

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE

BEFORE SHRI S. S. GODARA, JUDICIAL MEMBER

Sl. No.	ITA No.	Name of Appellant	Name of Respondent	Asst. Year
1	1323/PUN/2019	Sayyad Hakeem Ali Ilahi Baksh, Saray Road, At Post Renapur- 413527. PAN : DIIPS2536A	ITO, Ward-1, Latur	2012-13
2	1324/PUN/2019	Sayyad Atik Ali Ilahi Baksh, Saray Road, At Post Renapur- 413527. PAN : DIIPS2352B	ITO, Ward-1, Latur	2012-13
3	1325/PUN/2019	Sayyad Maksood Ali Ilahi Baksh, Saray Road, At Post Renapur- 413527. PAN : DIIPS2538Q	ITO, Ward-1, Latur	2012-13
4	1326/PUN/2019	Sayyad Rafiq Ali Ilahi Baksh, Saray Road, At Post Renapur- 413527. PAN : DIIPS2537B	ITO, Ward-1, Latur	2012-13
5	1327/PUN/2019	Sayyad Matin Ali Ilahi Baksh, Saray Road, At Post Renapur- 413527. PAN : BCPPS5782P	ITO, Ward-1, Latur	2012-13

Assessee by : None
Revenue by : Shri Arvind Desai

Date of hearing : 25.05.2022
Date of pronouncement : 31.05.2022

आदेश / ORDER

PER S. S. GODARA, JM:

These five assessee's as many appeals; all for assessment year 2012-13, arise against the CIT(A)-2, Aurangabad's separate orders;

all dated 08.06.2016 and 02.09.2016 passed in case nos.ABD/CIT(A)-2/308/2015-16, ABD/CIT(A)-2/309/2015-16, ABD/CIT(A)-2/310/2015-16, ABD/CIT(A)-2/311/2015-16, ABD/CIT(A)-2/312/2015-16; respectively involving proceedings u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961; in short the Act.

Cases called twice. None appears at assessee's behest. They are accordingly proceeded *ex-parte*.

2. It emerges during the course of hearing that all the five instant appeals suffer from 1115 the former three, 1117 and 1023 days delay in filing. All these assessee's have filed their respective condonations petitions/affidavits averring that the impugned delay is in neither intentional nor deliberate but on account of their medical complications in all days as well as ongoing family disputes. Coupled with this, they also plead lack of communication amongst themselves, auditors and arguing counsel(s). The Revenue is fair enough in not controverting all these solemn averments. Faced with this situation, I quote hon'ble apex court landmark decision in Collector Land Acquisition vs. Mst. Kattji (1987) 167 ITR 471 (SC) held long back all technical aspects must make way for the cause of substantial justice to condone the impugned delay in all these cases. These five appeals are taken up for hearing on merits therefore.

3. Next comes assessee's identical substantive grievance that both the lower authorities have erred in law and on facts in treating their interest income(s); involving varying sum(s), received u/s 28 and 34 of the Land Acquisition Act, 1894 as taxable u/s 56(viii) r.w.s. 145(b) of the Act.

4. I notice with the able assistance coming from the Revenue side as well as from a perusal of the case records that the instant issue of taxability of the assessee's interest income(s) derived under land acquisition law is no more *res-integra* in light of this tribunal's recent decision in ITA No.1012/PUN/2017 dated 05.10.2020 *Basweshwar Mallikarjun Bidwe vs. ITO* deciding the same in favour of the department as under :-

"3. Succinctly, the facts of the case are that the assessee filed his return declaring total income of RS.42,370/-. He received enhanced compensation at RS.38,19,709/- and interest U/S.28 of the LAA amounting to RS.68,32,020/- on compulsory acquisition from The Special Land Acquisition Officer (MIW), Latur against the land situated at Village Khadgaon, Tq. Latur. In the column of exempt income in the return, the assessee showed figures of total interest at RS.68,32,020/- and agriculture income at RS.2,37,900/-. On being called upon to explain as to why the interest was not shown separately as income U/S.56(2)(VIII) of the Income-tax Act, 1961 (hereinafter also called 'the Act') Act, the assessee made certain submissions which did not find favour with the Assessing Officer (AO). Treating 50% of the interest income as deductible in terms of section 57(iv), the AO added net interest income of RS.34,16,010/- u/s. 56(2)(VIII) of the Act. The ld. CIT(A), relying on certain decisions, which we will advert to in the later part of the order, jettisoned the claim of the assessee thereby approving the view of the AO in bringing to tax the interest income U/S.56(2)(VIII) of the Act. Aggrieved thereby, the assessee has approached the Tribunal.

4. We have heard both the sides through virtual court and cogitated over the relevant material on record. Indisputably, the amount of net interest income computed by the AO U/S.56(2)(VIII) of the Act pertains to section 28 of the LAA. The assessee treated such amount as part of

the enhanced compensation of land and claimed the same as exempt from tax on the ground that the land itself was agricultural. To buttress the contention that interest u/s 28 of the LAA is a part of compensation and hence not chargeable to tax, the ld. AR chiefly relied on the judgment of the Hon'ble Supreme Court in CIT Vs. Ghanshyam (HUF) (2009) 315 ITR 1 (SC) before the Tribunal in which it has been held that interest U/S.28 under The Land Acquisition Act, is to be taxed as part of consideration on receipt basis. This judgment was delivered on 16-07-2009. The Finance (NO.2) Act, 2009 w.e.f. 01-04-2010 inserted clause (viii) to section 56(2) providing that: "income by way of interest received on compensation or on enhanced compensation referred to in sub-section (1) of section 145B" shall be chargeable to income-tax under the head "Income from other sources". Section 145B(1) provides that: "Notwithstanding anything to the contrary contained in section ITA NO.1012/PUN/2017 Basweshwar Mallikarjun Bidwe 145, the interest received by an assessee on any compensation or on enhanced compensation, as the case may be, shall be deemed to be the income of the previous year in which it is received". Thus it is palpable that post the decision in Ghanshyam (supra), a statutory amendment has been carried out providing that income by way of interest received on compensation or on enhanced compensation shall be chargeable to income-tax under the head "Income from other sources".

5. *The question of taxability of interest received u/s 28 of the LAA came up for consideration before Hon'ble Punjab & Haryana High Court in the case of Manjet Singh (HUF) Karta Manjeet Singh Vs. Union of India (2016) 237 Taxman 0116 (P&H). It noted another judgment of three Judges of the Hon'ble Apex Court in Bikram Singh vs. Land Acquisition Collector, (1997) 224 ITR 551(SC) following Dr. Shamlal Narula vs. CIT (1964) 53 ITR 151 (SC) holding that interest under Section 28 of the 1894 Act was a revenue receipt and is taxable. After considering all the available relevant material including the judgment in Ghanshyam (HUF) (Supra) and also the statutory amendments carried out w.e.f. A.Y. 2010-11, the Hon'ble High Court, vide its judgment dated ITA NO.1012/PUN/2017 Basweshwar Mallikarjun Bidwe 14.01.2014, decided this issue in favour of the Revenue by holding that interest U/S.28 of LAA was chargeable to tax u/s. 56(2)(VIII) of the Act. The SLP filed against the judgment in the case of Manjet Singh Vs. Union of India has since been dismissed by the Hon'ble Supreme Court on 18-12-2014 (SLP No. 34642 of 2014) holding that "Heard ld. Counsel for the petitioners and perused the relevant material. We do not find any legal and valid ground for interference. The special leave petitions are dismissed."*

6. *Question of deduction of tax at source on interest u/s 28 of the LAA once again came up for consideration before the Hon'ble jurisdictional High Court in a batch of 13 petitions with the lead case of Shivajirao S/o Dnyanoba Ghanwat & Ors. VS. The State of Maharashtra & Ors. (WP No. 5402 of 2013). The petitioners contended that the tax was deducted at source on the entire amount of compensation awarded in Land Acquisition proceedings, including the interest u/s 28 of the Land Acquisition Act, which was not deductible in*

the light of the judgment of the Hon'ble Supreme Court in Ghanshyam (HUF) (supra). Per contra, the Respondent made out a case that tax at source was rightly deductible as there was no difference between the interest granted ITA NO.1012/PUN/2017 Basweshwar Mallikarjun Bidwe u/s 28 and 34 of the LAA. This view was bolstered on the basis of an earlier judgment of the Hon'ble Supreme Court in Bikram Singh (supra) 224 ITR 551 (SC). The Hon'ble Bombay High Court, vide its judgment dated 27.08.2013 (copy at pages 69 onwards of the assessee's paper book), recorded the petitioner's contention in para 8 and that of the respondent in paras 3 read with 4. In para 5 of the judgment, their Lordships found that: 'Section 34 casts obligation upon Collector to pay interest after compensation is worked out. Section 28 puts similar obligation upon the Court when the Court finds that the compensation awarded under section 11 was inadequate. Therefore, there is no change in nature of interest either U/S.28 or section 34. Even if court hikes compensation for land and interest is awarded under Section 28 of the Act, upon such increased compensation, in the light of larger Bench judgment, the Department and Disbursing Authorities are bound to effect deduction of TDS'. On the interplay between the Hon'ble Apex Court judgments in Ghanshyam (supra) & Bikram Singh (supra), the Hon'ble Bombay High Court in para 4 found the: 'issue to be squarely covered by the larger Bench judgment of the Apex court' in Bikram Singh (supra). Then it noted in para 9 of the ITA NO.1012/PUN/2017 Basweshwar Mallikarjun Bidwe judgment that: "We have perused para 24 and 25 of the judgment of the Apex Court in Commissioner of Income Tax Vs. Ghanshyam (supra). We find that the Hon'ble Apex Court there, was not called upon to look into the Larger Bench judgment delivered earlier in case of Bikram Singh (supra). In para 7, the Hon'ble Larger Bench has found that the interest paid U/S.28 is not by way of any charge on compensation determined U/S.23(1). We, therefore, with respect, follow the larger Bench judgment of the Hon'ble Apex Court". Thus it is plentifully lucid that the Hon'ble jurisdictional High Court has categorically held that interest u/s 28 of the Land Acquisition Act is chargeable to tax.

7. *The ld. AR submitted that the Hon'ble jurisdictional High Court has not correctly appreciated the legal position inasmuch as the decision in the case of Ghanshyam (supra) was binding and ought to have been followed. He unsuccessfully tried to convince the Tribunal that the decision rendered by the Hon'ble Bombay High Court should not be preferred over certain other decisions in favour of the assessee. We find that in certain decisions, the issue has been decided in assessee's favour. Notwithstanding any contrary view expressed by a non-jurisdictional Hon'ble High Court, the ITA NO.1012/PUN/2017 Basweshwar Mallikarjun Bidwe Tribunal, being an authority inferior in hierarchy to its jurisdictional High Court, is bound by the verdict of its superior Hon'ble High Court and cannot read, consider or understand the judgments of the Hon'ble Supreme Court in a way different from the one understood by the Hon'ble jurisdictional High Court unless such a view has been subsequently reversed/modified by the Hon'ble Supreme Court.*

8. The *ld. AR* then submitted that the Hon'ble Supreme Court in *Union of India and others Vs. Hari Singh and others (2018) 302 CTR 0458 (SC)* has considered a similar issue and decided the same in favour of the assessee. It was then contended that since the judgment of the Hon'ble jurisdictional High Court was rendered prior to that of Hon'ble Supreme Court in *Hari Singh and others (supra)*, the latter should be followed in preference to the former.

9. We are unable to find any relevance of the judgment of Hon'ble Supreme Court in *Hari Singh and others (supra)*, insofar as the issue under consideration is concerned. In that case, the Land Acquisition Collector deducted tax at source from compensation on account of compulsory acquisition of land and ITA NO.1012/PUN/2017 *Basweshwar Mallikarjun Bidwe* deposited the same with the exchequer. A writ petition was filed in the High court urging that no deduction of tax at source was permissible in view of the provisions of section 194LA of the I.T. Act, since the land which was acquired was agricultural land and this provision categorically mentions that in respect of agricultural land, tax at source was not to be deducted. The Hon'ble High Court directed the Income-tax Department to refund the amount to the collector and held: "that the Collector will determine whether the compensation paid is for property other than the agricultural land or otherwise and whether deduction of tax at source was permissible under other provisions of law. ".

Aggrieved thereby, the Revenue approached the Hon'ble Supreme Court pleading that the matter should have been remitted to the AO for deciding the nature of land acquired and not the Collector as it was the AO who was to come to the conclusion whether land was agricultural or not. Accepting the contention on behalf of the Revenue, the Hon'ble Supreme Court held that the claimant should approach the concerned AO and raise the issue that no tax was payable on compensation/enhanced compensation which was received by them as their land was agricultural land. It was further observed ITA NO.1012/PUN/2017 *Basweshwar Mallikarjun Bidwe* that, while determining as to whether the compensation paid was for agricultural land or not, the AO will keep in mind the provisions of Section 28 of the Land Acquisition Act and the law laid down by this Court in *CIT, Faridabad Vs. Ghanshyam (HUF)* in order to ascertain whether the interest given under the said provision amounts to compensation or not. It is abundantly clear that the judgment in the case of *Hari Singh and others (supra)* is based on altogether different factual matrix in which the question was as to whether it was the Collector or the AO who will decide as to whether any tax was payable on compensation/enhanced compensation. This issue came to be decided by Hon'ble Supreme Court by holding that the AO was the competent authority. There is no adjudication on the point as to whether interest U/S.28 of the Land Acquisition Act is chargeable to tax separately or part of enhanced compensation. There is a simple direction to the AO to consider this aspect of the matter.

10. In view of the foregoing discussion, it is manifest that the judgment of the Hon'ble jurisdictional High Court holding that interest

U/S.28 under the LAA is chargeable to tax, is intact and has not been disturbed in any manner by the Hon'ble Supreme ITA NO.1012/PUN/2017 Basweshwar Mallikarjun Bidwe Court in the case of Hari Singh and others (supra). On a specific query, the ld. AR could not point out as to whether the judgment of the Hon'ble jurisdictional High Court in Shivajirao (supra) has been reversed or modified in any manner by the Hon'ble Supreme Court. Respectfully following the judgment of the Hon'ble jurisdictional High Court in Shivajirao (supra) and the judgment of Hon'ble Punjab & Haryana High Court in Manjeet Singh (supra) along with the statutory amendment carried out to section 56(2) inserting clause (viii) w.e.f. 01-04-2010, it is overt that the ld. CIT(A) has taken an unexceptionable view in the matter pertaining to the A.Y. 2013-14. We, therefore, uphold the same. This ground is not allowed.”

I adopt the foregoing detailed discussion *mutatis mutandis* to hold both the learned lower authorities have rightly assessed the interest income herein u/s 56(2)(viii) under the head income from “other” sources. These assesseees fail in their instant sole substantive grievance therefore.

5. These assesseees’ five appeals are dismissed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced on this 31st day of May, 2022.

Sd/-
(S. S. GODARA)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 31st May, 2022.

Sujeet (DOC)

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-2, Aurangabad.
4. The Pr. CIT-2, Aurangabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “**SMC**” बेंच, पुणे / DR, ITAT, “**SMC**” Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

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Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.