

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.2571/Del/2015
Asstt. Year: 2011-12

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| ITO Ward-2 Rewari 123 401 | Vs. | Ramsarup Saini HUF Konsiwas Road Rewari PAN AAIHR3464F |
| (Appellant) | | (Respondent) |

| | |
|-----------------------|-------------------------|
| Department by: | Shri C.P. Singh, Sr. DR |
| Assessee by : | None |
| Date of Hearing | 27/02/2019 |
| Date of pronouncement | 28/02/2019 |

ORDER

PER O.P. KANT, A.M

This appeal by the Revenue is directed against order dated 25/02/2015 passed by the Ld. Commissioner of Income-tax (Appeals)-Rohtak [in short the Ld. CIT(A)] for assessment year 2011-12 raising following grounds:

“1. On the facts and circumstances of the case, Ld. CIT(A) has erred in law in deleting the addition amounting to Rs. 1,93,90,940/- made by the AO on account of interest received

on enhanced compensation without appreciating the facts brought on record by the AO in assessment order.

2. On the facts and circumstances of the case, Ld. CIT(A) has erred in law in deleting the addition amounting to Rs. 1,93,90,940/- made by the AO on account of interest received on enhanced compensation contrary to the provisions of section 56(2)(viii) rws 145A and 57(iv) of the Income Tax Act, 1961.

3. The appellant craves leave to add, amend, alter, modify, delete and or change any of the above grounds on or before the date of hearing.”

2. Briefly stated facts of the case are that the assessee filed return of income on 28/03/2013 disclosing income of Rs. 89,04,270/-including long-term capital gain of Rs. 57,58,548/-. The case was selected for scrutiny and notice u/s 143(2) of the Income Tax Act, 1961 (in short the Act) was issued and complied with. The Assessing Officer observed exempt income of Rs. 10,22,83,885/- claimed by the assessee. The assessee submitted that the amount was received from Haryana Urban Development Authority (HUDA) against compulsory acquisition of agricultural land in the form of enhanced compensation and interest thereon and same was exempt from tax u/s 10(37) of the Act. The Assessing Officer found that total amount received includes interest amounting to Rs. 3,87,81,880/-on enhanced compensation. According to the Assessing Officer in view of the section 56(2)(viii) inserted w.e.f. 01/04/2010 read with clause (b) of section 145A of the Act , the interest on compensation is deemed to be the income of the assessee for the year in which it is received. He further observed that as per section 57 (iv) of the Act. 50% percent of the such income was allowed as deduction. Accordingly, the Assessing Officer against the interest income of Rs. 3,87,81,880/-allowed the deduction of Rs. 1,93,90,940/-and balance income of Rs. 1,93,90,940/-was held as taxable.

3. On further appeal, before the Ld. CIT(A), the assessee claimed that in view of the decision of the Hon'ble Supreme Court in the case of CIT Vs Ghanshyam (HUF) reported in (2009) 224 CTR 522 compensation or enhanced compensation along with interest by any court on compulsory acquisition of agricultural land u/s 28 of the Land Acquisition Act shall come under the purview of section 10(37) of the Act. According to the assessee , if HUDA would have paid the interest on delayed payments i.e. after the expiry period of one year u/s 34 of the Land Acquisition Act , that it would fall u/s 56 (2)(viii) of the Act read with section 145A clause (b) and not the interest received u/s 28 of the Land Acquisition Act. The Ld. CIT (A) after taking into account remand report of the Assessing Officer and relying on the decision of the Hon'ble Punjab and Haryana High Court in the case of Jamaal Singh and others versus the State of Haryana (supra) held that compensation and interest received u/s 28 of the Land Acquisition Act is exempted u/s 10(37) of the Act and accordingly deleted the addition made by the Assessing Officer.

4. Before us, the Ld. DR submitted that no documentary evidences to support that the interest was received u/s 28 of the Land Acquisition Act have been filed by the assessee before the Assessing Officer .

5. None represented on behalf of the assessee despite notifying the date of hearing.

6. We have heard the submission of the Ld. DR and perused the relevant material on record including the impugned order of the Ld. CIT(A). The Ld. CIT(A) has reproduced comment of the assessee on the remand report of the Assessing Officer, wherein it is mentioned that the assessee filed copy of the order of the Ld. Additional District Judge passed for enhanced compensation u/s 28 of the Land Acquisition Act wherein he directed the collector to pay the interest on such amount at the rate of 9% per annum from the date on which he took possession of the land. It is further mentioned that the collector (HUDA) paid 9% interest on

enhanced compensation and hence the interest is covered under section 28 of the Land Acquisition Act.

7. In our opinion, the bone of contention in the instant case is whether the interest is received u/s 28 of the Land Acquisition Act or Section 34 of the Land Acquisition Act. We find that the taxability of the interest received u/s 28 of the Land Acquisition Act and Section 34 of the Land Acquisition Act has been discussed in detail by the Tribunal in the case of **Dnyanoba Shajirao JadhavVs ITO (ITAT Pune)** In IT Appeal No. 168 (Pun.) of 2016 with reference to the decisions of the Hon'ble Supreme Court on the issue. The relevant finding of the tribunal is reproduced as under:

“8. Before proceeding further it would be relevant to note that the interest awarded u/s. 23(1A) and 23(2) of L.A. Act is different from the interest awarded u/s. 34 of the L.A. Act. The Hon'ble Supreme Court of India in the case of Commissioner of Income Tax Vs. Ghanshyam (HUF) (supra) has brought out the distinction between the award of interest under the two sections. The relevant extract of the judgment of Hon'ble Apex Court in the aforesaid case is as under :

“22. Sec. 23(1A) was introduced in the 1894 Act to mitigate the hardship caused to the owner of the land who is deprived of its enjoyment by taking possession from him and using it for public purpose, because of considerable delay in making the award and offering payment thereof [see :Asstt. Commr. Gadag Sub-division, Gadag vs. Mathapathi Basavanneewa & Ors. AIR 1995 SC 2492]. To obviate such hardship, s. 23(1A) was introduced and the legislature envisaged that the owner is entitled to 12 per cent per annum additional amount on the market value for a period commencing on or from the date of publication of the notification under s. 4(1) of the 1894 Act upto the date of the award of the Collector or the date of taking possession of the land, whichever is earlier. The additional amount payable under s. 23(1A) 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. [see : State of Tamil Nadu &Ors. vs. L. Krishnan &Ors. AIR 1996 SC 497]. Therefore, the amount payable under s. 23(1A) 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. Sub-s. (1A) of s. 23 was introduced by Land Acquisition

(Amendment) Act, 1984. It provides that in every case the Court shall award an amount as additional compensation @ 12 per cent per annum on the market value of the land for the period commencing on and from the date of publication of the notification under s. 4(1) to the date of the award of the Collector or to the date of taking possession of the land, whichever is earlier. In other words sub-s. (1A) of s. 23 provides for additional compensation. The said sub-section takes care of increase in the value @ 12 per cent per annum.

23. In addition to the market value of the land, as above provided, the Court shall in every case award a sum of 30 per cent on such market value, in consideration of the compulsory nature of acquisition. This is under s. 23(2) of the 1894 Act. In short, s. 23(2) talks about solatium. Award of solatium is mandatory. Similarly, payment of additional amount under s. 23(1A) is mandatory. The award of interest under s. 28 of the 1894 Act is discretionary. Sec. 28 applies when the amount originally awarded has been paid or deposited and when the Court awards excess amount. In such cases interest on that excess alone is payable. Sec. 28 empowers the Court to award interest on the excess amount of compensation awarded by it over the amount awarded by the Collector. The compensation awarded by the Court includes the additional compensation awarded under s. 23(1A) and the solatium under s. 23(2) of the said Act. This award of interest is not mandatory but is left to the discretion of the Court. Sec. 28 is applicable only in respect of the excess amount, which is determined by the Court after a reference under s. 18 of the 1894 Act. Sec. 28 does not apply to cases of undue delay in making award for compensation [see : Ram Chand & Ors. vs. Union of India & Ors. 1994 (1) SCC 44]. In the case of Shree Vijay Cotton & Oil Mills Ltd. vs. State of Gujarat (1991) 1 SCC 262, this Court has held that interest is different from compensation.

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

25. It is clear from reading of ss. 23(1A), 23(2) as also s. 28 of the 1894 Act that additional benefits are available on the market value of the acquired lands under ss. 23(1A) and 23(2) whereas s. 28 is

available in respect of the entire compensation. It was held by the Constitution Bench of the Supreme Court in Sunder vs. Union of India (2001) 7 SCC 211, that “indeed the language of s. 28 does not even remotely refer to market value alone and in terms it talks of compensation or the sum equivalent thereto. Thus, interest awardable under s. 28, would include within its ambit both the market value and the statutory solatium. It would be thus evident that even the provisions of s. 28 authorise the grant of interest on solatium as well.” Thus solatium means an integral part of compensation, interest would be payable on it. Sec. 34 postulates award of interest at 9 per cent per annum from the date of taking possession only until it is paid or deposited. It is a mandatory provision. Basically s. 34 provides for payment of interest for delayed payment.”

[Emphasized by us]

A perusal of the above extract of the judgment indicate that the interest awarded u/s. 23(1A) and 23(2) r.w.s. 28 of the L.A. Act is in the nature of solatium and an integral part of compensation. It is an admitted position that the receipt of compensation awarded under L.A. Act is a capital receipt. Whereas, interest awarded u/s. 34 of the L.A. Act is on account of delayed payment of compensation and is revenue receipt. Thus, the payment of interest u/s. 23(1A) and 23(2) of the L.A. Act and interest awarded u/s. 34 of the L.A. Act are very different in nature.

9. One of the question before the Hon'ble Supreme Court of India in the case of Commissioner of Income Tax Vs. Ghanshyam (HUF) (supra) was :

“26. The question before this Court is : whether additional amount under s. 23(1A), solatium under s. 23(2), interest paid on excess compensation under s. 28 and interest under s. 34 of the 1894 Act, could be treated as part of the compensation under s. 45(5) of the 1961 Act ?”

Answering the above question along with other questions the Hon'ble Apex Court held :

“33. It is to answer the above questions that we have analysed the provisions of ss. 23, 23(1A), 23(2), 28 and 34 of the 1894 Act. As discussed hereinabove, s. 23(1A) provides for additional amount. It takes care of increase in the value @ 12 per cent per annum. Similarly, under s. 23(2) of the 1894 Act there is a provision for solatium which also represents part of enhanced compensation. Similarly, s. 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 s.

23(1A) and solatium under s. 23(2) of the said Act. Sec. 28 of the 1894 Act applies only in respect of the excess amount determined by the Court after reference under s. 18 of the 1894 Act. It depends upon the claim, unlike interest under s. 34 which depends on undue delay in making the award. It is true that "interest" is not compensation. It is equally true that s. 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 s. 28 unlike interest under s. 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 s. 34 of the 1894 Act. So also additional amount under s. 23(1A) and solatium under s. 23(2) of the 1961 (sic-1894) Act forms part of enhanced compensation under s. 45(5)(b) of the 1961 Act."

Thus, it is unambiguously clear that interest received on compulsory acquisition of land u/s. 23(1A) and 23(2) r.w.s. 28 and interest received u/s. 34 of the L.A. Act are on different pedestal and both the interest cannot be equated for tax purpose.

10. The Commissioner of Income Tax (Appeals) while confirming the order of Assessing Officer has observed that the case of assessee is covered by the decision of Hon'ble Apex Court in the case of *Bikram Singh &Ors. Vs. Land Acquisition Collector &Ors. (supra)* as the said judgment is delivered by Larger Bench and prevails over the decision rendered in the case of *Commissioner of Income Tax Vs. Ghanshyam (HUF) (supra)* which is though subsequent in time but is rendered by Division Bench. We do not concur with the findings of Commissioner of Income Tax (Appeals) to make the addition. Undisputedly, while rendering the decision in the case of *Commissioner of Income Tax Vs. Ghanshyam (HUF) (supra)* the judgment of Larger Bench in the case of *Bikram Singh &Ors. Vs. Land Acquisition Collector &Ors. (supra)* was not considered. However, we find that there is no conflict of law laid down in both the cases. The Hon'ble Supreme Court in the case of *Commissioner of Income Tax Vs. Ghanshyam (HUF) (supra)* has clearly marked the distinction between the interest received u/s. 23(1A) and 23(2) r.w.s. 28 of the L.A. Act vis-à-vis interest on delayed payment of compensation u/s. 34 of the L.A. Act. The Larger Bench of Hon'ble Supreme Court of India in the case of *Bikram Singh &Ors. Vs. Land Acquisition Collector &Ors. (supra)* has held that the interest received u/s. 34 of the Act on delayed payment of compensation is a revenue receipt and is exigible to tax. Both the judgments rendered by the Hon'ble Apex Court have held that payment of interest on delayed payment of compensation u/s. 34 of the L.A. Act are liable to tax under the provisions of Income Tax Act.

11. A perusal of material available on record does not clearly indicate whether the interest component which is subject matter of dispute in the present appeal was received by assessee under the provisions of section 23(1A) and 23(2) r.w.s. 28 of the L.A. Act or u/s. 34 of the L.A. Act. The assessment order indicates that the assessee has received interest on compensation/enhanced compensation u/s. 28 and 34. The order of Commissioner of Income Tax (Appeals) is silent on the fact whether the interest component which is subject matter of dispute was received by assessee u/s. 23(1A) and 23(2) or u/s. 34 of the L.A. Act. However, the Commissioner of Income Tax (Appeals) has given findings on the presumption that the assessee has received interest under L.A. Act u/s. 34.

A perusal of Form 35 shows that the assessee in grounds of appeal before the Commissioner of Income Tax (Appeals) has not specified that the interest received by assessee on compulsory acquisition of land is u/s. 23(1A) and 23(2) or u/s. 34 of the L.A. Act. It is for the first time before the Tribunal that assessee in grounds of appeal has clearly stated that assessee has received interest u/s. 23(1A) and 23(2) r.w.s. 28 of the L.A. Act. However, the assertions made by assessee in the grounds of appeal are not supported by any cogent evidence. In the absence of complete facts it would not be possible to adjudicate the issue in hand. Therefore, in our considered opinion this issue needs re-visit to the file of Assessing Officer. The Assessing Officer after examining the facts of the case and determining the nature of interest received by assessee under the provisions of Land Acquisition Act shall decide this issue de-novo, in accordance with law laid down by the Hon'ble Apex Court. Needless to say that the Assessing Officer shall follow principles of natural justice while re-adjudicating the issue."

8. Since in the instant case before us also the Assessing Officer has not been provided opportunity by the Ld. CIT(A) in remand proceedings to examine whether the interest received was u/s 28 of the Land Acquisition Act or u/s 34 of the Land Acquisition Act. No documents in support of the claim of the assessee that interest was received u/s 28 of Land Acquisition Act have been filed before us also. In the circumstances, we feel it appropriate to restore this issue to the file of the Ld. CIT(A) for deciding a fresh in accordance with law after following the

procedure laid down in Rule 46A of the Income Tax Rules, 1962 and providing opportunity of being heard to both the parties.

9. Accordingly, the ground of the appeal of the Revenue is allowed for statistical purposes.

This decision was pronounced in the Open Court on 28th February,

2019.

sd/-

(H.S. SIDHU)
JUDICIAL MEMBER

Dated: 28 /02/2019

Veena

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

sd/-

(O.P. KANT)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT, New Delhi