

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : NEW DELHI
BEFORE SHRI C.M. GARG, JUDICIAL MEMBER

ITA No.1619/Del/2017
Assessment Year: 2018-19

Chander Kalan,
53, Maitri Apartments,
Sector-9, Rohini,
Delhi – 110 085

Vs. NEAC,
Delhi.

PAN: AKRPK1868R

(Appellant)

(Respondent)

Assessee by : Ms Ishita Farsaiya, Advocate
Revenue by : Shri Mithalesh Kr. Pandey, Sr. DR

Date of Hearing : 20.09.2022
Date of Pronouncement : 14.10.2022

ORDER

This appeal filed by the assessee is directed against the order dated 06.09.2021 of the NFAC, Delhi, relating to Assessment Year 2018-19.

2. The grounds raised by the assessee read as under:-

“1. That the learned Commissioner of Income Tax (Appeals) has erred on facts and in law in upholding the assessment made by the assessing officer and the impugned order was passed without properly and judicially considering the submissions of the appellant.

2. That the learned Commissioner of Income Tax (Appeals) has erred on facts and in law in upholding addition made by the assessing officer amounting Rs. 41,22,768/- under section 56 (2)(viii) of Income Tax Act, on account of interest on enhanced compensation. The said addition is based on mere surmises, conjunctures and is against the law and is therefore not tenable in law.

3. *That the learned Commissioner of Income Tax (Appeals) has erred on facts and in law in upholding the addition made by the assessing officer by rejecting the claim of the assessee that the Interest received by assessee on enhanced compensation for acquisition of agricultural land by Government under Land Acquisition Act is exempt from tax under section 10(37) as the interest received under section 28 of the Land Acquisition Act assumes the character of enhanced compensation and consequently it is exempt under section 10(37) of the Act.*

4. *That the impugned order of the learned Commissioner of Income Tax (Appeal) is not based upon the facts of the case but on assumptions and surmises. The impugned order of the Ld. CIT is bad in law, both factually and legally erroneous.*

5. *That the impugned order is illegal, bad in law and in violation of the contemporary principles of natural justice as well as established judicial pronouncements. No reasonable opportunity was given by the learned CIT (Appeals) before passing the impugned order.*

6 *That the appellant craves leave to add, amend, alter, vary and / or withdraw any or all grounds of appeal at the time of or before the hearing of the appeal.”*

3. The Id. Counsel for the assessee submitted that the Id.CIT(A) has erred on facts and in law in upholding addition made by the assessing officer amounting Rs. 41,22,768/- under section 56 (2)(viii) of Income Tax Act, 1961 (for short, ‘the Act’) on account of interest on enhanced compensation which is only based on mere surmises, conjunctures and is against the law, therefore, not tenable. The Id. AR also submitted that the learned Commissioner of Income Tax (Appeals) was not justified and correct in rejecting the claim of the assessee that the Interest received by assessee on enhanced compensation for acquisition of agricultural land by Government under Land Acquisition Act is exempt from tax under

section 10(37) of the Act whereas the interest received on enhanced compensation under section 28 of the Land Acquisition Act assumes the character of enhanced compensation and, therefore, 100% exempt. The Id. Counsel submitted that the issue is squarely covered in favour of the assessee by the order of the ITAT Delhi Benches 'G' in the case of *Baldev Singh vs. ITO, 104 taxmann.com 99 (Delhi-Trib.)* wherein after considering all the relevant judgements, it was held that the enhanced compensation including interest thereon would be eligible for exemption. The written submissions placed on record by the Id. Counsel of the assessee are as follows:-

“10. The Impugned Order passed by the Ld. CIT (A) and the AO are incorrect in law and fact and ought to be set aside by this Hon'ble Tribunal. The submission in this regard are as under:

*a. It is undisputed that the Appellant owned agricultural land which was acquired under the Land Compensation Act, 1984 and the same was acquired by HSIIDC. The compensation paid by HSIIDC was set aside and the Hon'ble Punjab and Haryana High Court vide decision dated 18.02.2016 increased the compensation to Rs. 59,88,657/- per acre from Rs. 30,00,000/- which was to be treated from the date of the award of compensation in the case of the Appellant and other land owners. The amount as directed by the Court was disbursed to the Appellant and the same included compensation under Section 28 of the Act. It is submitted that the amount paid to the Assessee/Appellant under Section 28 of the Act subsequent to the decision of the Punjab and Haryana High Court dated 18.02.2016 forms a part of the solatium of the total compensation received under the Land Acquisition Act such amount forms a part of capitals gains under Section 45 (5) (b) of the Act and by virtue of Section 10 (37) of the Act is not chargeable to tax. Reliance in this regard is placed on the decision of the Hon'ble Supreme Court of India in *CIT vs. Ghanshyam (HUF)*, [2009] 182 Taxman 368 (SC) wherein the Court made the following observations:*

“33. It is to answer the above questions that we have analysed the provisions of sections 23, 23(1A), 23(2), 28 and 34 of the 1894 Act. As discussed hereinabove, section 23(1 A) provides for additional amount. It takes care of increase in the value at the rate of 12 per cent per annum. Similarly, under section 23(2) of the 1894 Act, there is a provision for solatium which also represents part of enhanced compensation. Similarly, section 28 empowers the Court in its discretion to award interest on the excess amount of compensation over and above what is awarded by the Collector. It includes additional amount under section 23(1 A) and solatium under section 23(2) of the said Act. Section 28 of the 1894 Act applies only in respect of the excess amount determined by the Court after reference under section 18 of the 1894 Act. It depends upon the claim, unlike interest under section 34 which depends on undue delay in making the award. It is true that "interest" is not compensation. It is equally true that section 45(5) of the 1961 Act, refers to compensation. But as discussed hereinabove, we have to go by the provisions of the 1894 Act, which awards “interest” both as an accretion in the value of the lands acquired and interest for undue delay. Interest under section 28 unlike interest under section 34 is an accretion to the value, hence, it is a part of enhanced compensation or consideration which is not the case with interest under section 34 of the 1894 Act. So also additional amount under section 23(1A) and solatium under section 23(2) of the 1961 Act forms part of enhanced compensation under section 45(5)(b) of the 1961 Act. In fact, what we have stated hereinabove is reinforced by the newly inserted clause (c) in section 45(5) by the Finance Act, 2003 with effect from 1-4-2004. This newly added clause envisages a situation where in the assessment for any year,—

-the capital gain arising from the transfer of a capital asset is computed by taking the –

-compensation or consideration referred to in clause (a) of section 45(5) or, as the case may be,

-enhanced compensation or consideration referred to in clause (b)j of section 45(5), and subsequently such compensation or consideration is reduced by any Court, Tribunal or other authority.

34. In such a situation, such assessed capital gain of that year shall be recomputed by taking the compensation or consideration as so reduced by such Court, Tribunal or other authority to be the full value of the consideration. Forgiving effect to such recomputation, the provisions of the newly inserted (with effect from 1-4-2004) section 155(16) by the Finance Act, 2003 (32 of 2003), have been enacted.

35. *To sum up, interest is different from compensation. However, interest paid on the excess amount under Section 28 of the 1894 Act depends upon a claim by the person whose land is acquired whereas interest under Section 34 is for delay in making payment. This vital difference needs to be kept in mind in deciding this matter. Interest under Section 28 is part of the amount of compensation whereas interest under Section 34 is only for delay in making payment after the compensation amount is determined. Interest under Section 28 is a part of enhanced value of the land which is not the case in the matter of payment of interest under Section 34.*

.....

50. *It is true that "interest" is not compensation. It is equally true that Section 45(5) of the 1961 Act refers to compensation. But as discussed hereinabove, we have to go by the provisions of the 1894 Act which awards "interest" both as an accretion in the value of the lands acquired and interest for undue delay. Interest under Section 28 unlike interest under Section 34 is an accretion to the value, hence it is a part of enhanced compensation or consideration which is not the case with interest under Section 34 of the 1894 Act. So also additional amount under Section 23(1 A) and solatium under Section 23(2) of the 1961 Act forms part of enhanced compensation under Section 4J(J)(b) of the 1961 Act. "* [emphasis supplied]

The above view of the Supreme Court was also followed by the Hon'ble Supreme Court in the case of CIT v. Govindbhai Mamaiya (2014) 16 SCC 449 (refer to paras 3, 7 and 9)

b. *Under the Land Acquisition Act there are two types of interests payable to land owners one under is Section 28 and second is under Section 34. The Supreme Court has treated them separately and it is evident from the above decision of the Supreme Court that interest under Section 28 of the Act forms a part of the accretion of the land value forming part of capital gain under Section 45 and the same is not interest on delayed payment of the compensation or enhanced compensation. Since amount paid under Section 28 of the land Acquisition Act is part of the compensation and forms a part of capital gains under Section 45 of the Act the said amount will be exempt under the provision of Section 10 (37) of the Act. This specially holds true in the current facts considering that the Punjab and Haryana High Court increased the compensation amount vide its decision dated 18.06.2016 and the amount under the order was received by the*

Assessee/Appellant during FY 2017-18 and there is no interest on any delayed payment here which attracts tax as per the provisions of Section 56 (2) (viii) of the Act and the amount received being capital gains is exempt to tax as per Section 10 (37) of the Act. A later decision of the Supreme Court and the High Court of Gujarat also hold the same view and the relevant extract of the decision of the Gujarat High Court in the case of the Movaliya Bhikhubhai Balabhai vs. ITO, [2016] 70 taxmann.com 45 (Gujarat) is as under:

“ 7. At this juncture, reference may be made to the decision of the Supreme Court in the case of Ghanshyam (HUF) (supra) wherein, the court has examined the provisions of the Land Acquisition Act, 1894 as well as the provisions of section 45 of the I. T. Act and the intention behind insertion of sub-section (5) of section 45. The court noted that sub-section (5) of section 45 was inserted to provide for taxation of additional compensation in the year of receipt instead of in the year of transfer of the capital asset. The court considered the provisions of sections 23(1), 23(1-A) and section 23(2) of the Act as well as section 28 and section 34 of the Act of 1894 and observed that section 23(1-A) was introduced in the 1894 Act to mitigate the hardship caused to the owner of the land who is deprived of its enjoyment by taking possession from him and using it for public purpose, because of the considerable delay and offering payment thereof. To obviate such hardship, section 23(1-A) was introduced and the legislature envisaged that the owner is entitled to 12% per annum additional amount on the market value for a period commencing on or from the date of publication of the notification under section 4(1) of the 1894 Act up to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier. The court held that the additional amount payable under section 23 (1 -A) of the 1894 Act is neither interest nor solatium. It is an additional compensation designed to compensate the owner of the land for the rise in price during the pendency of the land acquisition proceedings. It is a measure to offset the effect of inflation and the continuous rise in the value of properties. Therefore, the amount payable under section 23(1-A) of the Act is an additional compensation in respect to the acquisition and has to be reckoned as part of the market value of the land. The court further held that 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 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. The compensation awarded by the court includes the additional compensation awarded under section 23(1- A) and the solatium under section 23(2) of the said Act. This award of interest is not mandatory but is left to the discretion of the court. It was further held that 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 for compensation. The court observed that interest is different from compensation. However, interest paid on the excess amount under section 28 of the 1894 Act depends upon a claim made by a person whose land is acquired whereas interest under section 34 is for the delay in making payment. This vital difference needs to be kept in mind in deciding the matter. Interest under section 28 is part of the amount of compensation whereas interest under section 34 is only for delay in making payment after the compensation amount is determined. Interest under section 28 is a part of the enhanced value of the land which is not the case in the matter of payment of interest under section 34. The court, thereafter, specifically considered the question as to whether additional amount under section 23(1-A), solatium under section 23(2), interest paid on excess compensation under section 28 and interest under section 34 of the 1894 Act, could be treated as part of compensation under section 45(5) of the 1961 Act and the court held thus:—

"47. The issue to be decided before us-what is the meaning of the words "enhanced compensation/consideration" in Section 45(5)(b) of the 1961 Act? Will it cover "interest"? These questions also bring in the concept of the year of taxability.

48. It is to answer the above questions that we have analysed the provisions of Sections 23, 23(1-A), 23(2), 28 and 34 of the 1894 Act.

49. As discussed hereinabove, Section 23(1-A) provides for additional amount. It takes care of the increase in the value at the rate of 12% per annum. Similarly, under Section 23(2) of the 1894 Act there is a provision for solatium which also represents part of the enhanced compensation. Similarly, Section 28 empowers the court in its discretion to award interest on the excess amount of compensation over and above what is awarded by the Collector. It includes additional amount under Section 23(1-A) and solatium under Section 23(2) of the said Act. Section 28 of the 1894 Act applies only in respect of the excess amount determined by the court after reference under Section 18 of the 1894 Act. It depends upon the claim, unlike

interest under Section 34 which depends on undue delay in making the award.

50. It is true that "interest" is not compensation. It is equally true that Section 45(5) of the 1961 Act refers to compensation. But as discussed hereinabove, we have to go by the provisions of the 1894 Act which awards "interest" both as an accretion in the value of the lands acquired and interest for undue delay. Interest under Section 28 unlike interest under Section 34 is an accretion to the value, hence it is a part of enhanced compensation or consideration which is not the case with interest under Section 34 of the 1894 Act. So also additional amount under Section 23(1 -A) and solatium under Section 23(2) of the 1961 Act forms part of enhanced compensation under Section 45 (5) (h) of the 1961 Act."

Thus, the court has held that interest under section 28 of the Act of 1894 is an accretion to compensation and forms part of the compensation and, therefore, exigible to tax under section 45(5) of the Act. Such decision was, therefore, rendered in favour of the revenue.

8. The above referred decision in the case of Ghanshyam (HUF) (supra) came to be followed by the Supreme Court in the case of CIT v. Govindbhai Mamaiya [2014] 152 taxmann.com 270:367ITK 498/[2015] 229 Taxman 138. wherein the court after referring to the above decision in the case of Ghanshyam (HUF) (supra) held that it is clear that whereas interest under section 34 of the Act of 1894 is not treated as a part of income subject to tax, the interest earned under section 28, which is on enhanced compensation, is treated as an accretion to the value and, therefore, part of the enhanced compensation or consideration making it exigible to tax under section 45(5) of the Income Tax Act.

9. Thus, the Supreme Court in the case of Ghanshyam (HUF) (supra) has held that the interest under section 28 of the Act of 1894 unlike interest under section 34 is an accretion to the value and hence, it is a part of the enhanced compensation or consideration which is not the case with interest under section 34 of the 1894 Act. Therefore, interest under section 28 of the Act of 1894 would form part of the enhanced compensation and would be exigible to capital gains under section 45(5) of the I. T. Act. In other words, in case of a transaction which is otherwise exigible to capital gains tax under section 45 of the I.T. Act, the interest received under section 28 of the Act of 1894 being an accretion to the value, would

form part of the compensation and would be exigible to tax under section 45(5) of the I.T. Act, whereas the interest received under section 34 of the Act of 1894 would be "interest" within the meaning of such expression as envisaged under section 145A of the I.T. Act and would be deemed to be the income of the year under consideration, chargeable to tax as income from other sources under section 56 of the I.T. Act. ” [emphasis supplied]

Attention is also drawn to the following extract of the decision of the Gujarat High Court:

“13. The upshot of the above discussion is that since interest under section 28 of the Act of 1894, partakes the character of compensation, it does not fall within the ambit of the expression "interest" as contemplated in section 147A of the I.T. Act. The first respondent - Income Tax Officer was, therefore, not justified in refusing to grant a certificate under section 197 of the I.T. Act to the petitioner for non-deduction of tax at source, inasmuch as, the petitioner is not liable to pay any tax under the head "income from other sources" on the interest paid to it under section 28 of the Act of 1894. ” [emphasis supplied]

c. The decision of the Gujarat High Court was before the Hon’ble Supreme Court as C.A. No. 017147 of 2017 in a batch of petition with the lead matter being Union of India vs. Hari Singh and Ors. being CA No. 17041 of 2017 (at para 11) wherein the Hon’ble Supreme Court in its decision dated 15.09.2017 referred to its earlier decision in Ghanshyam (HUF) (supra) and stated that in order to ascertain whether the interest under Section 28 of the Land Acquisition Act.

d. The Hon’ble Delhi High Court being the jurisdictional High Court in the case of the Appellant/Assessee based in Delhi has also taken a view Surjit Kumar Chetal vs. CIT [2017] 86 taxmann.com 121 (Delhi) that the enhanced compensation along with other statutory benefits which were awarded to the Assessee/Appellant in the present case as well would constitute to be capital gains in terms of Section 45 of the Act and such income would be exempt from tax in terms of Section 10 (37) of the Act. This Hon’ble Tribunal in Baldev Singh vs. ITO, [2019] 104 taxmann.com 99 (Delhi — trib), following the view of the Supreme Court of India in Ghanshyam Dass (supra) has held in its decision that compensation paid under Section 28 forms a part of capital gains under Section 45 of the Act and is exempt as per Section 10 (37) of the Act.

e. *Considering the abovementioned decision of the Hon'ble Supreme Court of India, Delhi High Court and this Tribunal it is submitted that the Ld. AO and the Ld. CIT (A) have wrongly treated the amounts received under Section 28 of the Land Acquisition Act to be taxable under Section 56 (2)(viii) of the Act read with Section 145B (earlier Section 145A) of the Act.*

f. *It cannot be argued that Section 145B (earlier Section 145A) read with Section 56 (2) (viii) seeks to tax compensation paid under the Land Acquisition Act. In this regard reliance is placed on the following extract of the leading commentary of 'The Law and Practice of Income Tax' by Kanga and Palkivala (edited by Arvind P Datar) 11th edition (Volume 1 at p. 1524):*

“Section 145A was enacted in a particular context to get over the decision of the Supreme Court in Rama Bai vs. CIT, which had held that the interest on compensation was the income of each year in which it was payable and could not be brought to tax in the year in which it was received. Hence, Section 145A does not seek to tax a sum that was not otherwise liable to tax; it only clarifies the year in which this income would be taxable, if it is the income at all. The question to be asked, therefore, is whether the compensation in question is income or not. It is submitted that compensation received for a motor vehicle, accident and interest thereupon is only..a Capital receipt and not an income. In a well-reasoned judgment, the Bombay High Court has considered all the important decisions on compensation and interest payable thereon. Sadly, while the accident took place in 1978, the matter was finally disposed by the Bombay High Court in 2014 and the final compensation became payable a staggering 36years later. The issue before the court was whether the interest that was payable on the delayed payment of compensation was exigible to tax. After considering the case-law relating to compensation and interest both under the Land Acquisition Act, 1894 and the Motor Vehicles Act, 1988 it was held that the interest awarded for delayed payment of compensation will not be liable to tax as it does not partake the character of income.² This view, the Court held, would not change even after taking into account the old S. 145A(b) and the new S. 145B(1) or S. 56(2)(viii) as it existed at the relevant time. ” (Complete Extract is enclosed as Enclosure B)

g. *The above has to be read considering the fact that despite the amendments to Section 56 and Section 145A (now Section 145B) of the Act, the provisions of Section 10 (37) and Section 45 were never*

amended or changed. The Courts while reading the above-mentioned provisions must attempt to reconcile all the provisions of the statute so that no provision is reduced to a dead letter and all provisions of the Act are read harmoniously along with judicial binding precedents.

h. It is submitted that a harmonious reading of the provisions of Section 10 (37), Section 45, Section 56 and Section 145B the Act specifically exempts compensation and amounts received under Section 28 of the Land Acquisition Act for agricultural land (under Section 10 (37) and seeks to tax interest paid under Section 34 of the Land Acquisition Act (under Section 56(2)(viii) of the Act). A harmonious and logical reading of the Act along with the binding decisions of the Hon'ble Supreme Court of India would only indicate that amount paid under Section 28 of the Land Acquisition Act being in the nature of capital gains is exempt and interest on delayed payment of compensation or enhanced compensation under Section 34 of the Land Acquisition Act is taxable as income from other sources under the Act.

i. Thus, in the present case as the Appellant received amounts under Section 28 of the Act the same ought to be treated as exempt and the Appeal of the Assessee ought to be allowed.”

4. Replying to the above, the ld. Sr. DR, placing reliance on the judgement of the Hon'ble High Court of Punjab & Haryana, dated 19.02.2020, in CWP No.17971 of 2019 in the case *Mahender Pal Narang vs. CBDT*, contended that the interest received on compensation or enhanced compensation is to be treated as 'Income from other sources' and not under the head 'Capital gains.' However, he did not controvert that the impugned amount is interest received by the assessee on enhanced compensation.

5. Placing rejoinder to the above, the ld. AR drew our attention to the order of the ITAT Delhi Bench 'F' in the case of *Ram Kishan Kishan vs. ITO*, dated 02.12.2020 in ITA No.5391/Del/2017 for AY 2014-15, especially to para 8 and 9

and submitted that the ITAT Delhi Bench, after considering the judgement of Hon'ble Supreme Court in the case of *CIT vs. Ghanshyam (HUF), (2009) 8 Supreme Court Cases 412* and by relying on the judgements available at that time including the judgement of the Hon'ble Punjab & Haryana High Court in the case of *Mahender Pal Narang (supra)* decided that the interest received by the assessee u/s 28 of the Land Acquisition Act is not taxable. Therefore, the grievance of the assessee may kindly be allowed. The ld. Counsel of the assessee has also relied on the following judgements:-

- (i) CIT v. Ghanshyam (HUF) [(2009) 8 SCC 412];
- (ii) CIT, Rajkot v. Govindbhai Mamiya [(2014) 16 SCC 449];
- (iii) Movaliya Bhikhubhai Balabhai v. Income Tax Officer, Surat [(2016) 70 taxmann.com 45 (Gujarat)];
- (iv) Union of India & Ors. V. Hari Singh & Ors. [Civil Appeal No. 15041 of 2017];
- (v) Baldev Singh vs. ITO [2019] 104 taxmann.com 99 (Delhi - Trib); &
- (vi) Mahender Pal Narang v. Central Board of Direct Taxes, New Delhi [(2020) 120 taxmann.com 400 (Punjab & Haryana)]

6. On careful consideration of the above submissions, I am of the considered view that the identical issue was placed for adjudication before the ITAT Delhi

‘F’ Bench in the case of *Ram Kishan vs. ITO*, wherein, after considering all the relevant judgements, the issue was decided as follows:-

“8. On careful consideration of the issue before us we find That The finance (number 2) act, 2009 with effect from 1 April 2010 in the income tax act has introduced the provisions of Section 145A (b) which defines the year of taxability as the year of receipt, irrespective of the method of accounting followed by the assessee with respect to the enhanced compensation and interest on compensation. The provisions of Section 56 (2) also defines head of income as income from other sources for such income. Section 57 (iv) allows deduction of 50% of such income without any proof of such expenditure. The provisions of the sections were introduced to remove an anomaly. At that time the existing provisions of the income tax provided that the income chargeable Under that profits and gains of business or profession or income from other sources shall be computed in accordance with either cash or Mercantile system of accounting regularly employed by the assessee. The honourable Supreme Court in case of Rama Bai versus CIT 181 ITR 400 held that arrears of interest computed on delayed or enhanced compensation shall be taxable on accrual basis. This has caused undue hardship to the taxpayers. With a view to mitigate that hardship provisions of Section 145A were amended to provide that the interest received by an assessee on compensation or enhanced compensation shall be deemed to be income for the year in which it was received, irrespective of the method of accounting followed by the assessee. Further amendment u/s 56 was also made to provide that such income shall be taxable as income from other sources in the year in which it is received. However such amendment was not in respect to the decision of the honourable Supreme Court in case of Ghanshyam HUF 315 ITR 1. Despite the above changes made u/s 14 5A and u/s 56 (2) with effect from 1 June 2010, so as to tax the interest on compensation or enhanced compensation as income from other sources u/s 56 in the year of receipts, the judicial precedents held that the interest awarded to landowners u/s 28 of the land acquisition act, 1894 on enhanced compensation is still a part of compensation and is a capital receipt taxable Under the head capital gains. Such is the judicial precedent of the honourable Himachal Pradesh High Court in case of CIT versus Joginder Singh 217 taxmann 208 and honourable Gujarat High Court in case of Movaliya BhikhaBhai Balabhai 70 taxmann.com 45 [388 ITR 343] . Further we are also mindful of the fact that the honourable

Punjab and Haryana High Court in the case of Mahenderpal Narang versus CBDT CWP 17971 of 2019 dated 19/2/2020 as well as in case of Puneet Singh V CIT 110 taxmann.com 16 and Manjeet Singh HUF V Union of India 1 37 taxman 116 has decided in favour of revenue. It is a settled law that Statute must be interpreted according to the intention of the legislature and the court should act upon the true intent of the legislation while applying the law and its interpretation. If a statutory provision is open to more than one meaning, the Court has to choose the interpretation which represents the intention of the legislature. In the present case the Department circular number 5/2010 dated 3/6 / 2010 clearly demonstrates the intention of the legislature. Accordingly we hold that interest on u/s 28 of the land acquisition act, 1894 being part of the compensation shall be treated as a tax free in the case of an individual and HUF u/s 10 (37) if transfer is of an agricultural land. In view of above facts and judicial precedence we hold that the interest received by the assessee u/s 28 of the land acquisition act of ₹ 24,207,223 is not taxable. Accordingly ground number 2 & 3 of the appeal of the assessee are allowed.”

7. In view of the above, I clearly note that the coordinate Bench of the Tribunal categorically held that after judgement of the Hon’ble Supreme Court in the case of Ram Bai (supra), the undue hardship to the taxpayer was mitigated and the provisions of section 145A of the Act was amended to provide that the interest received by an assessee on compensation or enhanced compensation shall be deemed to be income for the year in which it was received, irrespective of the method of accounting followed by the assessee. It was further held that Statute must be interpreted according to the intention of the legislature and the court should act upon the true intent of the legislation while applying the law and its interpretation. It was also held that Department circular number 5/2010 dated 3/6/2010 clearly demonstrates the intention of the legislature and, therefore, after taking into consideration judgement of the Hon’ble Supreme Court in the case of

Ghanshyam HUF (supra) and all subsequent judgements on the issue including the judgement of the Hon'ble Punjab & Haryana High Court in the case of *Mahender Pal Narang (supra)*, it was held that the interest received by the assessee on enhanced compensation u/s 28 of the Land Acquisition Act being part of the enhanced compensation shall be treated as tax free in the case of an individual u/s 10(37) of the Act, if the transfer is of agricultural land.

8. In view of the above order of the coordinate Bench of the ITAT, Delhi, when we evaluate the grievance of the assessee, then, it is amply clear that in the present case also the Id.CIT(A) upheld the assessment order wherein following the judgements of the Hon'ble Punjab & Haryana High Court in the case of *Mahender Pal Narang (supra)*, the addition made by the AO was confirmed. I also note that the AO did not allow benefit of the section 10(37) of the Act to the assessee, however, he allowed 50% of deduction on total interest received, u/s 28 of enhanced compensation by following the provisions of section 57(iv) of the Act and treated the remaining 50% as 'Income from other sources.'

9. The Id. Counsel of the assessee has also drawn my attention to the Circular No.36 of 2016 issued by the Ministry of Finance, Department of Revenue, Central Board of Direct Taxes dated 25.10.2016 wherein, at para 3, it was clarified that the compensation received in respect of an award or agreement which has been exempt from levy of income-tax, vide section 96 of RFCTLAAR Act shall also not be taxable under the provisions of the Income-tax Act, 1961

even if there is no specific provision for exemption for such compensation in the Income-tax Act. The Id. Counsel submitted that the land of the assessee was acquired under the old Land Acquisition Act, but, the intention of the legislature is also clear as per the said Circular wherein the compensation received by the assessee u/s 96 of the RFCTLAAR Act has to be held as exempt from levy of income-tax. Therefore, the grievance of the assessee may kindly be allowed. The Id. Sr. DR simply stated that the land of the assessee had been acquired long back under the old Land Acquisition Act, therefore, the CBDT Circular regarding acquisition of land under section 96 of the new Land Acquisition Act is not applicable to the present case. On these submissions, I am of the considered view that the Board Circular is not directly applicable to the present case of the assessee as, in the present case, the land was acquired under the old Land Acquisition Act, 1896, but, the intention of the legislature can be gathered therefrom that the Revenue does not want to tax the amount of enhanced compensation or interest thereon.

10. Therefore, in view of the foregoing, I am inclined to hold that the Id.CIT(A) was not correct in upholding the assessment order wherein the AO has granted part relief to the assessee u/s 57(iv) of the Act and not applying the provisions of section 10(37) of the Act on the interest received by the assessee on enhanced compensation. Therefore, the orders of the authorities below are set aside being not sustainable and not in accordance with the provisions of the Act. Therefore, the grounds of appeal of the assessee are allowed and the AO is

directed to allow deduction u/s 10(37) of the Act to the assessee on the entire amount of interest received on enhanced compensation u/s 28 of the Act.

11. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 14.10.2022.

Sd/-

(C.M. GARG)
JUDICIAL MEMBER

Dated: 14.10.2022.

dk

Copy forwarded to

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

Asstt. Registrar, ITAT, New Delhi