

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'B' NEW DELHI**

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. YOGESH KUMAR U.S., JUDICIAL MEMBER**

I.T.A. No. 5084/DEL/2019 (A.Y 2016-17)

ITO ITO Ward-1, Fatehabad Haryana- PIN- 125050 (APPELLANT)	Vs.	Girish Kumar 901, Sector-3, Huda, Fatehabad, Haryana PIN: 125050 PAN: AIZPK2491C (RESPONDENT)
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Assessee by :	Sh. Lalit Mohan, CA
Department by:	Shri R. S. Yadav, Sr. D.R.;

Date of Hearing	22.06.2022
Date of Pronouncement	06.07.2022

ORDER

PER YOGESH KUMAR U.S., JM

This appeal has been filed by the Revenue against the order dated 29/03/2019 passed by CIT(A)-Hisar, for Assessment Year 2016-17.

2. The assessee is a Chartered Accountant, who has filed his income for the Assessment Year 2015-16 on 05/08/2016 declaring total income of Rs. 12,01,460/- besides a sum of Rs. 10,82,87,692/- was declared as exempt income in the return itself being amount of enhances compensation in respect of compulsory acquisition of agricultural land which was exempt u/s 10 sub Section 37 of the Income Tax Act, 1961. The Ld. A.O by placing reliance on judgment of Hon'ble Punjab and Haryana High Court in the case of Manjeet Singh Vs. Union of India, CWP No. 15506/2013 held that, the interest of Rs.

5,39,56,851/- to be in income taxable as per Section 56(2) (viii) of the Act and after allowing 50% deduction u/s 56(iv) of the Act added a sum of Rs. 2,69,78,425/- to the taxable income of the assessee and passed an assessment order on 20/03/2018.

3. Aggrieved by the assessment order dated 20/03/2018, the assessee has preferred an appeal before CIT(A). The Ld.CIT(A) has allowed the Appeal filed by the assessee and deleted the addition made by the A.O vide order dated 29/03/2019.

4. Aggrieved by the order of the CIT (A). The Department of Revenue has filed the Appeal on following grounds:-

“1. On the facts and circumstances of the case, the Learned CIT (A) erred in law in deleting the addition in view of decision pronounced by Jurisdictional Hon’ble High Court in the case of Manjeet Singh HUF Vs CIT of CWP No 15506 of 2013 dated 14.01.2014, Naresh Kumar Jain and others Vs State of Haryana and others of CWP No 14728 of 2017 dated 12/07/2017 and Puneet Singh Vs Commissioner of Income Tax, Karnal in ITA-132-2018 (O&M) dated 19.11.2018. The Hon’ble Punjab and Haryana High Court has clearly stated that/interest received u/s 28 of Land Acquisition Act, 1894 is taxable u/s 56(2)(viii) r.w.s. 57(iv) and 145A of the Income Tax Act.

2. On the facts and circumstances of the case, the Ld. CIT (A) erred in law by treating the interest received u/s 28 of the Land Acquisition Act, 1894 as Non-taxable. Hon’ble Apex Court in the case of Manjeet Singh HUF Vs. CIT has already upheld the decision of Hon’ble Punjab and Haryana by dismissing the SLP filed against the High Court Decision that interest received u/s 28 and 34 of Land Acquisition Act, 1894 are taxable.

3. *The appellant craves leave to add, or amend the grounds before the appeal is heard and disposed off.”*

5. The Ld. DR submitted that, the order of the CIT(A) is contrary to the Jurisdictional High Court in the case of Manjeet Singh HUF Vs CIT of CWP No 15506 of 2013 dated 14.01.2014, Naresh Kumar Jain and others Vs State of Haryana and others of CWP No 14728 of 2017 dated 12/07/2017 and Puneet Singh Vs Commissioner of Income Tax, Karnal in ITA-132-2018 (O&M) dated 19.11.2018. Further submitted that, the Hon'ble Punjab and Haryana High Court has clearly stated that/interest received u/s 28 of Land Acquisition Act, 1894 is taxable u/s 56(2)(viii) r.w.s. 57(iv) and 145A of the Income Tax Act, therefore, the Ld.CIT(A) has erred in law by treating interest received u/s 28 of the Land Acquisition Act, 1894 as non taxable.

6. Per contra, the Ld. Counsel for the assessee submitted that the interest received u/s 28 of the Land Acquisition Act, 1894 is not taxable u/s 56(2) (viii) read with Section 57(iv) and 145A of the Income Tax Act and submitted that the present Appeal of the Revenue deserves to be dismissed. The Ld. Counsel for the assessee has relied on several judgments of the Hon'ble Supreme Court.

7. We have heard the parties, verified the material on record and gave our thoughtful consideration. The only question arises as to whether interest received u/s 28 of Land Acquisition Act, 1894 is taxable u/s 56(2) (viii) read with Section 57(iv) and 145A of the Income Tax.

8. As per Section 10(37) of the Act, any income chargeable under the head of capital gain arising from transfer of agricultural land by way of compulsory acquisition under the law is exempt from taxation. Further, as per provisions of Section 56(2) (vi) of the Act, income by way of interest received on compensation on an enhanced compensation is taxable and a deduction of a sum equal of 50% of such income is allowable u/s 57(iv) of the Act on that interest. The interest under Land Acquisition Act, is payable under two

different Sections i.e. Section 34 & Section 28 of Land Acquisitions Act. There is no dispute in so far as payment of interest u/s 34 of the Land Acquisition Act is concerned. Now, the question whether the interest paid under the provisions of Section 28 of Land Acquisition Act is a part of enhanced compensation or is it taxable as interest income or not. The said issue has been considered by the Hon'ble Supreme Court in the case of CIT Vs. Ghanshyam HUF 315 ITR 1 held that the interest paid on the excess amount u/s 28 of Land Acquisition Act, 1894, depends upon a claim by the person whose land is acquired, where as interest u/s 34 of Land Acquisition Act is for delay in making payment. Interest u/s 28 of Land Acquisition Act is a part of enhanced value of land which is not the case in the matter of payment of interest u/s 34 of the Land Acquisition Act. The relevant portions of the Judgment of the Apex Court are hereunder:-

“In addition to the market value of the land, the Court shall in every case award a sum of 30 per cent on such market value, in consideration of the compulsory nature of acquisition. This is under section 23(2) of the 1894 Act. In short, section 23(2) talks about solatium. Award of solatium is mandatory. Similarly, payment of additional amount under section 23(1 A) is mandatory. The award of interest under section 28 of the 1894 Act is discretionary. Section 28 applies when the amount originally awarded has been paid or deposited and when the Court awards excess amount. In such cases, interest on that excess amount alone is payable. Section 28 empowers the Court to award interest on the excess amount of compensation awarded by it over the amount awarded by the Collector. This award of interest is not mandatory but is left to the discretion of the Court. Section 28 is applicable only in respect of the excess amount, which is determined by the Court after a reference under section 18 of the 1894 Act. Section 28 does not apply to cases of undue delay in making award of compensation. [Para 23.]”

9. The above ratio has also been followed by the Hon'ble Supreme Court in its order dated 15/09/2017 in the case of Union of India Vs. Hari Singh & ors in Civil Appeal No. 15041/2017 wherein the Hon'ble Supreme Court has held as follows:-

“While determining as to whether the compensation paid was for agricultural land or not, the AOs will keep in mind the provisions of section 28 of the Land Acquisition Act and the law laid down by this court in commissioner of Income Tax, Faridabad V. Ghanshyam (HUF) (2009 (8) SCC 412) in order to ascertain whether the interest given under the said provisions amounts to compensation or not.”

10. The Ld.CIT(A) has considered all the judgments mentioned in the present grounds of Appeal and since the judgment of Hon'ble Supreme Court in the case of Hari Singh & Ors (Supra) and also in the case of Ghanshyam HUF (Supra) are binding precedents, relied on the same.

11. In our considered opinion, the Ld.CIT(A) has committed no error and there is no infirmity in allowing the Appeal of the assessee. We are also of the view that the judgment rendered in the case of Ghanshyam HUF and Hari Singh (Supra) of the Hon'ble Supreme Court are applicable to the present case having binding effect over the High Court Judgments relied by the Revenue. Therefore, the Grounds of Appeal of the Revenue are dismissed.

12. In the result, the Appeal filed by the Department of Revenue is dismissed.

Order pronounced in the open court on 06th July, 2022.

Sd/-

**(N. K. BILLAIYA)
ACCOUNTANT MEMBER**

Sd/-

**(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

Dated : 06/07/2022

R. Naheed

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI