

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH “ B ” : BANGALORE

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA Nos.642 to 645/Bang/2020
(Assessment Years : 2014-15 to 2017-18)

Special Land Acquisition Officer,
Upper Tunga Project, Old DC Office Building,
Shivamogga – 577 201 Karnataka.
TAN BLRS 17756E

....Appellant

Vs.

Income Tax Officer,
TDS Ward, C R Building,
Devraj URS Layout, C Block, Davangere.

.....Respondent.

ITA Nos.1421 & 1422/Bang/2019
(Assessment Years : 2014-15 & 2016-17)
(By Revenue)

Assessee By:	Shri Nitish Ranjan, C.A.
Revenue By:	Shri Muzaffar Hussain, CIT (D.R)

Date of Hearing :	18.01.2021.
Date of Pronouncement :	27.01.2021.

ORDER

PER SHRI CHANDRA POOJARI, A.M. :

These appeals are filed by assessee and Revenue against different orders of Commissioner of Income Tax (Appeals), Davangere. The assessee has filed appeals for Assessment Years 2014-15 to 2017-18 and Revenue has filed for Assessment Years 2014-15 and 2015-16. Since common issues are involved in

these appeals, they are heard together and disposed of by consolidated order for the sake of convenience.

2. Common grounds (only change in figures) raised by assessee's appeals are as follows :

1. " The order of the Ld. Commissioner of Income Tax (Appeals) is arbitrary, opposed to law, facts and circumstances of the case.
2. The Ld. Assessing Officer and the Ld. CIT (A) has erred in ignoring the fact that the impugned lands in the present case are rural agricultural lands, as apparent from the available records, including the order of the Hon'ble Civil Court at Shimogga pursuant to reference made under section 18 of the Land acquisition Act, 1894.
3. The Ld. Assessing Officer and the Ld. CIT (A) ought to have observed that the impugned land being rural agricultural land, the entire compensation, including enhanced compensation and interest thereon under section 28 of the Land Acquisition Act, 1894, paid towards the acquisition is exempt from income tax under section 10(37) of the Income-tax Act.
4. The Ld. Assessing officer erred in treating the Assessee as an 'Assessee in default' under section 201 of the Income-tax Act for non- deduction of TDS on payments which are exempt under Income-tax Act. The Ld. CIT (A) has erred in confirming the order of the Ld. Assessing Officer.
5. Without prejudice to the above, the Ld. Assessing Officer has erred on facts and in law by not being able to distinguish between interest payments made in the nature of compensation as defined under section 45(5) and interest paid for delay in payment.
6. The Ld. Assessing Officer's contention that TDS has to be deducted on all interest payments, including those payments made under section 28 under The Land Acquisition Act, is contrary to the position of law as established by the Hon'ble Supreme court in the case of CIT V. Ghanshyam (HUF)."

3. The grounds raised in Revenue's appeals are as follows :

"1. The learned CIT (Appeals) has erred in allowing relief on deduction of tax at source on interest payments made as a consequence of Court Order.

2. *The learned CIT (Appeals) has erred in bifurcating the interest payments into the categories of the amounts for which “details are available” and those for which “details are not available” and allowing relief on “details available” even though there is no provision in the Income Tax Act for giving relief on same amount based on such bifurcations.”*

4. The facts involved in these appeals are that the assessee is a State Government Department, Karnataka. The assessee acquires lands for development works of Govt. of Karnataka and compensation is paid to various land owners. The assessee has paid enhanced compensation to various land owners as per the orders of judicial courts and interest awarded to land owners by courts. The interest awarded by Courts are directly remitted to Civil Courts only as per the directions of the Civil Courts and the assessee did not pay the interest to awardees. The Assessing Officer conducted Survey u/s. 133A of the Income Tax Act, 1961 ('the Act') and found that TDS was not deducted on interest awarded to land owners and levied tax for short deduction or non-deduction of TDS and the Assessing Officer levied interest u/s. 201(1) and 201(1A) of the Act. On appeal, the CIT (Appeals) observed that the assessee is in default and the assessee is liable for deduction of TDS on interest component. The learned CIT (Appeals) observed that interest awarded u/s. 23(1A) & 23(2) r.w.s. 28 of the Land Acquisition Act is in the nature of solatium and integral part of compensation. Receipt of compensation awarded

under Land Acquisition Act is a Capital Receipt. Whereas, interest awarded u/s. 34 of the Land Acquisition Act is on account of delayed payment of compensation is a revenue receipt. The payment of interest u/s. 23(1A) and 23(2) of Land Acquisition Act and interest awarded u/s. 34 of the Land Acquisition Act are very different in nature. As per the available record, he classified the compensation as follows :

Financial Year	Compensation paid details			
	Amount claimed U/s 28 LA Act (As per SLAO)	Amount for which Details available	Amount verified as per details available	U/s 34 LA Act (As per SLAO)
2013-14	52,52,08,523	8,10,49,132	8,10,49,132	30,88,985
2014-15	41,79,79,010	96,418	96,418	50,68,866
2015-16	34,25,09,608	2,93,72,461	2,93,72,461	31,49,947
2016-17	3,57,24,943	2,69,07,135	2,69,07,135	7,41,29,337
TOTAL	132,14,22,084	13,74,25,326	13,74,25,326	8,54,37,135

Considering the above, the CIT (Appeals) observed that the interest payment u/s. 28 of 1894 Act where the details available, no TDS to be made in respect of this interest. On this issue, the revenue is in appeal before us for the A.Ys 2014-15 & 2016-17. On the other hand, the assessee is in appeal before us with regard to treating the assessee in default for the land being rural agricultural land, the entire compensation and interest thereon u/s. 28 of Land Acquisition Act paid towards the acquisition which is exempt from Income Tax u/s. 10(37) of Income Tax Act.

5. At the time of hearing, the learned Authorised Representative filed petition dt.28.10.2020 for additional evidence submitting as follows :

M/s. Special Land Acquisition Officer

Upper Tunga Project,
Old DC Office Building,
Shivamogga - 577 201

TAN: BLRS 17756 E

.....Petitioner

PETITION FOR ADDITIONAL EVIDENCE/S FILED ON BEHALF OF THE PETITIONER

The Petitioner is a department of Karnataka, who acquires land for the development works of Govt of Karnataka and pays compensation to the land owners. TDS survey under section 133A of the Income-tax Act, 1961 (for brevity "the Act') was conducted at the office premises of the petitioner on 30-Aug-2017 to verify its compliance with the provisions of TDS. On the same day, summon under section 131 of the Act was also issued on the petitioner to furnish certain details and information's which were duly submitted by the petitioner in the course of the proceedings.

Orders under section 201(1)/201(1A) of the Act were passed on 28-Feb-2018 by the Ld. Income Tax Officer, TDS Ward, Davangere for the AYs 2014-15 to 2017-18 by levying tax of on account of short deduction/ non deduction of TDS on interest paid on compensation under section 201 of the Act and interest on short deduction/ non deduction of TDS under section 201(1A) of the Act as follows:

AY	Tax on non-deduction of TDS on interest paid on compensation u/s 201(1).	Interest on non-deduction of TDS u/s. 201(1A)	Total
2014-15	6,21,73,292	3,12,16,026	9,33,89,318
2015-16	4,70,33,414	2,01,57,583	6,71,90,997
2016-17	2,94,36,592	84,37,906	3,78,74,498
2017-18	1,04,19,060	18,05,076	1,22,24,136
Total	14,90,62,358	6,16,16,591	21,06,78,949

Aggrieved against the order of the Ld. Income Tax Officer, TDS Ward, the petitioner filed an appeal before the Ld. Commissioner of Income Tax (Appeals) – Davangere (for brevity “Ld. CIT(A)”). The Ld. CIT(A) vide his order dated 28-Mar-2019 partly allowed the appeal to the extent of which the details were available in respect of interest paid on the compensation made as per section 28 of the Land Acquisition Act, 1894.

Aggrieved with the order of the Ld. CIT(A), the petitioner is in appeal before the Hon’ble Income Tax Appellate Tribunal, Bengaluru and wishes to submit bifurcation of the interest computation under section 28 of the Land Acquisition Act, 1894 along with the court orders from the Principle (SR. DN) Civil Judge, Shimoga and the Senior Civil Judge, Harihar.

It is submitted that the petitioner during the course of assessment proceedings and appellate proceedings could not furnish the evidences since the same were with the court and the petitioner did not have access to the same.

The petitioner submits that the above documents are crucial for their claim and they were prevented by a reasonable cause from not furnishing the above evidences before the lower Authorities.

In view of the above, it is prayed before the Hon’ble Tribunal that the above-mentioned additional evidences be accepted by your lordships for disposal of the appeal.

Prayer:

In light of the submissions made hereto above, the Petitioner prays before Hon’ble bench to:

- a. Admit the additional evidence/s;
- b. Hear and dispose of the appeal in accordance with law and the merits of the case; and
- c. Pass such other order as your Ld. Authority deems fit and proper.

5.1 The learned Authorised Representative prayed for admission of additional evidences in the form of Court Order from Principle (SR.DN) Civil Judge, Shimoga and Senior Civil Judge, Harihar. With regard to bifurcation of interest computation u/s. 28 of the Land Acquisition Act, 1894, he prayed that the issue may be remitted to the file of Assessing Officer for consideration afresh. On the other hand, the Id. DR submitted that the additional evidence may be admitted, however, the issue may be remitted to Assessing Officer for fresh consideration.

6. We have heard both the parties and perused the material on record. These additional evidences were not made available at the time of framing the order to the Assessing Officer by the assessee. These Court orders are relevant for deciding the issue. The assessee has also not produced these court orders while framing of passing of orders u/s. 201(1) and 201(1A) of the Act. These additional evidences are admitted for adjudication since the CIT (Appeals) had no occasion to consider these additional evidences and we are inclined to remit the matter to the file of CIT (Appeals) for fresh consideration and adjudication in the light of Court Orders after affording an opportunity to the assessee and calling Remand Report from the

Assessing Officer. With the above observations, we remit the issues in dispute to the file of CIT (Appeals) for fresh adjudication.

7. In the result, the appeals of the assessee as well as Revenue are allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(SMT. BEENA PILLAI)
JUDICIAL MEMBER

Sd/-

(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Dated: 27.01.2021.

*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