

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : SMC-1 : NEW DELHI  
(Through Virtual Hearing)

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.2831/Del/2019  
Assessment Year: 2013-14

Uma Shankar sitani,  
115-A, Khanpur,  
Sainik Farms,  
Delhi.

Vs. ITO,  
Ward-31(4),  
New Delhi.

PAN: AYYPS9523Q

(Appellant)

(Respondent)

Assessee by	:	Shri Gobind Ram Kesarwani, CA
Revenue by	:	Shri Om Prakash, Sr.DR
Date of Hearing	:	10.11.2021
Date of Pronouncement	:	10.11.2021

ORDER

This appeal filed by the assessee is directed against the order dated 17<sup>th</sup> January, 2019 of the CIT(A)-11, New Delhi, relating to Assessment Year 2013-14.

2. Facts of the case, in brief, are that the assessee is an individual and filed his return of income on 23<sup>rd</sup> March, 2014 declaring the total income at Rs.4,80,330/-. During the course of assessment proceedings, the AO observed from the perusal of 26AS that during the year, the assessee has earned some interest income on which TDS was deducted u/s 194A by the State Govt., DRO- cum-LAC (Distt.

Revenue Officer- cum - Land Acquisition Collector), Gurgaon, Haryana. However, the assessee has not declared this interest income in his return of income. The deductor DRO-cum-LAR was requested vide office letter dated 12.02.2016 to provide the details of the nature of the amount remitted and details of TDS deducted thereupon during the year. The deductor, DRO-cum-LAR vide his letter dated 16.02.2016 provided the details of the amount which was remitted to the assessee (along with details of TDS) during the year, which has been summarized by the AO in the body of the assessment order as under:-

Date of remittance	Enhanced compensation - Principal amount	Interest on B	TDS on Interest	Net Amount after TDS
(A)	(B)	(C)	(D= 10% on C)	(E=B+C-D)
24.09.2012	17,94,689	40,61,652	4,06,165	54,50,176
16.01.2013	29,738	67,302	6,730	90,310
Total	18,24,427	41,28,954	4,12,895	55,40,486

3. The AO further noted that the above amount of Rs.54,50,176/- and Rs.90,310/- were credited to the bank account of assessee maintained with Union Bank of India, Sector-14, Gurgaon. He, therefore, asked the assessee to explain as to why this interest income should not be added to the total income of the assessee. The assessee submitted that he has received the compensation for compulsory acquisition of agricultural land upon which TDS of Rs.4,12,895/- was wrongly deducted by State Government, Haryana. It was argued that the whole amount received by the assessee from the Government is on account of compensation for compulsory acquisition of agricultural and whatever interest is on the said compensation is also towards the consideration for the agricultural

land and no TDS was warranted to be deducted by the Government under the provisions of the IT Act. The assessee submitted that wrongful deduction of TDS therefrom cannot change the nature of the receipt and it should not be used as the determining factor to arrive at the nature of the receipt. It was accordingly argued that the whole amount of compensation should be treated as exempt. The assessee also relied on various decisions.

3.1 However, the AO was not satisfied with the arguments advanced by the assessee. After allowing 50% of the compensation as deduction u/s 57(iv) of the IT Act from the total interest of Rs.41,28,954, the AO added an amount of Rs.20,64,477/- to the total income of the assessee.

4. In appeal, the Id. CIT(A) upheld the action of the AO by observing as under:-

7.2 Ground no 1 relates to disallowance of Rs.20,64,477/- on account of compensation for compulsory acquisition of agricultural land and interest thereon. During the course of assessment, AO observed that assessee had earned interest income on which TDS was deducted u/s 194A by State Government, DRO-cum-LAC (Distt. Revenue Officer-cum-Land Acquisition Collector), Gurgaon, Haryana. But he had not declared this interest income in his ITR. AO obtained the details of amount which was paid to assessee from the deductor DRO-cum- LAR. AO also verified from assessee's bank account with Union Bank of India that Rs.54,50,176/- and Rs.90,310/- was credited to his bank account on 13.10.2012 and 23.02.2013 respectively for compulsory acquisition of compensation of agricultural land. Assessee has submitted that he has received the compensation for compulsory acquisition of agricultural land on which TDS of Rs.4,12,895/- was wrongly deducted by the Government of Haryana. It is further submitted that the entire amount was on account of compensation for compulsory acquisition of agricultural land and the interest on the said compensation is also towards the consideration for the agricultural land for which no TDS was warranted to be deducted. Assessee has further submitted that the whole amount of compensation was exempt. He has also

filed a certificate issued by the District Revenue Officer from Land Acquisition Collector, Gurgaon. AO observed that there was no basis in the claim of assessee in view of section 56(2)(viii) r.w.s 145A(b) of the I.T. Act. However, he disallowed the deduction u/s 57(4) of the I.T. Act. I have carefully considered the submissions of appellant and observations of AO and case laws relied on by appellant. It is seen that assessee has earned interest on enhanced compensation of Rs.41,28,954/- on which TDS of Rs.4,12,895/- has been deducted. There is no basis in the claim of appellant that the whole amount received by him is on account of compensation for compulsory acquisition of agricultural land and the interest on the said compensation is also towards the consideration of the agricultural land and, therefore, exempt. The provisions of section 56(2)(viii) r.w.s. 145A(b) of the I.T. Act has been inserted by the Finance (No. 2) at 2009 w.e.f. 01.04.2010 vide which interest received on compensation or on enhanced compensation referred in section 145A(b) is taxable in the year in which it is received. AO has elaborately discussed this issue in the assessment order. I am in agreement with AO that the amount on account of interest received on enhanced compensation/compensation is taxable. It is also to be noted that AO has considered the due deduction u/s 57(4) of the Act which is allowable to the appellant. The certificate of DRO-cum-LAC filed by appellant does not help appellant's case as the nature of receipt will not change. Accordingly, ground no. 1 is dismissed.ö

5. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal raising the following grounds:-

õa) That, on the facts and in the circumstances of the case, the Ld. C.I.T.(A) erred in having upheld the action of the Ld. A.O. in considering the compensation received by the appellant against compulsory acquisition of agricultural land along with interest as income from other sources in spite of the fact that such compensation being on agricultural land was exempt from income- tax.

b) That, on the facts and in the circumstances of the case, the Ld. C.I.T.(A) further erred in having upheld the addition of Rs.20,64,477/- unlawfully made by the A.O. in spite of the fact that as per Honøble Supreme Court decision amount awarded u/s. 28 of Land Acquisition Act, 1894 is accretion in value of land and interest therein forms part of compensation, which is beyond the scope of levying any income-tax.

c) That, the Ld. C.I.T.(A) grossly erred in having denied to take any cognizance to the Certificate issued by District Revenue Officer, Govt, of Haryana, affirming that the appellant was given interest of Rs. 4128954/- u/s.28 of the Land Acquisition Act, 1894 on the compensation for compulsory acquisition of agricultural land, solely on the ground that this

document was not filed before the A.O. and hence addition sustained without meeting justice to the appellant is liable to be quashed.

d) That, the Ld. C.I.T.(A) wrongly invoked provisions of sec.56(2)(viii) r.w.s. 145A(b) of the Act in support of upholding the addition Rs.2064477/- as income from other sources without considering that once the appellant's case falls within the ambit of Sec.28 of Land Acquisition Act, 1894 and settled by decision of Honøble Supreme Court, the said provisions on the facts of the case do not come into play in the case of the appellant.

e) That without any prejudice to the above, the Ld. C.I.T.(A) erred in having taken support from the wrongful deduction of TDS by the State Govt, from payment of interest on compensation to allege that the interest paid to the appellant was not part of compensation when he himself has admitted that DRO-LAC of the State Govt, has clarified that interest has been paid along with enhanced compensation.

2. That as the order of Ld. CIT(Appeals) on the above issues suffers from illegality and is devoid of any merit, the same should be quashed and your appellant be given such relief(s) as prayed for.

3. That, the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/ or rescind any or all of the above grounds.ö

6. The Id. Counsel for the assessee submitted that the various details filed before the AO as well as CIT(A) to substantiate that the land in question is agricultural land has not been properly considered by them. Relying on the following decisions of the coordinate Benches of the Tribunal, he submitted that the issue stands squarely covered in favour of the assessee:-

i) Decision of the Chandigarh Bench in ITA Nos.313 to 318/Chd/2015 in the case Baldev Singh vs. ITO and five other assesseees, for AY 2010-11, order dated 02.02.2016;

ii) Decision of the Delhi Bench, SMC-1, in ITA No.5206/Del/2017, for AY 2014-15 in the case Narender Kumar vs. ITO, order dated 12.04.2021;

and

iii) Decision of the Honøble Supreme Court in the case CIT vs. Ghanshyam (HUF), 315 ITR 1 (SC).

6.1 He, accordingly submitted that he has no objection if the matter is restored to the file of the AO with a direction to verify the details furnished and allow the claim of the assessee.

7. The ld. DR, while supporting the order of the CIT(A), drew the attention of the Bench to the findings of the CIT(A) that the assessee could not explain before him that the amount so received by the assessee is on account of compensation for compulsory acquisition of agricultural land and the interest on the said compensation is also towards the consideration of the agricultural land. He, however, submitted that he has no objection if the matter is restored to the file of the AO for fresh adjudication

8. I have considered the rival arguments made by both the sides and perused the record. I find, the AO, in the instant case brought to tax an amount of Rs.20,64,477/- after allowing 50% of deduction u/s 57(iv) from the total interest amount of Rs.41,28,954/- received by the assessee on account of interest on enhanced compensation. I find, the ld.CIT(A) upheld the action of the AO, the reasons of which have already been reproduced in the preceding paragraphs. It is the submission of the ld. Counsel for the assessee that the various details filed before the lower authorities substantiating that the amount received in question is on account of compulsory acquisition of agricultural land has not been considered

properly by the lower authorities. It is also his submission that in view of the various decisions cited before him, the issue stands squarely covered in favour of the assessee. It is also his submission that given an opportunity, the assessee is in a position to substantiate that such interest is not taxable as it is the part of the compensation in view of the decision of the Honøble Supreme Court in the case of CIT vs. Ghanshyam (HUF) (supra). Considering the totality of the facts of the case and in the interest of justice, I deem it proper to restore the issue to the file of the AO with a direction to grant one final opportunity to the assessee to substantiate his case and if the land in question is an agricultural land, then, decide the issue in the light of the decisions relied on by the Id. Counsel for the assessee including the decision of the Honøble Supreme Court in the case of CIT vs. Ghanshyam (HUF) (supra). The AO shall decide the issue as per fact and law, after giving due opportunity of being heard to the assessee. I hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

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

Order pronounced in the open court at the time of hearing itself, i.e., on 10.11.2021.

Sd/-  
(R.K. PANDA)  
ACCOUNTANT MEMBER

Dated: 10<sup>th</sup> November, 2021.

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Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi