

आयकर अपीलिय अधिकरण

चंडीगढ़ पीठ “ ए ”, चंडीगढ़

श्री एन.के सैनी, उपाध्यक्ष एवं

श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
CHANDIGARH BENCH “A”, CHANDIGARH  
BEFORE SHRI N.K. SAINI, VICE-PRESIDENT &  
SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आअसं. 45/चंडीगढ़/2020(नि.व. 2015-16)

ITA NO.45/CHD/2020 (A.Y.2015-16)

Ishwar Singh,  
CA, Ajay Kumar Singh,  
SCO 80-81, 4<sup>th</sup> Floor,  
Sector-17C,  
Chandigarh-160017  
PAN: **CMHPS2458D**

..... अपीलार्थी /Appellant

बनाम Vs.

Pr.CIT,  
Aayakar Bhavan Sector-2,  
Panchkula-134109.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Sh. Ajay Jain, CA

प्रतिवादी द्वारा/Respondent by : Sh. Bikram Batra, CIT-DR

सुनवाई की तिथि/ Date of hearing : 26/10/2021

घोषणा की तिथि/ Date of pronouncement : 20 /01/2022

**आदेश/ ORDER**

Per Vikas Awasthy, Judicial Member

This appeal by the assessee is directed against the order of Principle Commissioner of Income Tax, Panchkula [hereinafter referred to as ‘the PCIT’]

for the AY 2015-16 dated 02.12.2019 passed under section 263 of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'].

2. The assessee in appeal has assailed the action of PCIT in invoking revisional jurisdiction under section 263 of the Act. The assessee has also assailed the addition proposed by the PCIT in respect of interest received by the assessee under section 28 of the Land Acquisition Act, 1894 (in short 'the LAA').

3. Sh. Ajay Jain appearing on behalf of the assessee submitted that during the period relevant to assessment year under appeal, the assessee has received interest under section 28 of the LAA on account of compulsory acquisition of agriculture land. The interest received u/s 28 of the LAA partakes the character of compensation and hence, eligible for exemption as has been held by the Hon'ble Supreme Court of India in the case of CIT vs. Ghanshyam (HUF) 315 ITR 1. The assessee claimed exemption u/s 10(37) of the Act in respect of said interest. During the course of scrutiny assessment proceedings, the Assessing Officer (AO) made specific query with respect to the exemption claimed by the assessee in respect of receipts under Land Acquisition Act. The Id. Authorized Representative (AR) referred to notice under section 142(1) of the Act dated 16.10.2017 and the questionnaire issued along with the said notice by the AO (at pages 1 to 3 of Paper Book). The assessee gave a detailed reply to the aforesaid questionnaire on 07.11.2017. The same is at page no. 4 to 6 of the Paper Book (PB) and again on 11.12.2017 at page no. 7 to 9 of the PB. The assessee also relied on the judgment of Hon'ble Supreme Court of India in the case of Union of India Vs. Hari Singh, 254 Taxman 126, wherein, after placing reliance on the judgement rendered in the case of CIT vs. Ghanshyam (HUF) (supra), it has been reiterated that interest received u/s.28 of LAA is in nature of compensation. The

AO after examining the issue in detail following the decision in the case of Hari Singh (supra), accepted the contentions of assessee and made no addition in respect of interest received under section 28 of the Land Acquisition Act.

4. The Id. AR asserted that to re-examine the same very issue the PCIT has invoked revisional jurisdiction under section 263 of the Act. The Hon'ble Supreme Court of India has settled the legal position qua the nature of interest received under section 28 of the Land Acquisition Act. The Id. AR pointed that the Co-ordinate Bench of Tribunal in the case of ITO vs. Chawli Devi in ITA No. 63 & 64/Chd/2020 for AY 2011-12 decided on 17.05.2021 following the ratio laid down in the case of Hari Singh (supra) has deleted the addition made by AO. In the case of Bharat Bhushan vs. PCIT in ITA No. 597/Chd/2018 for AY 2013-14 decided on 11.01.2019, the assessee therein had assailed invoking of revisional jurisdiction under section 263 on similar set of facts. The PCIT was of the view that interest received under section 28 of the Land Acquisition Act was taxable consequent to amendment to the provisions of sections 56(2), 57(iv) and 145A(3) by the Finance (No.2) Act 2009. The Co-ordinate Bench decided the issue in favour of the assessee and set-aside the order of PCIT.

5. Per contra, Sh. Bikram Batra representing the department vehemently supported the impugned order and prayed for dismissing the appeal of assessee. The Id. DR submitted that after amendment to section 57 by the Finance Act (No.2) of 2009 w.e.f. 01.04.2010 interest received by the assessee on any compensation or enhanced compensation shall be eligible for deduction only to the extent of 50%. The corresponding amendment was also made in the provisions of section 56 of the Act by way of insertion of clause (viii) to sub-section (2). The judgments relied upon by the assessee pertain to the period

prior to amendment. The Id. DR in support of his contentions placed reliance on the decision of Hon'ble Punjab & Haryana High Court in the case of Mahender Pal Narang vs. CBDT reported as 423 ITR 13, to contend that interest received u/s28 of the LAA is no exception to the amended provisions of sections 56(2), 57(iv) and 145A(b) of the Act.

6. The Id. AR rebutting the submissions made on behalf of the Department submitted that even after amendment there has been no change in the status of interest received under section 28 of the Land Acquisition Act. The said interest as per the Apex Court is part of compensation. The Id. AR pointed that the Delhi Bench of the Tribunal in the case of Ram Kishan Vs. ITO in ITA No. 5391/Del/2017 for AY 2014-15 decided on 02.12.2020 has considered the decision rendered in the case of Mahindra Pal Narang (supra) and has distinguished the same in view of the law laid down by Hon'ble Apex Court in the case of CIT Vs. Ghanshyam (HUF) (supra). The Id. AR further placed reliance on the judgement of Hon'ble Gujrat High Court in the case of Movaliya Bhikhibhai Balabhai vs. ITO 388 ITR 343 to contend that even after amendment interest received u/s 28 of the LAA on compensation or enhanced compensation forms part of compensation and is not taxable as interest under the head 'Interest from Other Sources'.

7. We have heard the submissions made by rival sides and have examined the documents on record and the impugned order. The primary issue raised in the present appeal by the assessee is against invoking of revisional jurisdiction under section 263 of the Act by the PCIT and holding assessment order to be erroneous and prejudicial to the interest of revenue. A perusal of documents on record reveal that during the course of assessment proceedings, the AO vide

notice and questionnaire dated 16.10.2017 had raised a specific query with regard to receipts claimed as exempt income under section 10(37) of the Act. The assessee in response to the said query furnished reply on 07.11.2017. The assessee specifically pointed that the said amount was received as compensation under Land Acquisition Act on compulsory acquisition of agricultural land. Thereafter, in subsequent reply furnished to the AO on 11.12.2017 (at page no. 7 to 9 of the PB), the assessee pointed that interest received under section 28 of the Land Acquisition Act was claimed as exempt u/s 10(37) in accordance with the decision of Hon'ble Supreme Court in the case of CIT Vs. Ghanshyam (supra). The AO after having examined the issue in detail accepted the contentions of the assessee and made no addition in scrutiny assessment proceedings. Thus, it is not the case where the AO had made no enquiry in respect of assessee's claim of exemption u/s 10(37) of the Act. The AO made enquiry and found the claim of assessee in order.

8. The Id. DR in support of the findings of the PCIT has placed reliance on the judgement of Hon'ble Jurisdictional High Court in the case of Mahender Pal Narang (supra) to contend that after amendment to sections 56(2), 57(iv) and 145A by the Finance (No.2) Act, 2009 there is no distinction in interest received u/s 28 of the LAA and hence, the same would be taxable under the head 'Income from Other Sources'.

9. After giving thoughtful consideration to the submissions of rival sides and after examining the documents on record we do not find merit in the impugned order for the following reasons:

(i) The Assessment Order was passed on 28/12/2017 after considering the judgements of Hon'ble Apex Court in the case of CIT vs. Ghamshyam (supra) and

UOI vs Hari Singh (supra). The judgement in the case of Hari Singh (supra) was delivered by the Hon'ble Apex Court on 15/9/2017 i.e. after the amendment to sections 56, 57(iv) and 145A by the Finance (No.2) Act 2009, w.e.f. 01/4/2010. Though the amendment brought in by the Finance (No.2) Act 2009 was not in particular considered in the said decision, never the less, the Hon'ble Apex Court rendered the judgement after the amendment and reiterated the law propounded in CIT vs. Ghanshyam (supra), wherein, interest received u/s. 28 of the LAA was held to be part of solatium and in the nature of capital receipt in the hands of recipient, whereas, interest received u/s 34 of the LAA was held to be revenue receipt and exigible to tax. Thus, the Hon'ble Apex Court had made clear distinction in the nature of interest received under section 28 and 34 of the LAA.

The Hon'ble Gujrat High Court in the case of Movaliya Bhikhibhai Balabhai vs ITO (judgement rendered on 31/3/2016) after considering the amendments by the Finance (No.2) Act 2009 by way of insertion of clause (vii) to Section 56(2) and corresponding amendment in section 57(iv) and 145A of the Act, followed the principle laid down in CIT vs. Ghanshyam (supra) and held that interest paid on compensation/enhanced compensation under section 28 of Land Acquisition Act forms part of compensation and not interest as contemplated under section 145A of the Act. The Assessing Officer was not having the benefit of judgement in the case of Mahender Pal Narang (supra) as the same was rendered much later on 19/2/2020 i.e. after passing of the assessment order on 28/12/2017.

(ii) Once the issue has been examined by the Assessing Officer in assessment proceedings and has taken one of possible views duly supported by the judgment rendered by Hon'ble Apex Court, the assessment order cannot be said

to be erroneous. For exercising revisional powers under section 263, twin conditions i.e. assessment order should be erroneous and prejudicial to the interest of Revenue, should be satisfied. In the present case, we find that the assessment order has been passed by the AO after examining the claim of assessee with respect to exemption claimed under section 10(37) of the Act on interest received under section 28 of the Land Acquisition Act. The assessment order cannot be held erroneous only for the reason that the Assessing Officer has not subscribed to the view favoured by the PCIT. Thus, in the present case the PCIT clearly exceeded his jurisdiction in invoking the provisions of section 263 of the Act for thrusting his opinion on the Assessing Officer.

(iii) After the amendment to section 145A and corresponding amendment to sections 56(2) and 57(iv) by the Finance Act, (No.2) 2009, the issue whether the interest on compensation received u/s. 28 of the LAA on compulsory acquisition of land is exigible to tax under the head 'Income from Other Sources' or is exempt u/s. 10(37) of the Act as it partakes the character of solatium has become debatable. Different High Courts have taken divergent view on the issue, as to whether interest received u/s 28 of LAA would still partake the charter of solatium or it should be considered as interest taxable under the head 'Income from Other Sources'. The Tribunal in the case of Bharat Bhushan vs. PCIT (supra), ITO vs. Chawli Devi (supra), Ram Kishan vs. ITO (supra) and various other cases have consistently followed the principle laid down in CIT vs. Ghanshyam (supra) even after the amendment to sections 56(2), 57(iv) and 145A of the Act by the Finance (No.2) Act, 2009 w.e.f. 01/4/2010.

9. Thus, in light of our above finding, we hold that the Assessing Officer found the claim of assessee in order and in consonance with the law expounded

by Hon'ble Supreme Court of India. Ergo, the AO has taken one of the possible views, therefore, the assessment order cannot be said to be erroneous. We do not concur with the findings of PCIT. Consequently, the impugned order is set-aside and appeal of the assessee is allowed.

Order pronounced in the open court on \_\_\_\_\_, the 20<sup>th</sup> day of January, 2022.

Sd/-

Sd/-

(N.K. SAINI)

(VIKAS AWASTHY)

उपाध्यक्ष / VICE-PRESIDENT

न्यायिक सदस्य/JUDICIAL MEMBER

चंडीगढ़/Chandigarh, दिनांक/Dated: 20/01/2022

SK, Sr. PS

**प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., चंडीगढ़/DR, ITAT,  
Chandigarh
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai