

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'E' BENCH,
NEW DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER, AND
SHRI T.S. KAPOOR, ACCOUNTANT MEMBER,

ITA No. 3836/DEL/2016
[Assessment Year: 2012-13]

ITO, Ward No.2, Rewari, Model Town, Rewari (Haryana), Haryana-123401	Sh. Manish Yadav, S/o-Sh. Jai Prakash, H. No.499, Mehrwara, Rewari, Haryana
	PAN-AGWPY4077F
Appellant	Respondent

Revenue by	Ms. Rinku Singh,
Assessee by	Shri Kapil Geol,

Date of Hearing	08/08/2019
Date of Pronouncement	09/08/2019

ORDER

PER T. S. KAPOOR, ACCOUNTANT MEMBER,

This is an appeal filed by the Revenue against the order of Ld. CIT(A), dated 19/04/2016. The Revenue has taken following grounds of appeal:-

"1. CIT(A) has erred in deleting the addition of Rs. 96,29,902/- made on the ground of disallowance of 50% interest on compensation/enhanced compensation u/s 56 (2)(viii) of the I.T. Act. CIT(A) has erroneously placed reliance on the decision of Hon'ble Supreme Court in the case of Ghanshyam(HUF) delivered on 16.07.2009 as clause (viii) of section 56(2) was inserted by finance act 2009 w.e.f 01.04.2010 according to which income by way of interest received on compensation or enhance compensation refer to in clause (b) of section 145A shall be chargeable under head income from other sources in the year of receipt. Even, the jurisdictional Hon'ble Punjab & Haryana High Court in the case of Manjit Singh(HUF) Vs UOI and others in CWP No. 15506 of 2013 dated

14.02.2014 has referred to the decision of Hon'ble Supreme Court in the case of CIT Vs Ghanshyam(HUF) and held that interest received on enhanced compensation is a revenue receipt charged to income tax.

2. CIT(A) has erred in not considering the decision of the Hon'ble Punjab & Haryana High Court in CIT Vs Bir Singh ITA No. 209 of 2004 decided on 27.10.2010 and Sunder Lai and another Vs UOI in CWP No. 2014 decided on 21.09.2015 where in it was held that element of interest awarded by the court on enhanced amount of compensation u/s 28 of 1894 act falls for taxation u/s 56 as income from other sources in the year of receipt under cash system of accountancy.

2. At the outset, the Id. DR argued that the Ld. CIT(A) has wrongly allowed relief to the assessee after relying on the order of the Hon'ble Supreme Court in the case of Ghanshyam (HUF) which was delivered by the Hon'ble Supreme Court on 16/07/2009 whereas the Finance Act, 2009 w.e.f. 01/04/2010 was amended and to which income by way of interest received on compensation or enhanced compensation was chargeable under head income from other sources. The Ld. DR argued that even Hon'ble Punjab & Haryana High Court in the case of Manjeet Singh (HUF) vs UOI, after considering the judgement of Hon'ble Supreme Court in the case of Ghanshyam (HUF) has held that interest received from enhanced compensation is a revenue receipt chargeable to income tax. The Id. DR further argued that Ld. CIT(A) has erred in not considering the decision of the Honb'ble Punjab & Haryana High Court in the case of CIT vs CIT vs Bir Singh (HUF) in ITA No.209 of 2004, wherein in was held that the element of interest on enhanced amount of compensation u/s 28 of 1894 of the Act falls for taxation u/s 56 as

income from other sources in the year of receipt under cash system of accountancy. The Ld. DR further placed her reliance on the order of the Hon'ble Supreme Court in the case of CIT vs Chet Ram (HUF), where the Hon'ble Supreme Court has held that where the assessee received some amount of enhanced compensation as also interest thereon under an interim order passed by the Hon'ble High Court, it was liable to be assessed for tax in the year in which said amount has been received.

3. The Ld. AR on the other hand, submitted that the case law of Manjet Singh (HUF) & CIT vs Chet Ram(HUF) decided by Hon'ble Punjab & Haryana High Court has already been considered in various case decided by various benches of the Tribunal and in this respect specific reliance was placed on order of the Delhi Bench in the case of Opinder Singh Virk, where vide order dated 14/03/2019, Hon'ble Tribunal had decided the issue in favour of the assessee. The Ld. AR further placed his reliance on order of Lucknow Tribunal where under similar facts and circumstances vide order dated 07/03/2018, the Tribunal had decided the issue in favour of the assessee. Similarly, reliance was placed on the order of the Hon'ble Tribunal of Chandigarh, in the case of Shri Bharat Bhushan vs Pr. CIT in ITA No.597/Chd/2018, where the Hon'ble Tribunal after considering the various case laws including the

case law of Manjeet Singh(HUF), decided the issue in favour of the assessee.

4. We have heard rival parties and have gone through the material placed on record. We find that it is an undisputed fact that assessee has received interest u/s 28 of Land Acquisition Act, 1894. The Hon'ble Apex Court in the case of CIT vs Ghanshyam(HUF) 182 taxman 368 has clearly held that interest received by the assessee in view of section 28 of Land Acquisition Act 1894 is part of the compensation and therefore was not taxable. The Hon'ble Delhi Bench of the Tribunal in the case of Shri Opinder Singh Virk, vide order dated 14/03/2019 has dealt with the decision of the Hon'ble Supreme Court in the case of Chet Ram (HUF) as well as the case laws of Ghanshyamdas and after analysing the same has again held that interest receipt on enhanced compensation u/s 28 of the Land Acquisition Act is in the nature of compensation. The finding of the Hon'ble Tribunal as reproduced below:-

"8. We have gone through the orders of the authorities below in the light of the arguments on either side and the decisions of the Hon'ble Apex Court cited above. In the case of Ghanshyam (supra), the Hon'ble Supreme Court held in unequivocal terms that the additional amount u/s 23(1A), solatium under section 23(2) and interest on excess compensation u/s 28 of the Land Acquisition Act form part of enhanced compensation u/s 45(5)(b) and, therefore, is subject to tax u/s 45(5) in the year of receipt. No contrary view is taken by the Supreme Court in the subsequent judgments and as on the date, law is fairly settled that the amount of interest received u/s 28 of the land Acquisition Act is in the nature of capital gain. In the case of Hari Singh (supra) while dealing with the similar question under identical set of facts while setting aside the matter to the file of the AO to

examine the facts of the case and to apply the law as contained in the Income-tax Act, Hon'ble Supreme Court specifically directs that in case the learned AO finds that the compensation was received in respect of the agricultural land, the tax deposited with the Income-tax Department shall be refunded to the assessee. Hon'ble Supreme Court gave the above direction after noticing the decision in the case of Ghanshyam (supra).

9. In this set of circumstances, it does not admit of any doubt as to the nature of receipt by way of interest u/s 28 of the Land Acquisition Act in the hands of the assessee or the applicability of the Income-tax Act to such amount. When the Hon'ble Supreme Court specifically directs in the case of Hari Singh (supra), the learned AO shall examine the facts of the case and then apply the law as contained, CIT(A) has not stated that such an amount shall be brought to tax u/s 45(5) without applying the provisions under 10(37) of the Act, which exempts such receipts from being taxed. It could be noted that Section 45(5) makes no reference to the nature of property that is acquired but it deals with the category of cases which falls in the description of "capital assets". However, Section 10(37) exempts specifically an income chargeable under the head "capital gains" arising from the transfer of agricultural land. It is, therefore, clear that once the Hon'ble Supreme court directed the AO in the case of Hari Singh (supra) that after examining the facts to apply the provisions contained in the Income-tax Act with a specific reference to the agricultural land stating that in case if it is found that the compensation was received in respect of the agricultural land, the tax deposited with the Income-tax Department shall be refunded to these depositors.

10. In this matter, what was acquired by the Government was an agricultural land and such a fact is well evident from the assessment order itself. As a matter of fact, learned AO, by granting exemption under section 10(37) of the Act, refunded a sum of Rs. 1,22,01,723/-. Only question is whether the interest received under section 28 of the Act assumes the character of enhanced compensation and consequently it is exempt under section 10(37) of the Act. In view of the decisions of the Hon'ble Supreme Court referred to above, we do not have any doubt in our mind as to the law in this aspect and while respectfully following the ratio laid down by the Hon'ble Supreme Court in the case of Ghanshyam (supra) and Hari Singh (supra) above, direct the Id. AO to refund the TDS amount that was deducted on account of the interest received under section 28 of the Land Acquisition Act Also. With these directions, we allow the appeal of the assessee.

11. In the result, the appeal of the assessee is allowed."

5. Further, we find that the Hon'ble Chandigarh Bench of the Tribunal vide order dated 11/01/2019 has dealt with the case law of Manjit Singh and relying on the order of the Hon'ble Supreme Court in the case of Hari Singh has allowed relief to the assessee by cancelling order u/s 263 by holding as under:-

6. *During the course of hearing before us, Id. 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 Id. 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 Id. Pr. CIT, therefore, was erroneous.*

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

8. *Having heard the rival contentions. We find merit in the contention of the Id. 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 Id. 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: (I) 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”.*

6. The argument of the Ld. DR that the case law of Chet Ram (HUF) decided by the Hon'ble Apex Court will be applicable do not hold any force in view of the fact that order in the case of Chet Ram (HUF) has been passed by Hon'ble Apex Court on 12/09/2017, whereas, the order in the case of Hari Singh has been passed by Hon'ble Apex Court on 15/09/2017 and wherein the Hon'ble Apex Court has directed the

Assessing Officer to keep in mind the proposition laid down by it in the case of Ghanshyam Dass (HUF).

7. In view of the above, we do not find any infirmity in the order of the Ld. CIT(A) and therefore, the appeal filed by the Revenue is dismissed.

The order is pronounced in the open court on 09/08/2019.

Sd/-
[BHAVNESH SAINI]
JUDICIAL MEMBER
Delhi; Dated: 09/08/2019.
Shekhar, Sr. P.S

Sd/-
[T.S. KAPOOR]
ACCOUNTANT MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi