

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" NEW DELHI**

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER

I.T.A. No.7459/DEL/2018
Assessment Year: 2015-16

Anil Kumar, C/o R. Khare & Associates, 7/6 (LFG), Sarva Priya Vihar, New Delhi.	v.	ITO, Ward-44(4), New Delhi.
TAN/PAN: AKAPK1373N		
(Appellant)		(Respondent)

Appellant by:	Shri Rahul Khare, Adv.		
Respondent by:	Shri S.L. Anuragi, Sr.D.R.		
Date of hearing:	15	04	2019
Date of pronouncement:	26	04	2019

ORDER

The aforesaid appeal has been filed by the assessee against the impugned order dated 28.08.2018 passed by the Commissioner of Income Tax (Appeals)-XV, New Delhi for the quantum of assessment passed u/s.143(3) for the Assessment Year 2015-16. In the grounds of appeal, the assessee has challenged the order of the Id. CIT (A) on the ground that the same has been passed *ex-parte* and; secondly interest u/s.28 received on account of compensation on acquisition of land has been treated as revenue receipt instead of capital receipt.

2. The facts in brief are that the assessee is a farmer and his land was acquired by the Government under the Land Acquisition Act and has received compensation. However, after the Court's direction, enhanced compensation was

awarded amounting to Rs.76,11,500/- u/s. 28 of the Land Acquisition Act. The ld. Assessing Officer has treated the said amount as interest and has taxed the same after invoking the provision of Section 57(iv) and has disallowed 50% of the amount, i.e. Rs.38,05,750/-.

3. Ld. CIT (A) has passed the *ex parte* order stating that notice was sent on the address mentioned in form no.35 and no compliance has been made by the assessee.

4. Before us, learned counsel submitted that the assessee is a farmer living in an average. The said notices could not be served upon him, further here the land acquired was agriculture land in which assessee was carrying out agriculture activity, therefore, in view of Section 10(37), such an amount cannot be taxed as revenue receipt.

5. Ld. DR on the other hand, submitted that the conditions laid down in Section 10(37) needs to be satisfied, i.e., whether the said land was an agriculture land in terms of section 2(14) and the said land used for agriculture purposes. Therefore, the matter should be restored back to the file of the Assessing Officer so that all these conditions can be verified.

6. After considering the aforesaid submissions and on perusal of the material referred to before him at the time of hearing, I find that entire issue revolves around taxing of enhanced compensation received by the assessee in terms of Section 28 of Land Acquisition Act, 1894. The ld. Assessing Officer has taxed 50% of the said enhanced compensation as interest u/s.56 (2)(vii) and 57(iv). However, if the assessee has

received compensation under compulsory acquisition under any law and such a land is situated in the area referred to in item (a) or item (b) of sub clause (iii) of Clause (14) of Section 2; and such land during the period of two years immediately preceding the date of transfer was being used for agriculture purposes, then in terms of Section 10(37) the same cannot be taxed. In my opinion this issue should be remanded back to the file of Assessing Officer, who shall examine the conditions given in Section 10(37) and give appropriate relief to the assessee. The assessee shall co-operate with the Assessing Officer in substantiating the condition laid down u/s.10 (37). With this observation, appeal of the assessee is treated as allowed for statistical purposes.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 26th April, 2019.

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER

DATED: 26th April, 2019

PKK: