculture land at village – Malerna, Tehsil-Ballabgarh, Faridabad which was acquired by Urban Estate, Haryana, Faridabad in 1998 and later-on enhanced compensation was received by her husband during the F.Y 2002-03, which was assessed vide order dated 20.09.2010 u/s 143(3)/147 of the Income-tax Act, 1961. Now the assessee received second enhanced compensation of Rs. 2036576/- from Land Acquisition Officer Urban Estate, Faridabad during the present period, which the assessee added in her capital. Sir, the assessee disclosed this enhanced compensation in her income tax return filed for the period under exempt income because enhanced compensation is exempt u/s 10(37) of the Income-tax Act, 1961. We are enclosing herewith statement of enhanced compensation as per Annexure “B ”for your record”.

3. Further, the assessee submitted a copy of statement of enhanced compensation issued by LAC Urban Estate Faridabad, according to which the assessee had received Rs.20,36,573/- which contained interest component of Rs.14,39,841/- as per details below :

(i). From 08.08.95 to 30.04.1998	Rs.1,63,891/-
(ii). From 30.04.98 to 29.04.1999	Rs. 68,456/-
(iii). From 30.04.99 to 29.11.2009	<u>Rs.12,07,494/-</u>
Total :	<u>Rs.14,39,841/-</u>

The Assessing Officer noticed that by virtue of section 57(iv) read with section 56(2)(viii), both inserted by Finance Act No. 2 (Act) 2009 w.e.f. 01.04.2010, 50% of the above interest which comes to Rs. 7,19,220/- is taxable in the year of receipt and assessable in the assessment year 2010-11. Accordingly, the Assessing Officer issued show cause notice to the assessee. The assessee furnished reply on 03.09.2012 and relied on several judgments as incorporated in the assessment order. The amount paid to the assessee was under different sections of Land Acquisition Act, 1894 as under :

U/s. 23(1)	Rs.4,59,027/-
U/s. 23(2)	Rs.1,37,708/-
U/s. 23(1A)	Rs.1,63,891/-
U/s. 34	Rs.68,456/-
U/s. 34	Rs.12,07,494/-
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TOTAL:	Rs.20,36,576
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The Assessing Officer observed that section 57(iv) and 56(2)(viii) were inserted by the Finance Act, 2009 w.e.f. 01.04.2010 and referring to section 145A(b), 50% of interest received on compensation or enhanced compensation is taxable in the year of receipt. He also observed that the decision of Hon'ble Supreme Court in the case of CIT v. Ghanshyam HUF, 315 ITR 01 (SC) was prior to insertion of Finance Act, 2009, therefore, he did not give relief to the assessee and taxed 50% of the interest received, i.e., Rs.7,19,220/- in the hands of the assessee. The assessee appealed before the ld. CIT(A). The ld. CIT(A) observed that no interest has been paid u/s. 34 of

the Land Acquisition Act and that according to the amended provisions, the assessee is liable to tax on 50% of the interest amount received as per section 28 and 34 of the Land Acquisition Act. He, accordingly, dismissed the appeal of the assessee. Aggrieved by the order of Id. CIT(A), the assessee is in appeal before the Tribunal.

The Id. AR of the assessee submitted that the issue is covered by the following decisions :

(i). CIT v. Ghanshyam HUF, 315 ITR 01 (SC)
(Surinder Kumar v. DCIT & Ors. ITA No. 539/Chd/2016 dated 04.10.2018 (ITAT Chandigarh Bench).

4. On the other hand, the Id. DR relied on the orders of the lower authorities.

5. Having considered the rival submissions and gone through the entire materials available on record, we find that the assessee's case is squarely covered in her favour by the decision of co-ordinate Bench of ITAT, Chandigarh wherein the ITAT after following the decision of Hon'ble Supreme Court in the case of Ghanshyam HUF (supra) and other decisions, has held as under :-

"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.

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

Respectfully following the above decisions, the appeal of the assessee deserves to be allowed.

6. In the result, the appeal is allowed.

Order pronounced in the open court on 31.01.2019.

Sd/-

(H.S. Sidhu)
Judicial member

Sd/-

(L.P. Sahu)
Accountant Member

Dated: 31.01.2019

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