

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI
BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA No. 6344/Del/2015
(Assessment Year: 2000-01)

Shri Mahinder (Individual), C/o. Vijay Kumar Gupta, Advocate, Opp. Jain Mandir, Faridabad PAN: BQTPS5341E	Vs.	ITO, Ward-II(4), Faridabad
(Appellant)		(Respondent)

Assessee by :	Written submission
Revenue by:	Shri Vipul Kashyap, Sr. DR
Date of Hearing	12 & 13/10/2020
Date of pronouncement	28/10/2020

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of 1d CIT(A), Faridabad dated 09.09.2015 for the Assessment Year 2000-01, wherein, the appeal of the assessee is partly allowed.

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

- "1. *THAT the impugned assessment order has been passed even without serving statutory notice u/s. 148 of the I T Act, 1961 to the appellant assessee. Hence, the impugned order is illegal, arbitrary, beyond jurisdiction and against the principles of natural justice.*
2. *THAT in the present case the amount of statutory interest on late payment of enhanced compensation was paid u/s. 34 of the L A Act, 1894, hence, it was assessable under the head 'Income From Other Sources' and not as a part of enhanced compensation under the head 'Long Term Capital Gains' as done in the impugned assessment order.*

Judgment dated 16/07/2009 in the case of GHANSHYAM - [2009] 315 ITR 1 [SUPREME COURT]

3. *THAT without prejudice to the above, the entire interest amount being not earned in the previous year corresponding to the present assessment year 2000-01 cannot be charged to tax in the present period. Statutory interest u/s. 34 of the Land Acquisition Act, 1894 accrues from year to year and is taxable in the respective assessment year as held by the Hon'ble Supreme Court in the cases Ram Bai (1990) 181 - ITR- 400 (SC) & K S KRISHNA RAO (1990) 181 - ITR - 409 (SC) .*

4. *THAT the appellant assessee craves leave to add, alter, amend, revise, modify, substitute or delete any or all grounds of appeal and / or prayer made.*

5. *PRAYER :*

IN VIEW OF THE ABOVE, it is, therefore, prayed that the impugned assessment order being illegal, arbitrary, beyond jurisdiction and in utter disregard of the true facts and in the circumstances of the case may kindly be quashed in the interest of justice and fair play.

3. The brief fact of the case shows that the assessee is an individual who received enhanced compensation on compulsory acquisition of the land of Rs. 8970358/- on 06.09.1999 and further interest on enhanced compensation of Rs. 6111073/- on 17.09.1999 and 27.09.1999. Thus, the assessee received enhanced compensation and interest thereon of Rs. 15081431/-. The assessee did not file any return of income and therefore notice u/s 148 of the Act was issued on 22.03.2007, this notice was not accepted by assessee. Subsequently notices were issued by speed post which remained unreturned. Notice by affixture was also put on 30/3/2007. The assessee did not file any return and did not comply with any notices. Assessment order u/s 144 of the Act was passed on 20.11.2007 u/s 144 of the Act determining total income of the assessee at Rs. 15147430/-. The assessee preferred an appeal before the Id CIT(A), who allowed the appeal of the assessee on 25.08.2008 holding that addition on account of enhanced compensation and interest shall only be taxable when they are finally settled by the Hon'ble High Court or Supreme Courts. Revenue approached the coordinate bench who directed the Id AO to decide the issue afresh by following the decision of the Hon'ble Supreme Court in case of CIT Vs. Ghanshyam Das (HUF) 315 ITR 1. The coordinate bench also directed the Id AO to give opportunity of hearing. Thus, this is the second round before us.
4. As per the direction of ITAT AO gave many opportunities to the assessee however, none appeared therefore, the assessment order was passed by the Id AO u/s 144 of the Act dealing with the facts of the case in paragraph 4 and 5 as under:-

"4. The brief facts of the case are that the agriculture land belonging to the assessee located at village Fatehpur Chandela, Faridabad was acquired by the Haryana Urban Development Authority (HUDA) pursuant to notification No. LAC (F)-90/NTLA/13 dated 11.05.1990 published in the gazette of Haryana Govt, u/s 4 of the Land Acquisition Act 1894 and declaration u/s 6 of the said Act vide notification No. LAC(F)-91/NTLA/104 dated 08.05.1991. It appears that dissatisfied with the amount of award, the assessee filed an appeal before the Distt. & Session Judge, Faridabad who enhanced the compensation Award with a phenomenal rise. The enhanced compensation award by the Distt. Session Judge, Faridabad is said to have been the subject matter of appeals before the Hon'ble Punjab & Haryana High Court at the instances of Haryana Govt. through the Land Acquisition Officer (LAO), Faridabad and the assessee alongwith other persons of Village-Fatehpur Chandela. Ultimately, at the intervention of the Hon'ble High Court the enhanced compensation together with the interest on delayed payment of enhanced compensation was paid to ~re assessee by HUDA as per details given below falling in the A.Y 2000-01:-

<i>Nature of payment</i>	<i>Amount</i>	<i>Date of payment</i>	<i>LAC No.</i>
<i>Enhanced compensation</i>	<i>Rs.89,70,358/-</i>	<i>06-09-1999</i>	<i>558/97</i>
<i>Interest enhanced</i>	<i>Rs.61,11,073/-</i>	<i>17-09-1999</i>	<i>339/97</i>
<i>Compensation</i>		<i>27/09/1999</i>	<i>340/97</i>
<i>Total</i>	<i>Rs.1,50,81,431/-</i>		

(4.1) The agriculture land belonging to the assessee which was acquired by the HUDA located in Village-Fatehpur Chandela, Faridabad fall within the Municipal Corporation Area liable to Capital Gain Tax and therefore it is a capital assets within the meaning of section 2(14) of the I T Act 1961. Hence assessee is liable to capital gain tax u/s 45(5) of the I T Act. The provisions of sub-section (5) of section 45 of the Income tax Act were inserted by the Finance Act, 1987 with effect from 1-4-1988 which reads as under:-

"Notwithstanding anything contained in sub-section (1), where the capital gain arises from the transfer of a capital asset, being a transfer by way of compulsory acquisition under any law, or and the compensation is enhanced or further enhanced by any Court, tribunal or other authority, the capital gain shall be dealt with in the following manner, namely:-

- (a) The capital gain computed with reference to the compensation awarded in the first instance or, as the case may be, the consideration determined or approved in the first instance by the Central Government or the Reserve Bank of India shall be chargeable as income under the head "capital gains" of the previous year in which such compensation or part thereof or such consideration or part thereof, was first received; and*
- (b) The amount by which the compensation or consideration is enhanced or further enhanced by the Court, Tribunal or other authority shall be deemed to be income chargeable under the head "capital gain" of the previous year in which such amount is received by the assessee."*

(4.2) In the present case the assessee has physically received the amount of enhanced compensation of Rs.89,70,358/- and enjoying it in absolute terms. The provisions of section 45(5) make it abundantly clear that the capital gain arising out of enhanced compensation is taxable in the year of its receipt. Supreme Court of India also held in the case of CIT vs Ghanshyam Dass (HUF) (2009) 315 ITR 1 (SC) that "Capital gain arises on account of compulsory acquisition of land is taxable in the year of receipt." In the light of the legal position discussed above, it is held that total consideration of Rs.89,70,358/- received by the assessee in the form of enhanced compensation shall be charged to long term capital gain tax in the year of receipts i.e. in the A Y 2000-01 and assessed accordingly.

5. Interest received on enhanced compensation

As per information available, assessee also received interest of Rs. 61,11,073/- during the year under consideration from LAO on account of interest on enhanced compensation. Assessee was asked vide show cause to explain under which section the interest on enhanced compensation was received. Assessee fails to file any reply in this regard. Information was called for u/s 133(6) from the LAO, HUDA, Faridabad regarding section under which interest was paid to the assessee. The LAO, HUDA, Faridabad informed that interest on enhanced compensation was paid to the assessee u/s 28 of the LA Act. The Hon'ble Supreme Court of India held in the case of CIT vs Ghanshyam Dass (HUF) (2009) 315 ITR 1 (SC) that interest received u/s 28 of LA Act is part of compensation.

In view of the above discussion and also held by the Hon'ble Supreme COL" - of India held in the case of CIT vs Ghanshyam Dass (HUF) (2009) 315 ITR 1 ;SC), it is held that the interest on enhanced compensation amounting to Rs.6111073/- received by the assessee during the year is treated as compensation and so shall be charged as long term capital gain tax in the year of receipt i.e A.Y 2000-01 and assessed accordingly.

The assessee has not so far filed the return of income for the A.Y 2000-01, it is held that the assessee has committed a default within the meaning of section 271(l)(c) read with Explanation-3 under the said section. Therefore, penalty proceedings u/s 271(l)(c) have been initiated separately. The assessee has also failed to comply with the notice u/s 142(1) and as such proceedings 271(l)(b) for non compliance of notice u/s 142(1) have been initiated separately.

In view of the above, the total income of the assessee for the A.Y 2000-01 is computed as under:

- i) Long term capital gain as discussed above(para-4.2) Rs. 89,70,358/-*
 - ii) Long Term capital gain as discussed above(para 5) Rs. 61.11,073/-*
- Total Income* *Rs.1,50,81,431/-*

Or

R/o

Rs.1,50,81,430/-

Assessed at Rs.15,081,430/- (long term capital gain). Charge interest u/s 234A/B. The penalty proceedings 271(l)(b) and 271(l)(c) have been initiated separately.

Assessed. Issue requisite documents. ”

5. Thus, the Id AO assessed the total income of Rs. 15081430/-. The assessee preferred an appeal before the Id CIT (A) challenging the action of the Id AO u/s 148 of the Act, which was dismissed. However he, held that amount of consideration received in the impugned land is Rs. 42255187/- and share of the assessee is only Rs. 1/4th therefore, the addition cannot be made more than Rs. 10563797/-. With respect to interest on late payment it was submitted by the assessee that interest granted u/s 28 of the Land Acquisition Act 1894 is part of the compensation whereas interest u/s 34 is for delay in making payment if the compensation amount is determined is interest chargeable to tax . It was further stated that interest u/s 34 of that Act accrues from year to year and is taxable in the respective assessment year. The Id CIT(A) also rejected the same. In view of this assessee is in appeal before us.
6. At the time of hearing the appeal of the assessee placed on record the written submission stating that assessee has sought certain information with respect to service of notice u/s 148 of the Act as well as he relied on paper book filed in the month of March 2019. Written submission was also filed.
7. The Id DR relied upon the orders of the lower authorities.

8. The first ground of appeal is with respect to service of notice u/s 148 of the Act on 22.03.2007 issued through notice server, assessee refused to receive the notice. Subsequently, notice was sent through speed post which was not received back. Simultaneously, same was also served through afixture on 30.03.2007. In view of this, we do not find any infirmity in the order of the lower authorities in rejecting the contention of the assessee that notice was not properly served. The revenue has made three different attempts to serve the notice. Firstly, by notice server on 22.03.2007 which was not accepted by the assessee. This is not disputed by assessee. Secondly, notice was sent through speed post which is not received back by the AO. Thirdly through fixtures on 30.03.2007. Same is also not disputed by the assessee. There is no reason given to us that whether all the three actions of the ld AO were not correct. Accordingly, we dismissed ground No. 1 of the appeal.
 9. Ground No. 2 and 3 of the appeal are with respect to taxation of interest on enhanced compensation. According to information available on record the assessee has not produced any evidence whether the interest on enhanced compensation is received u/s 34 or u/s 28 of the Land Acquisition Act. The ld AO as well as the ld CIT(A) has also not brought on record any information on that count. It has been held by the Hon'ble Supreme Court in 315 ITR 1 that if the interest on enhanced compensation is u/s 28 of the Act, the same is part of compensation whereas interest u/s 34 is only for delay in making the payment if the compensation amount is determined. Thus, interest u/s 28 is unlike interest u/s 34 is accretion to the value, hence, it is part of enhanced compensation whereas the interest u/s 34 of the Act is interest. As no information is available on record, we set aside the whole issue back to the file of the ld AO with a direction to the assessee to show that with reference to various order, under which section of the Land Acquisition Act interest is received by the assessee. The ld AO may examine the whole issue with respect to taxability of the same and decide it afresh. The assessee is directed to submit the complete information before the ld AO within 3 months from the date of this order and thereafter the issue may be decided on the merits of the case. Accordingly, ground No. 2 and 3 of the appeal are allowed with above direction.
 10. Ground No. 4 is general in nature and therefore, same is dismissed.
 11. In the result appeal of the assessee is partly allowed for statistical purposes.
- Order pronounced in the open court on 28/10/2020.

Sd/-
(H.S.SIDHU)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated : 28/10/2020
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	28.10.2020.
Date on which the typed draft is placed before the dictating member	28.10.2020.
Date on which the typed draft is placed before the other member	28.10.2020.
Date on which the approved draft comes to the Sr. PS/ PS	28.10.2020.
Date on which the fair order is placed before the dictating member for pronouncement	28.10.2020.
Date on which the fair order comes back to the Sr. PS/ PS	28.10.2020.
Date on which the final order is uploaded on the website of ITAT	28.10.2020.
date on which the file goes to the Bench Clerk	28.10.2020.
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	