

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : NEW DELHI

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER

ITA No.9632/Del/2019
Assessment Year: 2016-17

Dinesh Sharma,
389, Masjit Moth,
NDSE-2,
New Delhi.

Vs. ITO,
Ward-53(5),
New Delhi.

PAN: AARPS5040F

(Appellant)

(Respondent)

Assessee by : Shri Ashok Sikka, Advocate
Revenue by : Shri Mithalesh Kr. Pandey, Sr. DR
Date of Hearing : 15.09.2022
Date of Pronouncement : 14.10.2022

ORDER

This appeal filed by the assessee is directed against the order dated 31.10.2019 of the CIT(A)-23, New Delhi, relating to Assessment Year 2016-17.

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

"1. That on the facts and circumstances of the case and in law, the order dated 31.10.2019 passed by the Ld. Commissioner of Income-tax (Appeals) ("CIT(A)") is erroneous and bad in law.

2 The Ld. CIT(A) has erred in law and on facts in sustaining the addition of Rs. 18,92,880/- made by the Ld. AO on account of disallowance of interest received on enhanced compensation.

2.1 The Ld. CIT(A) has erred in law and on facts in sustaining the addition made by the Ld. AO on the basis of wrong finding of fact that

interest which is received for a period falling after 29.05.2007 was not under section 28 of the Land Acquisition Act, 1894.

2.2 Without prejudice to the above, the Ld. CIT(A) has erred in law and on facts in sustaining the addition made by the Ld. AO stating that interest which is received for a period falling after 29.05.2007 was not under section 28 of the Land Acquisition Act, 1894 thereby disallowing the entire interest of Rs. 37,85,760 which includes interest received on enhanced compensation before and after 29.05.2007.

3 That the grounds of appeal are independent and without prejudice to each other.

4 The assessee craves leave to add, amend, alter, remove, rescind, forgo or withdraw any of the above grounds of appeal, which are without prejudice to one another, before or at the time of hearing of the appeal in the interest of natural justice.”

3. The Id. Counsel of the assessee submitted that the Ld. CIT(A) has erred in law and on facts in sustaining the addition of Rs. 18,92,880/- made by the Ld. AO on account of disallowance of interest received on enhanced compensation. He also submitted that the Ld. CIT(A) has erred in law and on facts in sustaining the addition made by the Ld. AO on the basis of wrong finding of fact that interest which is received for a period falling after 29.05.2007 was not under section 28 of the Land Acquisition Act, 1894. He further submitted that the Ld. CIT(A) has erred in law and on facts in sustaining the addition made by the Ld. AO stating that interest which is received for a period falling after 29.05.2007 was not under section 28 of the Land Acquisition Act, 1894 thereby disallowing the entire interest of Rs. 37,85,760 which includes interest received on enhanced compensation before and after 29.05.2007. 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.

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.'

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 (supra)*, 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 *Rama 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 03.06.2010 clearly demonstrates the intention of the legislature and, therefore, 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. In the said order, the coordinate Bench has also considered the judgement of the Hon'ble Supreme Court in the case of *Ghanshyam, HUF (supra)* and all subsequent judgements on the issue including judgement of the Hon'ble Punjab & Haryana High Court in the case of *Mahender Pal Narang (supra)* and, thereafter, held that the interest on enhanced compensation is part of enhanced compensation and, hence, the same is exempt from levy of tax u/s 10(37) of the Act.

8. In view of the above judgement, 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% amount as 'Income from other sources.' Thus, orders of the authorities below are not sustainable in view of the above discussion.

9. Therefore, in view of the foregoing, respectfully following the order of the coordinate Bench of the Tribunal in the case of *Ram Kishan vs. ITO (supra)*, 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.

10. 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.

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Copy forwarded to

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

Asstt. Registrar, ITAT, New Delhi