

IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES “ A ” BENCH: BANGALORE

**BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER  
AND  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.1952/Bang/2017  
(Assessment Year: 2012-13)

Shri Surendra Laxmanrao Vaidya,  
Kariyamma Kallu Badavane,  
Near Hatalgeri Naka, Gadag.  
PAN AVUPV2546H

....Appellant

Vs.

Income Tax Officer,  
Ward 2, Gadag.

.....Respondent.

Assessee By:	Shri B.S. Balachandran, Advocate
Revenue By:	Shri Sunil Kumar Agarwal, Addl. CIT (D.R)

Date of Hearing :	27.11.2019
Date of Pronouncement :	03.01.2020

**ORDER**

**PER SHRI PAVAN KUMAR GADALE, J.M. :**

The assessee has filed an appeal against the order of Commissioner of Income Tax, Hubli passed under Section 143(3) and 250 of the Income Tax Act, 1961 ('the Act'). There was a delay of 708 days in filing the appeal before the Tribunal and the assessee has filed an Affidavit and Medical Certificate in support of delay in

filing the appeal. We on verification of Affidavit and the explanations envisaged by the learned Authorised Representative, are satisfied with the reasonable cause in delay in filing and the Id. DR has no serious objection. Accordingly, the delay is condoned and the appeal is admitted and heard.

2. The assessee has raised the following grounds of appeal :

(1) In the facts and circumstances of the case, the Learned CIT(Appeals) erred in not appreciating the facts of the case and denying exemption under section 10(37) of the I.T. Act, 1961, in the light of the Hon'ble Supreme Court decision in the case of CIT v. Ghanshyam (HUF) 315 ITR 1 (SC)

(2) In the facts and circumstances of the case, the Learned CIT(Appeals) erred in upholding the action of the AO in taxing the interest under section 28 of the Land Acquisition Act, 1894, under section 56(2)(viii) of the I.T. Act, 1961 though it is not an interest covered by the said provisions of the I.T. Act, 1961

(3) In the facts and circumstances of the case, the Learned CIT(Appeals) erred in ignoring the decision of ITAT, Panaji Bench, Panaji in the case of The Chief Accounts Officer, LA, Upper Krishna Project, Bagalkot in ITA No.64/PNJ/2011 for A.Y. 2009-10 dated 13.4.2011 wherein, it was held that interest under section 28 of the LAA, 1894, is an accretion to the value and hence it is part of enhanced compensation and as such, provisions of section 194L are not applicable in respect of interest u/s 28 of the LAA, 1894 is concerned.

(4) The appellant prays for his reliance on the decision of Hon'ble Gujarat High Court in **Movaliya Bhikhubhai Balabhai vs. ITO (TDS) AND Another 388 ITR (2016) 343 (Guj)**, wherein, it was held that the interest under section 28 of the LAA, 1894, is not interest referred to in section 56(2)(viii) of the I.T. Act, 1961.

(5) The appellant further prays for reliance on the decision of ITAT, in the case Shri. Mallangoudar Shankargouda Naganagoudar , Bilagi Bagalkot, the Hon'ble ITAT, Bengaluru Bench vide its order in ITA No.1120(B)/2015 dt 30/12/15 relying on the decision in the case of CIT Vs. Ghanshyam (HUF) concluded that interest U/s.28 is a part of the compensation and interest U/s.34 is chargeable as revenue receipt.

(6) The appellant prays to add, alter or amend any of the foregoing grounds of appeal at the time of hearing.

3. The Brief facts of the case are that the assessee is an employee of Karnataka Vikas Grameena Bank and filed the Return of Income electronically on 25.3.2013 with total income of Rs.6,13,770. In the Return of Income filed, the assessee has disclosed Long Term Capital Gains of Rs.2,02,95,269 being  $\frac{1}{4}$  th share of compensation received under Section 28 of the Land Acquisition Act and has claimed exemption under Section 10(37) of the Income Tax Act, 1961. The Return of Income was processed under Section 143(1) of the Act, subsequently the Notice under Section 143(2) and 142(1) of the Act along with Questionnaire were issued. In compliance the learned Authorised Representative appeared from time to time and filed the details. In the appellate proceedings, the assessee has furnished the documents in support of the  $\frac{1}{4}$  th share of compensation received and the nature of agriculture land. On perusal of the facts, the Assessing Officer found that the assessee was awarded, enhanced compensation of land acquisition together with the interest and TDS was also deducted by Chief Accounts Officer, Bagalkot. The Assessing Officer found that the assessee has disclosed his share of enhanced compensation of Rs.2,02,95,269 and claimed exemption under Section 10(37) of the Act but the fact remains that the compensation includes interest component of Rs.1,27,09,612. The assessee has relied on the decision of Hon'ble Apex Court in the case of CIT Vs. Ghansham (HUF) in Civil Appeal No.4401/2009 dt.16.07.2009 further the ld. AR submitted that as per clause 28 of Land

Acquisition Act, 1894 compensation is part of enhanced value of land whereas the Assessing Officer has not disputed the fact that the lands are agriculture in nature. Hence considering the enhanced compensation on acquisition of agriculture land to the extent of Rs.75,85,659 is allowed as exempted under Section 10(37) of the Act. But in respect of remaining compensation which includes interest component of Rs.1,27,09,612, the Assessing Officer is of the opinion that it should be taxed under 'income from other sources' and allow deduction to the entire 50% under Section 57(iv) of the Act. The Assessing Officer also observed that TDS Credit to the extent of ¼ th share as per Section 199 of the Act r.w. Rule 37(BA), has to be allowed Rs.12,70,961 and assessed the total income of Rs.69,68,576 and passed the order under Section 143(3) dt.27.03.2014. Aggrieved by the order, the assessee filed an appeal with the CIT(Appeals) and whereas the CIT(Appeals) confirmed the action of the Assessing Officer and dismiss the assessee's appeal. Aggrieved by the order of CIT(Appeals), the assessee has filed an appeal before the Tribunal.

4. At the time of hearing, the learned Authorised Representative submitted that the CIT(Appeals) has erred in confirming the action of the Assessing Officer where the exemption under Section 10(37) was denied to the assessee. As per the decision of Hon'ble Apex Court in the case of CIT Vs. Ghanshyam (SC) (supra) the interest under Section 28 of the Land Acquisition Act, 1894 is not covered

under the provisions of Section 56(2)(viii) of the Act. The learned Authorised Representative also relied on the judicial decisions and the decision of Hon'ble Gujarat High Court in the case of Movaliya Bhikhubhai Balabhai Vs. ITO (TDS) & Another 388 ITR 343 (Guj) where the Hon'ble High Court has specified that interest under Section 28 of Land Acquisition Act, 1894 is not interest referred to Section 56(2)(viii) of the Act and prayed for allowing the appeal. Contra, the learned Departmental Representative relied on the CIT(Appeals) order.

5. We heard the rival contentions and perused the material on record. The sole crux of the disputed issue is with respect to chargeability of interest awarded under Section 28 of the Land Acquisition Act. The learned Authorised Representative submitted that the interest under Section 28 of the Land Acquisition Act, 1984 cannot be considered/equated as interest as referred under Section 56(2)(viii) of IT Act which has been inserted w.e.f. 1.4.2009 effectively from Assessment Year 2010-11. We found the assessee has claimed exemption under Section 10(37) of the Act whereas as per Section 28 of Land Acquisition Act, the compensation to be awarded in excess of the sum awarded by the Land Acquisition Officer, the Court may direct the Land Acquisition Officer to pay interest @ 9% per annum from the date of compensation on land to the date of payment of such excess deposit in the Court. We found the co-ordinate Bench of the Tribunal dealt on the issue in the case of ITO, Ward 1 Vs. Basavaraj M Kudarikannur 95 Taxman.com 106 in ITA

Nos.1747 & 1750/Bang/2017 Dt.1.6.2008, where the Hon'ble Tribunal has observed at para 11 to 14 as under :

“ 11. We have heard the rival submissions of the Id. DR, who relied upon the order of the AO. We have considered the submissions of the Id. DR. It is not disputed by the AO that the land acquired was agricultural land and the conditions laid down u/s. 10(37)(i) to (iv) are applicable to the land which is in question which was compulsorily acquired. It is also not in dispute that the interest in question was interest awarded u/s. 28 of the Land Acquisition Act, 1894. In the given circumstances, we are of the view that the decision of the Hon'ble Gujarat High Court in the case of Movaliya Bhikhubhai Balabhai (supra) will be applicable to the facts of the present case.

12. In Movaliya Bhikhubhai Balabhai v. Income-tax Officer-TDS-1-Surat [2016] 70 taxmann.com 45 (Gujarat), the Hon'ble Gujarat High Court had to deal with the nature of the interest awarded u/s.28 of the Land Acquisition Act, 1894. The facts of the case before the Hon'ble Gujarat High Court was that the petitioner's agricultural lands came to be acquired under the provisions of the Act of 1894 for the public purpose of the Ozat-2 Irrigation Scheme. The award passed by the Collector came to be challenged by the petitioner before the learned Principal Senior Civil Judge, Junagadh (hereinafter referred to as the "Reference Court"), who by an order dated 20th March, 2011 awarded additional compensation of Rs. 5,01,846/- in favour of the petitioner together with other statutory benefits. Pursuant to such award, the second respondent calculated the amount payable to the petitioner and in terms of the statement showing the amount of compensation to be deposited in the court, computed an amount of Rs. 20,74,157/- as payable to the petitioner by way of interest under section 28 of the Act of 1894. The petitioner made an application under section 197(1) of the Income Tax Act, 1961 (Act) for deciding the tax liability of interest and to issue a certificate as to NIL tax liability. The application was rejected on the ground that the interest amount on the delayed payment of compensation and enhanced value of compensation is taxable as per the provisions of section 57(iv) read with sections 56(2)(viii) and 145A(b) of the Act under the head income from other sources. Being aggrieved by such order, the Assessee filed writ petition before Hon'ble Gujarat High Court. The question before the Court was whether interest awarded u/s.28 of the Act of 1894 is akin to compensation and chargeable to tax u/s.45(5) of the Act or under the head "Income from other sources" u/s.57(iv) read with Sec.56(2)(viii) and 145A(b) of the Act. The Hon'ble Gujarat High Court held that interest under section 28 of the Act of 1894 is an accretion to compensation and forms part of the compensation and, therefore, exigible to tax under section 45(5) of the Act. In coming to the aforesaid conclusion, the Hon'ble Gujarat High Court followed the decision of Hon'ble Supreme Court in the case of CIT v. Ghanshyam (HUF) [2009] 182 Taxman 368, wherein it was held that interest under section 28 of the Act of 1894 is part of the amount of compensation whereas interest under section 34 thereof is only for delay in making payment after the compensation amount is determined. Interest under section 28 is a part of the enhanced value of the land which is not the case in the matter of payment of interest under section 34. On the applicability of the provisions of Sec.57(iv) read with 56(2)(viii) and Sec.145A(b) of the Act, the Hon'ble Gujarat High Court held, :-

“Section 145A of the I.T. bears the heading "Method of accounting in certain cases". Section 145A(b) provides that notwithstanding anything to the contrary contained in section 145, interest received by an assessee on compensation or on enhanced compensation, as the case may be, shall be deemed to be the income of the year in which it is received. Clause (viii) of sub-section (2) of section 56 of the I.T. Act provides for income by way of interest received on compensation or on enhanced compensation referred to in clause (b) of section 145A which is chargeable as income from other sources. The first

respondent Income Tax Officer seeks to tax the interest received by the petitioner under section 28 of the Act of 1894 as income from other sources under section 56(2)(viii) read with section 145A(b) of the I.T. Act. In the opinion of this court, in the light of the law laid down by the Supreme Court in the case of Ghanshyam (HUF) (supra), the interest received under section 28 of the Act of 1894 would not fall within the ambit of the expression "interest" as envisaged under section 145A(b) of the I.T. Act, inasmuch as, the Supreme Court in the above decision has held that interest under section 28 of the Act of 1894 is not in the nature of interest but is an accretion to the compensation and, therefore, forms part of the compensation."

It was argued on behalf of the Revenue before the Hon'ble Gujarat High Court that the decision of Hon'ble Supreme Court in the case of Ghanshyam (HUF) was rendered prior to the substitution of section 145A of the I.T. Act by Finance (No. 2) Act, 2009 with effect from 1st April, 2010, and hence, would have no applicability cases pertaining to AY 2010-11 and afterwards. Such an argument was repelled by the Hon'ble Gujarat High Court as follows:

"11. It has been vehemently contended on behalf of the first respondent that the above decision has been rendered prior to the substitution of section 145A of the I.T. Act by Finance (No. 2) Act, 2009 with effect from 1st April, 2010, and hence, would have no applicability to the facts of the present case. The scope and effect of the substitution (with effect from 1st April, 2010) of section 145A, as also amendment made in section 56(2) by Act 33 of 2009 have been elaborated in the following portion of the departmental circular No. 5/2010, dated 3.6.2010, as follows:

"Rationalizing the provisions for taxation of interest received on delayed compensation or on enhanced compensation.-

46.1 The existing provisions of Income Tax Act, 1961, provide that income chargeable under the head "Profits and gains of business or profession" or "Income from other sources", shall be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee. Further the Hon'ble Supreme Court in the case of Smt. Rama Bai v. CIT (1990) 84 CTR (SC) 164 : (1990) 181 ITR 400 (SC) has held that arrears of interest computed on delayed or enhanced compensation shall be taxable on accrual basis. This has caused undue hardship to the taxpayers.

46.2 With a view to mitigate the hardship, section 145A is amended to provide that the interest received by an assessee on compensation or enhanced compensation shall be deemed to be his income for the year in which it was received, irrespective of the method of accounting followed by the assessee.

46.3 Further, clause (viii) is inserted in sub-section (2) of the section 56 so as to provide that income by way of interest received on compensation or enhanced compensation referred to in clause (b) of section 145A shall be assessed as "income from other sources" in the year in which it is received. 46.4 Applicability. - This amendment has been made applicable with effect from 1st April, 2010, and it will accordingly apply in relation to assessment year 2010-11 and subsequent assessment years."

Thus, the substitution of section 145A by Finance (No. 2) Act, 2009 was not in connection with the decision of the Supreme Court in Ghanshyam (HUF)'s case (supra) but was brought in to mitigate the hardship caused to the assessee on account of the decision of the Supreme Court in Rama Bai v. CIT [1990] 181 ITR 400/[1991] 54 Taxman 496 whereby it was held that arrears of interest computed on delayed or enhanced compensation shall be taxable on accrual basis. Therefore, when one reads the

words "interest received on compensation or enhanced compensation" in section 145A of the I.T. Act, the same have to be construed in the manner interpreted by the Supreme Court in Ghanshyam (HUF)'s case (supra)."

13. The Hon'ble Gujarat High Court finally concluded, as follows:

"13. The upshot of the above discussion is that since interest under section 28 of the Act of 1894, partakes the character of compensation, it does not fall within the ambit of the expression "interest" as contemplated in section 145A of the I.T. Act. The first respondent - Income Tax Officer was, therefore, not justified in refusing to grant a certificate under section 197 of the I.T. Act to the petitioner for non-deduction of tax at source, inasmuch as, the petitioner is not liable to pay any tax under the head "income from other sources" on the interest paid to it under section 28 of the Act of 1894.

14. The petitioner had earlier challenged the communication dated 9th February, 2015 whereby its application for a certificate under section 197 of the I.T. Act had been rejected, and subsequently, tax on the interest payable under section 28 of the Act of 1894 has already been deducted at source. Consequently, the challenge to the above communication has become infructuous and hence, the prayer clause came to be modified. However, since the amount paid under section 28 of the Act of 1894 forms part of the compensation and not interest, the second respondent was not justified in deducting tax at source under section 194A of the I.T. Act in respect of such amount. The petitioner is, therefore, entitled to refund of the amount wrongly deducted under section 194A of the I.T. Act."

14. In the light of the aforesaid decision of the Hon'ble Gujarat High Court and in the light of the admitted factual position in the present case, we are of the view that the CIT(Appeals) is fully justified in allowing exemption u/s. 10(37) of the Act on the interest received by the assessee u/s. 28 of the Land Acquisition Act, 1894. We find no grounds to interfere with the impugned orders of the CIT(Appeals)."

We found the present case is similar to the facts of above case in respect of interest under Section 28 of Land Acquisition Act, 1894 and the co-ordinate Bench of Tribunal has considered the Hon'ble Apex Court decision in the case of CIT Vs. Ghanshyam (supra) and of Hon'ble Gujarat High Court in the case of Movaliya Bhikhubhai Balabhai Vs. ITO (TDS) & Another (supra). We respectfully follow the judicial precedence and found that the facts are identical and apply the ratio of judicial decisions and direct the Assessing Officer to delete the interest disallowance and allow the grounds of appeal of the assessee.

6. In the result, the appeal of assessee is allowed.

Order pronounced in the open court on 3rd Jan., 2020.

Sd/-

**(A.K. GARODIA)**  
**ACCOUNTANT MEMBER**

Sd/-

**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

Dated: 03.01.2020.

\*Reddy GP

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar  
Income-tax Appellate Tribunal  
Bangalore