

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'SMC' NEW DELHI**

**BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER**

I.T.A. No. 8243/Del/2018  
Assessment Year: 2015-16

Mahavir Singh,  
97, Jaat Mohalla, Dhulsiras,  
Dwarka, New Delhi  
(PAN:CDKPS0231C)  
**(ASSESSEE)**

vs.

Income Tax Officer  
Ward-44(4), New Delhi

**(RESPONDENT)**

**Assessee by:** Shri. Santosh Gupta, CA  
**Revenue by:** Sh. Manoj Kumar Chopra, Sr. DR.

**ORDER**

This appeal is filed by the assessee against the Order dated 31.08.2018 passed by the Ld. CIT(A)-15, Delhi, relating to Assessment Year 2015-16 on the following grounds:-

- 1. That The learned CIT ( Appeals ) -15 erred in law as well as in facts in treating the enhanced compensation received u/s 28 of Land Acquisition Act 1894 from compulsory acquisition of agriculture land .*
- 2. That this amount of enhanced compensation along with interest from compulsory acquisition of agriculture land awarded by competent court u/s 28 of Land Acquisition Act 1894 is not a income u/s 56 (2)(VIII) read with section 145A of Income Tax Act 1961 but comes under the ambit of section 10(37) of IT Act 1961.*
- 3. That amount so received could not be covered u/s sec. 45 of IT Act 1961 because as per sec. 10(37) of Act, if urban agriculture land is compulsory acquired under any law, which has been used for agriculture purpose during 2 year immediately prior to acquisition, then above transfer not chargeable to tax if compensation whether enhanced is received after 31-03-2004. And the amount was received after 31.03.2004. Therefore it is not taxable under this head of income of IT Act 1961.*
- 4. That the tax officials made the assessment with undue haste and in a suo moto manner for their due transfer so did not gave proper time to submit harvest related documents which were very difficult to gather from red-tapism bureaucracy prevailing in land revenue offices. The same are now submitted for your kind inspection in Form P-4 (khasra girdawari). Now it has been established from the girdawari documents that subjected*

*urban agriculture land was being used for agriculture purpose during 2 year immediately prior to acquisition, so is exempt U/S 10(37) of IT Act.*

*5. That above of all this government do not want to punish by imposing any tax but to rehabilitate and resettle the deprived landowners for their compulsorily acquired land by it. And to address this problem, the Government replaced British Era Law" Land Acquisition Act 1894 " by New one "THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013 which States no tax etc. be payable on acquired ANY land under this act. The CBDT also admitted it in circular no. 36/2016 in this regard.*

*6. That the appellant prays to delete the addition made in respect of enhanced compensation received from compulsory acquisition of agriculture land."*

2. At the time of hearing, learned counsel for the assessee stated that the issue involved in this appeal has already been adjudicated and decided in favour of the assessee by the ITAT Delhi Bench "SMC", New Delhi vide its order dated 26.04.2019 passed in ITA No. 7459/Del/2018 relating to Assessment Year 2015-16 in the case of Anil Kumar vs. ITO, Ward-44(4), New Delhi. He especially draw my attention towards para nos. 6 and 7 of the order dated 26.04.2019. He requested that the same order may be passed in the present appeal.

3. On the contrary, learned DR has not raised any objection on the request of learned counsel for the assessee.

4. I have heard both the parties and perused the orders passed by the Revenue authorities especially the impugned order alongwith order dated 26.04.2019 passed by the ITAT Delhi Bench "SMC", New Delhi passed in ITA No. 7459/Del/2018 relating to Assessment Year 2015-16 in the case of Anil Kumar vs. ITO, Ward-44(4), New Delhi. As requested by the learned counsel for the assessee, I am fully agree with the request of the learned counsel for the assessee. Hence, for the sake of convenience, I

am reproducing the relevant para nos. 6 and 7 of the order dated 26.04.2019 as under:

*"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 Id. 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 cooperate 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."*

5. Keeping in view the issue involved in the present appeal and agreed by both the parties and respectfully following the aforesaid Tribunals order dated 26.04.2019, I direct the Assessing Officer to examine the conditions given in section 10(37) of the I.T. Act as directed by the SMC Bench in the aforesaid order dated 26.04.2019.

6. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on 13/01/2020.

**Sd/-**  
**[H.S. SIDHU]**  
**JUDICIAL MEMBER**

Date: 13/01/2020  
SH