IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRIPAVAN KUMAR GADALE, JM

ITA No. 2328/Mum/2021

(Assessment Year 2017–18)

DCIT 27(1) R no.406, 4th Floor, Tower no.6, Vashi Railway Stn Complex, Vashi, Navi Mumbai Mumbai-400 703	Vs.	M/s Ganga Developers Plot no. 219, Alal Asia, 11th road, Chembur, Mumbai-400 071
(Appellant)		**(Respondent)**

PAN No. AAAFG 8230 C

Assessee by	:	Shri J.P. Bairagra, AR
Revenue by	:	Shri Jasbir Chouhan, DR

Date of hearing: 13.07.2022
Date of pronouncement : 12.10.2022

O R D E R

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by the Dy. Commissioner of Income-tax 27(1), Mumbai (the learned Assessing Officer) against the appellate order passed by the Commissioner of Income-tax (Appeals)52, Mumbai [the learned CIT (A)] for A.Y. 2007-08 dated 2nd August, 2021, wherein the appeal filed by the assessee against the assessment order dated 28th December, 2019 passed under Section 143(3) of the Income-tax Act, 1961 (the Act), by the learned Assessing Officer was allowed.

02. The learned Assessing Officer has raised the following grounds of appeal:-

> *"1. Whether on the facts and circumstances of the case and in law the Ld. CIT(A) was right in holding that the compensation received on compulsory acquisition of land of Rs.69,92,42,974/- was not taxable and failing to appreciate that the award of compensation to the assessee was made under section 11 of the Land Acquisition Act 1894 and not an award under RFCTLAAR Act 2013 and hence the provisions of the section 96 of the RFCTLAAR Act 2013 is not applicable in the case of the assessee and the compensation was rightly treated as business income of the assessee.*
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> *2) Whether on the facts and circumstances of the case and in law the Ld. CIT(A) has erred in failing to appreciate that the provisions section 10(37) of the I.T. Act is applicable only to individuals and HUF and not to the assessee being the partnership firm and also as the land is non-agricultural land.*
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> *3) Whether on the facts and circumstances of the case and in law the Ld.CIT (A) has erred in holding that the CBDT circular number 36 of 2016 is applicable to the case of the assessee.*
>
> *4) Whether on the facts and circumstances of the case and in law the Ld.CIT(A) was right in deleting the addition on account of deemed income from house property in respect of the unsold flats.*

5) The appellant craves leave to amend, modify and alter any grounds of appeal during the course of hearing of this case."

03. The fact of the case shows that assessee is a company engaged in the business of real estate development and construction. It is also running a hotel. It filed its return of income on 31st October 2017 declaring nil income.

04. During assessment proceedings, it was found that assessee has claimed exemption under Section 10(37) of the Act of ₹69,92,42,974/-. On questioning to the same, assessee submitted copy of Awarded under Section 11 of the Land Acquisition Act, 1984 dated 5/8/2016. Assessee relied on Section 96 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short RFCTLARR) as well as CBDT circular no.36/2016 dated 25th October 2016. Assessee submits that as the compensation has been received under that Act, the amount received is exempt under Section 10(37) of the Act.

05. The learned Assessing Officer looked at the various dates with respect to acquisition of land of the assessee as per paragraph no.9 of the assessment order. The learned Assessing Officer noted that the date of publication of the notification of land acquisition is 21st June 2012.Revised notification was published on 27th March 2014. Award under Section 11 of the Act was issued on 5th August 2016 and compensation was paid on 24th August 2015. The learned Assessing Officer further noticed that Land

Acquisition Act was in force till 31st December 2013 and same has been repealed by the RFCTLARR Act, 2013 with effect from 1st June 2014. The learned Assessing Officer held that as the award was passed under Section 11 of the Act Land Acquisition Act, the provision of RFCTLAAR Act does not apply to the case. He also held that reliance on the CBDT Circular No.36 of 2016 is also misplaced. Accordingly, he held that compensation received by the assessee of ₹69,96,28,629/- is business income. Accordingly, assessment order under Section 143(3) of the Act was passed on 28th December 2018 determining the total income of the assessee at ₹67,93,22,036/-.

06. Assessee preferred the appeal before the learned CIT (A). The learned CIT (A) has held that Award made in the present case is in terms of RFCTLAAR Act and not under the old Act which is repealed with effect from 1st January, 2014 and further, CBDT Circular No.36 of 2016, the above amount of compensation cannot be charged to tax. Accordingly, the claim of the assessee was allowed. Therefore, the learned Assessing Officer is aggrieved with the order is in appeal before us.

07. The learned Departmental Representative vehemently supported the order of the learned Assessing Officer and submitted that the Award is under the Land AcquisitionAct and same is not exempt under Section 10(37) of the Act. He further referred to the provision of Section 10(37) of the Act and stated that the claim of the assessee has rightly being denied. He further stated that, the learned

CIT (A) is not correct in holding that the Award given to the assessee is under the new Act and further, circular of CBDT does not apply. He submitted that the assessee is not entitled to the above exemption.

08. The learned Authorized Representative vehemently supported the order of the learned CIT (A). He referred to Paper Book containing 282 pages which is the submission before the learned CIT (A). He further submitted that there is no infirmity in the order of the learned CIT (A) in holding that the award given to the assessee is under the new Act. He referred to the old legislation, new legislation and saving clause under Section 24 of the Act. He also stated that the decision cited by the learned CIT (A) covers the issue in favour of the assessee. He further submitted that now the issue is squarely covered in favour of the assessee by the decision of Hon'ble Bombay High Court in case of Seema Jagdish Patil Vs. National Hi-Speed Rail Corporation Ltd [2022] 139 taxmann.com 249 (Bombay).

09. We have carefully considered the rival contentions and perused the orders of the lower authorities. The fact shows that during the year, the assessee has claimed exemption of ₹69,92,42,974/- of compensation received. This compensation was received for the reason that assessee was holding non agricultural land which was partially acquired by the Mumbai Municipal Corporation for recreational purposes and widening of existing road. The compensation was paid as per award dated 5thAugust

2016, under Section 96 of RFCTLAAR Act. The award was passed under Section 11 of the Act i.e. land acquisition Act, 1894. According to the learned Assessing Officer, same is not exempt. Several judicial precedents were relied upon before the lower authorities. The learned CIT (A) held as under :-

> "5.7 The various observations of the AO while arriving at the conclusion that the provisions of section 96 of the RFCTLARR Act 2013 are not applicable to the present case and the submission made by the assessee have been examined. The main conclusions drawn by the AO can be summarized as below:
>
> (i) The case of the appellant does not fall within the provisions of section 10(37) of the Act.
>
> (ii) The case of the appellant does not fall within the scope of Board's Circular No. 36/2016.
>
> (iii) The case of the appellant does not fall within the scope of section 96 of RFCTLARR Act 2013 as the award is under the old Act.
>
> 5.8 The assessee is a partnership firm which has acquired a non-agricultural piece of land in Mumbai from various co-owners. There appears to be an encroachment of slums in part of the premises. However, there does not appear to be any dispute

with respect to the ownership of the land as on the date of award as the entire consideration has been paid to the appellant in spite of certain reservations on this issue in the main order conferring the award. The time lines as noted by the AO resulting in the award of compensation are reproduced below:

	No. and Date of Notification sanction by the Hon'ble Addl. District Collector, Mumbai Suburban District.	Notification No. ADC/LA.Desk-9/Pra.Kra.673/2012, dated 20/06/2012.
	The date of Publication of the Notification in the Maharashtra Government Gazette part-1, Konkan Division Supplement.	Date: 21.06.2012
	Date of Publication of the RevisedNotification in the Maharashtra Government Gazette part-1. Konkan Division Supplement.	1) DainikPrahar, dt.23.06.2012 2) Business Standard, dt. 27/06/2012
	The date of Publication of the Revised Notification in the Maharashtra Government Gazette part-1, Konkan Division Supplement.	Date 27th March/02 April, 2014.
	The date of Publication of the Notification under section 6. 1. Notice of Boards of the District Collector Offices 2. Talathi-	Date: 21/05/2014 Date 19/05/2014 Date 19/05/2014

		Chavdi 3. Acquisition Site	
		Award under section 11 of the Land Acquisition Act, 1894,	05/08/2016
		Date of receipt of Compensation	24.08.2016

5.9 The contents of the Award dated 5.8.2016 have been perused. The heading of the award is as below:

"MATTER NO. LAQ SR/BHANDUP/476 Award

under Section 11 of the Land Acquisition Act 1894"

It is this subheading which has prompted the AO to conclude that the order has been passed under the old Land Acquisition Act 1894. The text of the order has been perused. At para 2 of the order, it is mentioned that;

It is provided under provisions of Rule 19(3) of the Right to Fair Compensation and Transparency In Land Acquisition, Rehabilitation and Resettlement Rule, 2014 that, if the land is reserved for Public purpose as per The Maharashtra Region Planning and Town Planning Act 1966, and if Declaration under section 6(1) of Land Acquisition Act, 1894 has been made prior to 31.12.2013, and if the Award under section 11 of Land Acquisition Act, 1984 is

not declared before 31.12.2013, the action in that respect shall be continued further as per section 26 to 30 of the Right to Fair Compensation and Transparency In Land Acquisition, Rehabilitation and Resettlement Rule, 2014. In the said proposal, the notification under section 6 has been published on 21.6.2012. Therefore, the action has been continued as per the provisions of New Land Acquisition Act-2013.....

5.10 At para 11 which relates to valuation, the valuation of the property has been carried out in line with section 26 to 30 of the RFCTLARR Act. It is also noted that even with respect to other compliances and not merely for the purpose of computation of compensation, the new Act and corresponding RFCTLARR Rules 2014 have been followed by the Award authority. In the notes to the Award, it is clarified that:

> 1) As per Rule 18(3) of Right to Fair Compensation and Transparency In Land Acquisition, Rehabilitation and Resettlement Rule, 2014, the Hon'ble Commissioner, Konkan Division, has granted approval to this Award vide his Letter No. U. Award Branch/Village Bhandup/SR No. 3/2015/49 dated 17.12.2015.

5.11 The para 2 and para 11 of the Award as noted above leaves no doubt that the appellant's case has been categorized by the Authority as falling within the ambit of section 24(1)(a) of the Act. The implication of the process adopted by the Civic Authority in declaring the above award is that while the procedure laid down in the old Act has been adopted till publication of the notification under section 6 of the old Act. all the subsequent proceedings have been carried out in accordance with the RFCTLARR Act 2013 and the associated RFCTLARR Rules 2014.

5.12 There is no dispute or doubt that the case of the assessee does not fall within the ambit of Section 10(37) of the Act as that provision does not apply to firms. It is also not in dispute that under the Income Tax Act, there are no other provisions which allow exemption of such compensation money from income tax. Under these circumstances, it is essential to examine whether the case of the appellant is indeed covered by the RFCTLARR Act as well as guided by the Board's Circular No. 96-of 2016 on the subject. It is the AO's claim that both, the Act as well as the Circular are not applicable to the case of the assessee.

5.13 The various enabling provisions of RFCTLARR Act 2013 are examined in this regard. It is noted that:

-The RFCTLARR Act received the assent of the President of India on 26th September, 2013. Vide notification published on 19.12.2013 in the Gazette of India, the Central Government appointed the 1st January, 2014 as the date on which the said Act shall come into force replacing the earlier Act of 1894 which stood repealed.

-The Act had following provisions with respect to the earlier Act of 1894 which governed Compulsory Acquisition of property prior to this Act:

Section 114

(1) The Land Acquisition Act. 1 894 is hereby repealed

(2) Save as otherwise provided in this Act the repeal under sub-section (i) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act 1897 with regard to the effect of repeals

5.14 Hence, as on 1.1.2014, when the new Act i.e. the RFCTLARR Act 2013 came in force, the Land Acquisition Act 1894 stood repealed. The implication is that the old legislation was repealed and replaced with a new legislation on the issue on the date of such repeal. However, there were certain saving clauses in the Act with respect to continuance of proceedings under the repealed Act. Such saving

clause was provided in section 24 of the Act which is reproduced as below:

24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.

(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,-

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall

initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.

5.15 The provisions of section 24 of the Act make it clear that only in respect of cases falling under clause (b) of section 24(1), the proceedings under the Act of 1894 are to continue as if the old Act has not been repealed. In all other cases where the process was initiated but no award was made, the saving clause merely saves the procedural actions which have already been taken towards acquisition and mandate that subsequent proceedings need to be conducted under the new Act. This inference is inescapable as in all other cases, the old Act does not survive and is to be treated as if it stands repealed as on 1.1.2014. Once the Act itself does not survive, further proceedings under the old Act also do not survive or cannot continue in absence of a saving clause.

5.16 In fact the intent of the legislature is made clear from subsection 2 of section 24 which

mandates that even in cases where the award has been made five years before the new Act coming into force but either the physical possession of the land has not been taken or the compensation money has not been paid, the old proceedings shall be deemed to have lapsed and fresh proceedings will have to be started under the new Act. The proviso also mandates that if an award has been made and compensation in respect of majority land holdings has not yet been deposited in the land holder's account, then these beneficiaries shall be entitled to compensation in accordance with the provisions of the New Act.

5.17 The intent of the provisions in section 24 of the RFCTLARR Act is very clear.

i. In respect of cases covered by section 24(1)(a), the old Act does not survive with respect to further course of action. However, the steps taken by the Authorities in the past like issue of notification, consultation, disposing of objections etc. do survive and need not be repeated but subsequent proceedings shall be as per the provisions related to determination of compensation as per the new Act.

ii. In respect of cases covered by section 24(1)(b), since the award has already been

made, proceedings would continue as if the old Act has not been repealed.

iii. Even in cases where award has already been made but compensation has not been paid or possession of land has not been taken, the earlier proceedings shall be deemed to have lapsed and fresh action is to be taken as per new Act.

5.18 In the present case, there is no dispute that the case of the appellant falls within the ambit of Section 24(1)(a) of the RFCTLARR Act. This is admitted by both, the AO as well as the appellant. However, it is the claim of the AO that the new Act has been relied upon for the purpose of computation of compensation only and for any other purpose, the old Act shall apply. Such interpretation is not found to be correct. This is because the old Act stands repealed on 1.1.2014 and the Award in the case of the appellant has been made on 5.8.2016. The old Act, being not in existence as on the day of Award, as far as cases u/s 24(1)(a) were concerned, such Award could not have been made under a repealed Act.

5.19 The AO has relied entirely upon the citation in the Award order dated 5.8.2016 which mentions "Award Under Section 11 of The Land Acquisition Act 1894". It is clear that this is an erroneous mention as in cases covered by section 24(1) of the

RFCTLARR Act 2013, no waiver to repeal has been granted. As already pointed out, all the proceedings leading to the final Award have been in taken in accordance with the RFCTLARR Act 2013 and not in accordance with the old Act. Accordingly, it cannot be held that only Section 26 to section 30 of the RFCTLARR Act are applicable to this Award and the other provisions of the new Act are not applicable to this award.

5.20 While dealing with the issue of validity of an assessment made under the Sikkim State Income-tax Manual subsequent to extension of the Indian Income Tax Act to the said territory, in the case of Sikkim Manipal University [2015] 55 taxmann.com 270 (SIKKIM), the High Court held that in absence of the Act itself which stood repealed, the assessment under the said Act could not survive. The observations of the High Court are:

> 22. In the instant case, we have already held that the Sikkim State Income-tax Manual, 1948, stood repealed after extension of the Income-tax Act, 1961, in the State of Sikkim with effect from April 1, 1990. The petitioner has come claiming its rights as an assessee under the Income-tax Act, 1961. Therefore, any adverse plea like it was not an assessee under this Act or that the Income-tax Act,

1961, was not applicable to the petitioner, being a plea relating to the statute would not operate as estoppel against it and the arguments advanced by the Additional Advocate General is to be rejected.

23. It is, thus, clear from the material placed before us that, firstly, the petitioner approached this court by filing writ petition, saying that the Income-tax Act, 1961, was not applicable, but, the said writ petition was withdrawn with liberty to approach to the competent authority/forum and, thereafter, the petitioner succumbed to the income-tax authorities under the Income-tax Act, 1961, and presently, various proceedings are pending before the appropriate forums under the said Act. The above facts with specifications are widely stated in paragraphs 3 and 4 of the counter-affidavit filed by the Union of India/respondent No. 4.

24. The petitioner has also claimed the refund of Rs. 76,63,655 together with interest till the date of realisation. During the course of arguments, Mr. Pal, on instructions, fairly conceded that the previous interest or the interest pendente

> lite on the said amount may not be awarded to the petitioner but the State may be directed to refund this amount within the time-frame prescribed by this court. Therefore, we are not deliberating on this point, however, we would prefer to issue appropriate direction in this regard.
>
> 25. For the foregoing reasons, we allow this writ petition and record our findings that after extension of the Income-tax Act, 1961, to the State of Sikkim with effect from April 1,1990, the Sikkim State Income-tax Manual, 1948, stands repealed and the assessments made thereunder for the accounting years 1996-97 to 2004-05 (assessment years 1997-98 to 2005-06) are without authority of law, non est and nullity.

5.21 The Hon'ble High Court was clear and unambiguous that no order could have been passed under a repealed Act. In the case of Parmanand Das Brij Bhushan Das, [2001] 118 Taxman 681 (Madhya Pradesh), the Indore Bench of MP High Court has ruled as below:

In the case of Kolhapur Canesugar Works Ltd. v. Union of India AIR 2000 SC 811, the Apex Court observed that in a case where a particular provision in a statute is omitted and in its place another

provision dealing with the same contingence is introduced without a saving clause in favour of pending proceedings, then it can be reasonably inferred that the intention of the Legislature is that the pending proceeding shall not continue but a fresh proceeding for the same purpose may be initiated under the new provision.

In the Amendment Act of 1987, no saving clause was provided in favour of pending proceedings. That being so, as held by the Apex Court, the pending proceedings against the applicants could not continue under the repealed provisions but a fresh proceeding for imposition of penalty may be initiated under the new provision, i.e., section 271E.

5.22 Hence, after repeal of an Act and its replacement with a new Act, the proceedings under the old Act can continue only to the extent permitted by the saving clauses of the new Act. Any other action can only be taken under the new Act.

5.23 In fact, section 24 of the General Clause Act which deals with similar issues, holds that:

> 24. Continuation of orders, etc., issued under enactments repealed and re enacted. Where any Central Act or Regulation, is, after the commencement of this Act. repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided any

> appointment notification, order, scheme, rule, form or bye-law, made or issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been made or issued under the provisions so re-enacted, unless and until it is superseded by any appointment notification, order, schome, rule, form or bye-law, made or issued under the provisions so re-enacted and when any Central Act or Regulation, which, by a notification under section 5 or 5A of the 8 Scheduled Districts Act, 1874, (14 of 1874) or any like law, has been extended to any local area, has, by a subsequent notification, been withdrawn from the re-extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re-enacted in such area or part within the meaning of this section.

5.24 The implication is that in a situation wherein a new Act replaces the old Act, even actions taken under the old Act, if not in contravention with the provisions of new Act, shall be deemed to have been made under the provisions of the new Act. A similar view was taken by the Hon'ble Supreme Court in Mahadeo Prasad Bais [1992] 60 Taxman 388 (SC). In this case, the case of the firm was

reopened under the old Income Tax Act and the question arose as to whether the time limit for reopening the cases of partners was to be as per old repealed IT Act 1922 or the new Act of 1961. The observations of the Hon'ble Supreme Court are as below:

> 10. The position is, no doubt, a little different here. The provisions of section 150(1) have been specially made applicable and operative in respect of the notice under section 148 issued in pursuance of section 297(2)(d)(ii) and, as pointed out earlier, the application of the provisions of section 297(2)(d)(ii) gives rise to two sets of situations to one of which the language of section 150(1) would squarely apply and so the interpretation sought for by the appellant does not render the words of section 150(1) redundant. Despite this point of difference in the two situations, we think that the principle of the above decisions that the mutatis mutandis rule should be invoked in interpreting section 297(2) has application here also. Not to do so would, no doubt, not make section 150(1) redundant but it will bring about an unintended and inequitable situation. It is clear that section 150(1) will operate to lift the time bar in cases where the reassessment is initiated under section 148 to give effect to

an order passed under the Act. Equally, where assessments had been reopened under section 34 before 1-4-1962 to give effect to orders passed under the 1922 Act and are continued after that date by virtue of section 297(2)(d)(i), the provisions of the second proviso to section 34(3) would preclude the operation of the normal rule of limitation for reassessments. In this situation, it will be a great anomaly to reach the conclusion that the time limit will operate in cases where proceedings under section 148 are initiated to give effect to an order on appeal, revision and reference merely because such order is one passed under the 1922 Act. Neither reason nor rhyme can explain how the statute could have intended such anomaly or why it should be so interpreted as to result in a discriminatory treatment only to this class of cases. An interpretation which will result in such anomaly or absurdity should be avoided. It is also necessary to remember that section 297(2) is a provision enacted with a view to provide for continuity of proceedings in the context of a repeal of one Act by a fresh one broadly containing analogous provisions and the transitory provisions should, as far as possible, be construed so as to effect Such continuity and not so as to create a lacuna.

For these reasons we think that it will be appropriate to so read the words of section 291(2)(d)(ii) as to permit the applicability of section 150 (or section 153) with the necessary modifications. To paraphrase, the last words of section 297(2) (d)(ii) should be read to mean that where the proceedings are initiated under section 148, subject to the relaxations and limitation of sections 149 and 150, all the provisions of the Act shall apply accordingly; that is to say, in the same manner as they would apply in case of proceedings normally initiated under these provisions. Since reassessment proceedings so initiated to give effect to orders on appeal, revision or reference will not be subject to a time limit, the proceedings likewise initiated under section 297(2)(d)(i) read with section 148 will also not be subject to any limitations save to the extent mentioned in section 150(2)…..

…..

11. We would like to add that, even if section 150(1) is to be read literally and considered as posing a hurdle as contended for by the appellant, we think this result can be overcome by a liberal interpretation of section 297(2)(k). This clause reads:

"297. Repeals and Savings.- (1) **

(2)(a) to (j) **

(k)any agreement entered into, appointment made, approval given, recognition granted, direction, instruction, notification order or rule issued under any provision of the repealed Act shall, so far as it is not inconsistent with the corresponding provision of this Act, be deemed to have been entered into, made, granted, given or issued under the corresponding provision aforesaid and shall continue in force accordingly;

5.25 The Court has, accordingly laid down a guideline to be followed in cases where a new Act has repealed the earlier Act. The provisions of section 297(2)(k) are similar to the provisions of section 24 of the General Clauses Act and allow a similar interpretation. Any award, although initiated under the old Act, shall be understood to have been passed under the new Act and not under the repealed Act, in absence of an express saving clause. It is clear that in the present set of facts, it has to be concluded that the award has been made under the provisions of new Act. Not doing so would create an anomaly between two classes of similar beneficiaries.

5.26 The above discussion and facts of the present case lead to inescapable inference that in light of limited saving clause, the provisions of General Clauses Act and the various judicial precedents on the issue, it is to be concluded that any order passed for acquisition of land in cases falling within the ambit of section 24(1)(a) of the RFCTLARR Act could only be passed under the new Act and not under the repealed old Act of 1894.

5.27 Based on the above discussion, in spite of the mention of the old Act in the citation of the Award, it is to be held that the Award has been issued in terms of RFCTLARR Act 2013 as the old Act stood repealed as on 1.1.2014.

5.28 The AO has held that section 10(37) of the IT Act does not apply to the case of the appellant. It is also held that the provisions of section 96 of the RFCTLARR Act do not start with an over-riding clause and hence they do not override the provisions of IT Act. According to AO, both these Acts have the same force of Authority and hence, in absence of any authority of law, the provisions of section 96 of the RFCTLARR Act cannot be imported to IT Act to allow exemption to the assessee. It is also held that in light of section 10(37), the benefit of section 96 of the RFCTLARR Act cannot be granted to compensation received for acquisition of non-agricultural land owned by a partnership firm.

He has also held that section 194LA, relied upon by the assessee, is a tax collection provision and does not deal with taxability of an income.

5.29 The fact that the provisions of section 10(37) of the Act do not apply to the appellant's case are clear and need no further discussion. There are no other provisions under the IT Act which specifically grant tax exemption to the compensation received under RFCTLARR Act. Hence, the AO's inference in this regard is correct. However, it is noted that the Board has mandated through a circular issued in this regard that it is not necessary that only Income Tax Act grants such benefit and the view that any other Act cannot grant such exemption is not supported by the CBDT circular relied upon by the appellant. in this regard, it is necessary to examine the Circular no. 36 of 2016 on the issue which is reproduced below for clarity:

> CIRCULAR NO.36/2016 [F.NO.225/88/2016-ITA.II), DATED 25-10-2016
>
> Subject: Taxability of the compensation received by the land owners for the land acquired under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('RFCTLARR Act') - reg.

Under the existing provisions of the Income-tax Act, 1961 (the Act), an agricultural land which is not situated in specified urban area, is not regarded as a capital asset. Hence, capital gains arising from the transfer (including compulsory acquisition) of such agricultural land is not taxable. Finance (No. 2) Act, 2004 inserted section 10(37) in the Act from 1-4-2005 to provide specific exemption to the capital gains arising to an Individual or a HUF from compulsory acquisition of an agricultural land situated in specified urban limit, subject to fulfilment of certain conditions. Therefore, compensation received from compulsory acquisition of an agricultural land is not taxable under the Act (subject to fulfilment of certain conditions for specified urban land).

2. The RFCTLARR Act which came into effect from 1st January, 2014, in section 96, inter alia provides that income-tax shall not be levied on any award or agreement made (except those made under section 46) under the RFCTLARR Act. Therefore, compensation received for compulsory acquisition of land under the RFCTLARR Act (except those made under section 46 of RFCTLARR Act), is exempted from the levy of income-tax. (emphasis provided)

3. As no distinction has been made between compensation received for compulsory acquisition of agricultural land and non-agricultural land in the matter of providing exemption from income-tax under the RFCTLARR Act, the exemption provided under section 96 of the RFCTLARR Act is wider in scope than the tax exemption provided under the existing provisions of Income-tax Act, 1961. This has created uncertainty in the matter of taxability of compensation received on compulsory acquisition of land, especially those relating to acquisition of non agricultural land. The matter has been examined by the Board and it is hereby clarified that compensation received in respect of award or agreement which has been exempted from levy of income-tax vide section 96 of the RFCTLARR Act shall also not be taxable under the provisions of Income-tax Act, 1961 even if there is no specific provision of exemption for such compensation in the Income-tax Act, 1961.

4. The above may be brought to the notice of all concerned.

5.30 The AO has observed that the circular has been issued to clarify certain issues concerning section 10(37) of the Act. He has also concluded

that the circular only covers income liable to tax as capital gains. However, it is noted that neither the subject of the Circular nor its contents indicate any such restriction. The subject of the Circular is clear that it deals with taxability of compensation received by landowners under the RFCTLARR Act. There is no mention that the Circular is limited in its scope to only capital gains and individual assesses or to the income covered under section 10(37) of the Act. Para 1 indeed refers to the present exemptions granted under the Income-tax Act but that is merely as an introduction to the Circular. Para 2 and para 3 are not limited to section 10(37) of the IT Act but expresses the intent of RFCTLARR Act and its impact on the taxability of the compensation. The Circular makes is abundantly clear that any compensation received for compulsory acquisition of land under the RFCTLARR Act (except those made under section 46 of RFCTLARR Act), is exempted from the levy of income-tax. In light of this observation, the Board, in para 3, has proceeded to conclude that since the scope of tax-exemption provided under the RFCTLARR Act is much wider than that provided under the Income Tax Act, it has been clarified by the Board that compensation received in respect of award or agreement which has been exempted from levy of income-tax vide section 96 of the RFCTLARR Act shall also not be taxable under the provisions of

Income-tax Act, 1961 even if there is no specific provision of exemption for such compensation in the Income-tax Act, 1961.

5.31 The direction issued under Circular 36 of 2016 is unambiguous and clear and has much wider ramification than that noted by the AO and summarized at para 5.4 of his order. The Circular acknowledges that there is no specific provision under Income Tax Act granting a general waiver in respect of Awards given under the RFCTLARR Act. Still, it has chosen to issue a direction that such compensation received in respect of an award under the RFCTLARR Act would be exempt from levy of Income-tax. The Circular does not expand the scope of section 10(37) of the Act in any way as a circular can never alter the contents of a legislation. What the circular does is to acknowledge the fact that irrespective of class of land holder or type of land holding, acquisition made under RFCTLARR Act 2013 will not be subject to tax in spite of the fact that there is no such express provision in the IT Act. The implication of such acknowledgement is that the Circular admits that section 96 of the RFCTLARR Act overrides the IT Act as far as the taxability of receipts of compensation made under this Act is concerned. Board's circulars and instructions are issued under section 119 of the Income Tax Act. It is judicially accepted that under section 119 of the IT Act, the instructions and circulars issued by the

Board are binding on the subordinate authorities. Hence, there is no doubt that the above circular is binding on all authorities under CBDT. The assessing officer, while dealing with the case, is bound to follow the circular issued by CBDT. Once it is held that the Award issued in the case of the appellant is covered by the RFCTLARR Act, the circular no. 36 of 2016 comes into play with respect to applicability of section 96 of the RFCTLARR Act.

5.32 In this regard, it is found relevant to discuss various judicial precedents relied on by the assessee. The case of Smt. Annapurna Mishra (supra) is not found relevant to the case. In the case of Viswanathan M. (supra), the notification under the old Act had been published on 24.4.2013 and thereafter, declaration under Sections 6(1) and 17(1) of the erstwhile Land Acquisition Act, 1894, showing the emergency provisions which tantamount to compulsory acquisition were published. Under the agreement dated 13.08.2016 entered into between the petitioner and other land owners and Corporation of Kochi, the land was acquired, after the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, which came into force with effect from 01.01.2014. It was claimed that since RCFTLARR Act had come into effect from 1.1.2014, the effect of the acquisition under the Land Acquisition Act, 1894 stood effaced. The Hon'ble

High Court agreed with this contention and held that in light of the provisions of section 96 of the RFCTLARR Act, the compensation would not fall within the mischief of IT Act. The Court also held that on account of certain confusions, Board has come out with Circular no. 36 of 2016 to clarify the issued. The observations of the Kerala High Court are as below:

> 6. Having heard the learned counsel appearing for both the parties and apprising the paper books, am of the view that there is force and merit in the submissions. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 came into force with effect from 01.01.2014. It is a matter of record that the parties to the lis; viz., the petitioner and the acquisition authority, for the purpose of coming out the way development had in unison agreed to acquire and give the land on the basis of certain conditions in fixing the market value. Petitioner, in lieu, thereof received 80% of the amount, i.e., Rs.43,51,786/-, I would not be commenting on the claim of the petitioner with regard to the balance amount, as the matter is subjudice in this Court. The language of Section 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, do not leave any

doubt in the mind that if the land is either acquired or the result of an agreement, it could not fall within the mischief of Income Tax Act, in other words, exemption is liable to be granted. It is in this background of the matter and owing to certain confusions, the Central Board of Direct Tax vide the Circular No.36/2016 dated 25.08.2016 came out with a clarification. For the sake of brevity, only relevant portion of the circular is reproduced herein:-

3. As no distinction has been made between the compensation received for compulsory acquisition of agricultural land and non-agricultural land in the matter of providing exemption from income-tax under the RFCTLARR Act, the exemption provided under Section 96 of the RFCTLARR Act is wider in scope than the tax-exemption provided under the existing provisions of Income-tax Act, 1961. This has created uncertainty in the matter of taxability of compensation received on compulsory acquisition of land, especially those relating to acquisition of non-agricultural land. The matter has been examined by the Board and it is hereby clarified that compensation received in respect of award or agreement which has been exempted from levy of income-tax vide section 96 of the RFCTLARR Act shall also not be taxable under the provisions of income-tax Act, 1961 even if

there is no specific provision of exemption for such compensation in the Income-tax Act, 1961."

The aforementioned clarification is totally opposite to what has been assessed by the Assessing Officer. For the reasons aforementioned, the assessment and demand notice cannot sustain and are hereby quashed.

5.33 On facts which are similar to that of the appellant, the Hon'ble High Court has clearly held that the language of Section 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, do not leave any doubt in the mind that if the land is either acquired or the result of an agreement after coming into force of the RFCTLARR Act, it could not fall within the mischief of Income Tax Act, in other words, exemption is liable to be granted.

5.34 In the case of C. Nanda Kumar [2017] 88 taxmann.com 526 (Andhra Pradesh), the Hon'ble Court went into the issue of laxability of such compensation in greater detail while dealing with the issue of deduction of tax under section 194LA on a writ filed by the assessee when the CIT(TDS) had issued a circular addressed to all State Govt authorities to deduct TDS u/s 194LA on compensation to be paid to land owners. The Hon'ble Court held that such TDS could be only

made if income tax was liable to be paid on such amount, observing that:

> 29. If there can be no tax on a particular income by virtue of some special provisions contained in an enactment other than the Income-tax Act, 1961, it is not known how any provision contained in Chapter XVII of the Income-tax Act could be invoked. The emphasis under section 190(1) is on the "tax on such income". What follows from sections 192 onwards are actually deduction or collection at source or advance payment of "tax on income". Once this is clear, we will have no difficulty in concluding that section 96 of the 2013 Land Acquisition Act makes section 194LA of the Income-tax Act, 1961, inapplicable to the compensation paid under the award.

5.35 With respect to taxability of the amount received as compensation under the RCFTLARR Act, the Court observed that:

32. Having analysed sections 190 and 194LA of the income-tax Act, 1961, let us now have a look at section 96 of the 2013 Land Acquisition Act. It reads as follows:

> "96. Exemption from income-tax, stamp duty and fees-No Income-tax or stamp duty shall

be levied on any award or agreement made under this Act. except under section 46 and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same."

33. Section 96 mandates that no Income-tax shall be levied on any award made under the Act except under section 46. Section 46 deals with the purchase of land by a person other than a specified person through private negotiations. The benefit of section 96 is not available when a land is purchased through private negotiations by a person other than a specified person under section 46(1).

34. Therefore, in cases other than those covered by section 46 of the 2013 Land Acquisition Act, the levy of Income-tax is barred by section 96 and as a consequence, the deduction or collection under section 194LA of the Income tax Act, 1961, is impermissible.

5.36 While dealing with the issue, the Hon'ble Court further observed that;

39. We cannot lose sight of the fact that the Central Act 30 of 2013 is a welfare legislation, which made a quantum leap from the provisions of the 1894 Land Acquisition Act. The object of the 2013 Act is not merely to provide just and fair compensation but also to make provisions for the rehabilitation

and resettlement of the families of the land losers. The preamble to the Act shows that the Act was intended to look at land losers as persons who can become partners in the development of the country. Section 96 of the 2013 Act was intended to be a tool towards securing the laudable objectives of the 2013 Act. Therefore, it can never be contended that section 194LA of the Income-tax Act will make in roads into the welfare provision contained in the 2013 Land Acquisition Act. There is no use in giving effect to the provisions of section 96 of the 2013 Act by first asking the Land Acquisition authority to deduct tax under section 194LA and then driving the poor land losers from pillar to post to get a refund of the amount from the Income-tax Department. An interpretation that will lead the farmers and land losers to go from the Collectorate to the Income-tax Officer, is antithetic to the objects and reasons of the 2013 Act. Hence, the second contention of the learned standing counsel for the Department is liable to be rejected. Accordingly, it is rejected.

5.37 The High Court, in the above case, has held that exemption from levy of income tax can also be through another legislation, in this case, the RFCTLARR Act. Once such exemption has been granted, the provisions of IT Act cannot be applied to tax the amount. It has been held that in light of section 96 of the RFCTLARR Act, no tax is leviable on compensation received by the land owner under

this Act. A similar decision has been taken by ITAT, Chennai in ITA No. 2684/CHNY/2019 dated 28.1.2021 wherein the issue was whether interest paid on delayed compensation was liable to tax under section 56 as income from other sources or it was to be treated as part of the compensation exempt from tax in light of section 96 of the RFCTLARR Act.

5.38 In light of the above discussion, it requires to be held that the Award made in the case of the appellant has been made in terms of the RFCTLARR Act 2013 and not under the Land Acquisition Act of 1894 which stood repealed wef 1.1.2014. Further. in light of the provisions of section 96 of the RFCTLAAR Act as well as consequent circular 36/2016 issued by CBDT, the amount received by the appellant as compensation on the acquired land cannot be charged to tax.

5.39 In light of the above discussion, Ground no. 1 to 3 are decided in favour of the assessee. Ground no. 4 and 5 do not require adjudication in light of the decision in ground no. 1 to 3."

010. On careful perusal of the award dated 5/8/2016, it is clear that according to rule 18 (3) of the rights to fair compensation and transparency in land acquisition, rehabilitation and resettlement rules 2014 the Commissioner has granted approval to this award. The award was also passed after the land acquisition act 1984

stood repealed from 1/1/2014 which has been replaced by the right to fair compensation and transparency in land acquisition, rehabilitation and resettlement act of 2013.

011. The provisions of Section 24 of the act clearly provides that that when no award u/s 11 of the said land acquisition act has been made, then all the provisions of the new act relating to the determination of compensation shall apply. It also excludes where the award is already been made u/s 11 of that act and for that particular purpose only the old act continue to apply. In this case the award has been made on 5/8/2016. Therefore the new act shall apply.

012. According to Section 96 of that act income tax shall not be levied on any award agreement made Under that act except as provided u/s 46 of that act. This award/agreement is not u/s 46 of that act. Therefore the income arising in the form of compensation shall be governed by the provisions of Section 96 of the act. Accordingly the income is not chargeable to income tax.

013. Further the issue is squarely covered in favour of the assessee by the decision of the honourable Kerala High Court inVishwanatha M V Chief Commissioner 116 Taxmann.com 894, honourable Andhra Pradesh High Court in case of C nand Kumar 88 taxmann.com 526 as well as circular number 36/2016 dated 25/10/2016 which clarified in paragraph number 3 of the act that compensation received in respect of award agreement which is been exempted from levy of income tax as per provisions of

Section 96 of that act shall also not be taxable Under the provisions of the income tax act.

014. As the learned CIT – A has carefully considered all the above judgement as well as the provision of new law and the old law of acquisition of land and therefore held that sum received by the assessee is not taxable, cannot be found fault with. Accordingly we confirm the order of the learned CIT – A and dismiss ground number 1 of the appeal of the AO.

015. As our decision in ground number 1 of the appeal squarely decides that the above sum received by the assessee is not chargeable to tax Under the income tax act 1961, ground number 2 – 3 becomes merely academic in nature and therefore same are dismissed.

016. Ground number 4 of the appeal is with respect to the addition on account of deemed income from house property in respect of unsold flats deleted by the learned CIT – A.

017. The facts shows that assessee has shown closing stock of several frets of building however no rental income has been offered in respect of such properties. The identical issue arose in the case of the assessee for assessment year 2016 – 17 wherein the assessee submitted that no rental income can be assessed on unsold stock of flats/ shops in the light of judgement in case of Neha construction private limited 269 ITR 661. The assessee reiterated the same submission. The learned assessing

officer repeated the same addition and determined the annual value of house property income of ₹ 340,459/– on account of unsold flats lying in closing stock.

018. The assessee challenged the same before the learned CIT – A wherein the addition was deleted holding that in assessee's own case for assessment year 2016 – 17 the coordinate bench vide order dated 24/9/2020 following the decision of the honourable Gujarat High Court in case of CIT versus Neha builders private limited deleted the addition. Therefore, he relying on the decision of the coordinate bench deleted the addition. Learned assessing officer is aggrieved with the same and is in appeal before us.

019. The learned departmental representative supported the orders of the learned assessing officer whereas the learned authorised representative relied upon the order of the coordinate bench in assessee's own case for assessment year 2016 – 17 wherein on identical basis the addition was deleted.

020. We have carefully considered the rival contention and perused the orders of the lower authorities. The identical issue arose in the case of the assessee for assessment year 2016 – 17 which travelled up to the level of the coordinate bench where the above addition was deleted. Learned CIT – A following that decision of the coordinate bench in assessee's own case for assessment year 2016 – 17 in ITA number 3436/M/2019 dated 24/9/2020 has deleted the addition. The learned departmental

representative could not show us any reason to deviate from the order of the coordinate bench in assessee's own case. In result, respectfully following the decision of the coordinate bench in ITA number 3436/M/2019 in case of the assessee for assessment year 2016 – 17, we confirm the order of the learned CIT – A in deleting the above addition. Accordingly,We dismiss ground number 4 of the appeal.

021. In view of this, ITA number 2328/M/2021 filed by the learned assessing officer for assessment year 2017 – 18 is dismissed.

Order pronounced in the open court on 12.10.2022.

Sd/-	Sd/-
(PAVAN KUMAR GADALE)	(PRASHANT MAHARISHI)
(JUDICIAL MEMBER)	(ACCOUNTANT MEMBER)

Mumbai, Dated: 12.10.2022
Sudip Sarkar, Sr.PS
Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai