

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES 'G', NEW DELHI**

Before Ms. Sushma Chowla, Vice President

Dr. B. R. R. Kumar, Accountant Member

ITA No. 7589/Del/2018 : Asstt. Year : 2013-14

Surender, C/o Y S R & Associates, Plot No. 214, Basement , Near Vigilance Office, Sector-47, Gurgaon, Haryana-122001	Vs	Income Tax Officer, Ward-4(3), Gurgaon
(APPELLANT)		(RESPONDENT)
PAN No. CYIPS9304R		

Assessee by : Sh. Sudhir Yadav, CA

Revenue by : Sh. N. K. Choudhary, CIT DR

Date of Hearing: 08.01.2020

Date of Pronouncement: 27.04.2020

ORDER

Per Dr. B.R.R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT (A)-1, Gurgaon dated 27.09.2016.

2. Following grounds have been raised by the assessee:

"1. That on the facts and circumstances of the case as well as in Law, the Learned CIT (A) has erred in confirming the action of Learned Assessing Officer in the assessment completed u/s 144 of the Income Tax Act, 1961 without appreciating the facts of the appellant's case, properly.

2. That on the fact and circumstances of the case as well as in Law, the Learned CIT(A) has erred in confirming the addition, made by Learned Assessing Officer, of Rs.92,04,773/- as interest income of appellant ignoring the fact that said interest is part of compensation received u/s 28 of the Land Acquisition Act, 1894.

3. That the order of the learned assessing officer is bad in law as well as on the facts of the appellant's case."

3. Brief facts of the case are that the assessee had claimed exempt income of Rs.1,84,09,546/- received from State Government DRO-cum-LAC. The AO noted that the assessee had received interest on enhanced compensation amounting to Rs. 1,84,09,546/-. The A.O held that interest on enhanced compensation is taxable u/s 56(2)(viii) and after allowing a deduction of sum equal to 50% of interest received, as per the provisions of Section 57(1)(v) remaining amount of Rs. 94,11,070/- was added to the total income of the assessee.

4. Background of this case is that the agricultural land of the assessee was acquired by Haryana State Industrial & Infrastructure Development Corporation Ltd. (HSIIDC) u/s 4 of the Land Acquisition Act, 1894 for developing industrial area in IMT Manesar, Gurgaon. The HSIIDC has not paid the compensation on prevailing market rate, therefore, assessee filed an appeal before the Hon'ble Courts for increase the compensation for agricultural land. The Hon'ble Courts has awarded enhanced compensation u/s 19, 23(1A), 23(2) & 28 of the Land Acquisition Act, 1894. The total compensation included Rs.1,84,09,546/- u/s 28 of the Land Acquisition Act, 1894 which is mentioned as interest.

5. Thus, in the instant case, the fact on record is that the compensation received consists of interest received along with enhancement of compensation. The amount received is not liable to Section 34 which is only the interest received for delay in making the payment after the compensation amount is determined. Thus, the interest u/s 28 is a part of the value of the land.

6. The Id. CIT (A) held that the interest received u/s 28 of the Land Acquisition Act, 1894 is not exempt under the Act as it could not partake the character of compensation for acquisition of agricultural land and confirmed the order of the Assessing Officer.

7. The question before us is whether the amount received be treated u/s 28 of the Land Acquisition Act, 1894 or u/s 34 of Land Acquisition Act, 1894 and taxable u/s 56(2)(viii) of the Income Tax Act, 1961.

8. We have gone through the record and perused the judgment of Hon'ble High Court of Gujarat in the case of MB Bala Bhai Vs ITO 70 taxmann 45, Ramabai Vs CIT 181 ITR 400(SC), order of the Delhi Tribunal in the case of Jagmal Singh in ITA No. 2340/Del/2018, Sh. Amarchand Gupta 5367/Del/2018 and also the cases relied by the revenue viz. Jagmal Singh and Others Vs State of Haryana, Manjeet Singh Vs Union of India (SC). We have also perused the judgment of Hon'ble Apex Court in Ghanshyam (HUF). The Hon'ble Apex Court held that interest paid on the excess amount u/s 28 of Land Acquisition Act, 1894 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 the enhanced value. The Hon'ble Supreme Court has categorically held that interest u/s 34 is only for delay in making payment after the compensation amount is determined.

9. In the instant case before us, the compensation has been increased by the order of the Hon'ble High Court, hence, the amount received by the assessee being the compensation received u/s 28 of Land Acquisition Act, 1894, the same is exempt u/s 10(37) of the Income Tax Act, 1961.

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

Order Pronounced in the Open Court on 27/04/2020.

Sd/-

(Sushma Chowla)
VICE PRESIDENT

Sd/-

(Dr. B.R.R. Kumar)
ACCOUNTANT MEMBER

Dated: 27/04/2020

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR