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

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER

ITA No.6508/Del/2016
Assessment Year: 2013-14

Shri Nitya Nand, House No.483, Yadav Niwas, Kasan Road, Manesar, Gurgaon	**Vs.**	ITO, Ward-3, Gurgaon
PAN: ALWPN9240M		
(Appellant)		**(Respondent)**

Appellant by	Shri Arun Bansal, CA Shri Deepak Kataria, CA
Respondent by	Ms. Rakhi Bimal, Sr.DR

Date of hearing	06.11.2019
Date of pronouncement	30.01.2020

ORDER

PER O.P. KANT, AM:

This appeal by the assessee is directed against order dated 28/10/2016 passed by the learned CIT(Appeals)-I, Gurgaon in [short 'the Ld. CIT(A)'] for assessment year 2013-14 raising following grounds:

"1. The CIT(A) as well as Assessing Officer has erred in law and on facts while not accepting the decision of the Hon'ble Supreme Court in CIT V/s Ghanshyom HUF (315 ITR 1) that the interest

Rs.83,68,370/- awarded should not be taxable at all being integral part of compensation to the compulsory acquisition of agricultural land.

2. The CIT(A) as well as Assessing Officer has erred in law and on facts while not considering interest income being integral part of enhanced compensation and eligible to exemption since compensation itself is exempt u/s 10 (37) of the Act.

3. The CIT (Appeal)-I has further erred in law & facts in confirming the taxation of interest of previous years by the Assessing Officer in the current year income without providing relief under section 89 of the Act.

4. The CIT (Appeal)-I has further erred in law & facts in confirming the addition of ? 31,93,000/- made by the Assessing Officer on account of cash deposit in bank account without verifying the genuineness of the case that the appellant has deposited the cash out of advance received for sale of agricultural land/gift from relatives.

5. The CIT (Appeal)-I has further erred in law & facts in confirming the addition of 31,93,000/- made by the Assessing Officer without appreciating that the Assessing Officer has not provided reasonable opportunity of being heard and accordingly the additions are made against the principle of natural justice.

6. The CIT(A) has erred in not accepting the additional evidences merely on the basis of Assessing Officer report wherein the AO has grossly erred while not granted any opportunity to be heard to the appellant and passed the remand report against the principle of natural justice.

7. The CIT (Appeal)-I has further erred in law & facts in confirming the levying of interest, initiating the penalty proceeding under section 271(1) (c) of the Act and not granting credit of TDS.

2. Briefly stated facts of the case are that the assessee filed return of income on 31/03/2014, declaring income of ₹ 3,84,480/- including presumptive income of ₹ 2,45,000/- under section 44AE of the Income-tax Act, 1961 (in short 'the Act'). In the return of income, interest received of ₹ 83,68,370/- on enhanced compensation for agricultural land was treated by the

assessee as exempt income. The case of the assessee was selected for the scrutiny assessment and notice under section 143(2) of the Act was issued and served upon the assessee. Though no compliance of notice under section 143(2) of the Act was made, however, subsequent notice issued under section 142(1) of the Act was complied partly by the Authorized Representative of the assessee. The scrutiny assessment under section 143(3) of the Act was completed on 30/11/2015 wherein the Assessing Officer made addition for 50% of the amount of interest received, under section 56(2)(viii) of the Act, which was worked out to ₹ 41,84,185/-. The Assessing Officer also made addition for cash deposits of ₹ 31,93,000/- appearing in the bank statement of the assessee due to failure on the part of the assessee to explain the source of said deposit. Aggrieved with the additions made, the assessee filed appeal before the Ld. CIT(A), who upheld the additions made by the Assessing Officer. Aggrieved, the assessee is on appeal before the Tribunal, raising the grounds as reproduced above.

4. The Ground Nos. 1 to 3 of the appeal are related to the issue of addition for interest received on compensation for compulsory acquisition of the agricultural land of the assessee.

4.1 The facts qua the issue in dispute are that the assessee received interest amounting to ₹ 83,68,370/- on enhanced compensation from State Government (DRO-cum-LAC). The Assessing Officer noted that tax of ₹ 8,36,837/- was deducted at source by the State Government. The assessee treated the amount of interest received as exempt from income relying on the decision of the Hon'ble Supreme Court in the case of CIT Vs

Ghanshyam (HUF). According to the assessee, the interest has been received under the section 28 of the Land Acquisition Act 1894 which is part of the amount of the Land therefore not taxable being exempt under section 10(37) of the Act. However, according to the Assessing Officer, in view of the amended provisions of the section 56(2)(viii) of the Act introduced by Finance Act, 2009 effective from assessment year 2010-11, the interest received on delayed compensation or enhanced compensation is taxable under the head 'income from other sources'. According to the section 145(A)(b) of the Act the interest received would be liable to tax in the year of the receipt and deduction to the extent of the 50% would be available to the assessee under section 57(iv) of the Act. Accordingly, the Assessing Officer rejected the contention of the assessee and after allowing 50% deduction, he made addition for the balance amount of ₹ 41,84,185/-. The Ld. CIT(A) after considering judicial precedents available on the issue in dispute dismissed the ground of the appeal of the assessee observing as under:

> *"4.3 I have carefully considered the appellant's submissions. The only issue to be considered here is whether the interest received u/s 28 of the Land Acquisition Act is in the nature ol interest or is it a part of the enhanced compensation and whether the same is taxable under the head other sources. The issue whether the interest paid under the provisions of section 28 of LA Act is part of the enhanced compensation or is it taxable as interest income has been a debatable issue and has been considered by number of judicial authorities.*
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> *4.4 The Hon'ble Supreme Court in the case ofCIT V/s Ghansham (IIUF) (Supra) held that interest paid on the excess amount, u/s 28 of 1894 Act., depends upon a claim by the person whose land is acquired whereas interest u/s 34 is for delay in making payment.*

Interest u/s 28 is a part of enhanced value of land which is not the case in the matter of payment of interest u/s 34.

4.5 The llon'ble Punjab & Haryana High Court considered (his issue in the ease of Manjeet Singh (HUF) Karta Manjeet Singh V/s Union of India and Ors. CWP No. 15506 of 2013 dated 14/01/2014 (2016) 237 taxmann 116. The Hon'ble Jurisdictional High Court considered the issue whether the interest u/s 28 ol the 1894 Act. is taxable u/s 56 of the IT Act. as income from other sources. In this case the Hon'ble High Court referred to the decision of the Hon'ble Supreme Court in the case ofCIT V/s Ohanshyam (Supra). The Hon'ble High Court also referred to a number of other decisions ol the Hon'ble Supreme Court and held as under:

> *"7. The primary question for consideration that arises in these petitions relates to the nature of interest received by the landowner-assessee under Section 28 of the 1894 Act. In other words, whether the interest which is received by the assessee landowner partakes the character of income or not and, in such a situation is it taxable under the provisions of the Act.*
> *8. It would be apposite to quote herein below Sections 28 and 34 of 1894 Act which read thus:-*
> *"28. Collector may be directed to pay interest on excess compensation. - If the sum which, in the opinion of the court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of [nine per centum] per annum from the date on which he took possession of the land to the date of payment of such excess into Court."*
> *"34. Payment of interest.- When the amount of such compensation is not paid aide posited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of nine per centum per annum from the time of so taking possession until it shall have been so paid or deposited. Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one vein- on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry.*
> *9. The award of interest under Section 28 of the 1894 Act 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. Section*

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 Section 23(1 A) and the solatium under Section 23(2) of the said Act. Section 28 is applicable only in respect of the excess amount, which is determined by the Court after a reference under Section 18 of the 1894 Act.

10. Under Section 34 of the 1894 Ad, the Collector awards interest on the compensation offered at the rate of 9% per annum for a period of one year from the date of tc/kuiq possession and therea fter at the rate of 15% per annum from the date of expiry of one year on the amount o f compensation or part thereof Which remains unpaid or deposited before the date of such expiry.

11. A plain reading of Sections 23(1A), 23(2) as also Section 28 of the 1894 Act clearly spells out that additional benefits are available on the market value of the acquired lands under Section 23(1A) and 23(2) whereas Section 28 is available in respect of the entire compensation. The Constitution Bench of the Supreme Court in Sunder's case (supra) had approved the following observations of the Division Bench of this Court in Slate of Haryana r.v. Sint. Kailashwali and others, AIR 1980 P&H 117:-

"10. Once it is held as it inevitably must be that the solatium provided for under Section 23(2) of the Act forms an integral and statutory part of the compensation awarded to a landowner, then from the plain terms of Section 28 of the Act, it would be evident that the interest is payable on the compensation awarded and not merely on the market value of the land Indeed the language of Section 28 does not even remotely refer to marked value alone and in terms talks of compensation or the sum equivalent thereto. The interest awardable under Section 28 therefore would include within its ambit both the market value and the statutory solatium. It would be thus evident that the provisions of Section 28 in terms warrant and authorize the grant of interest on solatium as well."

12. Adverting to the case law on the subject, inevitably, reference is made to the judgment by the three Judges bench of the Supreme Court in the case of Dr. Sltam/al Narula v. CIT, fl964J 53 ITR 151, which had considered the issue regarding award of interest under the 1894-Act. Interest under Section 28 of the 1894 Act was considered akin to interest under Section 34 thereof as both were held to be on account of keeping back the amount payable to the owner and did not form part of compensation or damages for the loss of the right to retain possession. It was noticed as rmder:- "As

we have pointed out earlier, as soon as the Collector has taken possession of the land either before or after the award the title absolutely vests in the Government and thereafter owner of the land so acquired ceases to have any title or right of possession to the land acquired. Under the award he gels compensation for both the rights. Therefore, the interest awarded under s. 28 of the Act, just like under s. 34 thereof, cannot he a compensation or damages for the loss of the right to retain possession but only compensation payable by the Slate for keeping back the amount payable to the owner. "

The principle of Dr. Shamlal Narula's case (supra) had subsequently been applied by three Judges Bench of the Apex Court in a later decision in T.N.K.Govindaraju C/iefty v. CIT, (1967) 66 ITR 465.

13. Further Section 2(28A) of the Act defines ‘’interest " and was inserted by Finance Act. 1976 to be effective from 1.6.1976. It reads thus:- "'interest' means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) and includes any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised. ” The expression 'interest' occurring in subsection (28A) of Section 2 of the Act widens the scope of the term 'interest' for the purposes of the Act.

14. Another three Judges bench of the Apex Court in Bikrnm Singh Vs. Land Acquisition Collector, (1997) 224 ITR 551 following Dr. Shamlal Narula's case (supra) and taking into consideration definition of “interest” in Section 2(2SA) of the Act had recorded that interest under Section 28 of the 1894 Act was a revenue receipt and is taxable. I/ was held as under:-

"The controversy is no longer res Integra. This question was considered elaborately by this Court in Dr. Shamlal Nant la vs. CWP Commissioner of Income-tax, Jammu [51 ITR 151]. Therein, K. Subba Rao, J., as he then was, considered the earlier case law on the concept of "interest" laid down by the Privy Council and all other cases and had held at page 158 as under: "In a case where title passes to the State, the statutory interest provided thereafter can only be regarded either as representing the profit which the owner of the land might have made if he had the use of the money or the loss he suffered because he had not that use. In no sense of the term can it be described as damages or compensation for the owner's right to retain possession, for he has no right to retain possession after possession was taken under Section 16 or Section 17 of the Act. We, therefore, hold that the statutory interest paid under Section 34 of the Ad is interest paid for the delayed

payment of the compensation amount and. therefore, is a revenue receipt liable to tax under the Income Tax Act. "This position of law has been consistently reiterated by this Court in the case of TMK Govindaraju Chetty vs. Commissioner of Income-tax. Madras [66 ITR 465], Rama Rai & Ors. Vs. CJT, Andhra Pradesh [181 ITR 400] and K.S. Krishna Rao vs. CJT, A. P. [181 ITR 408], Thus by a catena of judicial pronouncements, it is sell led law about the intern received on delayed payment of the compensation is a revenue receipt eligible to income lax. It is true that in amending the definition of "interest" in Section 2(28A) interest was defined lo mean interest payable in any manner in respect of any money borrowed or debt incurred including a deposit, claim or other similar right or obligation and includes any service, fee or other charges in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilized. It is seen that the word "interest" for the purpose of the Act was interpreted by the inclusive definition. A literal construction may lead to the conclusion that the interest received or payable in any manner in respect of any moneys borrowed or a debt incurred or enumerated analogous transaction would be deemed interest. That was explained by the Board in the circular referred to hereinbefore But the question is: whether the interest on delayed payment on the acquisition of the immovable property under the Acquisition Ad would not be eligible to income-tax? It is seen that this Court has consistently taken the view that it is a revenue receipt. The amended definition of "interest" was not intended to exclude the revenue receipt of interest on delayed payment of compensation from taxability. Once it is construed to be a revenue receipt, necessarily, unless there is an exemption under the appropriate provisions of the Act, the revenue receipt is exigible to tax. The amendment is only to bring within its tax net, income received from the transaction covered under the definition of interest. It would mean that the interest received as income on the delayed payment of the compensation determined under Section 28 or 31 of the Acquisition Act is a taxable event."

15. Now, we advert to the judgment of the Apex Court in Ghanshyam (HUF)'s case (supra) on the basis of which learned counsel for the assessee had sought reconsideration of judgment of this Court in CIT Vs. Bir Singh, ITA No. 209 of 200-1 decided on 27.10.2010 where Division Bench of this Court has held that element of interest awarded by the court on enhanced amount of compensation under Section 28 of the 1894 Act falls for taxation under Section 56 as 'income from other sources' in the year of receipt.

16. The reliance was placed upon following observations in Ghanshyam (HUF)'s case (supra)
"To sum up, interest is different from compensation. However, interest paid on the excess amount under Section 28 of the 1894 Act depends upon a claim by the person whose land is acquired whereas interest under Section 34 is for delay in making payment. This vital difference needs to be kept in mind in deciding this matter. Interest under Section 28 is part of the amount of compensation whereas interest under Section 34 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. "
17. In view of the authoritative pronouncements of/the Apex Court in Dr. Sham Lai Narula, T.N.K.Govindaraja Chetty, Amarjit Singh, Sunder, Bikram Singh's cases (supra), Rama Bai vs. CIT (1990) 181 JTR 400 and K.S. Krishna Rao v. CIT, (1990) 181 ITR 408, the assessee cannot derive any benefit from the aforesaid observations quoted above."

4.6 The Hon'ble Supreme Court dismissed the SLP tiled in the case of' Manjeet Singh (HUF) Karta Manjeet Singh Vs. Union of India & Ors. CYVP No. 15506 of 2013(as discussed above) by way of Special Leave to appeal (C No. 34642 of 2014) vide order dated 1 8.12. 2014 with the following order:

"Heard Ld. Counsel for the petitioner and perused the relevant material. We do not find any legal and valid grounds for interference. The Special Leave Petitions are dismissed."

4.7 The Hon'ble Punjab & Haryana High Court considered all the aforesaid cases, in the case of Sunder Lai & Anr. Vs. Union of India in CWP No. 2014 of 2015. In this order dated 21.09.2015 the Hon'ble Jurisdictional High Court held as under:-

"9. In view of the above and also /he amendments made by I he Finance (No. 2) Act. 2009 w.e.f. 1.4.2010 noticed hereinbefore, no advantage can be derived by the petitioners from the judgment in Ghanshyam's case (supra).
10. Examining the issue of taxability of interest under Section 28 of the Act, in Commissioner of Income Tax v. Bir Singh (HUF), ITA No. 209 of 2004 decided on 27.10.2010, it was held by the Division Bench of this Court that the interest awarded by court on enhanced compensation under Section 28 of the Act was chargeable to tax as income from other sources in the year of receipt. Division Bench of this Court again in Commissioner of Income Tax, Panchkula v. Prem

Singh decided on 16.12.201 (I while considering, identical issue recorded as under:-

> *"11. In this view of the mutter, the interest component on enhanced compensation under Section 28 is liable to be taxed under Section 56 of the Act even when compensation is treated' as agricultural income. And is not covered by Section 45(c) of the Act. We thus answer the questions in favour of the revenue and modify our order dated 5. 7.2010 accordingly. The amount of interest on enhanced compensation is held to he taxable in the year of receipt irrespective of pendency of proceedings against award of enhanced compensation. ''*

11. The judgment of learned Single Judge in Man dir Nar Singh Puri's case (supra) (Annexare P-10) on which reliance has been placed by the petitioners being contrary to the aforesaid pronouncements cannot be taken to be interpreting the legal provisions correctly and is. thus, overruled.

12. Still further, this Court in Sard r. Haryana State Industrial and Infrastructure Development Corporation Ltd. and others, CWP No. 9739 of 2011 decided on 30.5.2011 dealing with the issue of tax deducted at source under similar circumstances had recorded as under:-

> *"8. This Court, in Income Tax Appeal No. 209 of 2004. decided on 27.10.2010 (Commissioner of Income Tax, Faridabad v. Bir Singh (HUF), Ballabgarh) had held that interest paid to the assessee under Section 28 of the Land Acquisition Act, 1894 (for brevity, "1894 Act'') on enhanced amount of compensation in respect of the acquired land falls for taxation under Section 56 of the Act as "income from other sources'' and is exigible to tax in the year of receipt under cash system of accountancy. It had also been observed that where the assessee is not maintaining books of accounts by adopting any specific method, it shall be 'treated to be cash system of accountancy. In the present case, the interest received by the petitioner was on account of delay in making the payment of enhanced compensation and, therefore, would fall under Section 28 of the 1894 Act. Such payment could not par-take the character of compensation for acquisition of agricultural land and, thus, was not exempt under the Act. Once that was so, the tax at source had been rightly deducted by the payer. ''*

13. In view of the above, the lax at source has been rightly deducted and the petitioners can claim the refund, if any, admissible to them by filing the income tax returns in accordance with law. ''

4.8 Further, on this issue, the Hon'ble Punjab & Haryana High Court has recalled the earlier decision in the case of Jagmal Singh and Ors. Vs. Slate of Haryana & Anr. vide its order dated 02.02.2016 in RA-CR No. 46 CII of 2014 in CR No. 7740 of 2012.

4.9 The Hon'ble High Court while recalling this order held as under:-

> *"1. The applications for review-is sought by-the Union of India on the plea that the orders passed by this Court in the absence of any representation of Union, failed to take note of an amendment in the Income Tax Act. The said provision made interest component assessed on additional amount on land acquisition awards under Section 28 of the Land Acquisition Act as taxable. The amendment through Section 145-A (b) took effect from April 2010. I have relied on a judgment of the Supreme Court m Commissioner of Income-tax, Faridabad Versus Ghanshyam-(H UF) Civil Appeal No. 4401 of 2009 decided on 16.7.2009 reported in 2009 (9) JT 445 to hold that the interest awarded on enhanced compensation is not taxable. The effect of the judgment has been statutorily abrogated by virtue of the amendment. The award of the Collector itself has been passed subsequent to the amendment on November 10. 2010. A Division Bench of this Court in Hari Kishan Versus Union of India 2014 (2) PLR 662 and another judgment in Attar Singh and others Versus State of Haryana and others. CWP No. 10125 of 2015 dated 3.9.2015 have reiterated the position of taxability on enhanced compensation under the Land Acquisition Act on the basis of the amendment and the fact of inapplicability of Ghanshyam 's case (supra), after the amendment to the statute. The decisions already rendered by the Court were parentally wrong, failing to note of the statutory amendment and its effect on the awards in the two decisions, referred to above.*
>
> *2. The orders already passed are recalled and the review applications are allowed holding that interest on the additional award is taxable under income tax and liable to be deducted at the time of deposit"*

4.10 From the aforesaid decisions, it is evident that"after the amendment of the Income Tax Act by way of insertion of Section 56(2)(viii) and Section 57(I)(v) by Finance Act 2009 w.e.f 01.04.2010, the issue whether the interest received on enhanced compensation was taxable as income from other sources has been finally settled. In these circumstances the decisions of the Hon'ble Supreme Court in the case of CIT vs. Ghanshyam (HUF) (Supra) is not applicable in the appellant's case.

4.11 The decision of the Hon'ble Punjab & Haryana High Court in the case of Sunderlal and Anr. Dated 21.09.2015 (Supra) and the the case of Jagmal Singh and Ors. (Supra) being the latest decision on this issue and this decision having considered the decision of the Hon'ble Supreme Court in the case of CIT vs. Ghanshyam (Supra) and also considering the fact that the Hon'ble Supreme Court has dismissed the SLP filed in the case of Manjit Singh (HUF) (Supra), it is held that the interest received u/s 28 of the Land Acquisition Act is not exempt under the act as it could not partake the character of compensation for acquisition of agricultural land. It is held that the interest received on enhanced compensation in the appellant's case is liable to tax under the head income from other sources. This ground of appeal is dismissed."

4.2 Before us, the learned counsel of the assessee relied on decision of the Tribunal in the case of Jagmal Singh Vs ITO, Ward-2(2), Gurgaon in ITA No. 2340/Del/2018 dated 20/09/2018 and Sushma Gupta Vs ITO ward-1(3) in ITA No. 1823/Del/2016 and submitted that the assessee was awarded interest under section 28 of the Land Acquisition Act, 1894 on enhanced compensation paid for compulsory acquisition of the land and the said interest received is to be treated as being in the nature of the compensation not liable to tax.

4.3 On the contrary, learned Departmental Representative relied on the order of the lower authorities.

4.4 We have heard the rival submission and perused the relevant material on record. The issue in dispute before us is whether the interest received on enhanced compensation is exempted under section 10(37) of the Act as part of the land compensation or it is taxable under section 56(2)(viii) of the Act. We find that the Ld. CIT(A) has taken into consideration decision of the Hon'ble Jurisdictional High Court of Punjab and Haryana in the case of Sunderlal and Anr. (supra) and Jagmal Singh and

Ors. (supra), where the decision of the Hon'ble Supreme Court in the case of CIT Vs Ghanshyam (HUF) has also been considered. Subsequent to the decisions of the jurisdictional High Court referred above, the Hon'ble Supreme Court in the case of CIT Vs. Chet Ram (HUF), dated 12.09.2017 in Civil Appeal No. 13053 of 2017, wherein also the Hon'ble Supreme Court has again reiterated the proposition laid down in the case of Ghanshyam (HUF) (supra), which has further been reiterated in the case of Union of India Vs. Hari Singh & Others in Civil Appeal No. 1504 of 2017, dated 15.09.2017, as under:

> *"(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."*

4.5 In view of above decisions of the Hon'ble Supreme Court, the interest received on compulsory acquisition of land under section 28 of Land Acquisition Act (LAA) would be in the nature of compensation and not interest, which is taxable under the Income from other sources. Accordingly, we restore the issue to the file of the learned CIT(A) to decide the taxability in accordance with law after verifying whether the interest received is in respect of land acquired u/s 28 of the LAA or interest under section 34 of the LAA. It is needless to mention that adequate opportunity of being heard shall be afforded to both the parties, i.e., the Assessee and the Assessing Officer. The ground Nos. 1 to 3 of the

appeal of the assessee are accordingly allowed for statistical purposes.

5. The ground Nos. 4 to 6 of the appeal are related to addition for cash deposits of ₹ 31, 93,000/- appearing in the bank account.

5.1 The facts qua the issue in dispute that the Assessing Officer observed cash deposits of ₹ 20,00,000/- on 26/05/2012 (sic) and ₹ 11,93,000/- on 12/10/2012 in the bank account maintained with Union Bank of India, Manesar (Haryana). The assessee was provided opportunity to explain the source of the deposit of the said cash deposits, however, he failed to explain the source of the same despite repeated opportunities provided. Before the Ld. CIT(A), the assessee claimed that deposits are made out of the cash received on agreement to sell of the land and money received from relatives and friends. The assessee filed additional evidence before the Ld. CIT(A) to support its claim of money received from agreement to sell of the land and money received from friends and relatives. The Ld. CIT(A) did not admit the additional evidence submitted by the assessee on the ground that the assessee did not satisfy the conditions provided under Rule 46A of Income Tax Rules, 1962 (for short 'the Rules') for admitting of the additional evidences. According to him, the explanation of the assessee of receipt of money from the relatives was only an afterthought and made by self-serving statement. In view of the Ld. CIT(A), the assessee failed to discharge his onus to prove the source of the cash deposited in the bank account. Accordingly, he dismissed the ground of the appeal of the assessee.

5.2 Before us, the learned Counsel of the assessee submitted that the lower authorities has ignored the facts and rejected the additional evidences. According to him, the cash withdrawal was duly reflected in the bank statement of the mother of the assessee as well as his uncle and same has been duly submitted in appeal proceedings. According to him the assessee was not able to find the bank statement during the course of the assessment proceeding. He submitted that entire transaction of the withdrawals and deposits are duly reflected in the bank account and verifiable from the relevant records. According to him, the assessee has discharge the initial burden casted upon him and, therefore, source of the cash deposit should be accepted.

5.3 On the other hand, Ld. Departmental Representative relied on the order of the lower authorities and submitted that the assessee did not satisfy the conditions for admitting additional evidence as provided under Rule 46A of the Rules and, therefore, the Ld. CIT(A) was justified in not admitting additional evidence and deciding the issue on the basis of the documents available on record.

5.4 We have heard the rival submission and perused the relevant material on record. We find that the assessee was provided ample opportunities to explain the source of cash deposits. The Ld. CIT(A) in para 5.5 of the impugned order has mentioned the details of the opportunities provided to the assessee. The relevant para is extracted as under:

> *"5.5 I have carefully considered the rival submissions. I have also perused the assessment records. As per the note sheet recorded in the assessment record, the appellant was asked vide order sheet*

entry dated 26.10.2015 to explain sources of cash deposits of Rs.20 lacs on 26.05.2012 and Rs.11,93,000/- on 12.10.2012 and to justify the claim. The case was adjourned to 09.11.2015. on 09.11.2015 none attended. Another opportunity was given to the appellant and the case was fixed for hearing on 17.11.2015. On 17.11.2015 no reply was furnished. The A.O. once again asked the appellant to furnish the requisite details and the case was adjourned to 24.11.2015. On 24.11.2015 once again no reply was furnished. The A.O. given one last opportunity to the appellant to furnish the requisite details. It was specifically mentioned that in case no reply was furnished it shall be presumed that the appellant has nothing to say and the cash deposited in the bank account shall be treated as undisclosed income of the appellant. The case was adjourned to 30.11.2015. On 30.11.2015 once again no explanation or evidence regarding the sources of cash deposit in the bank account were furnished."

5.5 The Ld. CIT(A) also examined admissibility of the additional evidence filed by the assessee in terms of Rule 46A of the Rules. The relevant part of the decision of the Ld. CIT(A) is reproduced as under:

"5.6 It is evident from the fact's recorded/discussed above that in spite of repealed opportunities granted by the A.O and in spite of a specific show cause recorded in the note sheet on 24.11.2015, the appellant failed to furnish any explanation or evidence. In these circumstances the request of the appellant for admission of additional evidence cannot be accepted. The power of CIT(Appeal) to admit additional evidence is governed by the provisions of Rule 46A of Income Tax Rules, 1961 . As per Rule 46A, the CIT(A) can admit additional evidence only in the following circumstances:-

i) Where the AO has refused to admit evidence which out to have been admitted.
ii) Where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the AO.
iii) Where the appellant was prevented by sufficient cause from producing before the AO any evidence which is relevant to any ground of appeal,
iv) Where the AO has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

5.7 In the appellant's case none of the conditions referred to in Rule 46A is satisfied. The AO did not refuse to admit any evidence. The next issue to be examined is whether the appellant was prevented by sufficient cause from producing the evidence. In this regard the appellant has not been able to justify as to how and why any explanation or evidence could not be produced by him, to explain his contentions, during the course of assessment proceedings. The documentary evidence requested for by the AO pertained to the period ending on 31.03.2013 and the same was called for by the AO during the period ending on 31.12.2015. The appellant has not been able to justify as to what prevented him from producing these evidences for such a long time.

5.9 The only other issues is whether the AO has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal. From the facts on record it is clear that appellant was afforded sufficient opportunities to produce the evidence. The fact remains that in spite of repeated opportunities provided by the AO during the course of assessment proceedings The appellant failed to furnish the requisite details.

5.10 Hon'ble Delhi High Court has strongly deprecated—the attitude of the non- cooperative assessees in the case of Commissioner of Wealth Tax vs. Gurdial Singh, 123 ITR 483 (Del) and observed as under :

> *"We have heard the parties and given our utmost consideration to all the circumstances. In our opinion, the narration of the facts above abundantly brings out the recalcitrant and totally non-co-operative attitude of the assessee. He did not care to file wealth-lax returns of his own. Perhaps there could be some justification for that in case he felt that his wealths were not assessable. However, when the WTO had issued notices under ss. 14(2) and 17 of the W.T. Act, requiring him to fide the returns, he was thereafter obliged under the law to file the returns. He could not have thereafter ignored the notices and still remained indifferent to the submission of the returns. The WTO, therefore, was justified to proceed under s. 16(5) of the Act and frame best judgment assessments. The Tribunal too in this regard has observed that it was no doubt correct that the WTO was compelled to act under s. 16(5) of the Act.*
> *With this background of the facts,* ***we do not see what was the other material which the authorities below had collected or relied upon, about which the Appellate Tribunal observed that the assessee should have been provided a second opportunity of being heard****. The*

generalized statement in the order of the Tribunal about the material collected had little bearing when in fact there was no such material collected. Primarily it were the statements furnished by the assessee himself which were made the basis for best judgment assessments in so far as the assets shown in them were concerned. All that was done was to ignore liabilities as the assessee had failed to substantiate them in spite of a large number of opportunities granted. In our opinion, therefore, the ratio of the Kerala High Court decision relied upon by the Tribunal was not, in any manner, attracted. ***The attitude of the assessee- was throughout to sit on the fence and contemptuously ignore the assessment proceedings and the notices issued by the WTO requiring him to furnish returns and other material in support of his wealth-lax statements.*** *After all the assessment proceedings could not be converted into a farce of mockery by him. He ought to have shown due regard to them. In the circumstances,* ***there was no justification, to allow him a second innings by setting aside the assessments and ret/airing the WTO to frame them afresh****. For the framing of those best judgment assessments, and the situation in which the assessee found himself rendered, he was himself to blame. He could not, therefore, be heard to make a grievance of his own defaults****. What the principles of natural justice postulates is that a reasonable opportunity should be granted to the assessee of being heard.*** *It is for him to avail that. In case, he does not choose to do so, the orders that follow cannot be held violative of those principles or the requirements of law.*

(emphasis supplied)

5.11 Hon'ble Supreme Court in the case of Segu Buchiah Setty, 77 ITR 539(SC) has held as under:

"It is inconceivable that the legislature could have ever intended that in case of multiple defaults for each one of which an ex-parte best judgment assessment has to be made the assessed can ask for cancellation of the assessment by merely showing cause for one of such defaults. In our opinion, the Bombay High Court in Chiranjilal Tibrewala v. Commissioner of Income-tax was right in holding that in circumstances similar to the present case the asses see cannot ask for cancellation under section 27 of an assessment made under section 23(4). In this view of the matter the judgment of the High Court -has to be set-aside, and the question has to be answered against the assessed and in favour of the appellant ".

5.12 Hon'ble Punjab & Haryana High Court in the case of Miri Mal Mahajan, 95 ITR 186 (P&H) held that the material gathered by Income Tax Officer was not required to be put to the assessee to afford him an opportunity to say what he may have to say in respect of the same where the assessee does not cooperate with the Department. The relevant part of the order is reproduced as under :

> *"The second contention on behalf of the appellant that the evidence got collected by the Income-tax Officer was not put to the assessee as provided in sub-section (3) of section 142 has, on the face of it, no force. The assessee was given a number of opportunities to produce his books of account on a date fixed by the Income-tax Officer, but he failed to avail of any of these opportunities. One cannot, therefore, understand how the material gathered by the Income-tax Officer under sub-section (2) of section 142 could be put to the assessee and afford him an opportunity to say what, he may have to say in respect of the same. In fact, the very opening words of sub-section (3) of section 142, viz., "The assessee shall, except where the assessment is made under section 144, be given an opportunity", make it clear that it does not apply to an assessment under section 144, i.e., where the assessee does not co-operate with the department " (emphasis supplied).*

5.13 Similarly. Hon'ble Madras High Court in the case of Rayala Corporation Pvt. Ltd., 215 ITR 883 (Mad) has not countenanced the non-cooperative attitude of the assessee. In that case the appeal of the Department was allowed by the Hon'ble High Court and the Hon'ble Court made the following observations after referring to the decision of Hon'ble Supreme Court in 176 ITRJ535 (SC) :

> *"What has surprised us, however, in the instant case, is the way the Appellate Commissioner has ignored the defiance of the assessee that in spite of the repeated notices and letters it never appeared before the Income-tax Officer with any information or material in response to the notice under section 148 of the Income-tax Act and the letters sent to it in this behalf.*
>
> *The Appellate Tribunal is not a court. Its powers, however, are expressed in the widest possible, terms under section 254 of the Act, "may after giving both the parties to the appeal an opportunity of being heard, and pass such orders thereon as it thinks fit". Its powers, thus, are almost similar to the powers of an appellate court under the Code of Civil Procedure. A wide power, however, is not such that it can be exercised in any manner. The Tribunal can interfere with the orders of the lower authorities, but can do so only on judicial considerations*

and on the basis of reasons that suggest clearly that the lower authorities had committed an error of law or such fact that had vitiated its considerations and gone perverse for such reasons. The appellate courts which exercise wide powers to hear appeals both on issues of law as well as issues of fact, exercise the well known refrain that if two opinions ewe possible and one opinion is formed by the lower authority or court, although it is to arrive at a different opinion it shall not interfere with the order of the lower authority or reverse the order of the tower .authority. The test which the courts apply for interference when an error of law is not evidenced is whether a reasonable person can take the opinion which the authority has, through the order under appeal, taken. Once it is found that a reasonable person could form the opinion, which the lower court, or the authority had formed, the appellate court or authority shall desist from interfering with its order.

We have chosen to make some observations as to the role of the Appellate Tribunal, because the stage at which it comes to examine the contentions of the assessee or the Revenue is one after all the proceedings under the law. an enquiry before assessment, an enquiry after assessment, if any, under section 143 of the Ad and hearing, if any, of the assessee by the Income-tax Officer are completed and the remedy of a statutory appeal before the Appellate Assistant Commissioner is availed of by the assessee or the Revenue ? Its primary task is not to go into the return of the assessee and decide what amount of lax should be levied upon his income, but to see whether the taxing authorities, including the Appellate Assistant Commissioner have committed any error of law or of fact and on account of such error, the assessee has suffered. A greater protection is extended by the law to the Revenue in the sense that, in cases where tax is found to have been short-levied, discretion is given to the competent authority (Commissioner) to reopen the whole mailer, if it is in public interest to do so. The Tribunal has got to protect, on the one hand, the interest of the assessee in the sense that he is not subjected to any amount of tax in excess of what he is bound to pay, and on the other hand, it has a duty to protect the interests of the Revenue and to see that, no one dodged the Revenue and escaped without, paying the tax.……

The Supreme Court also has pointed out that the assessee cannot be permitted to take advantage of his own illegal ads and that it was his duty to place all the fads truthfully before the assessing authority. If he fails to do his duty, he cannot be allowed to call upon the assessing authority to prove conclusively what turnover he had suppressed. That fact must

> *be within his personal knowledge. Hence, the burden of proving that fact is on him……..*
>
> *5.14 If the facts of the present case are analyzed, it is absolutely that the Assessing Officer gave the assessee many opportunities to furnish explanation with evidence regarding the cash deposits in the bank account but the appellant failed to give any evidence with regard to the cash deposits under reference. The ratio of the above said judicial opinions is on all fours and applicable to the present case. The Assessing Officer has framed the assessment in a very judicious manner and not in arbitrary manner.*
>
> *5.15 Keeping in view the aforesaid facts and circumstances of the case, additional evidences tiled by the appellant is not admitted. Reference in this regard may be made to the decision of the Hon'ble ITAT Chd.in the case of Dimple Exports Vs. DOT in 11 A No. 159/Chd/2014 dated 11.02.2016. Reference in this regard may also be made to the decision of the Hon'ble ITAT Chd. in the case of Rishi Sagar vs DCIT in ITA No. 10 /Chd./2013 dated 23.05.2013."*

5.6 We find that the assessee failed to explain any sufficient cause which prevented him from producing the evidences before the Assessing Officer. In view of the detailed reasoning provided by the ld. CIT(A), we do not find any error in the order of the Ld. CIT(A) on the issue in dispute.

5.7 Finally, the Ld. CIT(A) upheld the addition in view of failure of the assessee to explain the source of the cash deposits. The relevant part of the order of the Ld. CIT(A) reproduced as under:

> *"5.17 As seen from the facts recorded in the assessment order the appellant had failed to furnish any explanation with regard to the sources of cask deposit in the bank account. The contention of the appellant during the course of appellate proceedings that the same was received by the appellant from his relatives i.e from his mother as well as his uncle is without any supporting evidence and is an afterthought and a mere self-serving statement. No such contention was made during the course of assessment proceedings. The onus to prove the sources ol cash deposits in the bank account lies with the appellant. The appellant has failed to discharge the onus. The addition made by the A.O is confirmed. These grounds of appeal are dismissed."*

5.8 During the course of the assessment proceedings many opportunities were provided to the assessee but the assessee did not provide any explanation or statement in respect of the cash deposits. One can understand of not having ready availability of the documentary evidence but the assessee was not prevented from explaining the source of deposits which according to him was money received from his mother and uncle. No such explanation was even offered by the assessee before the AO. Thus, the explanation and documentary evidence filed before the ld. CIT(A) are result of afterthought only. The Ld. CIT(A) has rejected the additional evidences as same were not in accordance with Rule 46A of the Rules.

5.9 In view of the facts and circumstances of the case, we are of the considered opinion that assessee failed to discharge its onus to explain the source of the cash deposits and therefore, Ld. CIT(A) is justified in sustaining the addition. We, accordingly, uphold the same. The grounds of the appeal of the assessee are accordingly dismissed.

6. In ground No. 7, the assessee has challenged initiation of the penalty proceeding under section 271(1)(c) of the Act and non-granting of credit of TDS. In our opinion, as far as the issue of initiation of the penalty proceeding is concerned, the ground raised is premature at this stage and, therefore, same is dismissed as infructuous. However, as far as granting of the credit of the TDS is concerned, we direct the Assessing Officer to examine the claim of the assessee and if same is found in accordance with law, the assessee should be allowed the credit of

tax deducted at source. The ground of the appeal of the assessee is accordingly partly allowed.

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

Order is pronounced in the open court on 30th January, 2020.

Sd/-	***Sd/-***
(BHAVNESH SAINI)	**(O.P. KANT)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 30th January, 2020.
RK/-(D.T.D.)
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi