

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "G": NEW DELHI  
**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER**  
AND  
**SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 1429/Del/2020  
(Assessment Year: 2013-14)

Sardar Sant Singh Makkar, H. No. 17, Sector-14, Hisar, Haryana (Appellant)	Vs.	ITO, Ward-4, Hisar (Respondent)
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**PAN: AJFPM9012Q**

Assessee by :	Shri Kuldip Khera, CA
Revenue by:	Shri Abhishek Kumar, Sr. DR

Date of Hearing	10/11/2022
Date of pronouncement	23/11/2022

O R D E R

PER ANUBHAV SHARMA, J. M.:

1. The present appeal has been preferred by the Assessee against the order dated 30.11.2018 of Ld. CIT(A), Hisar (hereinafter referred as Ld. First Appellate Authority) arising out of an appeal before it against the assessment order dated 28.03.2016 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the Assessing officer, Dy.CIT, Circle Hisar (hereinafter referred as the Ld. AO).

2. Facts of the case are that the return declaring income of Rs. 5,61,770/- + Ari. Income of Rs. 5,50,000/- was e-filed on 26.10.2013, which was selected under CASS. As per the computation of income for the year under assessment, the appellant drives income from house property of Rs. 151200, income from other sources of Rs. 372371/-, income under section 44AE amounting to Rs. 60000/-. Assessee during the year also sold agriculture land situated village Chikan was (Hisar for

amounting to Rs. 60,00,000/- at village Agroha (Hisar amounting to Rs. 22,50,000/- and at village Bhadvin (Sirsa) for amounting to Rs. 1,13,70,000/- during the year. Assessee has also received land compensation of Rs. 50168465/- on compulsory acquisition and interest of Rs. 11899848/- thereon from LAO, HUDA. The assessee claimed the interest exempt u/s 10(37). Statutory notices were issued. The Ld. AO in this case made addition keeping in view of the decision of Hon'ble Punjab and Haryana High court in the case of Manjeet Singh (HUF) through Karta Manjeet Singh. Further, the assessee has credited the capital account with the amount of Rs. 712938/- on account of agriculture Royalty received by the assessee from Haryana govt, but the same has not been offered for taxation. The Ld. AO made addition on the same as there is no provision under the Income Tax Act where royalty paid to Land owner received from Haryana Govt. has been exempt from taxation. The Ld CIT(A) partly allowed the appeal of the assessee upholding the addition on account of royalty of Rs. 7,12,938/- while dealing with the issue in para 7 as below:-

*"7. Regarding addition of Rs. 7,12,938/- on account of agriculture royalty received by the assessee which was credited to the capital account but not offered in ITR/ computation of income, the reply of the assessee has carefully been considered. It is found that there is no provision under the Income Tax Act where royalty paid to land owners received from Govt. is exempt from taxation. Therefore, the addition made by the AO is sustained. The ground of appeal is dismissed."*

3. The assessee has approached this tribunal by raising following grounds of appeal:-

1. *The order of the Learned CIT(A) is bad in law and against the facts placed on file. On the basis of Honorable Supreme Court judgment in the case of Ghansham HUF , assessee denies any tax liability on the compensation amount received in the shape of annuity treating it as interest/reward.*
2. *On the facts & Circumstances of the case, order passed by the AO by making the addition of compensation in the shape of annuity treating it as interest/reward and sustained by the*

*Honorable CIT(A) is bad in law & against the facts of the case.*

3. *The Learned AO erred in making addition of compensation received in the shape of annuity and the Honorable CIT(A) erred in sustaining the addition on the ground that it is nowhere mentioned in the Income Tax Act that compensation in the shape of annuity received is exempt."*
4. Heard and perused the record.
5. On behalf of the assessee it was submitted that the annuity scheme under which the assessee received the money is part of the compensation against the land acquired and is exempt u/s 10(37) of the Act. It was submitted that interest received on compensation or annuity both are arising out of the compensation of the acquired land. It was submitted that the lump sum payment along with interest u/s 28 of the Land Acquisition Act and the annuity scheme payment over 33 years are both part and parcel of the compensation in lieu of land acquired. Referring to the Haryana Govt notification dated 09.11.2010 issued by Revenue & Disaster Management Department. It was submitted that annuity and other benefits were given to land owners whose land was acquired by the Govt. The Id AR also placed on record in the form of paper book of copy of letter issued by Land Acquisition Officer, Urban State Department, Hisar bearing No. 3253 dated 09.11.2020-22 (page NO. 7 of the paper book) that no tax deduction certificate is required to be issued in regard to annuity payment.
6. On the other hand the Id DR submitted that as the annuity is not part of award it cannot be equated with compensation or interest upon compensation and that Id Tax Authorities below have rightly made the addition as there is no provision under the Act where such payment are exempted from taxation.
7. On giving thoughtful consideration to the matter on record the bench is of considered opinion that though under the Land Acquisition Act 1894 or the Income Tax Act 1961 there are no specific provision with

regard to exemption income arising equities payment to land owners whose land has been acquired.

8. However, the notification dated 09.11.2010 of the Govt of Haryana under which this annuity has been granted is provides that annuity is paid by the Govt. of Haryana to a land owner whose land is acquired by Govt. under statute and that the annuity payment is in the nature of social security and benefit scheme is a part of overall R&R policy of the Govt. This R&R (Rehabilitation and resettlement) policy of the Govt of Haryana has its source under the Right to fair compensation and transparency in land acquisition, rehabilitation and resettlement Act, 2013 (hereinafter referred R&R Act).

9. Hon'ble Supreme Court of India in **MAHANADI COAL FIELDS LTD. & ANR Case** decided on 3<sup>rd</sup> November 2022 in MISCELLANEOUS APPLICATION NO. 231 OF 2019 IN SPECIAL LEAVE PETITION (C) NO(S). 6933 OF 2007 and Others has expressed the scope and intent of beneficial provisions R&R Act in following words;

*43. The provisions of the R&R Act, 2013 which replaced the old Land Acquisition Act, 1894 have for the first time cast obligations upon the State to ensure that resettlement and rehabilitation is provided in addition to compensation. These rehabilitation and resettlement provisions relate not only to a right to employment for at least one member of the displaced family but also other monetary and tangible benefits, such as land for construction of houses, cash assistance for construction; transportation cost; provision for temporary displacement; annuity and/or cash payment in lieu of employment benefits, etc. 31 Furthermore, by provisions of the Third Schedule, elaborate provisions for the kind of public amenities which have to be provided, such as public health benefits, schools, community centres, roads and other basic necessities, have been obligated. All these are in furtherance of*

*the displaced and the larger social justice obligations cast upon the State.*

10. Thus to understand the nature of annuity payments certain provisions of R&R Act are relevant and same are reproduced for convenience.

**"Section 16. Preparation of Rehabilitation and Resettlement Scheme by the Administrator.**—(1) *Upon the publication of the preliminary notification under sub-section (1) of section 11 by the Collector, the Administrator for Rehabilitation and Resettlement shall conduct a survey and undertake a census of the affected families, in such manner and within such time as may be prescribed, which shall include—*

*(a) particulars of lands and immovable properties being acquired of each affected family;*

*(b) livelihoods lost in respect of land losers and landless whose livelihoods are primarily dependent on the lands being acquired;*

*(c) a list of public utilities and Government buildings which are affected or likely to be affected, where resettlement of affected families is involved;*

*(d) details of the amenities and infrastructural facilities which are affected or likely to be affected, where resettlement of affected families is involved; and*

*(e) details of any common property resources being acquired.*

*(2) The Administrator shall, based on the survey and census under sub-section (1), prepare a draft Rehabilitation and Resettlement Scheme, as prescribed which shall include particulars of the rehabilitation and resettlement entitlements of each land owner and landless whose*

*livelihoods are primarily dependent on the lands being acquired and where resettlement of affected families is involved—*

*(i) a list of Government buildings to be provided in the Resettlement Area;*

*(ii) details of the public amenities and infrastructural facilities which are to be provided in the Resettlement Area.*

*(3) The draft Rehabilitation and Resettlement scheme referred to in sub-section (2) shall include time limit for implementing Rehabilitation and Resettlement Scheme.*

*(4) The draft Rehabilitation and Resettlement scheme referred to in sub-section (2) shall be made known locally by wide publicity in the affected area and discussed in the concerned Gram Sabhas or Municipalities.*

*(5) A public hearing shall be conducted in such manner as may be prescribed, after giving adequate publicity about the date, time and venue for the public hearing at the affected area: Provided that in case where an affected area involves more than one Gram Panchayat or Municipality, public hearings shall be conducted in every Gram Sabha and Municipality where more than twenty-five per cent. of land belonging to that Gram Sabha or Municipality is being acquired: Provided further that the consultation with the Gram Sabha in Scheduled Areas shall be in accordance with the provisions of the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (40 of 1996).*

*(6) The Administrator shall, on completion of public hearing submit the draft Scheme for 17 Rehabilitation and Resettlement along with a specific report on the claims and objections raised in the public hearing to the Collector.*

**Section 17. Review of the Rehabilitation and Resettlement Scheme.**—*(1) The Collector shall review the draft Scheme submitted*

*under sub-section (6) of section 16 by the Administrator with the Rehabilitation and Resettlement Committee at the project level constituted under section 45.*

*(2) The Collector shall submit the draft Rehabilitation and Resettlement Scheme with his suggestions to the Commissioner Rehabilitation and Resettlement for approval of the Scheme.*

**Section 18. Approved Rehabilitation and Resettlement Scheme to be made public.**—*The Commissioner shall cause the approved Rehabilitation and Resettlement Scheme to be made available in the local language to the Panchayat, Municipality or Municipal Corporation, as the case may be, and the offices of the District Collector, the Sub-Divisional Magistrate and the Tehsil, and shall be published in the affected areas, in such manner as may be prescribed, and uploaded on the website of the appropriate Government.*

**Section 19. Publication of declaration and summary of Rehabilitation and Resettlement.**—*(1) When the appropriate Government is satisfied, after considering the report, if any, made under sub-section (2) of section 15, that any particular land is needed for a public purpose, a declaration shall be made to that effect, along with a declaration of an area identified as the —resettlement area for the purposes of rehabilitation and resettlement of the affected families, under the hand and seal of a Secretary to such Government or of any other officer duly authorised to certify its orders and different declarations may be made from time to time in respect of different parcels of any land covered by the same preliminary notification irrespective of whether one report or different reports has or have been made (wherever required).*

*(2) The Collector shall publish a summary of the Rehabilitation and Resettlement Scheme along with declaration referred to in sub-section (1):*

*Provided that no declaration under this sub-section shall be made unless the summary of the Rehabilitation and Resettlement Scheme is published along with such declaration:*

*Provided further that no declaration under this sub-section shall be made unless the Requiring Body deposits an amount, in full or part, as may be prescribed by the appropriate Government toward the cost of acquisition of the land:*

*Provided also that the Requiring Body shall deposit the amount promptly so as to enable the appropriate Government to publish the declaration within a period of twelve months from the date of the publication of preliminary notification under section 11.*

*(3) In projects where land is acquired in stages, the application for acquisition itself can specify different stages for the rehabilitation and resettlement, and all declarations shall be made according to the stages so specified.*

*(4) Every declaration referred to in sub-section (1) shall be published in the following manner, namely:— (a) in the Official Gazette; (b) in two daily newspapers being circulated in the locality, of such area of which one shall be in the regional language; (c) in the local language in the Panchayat, Municipality or Municipal Corporation, as the case may be, and in the offices of the District Collector, the Sub-Divisional Magistrate and the Tehsil; (d) uploaded on the website of the appropriate Government; (e) in the affected areas, in such manner as may be prescribed.*

*(5) Every declaration referred to in sub-section (1) shall indicate,— (a) the district or other territorial division in which the land is situated; 18 (b) the purpose for which it is needed, its approximate area; and (c) where a plan shall have been made for the land, the place at which such plan may be inspected without any cost.*

*(6) The declaration referred to in sub-section (1) shall be conclusive evidence that the land is required for a public purpose and, after making such declaration, the appropriate Government may acquire the land in such manner as specified under this Act.*

*(7) Where no declaration is made under sub-section (1) within twelve months from the date of preliminary notification, then such notification shall be deemed to have been rescinded: Provided that in computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded: Provided further that the appropriate Government shall have the power to extend the period of twelve months, if in its opinion circumstances exist justifying the same: Provided also that any such decision to extend the period shall be recorded in writing and the same shall be notified and be uploaded on the website of the authority concerned.*

**23. Enquiry and land acquisition award by Collector.**—*On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 21, to the measurements made under section 20, and into the value of the land at the date of the publication of the notification, and into the respective interests of the persons claiming the compensation and rehabilitation and resettlement, shall make an award under his hand of—*

*(a) the true area of the land;*

***(b) the compensation as determined under section 27 along with Rehabilitation and Resettlement Award as determined under section 31 and which in his opinion should be allowed for the land; and***

*(c) the apportionment of the said compensation among all the persons known or believed to be interested in the land, or whom, or of whose*

claims, he has information, whether or not they have respectively appeared before him.

**Section 28. Parameters to be considered by Collector in determination of award.**—In determining the amount of compensation to be awarded for land acquired under this Act, the Collector shall take into consideration— firstly, the market value as determined under section 26 and the award amount in accordance with the First and Second Schedules; secondly, the damage sustained by the person interested, by reason of the taking of any standing crops and trees which may be on the land at the time of the Collector's taking possession thereof; thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land; fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings; fifthly, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 19 and the time of the Collector's taking possession of the land; and seventhly, any other ground which may be in the interest of equity, justice and beneficial to the affected families.

**Section 31. Rehabilitation and Resettlement Award for affected families by Collector.**—(1) The Collector shall pass Rehabilitation and Resettlement Awards for each affected family in terms of the entitlements provided in the Second Schedule.

(2) The Rehabilitation and Resettlement Award shall include all of the following, namely:— (a) rehabilitation and resettlement amount payable

to the family; (b) bank account number of the person to which the rehabilitation and resettlement award amount is to be transferred; (c) particulars of house site and house to be allotted, in case of displaced families; (d) particulars of land allotted to the displaced families; (e) particulars of one time subsistence allowance and transportation allowance in case of displaced families; (f) particulars of payment for cattle shed and petty shops; (g) particulars of one-time amount to artisans and small traders; (h) details of mandatory employment to be provided to the members of the affected families; (i) particulars of any fishing rights that may be involved; **(j) particulars of annuity and other entitlements to be provided;** (k) particulars of special provisions for the Scheduled Castes and the Scheduled Tribes to be provided: Provided that in case any of the matters specified under clauses (a) to (k) are not applicable to any affected family the same shall be indicated as not applicable: Provided further that the appropriate Government may, by notification increase the rate of rehabilitation and resettlement amount payable to the affected families, taking into account the rise in the price index.

**Section 69. Determination of award by authority.**-(1) In determining the amount of compensation to be awarded for land acquired including the Rehabilitation and Resettlement entitlements, the Authority shall take into consideration whether the Collector has followed the parameters set out under section 26 to section 30 and the provisions under Chapter V of this Act."

11. Further Section 96 of R&R Act, inter alia provides that income tax shall not levied on any award or agreement under R&R Act and the CBDT Circular No. 36 of 2016 dated 25.10.2016 as provided in paper book page No. 18 of Id AR, directs that:-

"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.”*

12. Now when the aforesaid provision of R&R Act are considered it becomes obvious with preparation of Rehabilitation And Resettlement Scheme u/s 16 of R&R Act is the foundation upon which after necessary enquiries the land acquisition award is passed by the Collector u/s 23 of R&R Act. Then sub-clause (b) of Section 23 specifically provides that rehabilitation and resettlement award as determined u/s 31 is part of the land acquisition award passed by the Collector u/s 23. Rehabilitation and resettlement award u/s 31 sub-clause (j) specifically refers to the particulars of annuity provided to the land owners. The Second Schedule to the R&R Act relevant to Section 31(1), 38(1) and 105(3) of the R7 r Act, provides elements of R&R Entitlements and at item no 4 there is choice of annuity or employment and the Schedule also fixes the minimum royalty to be paid.

13. Further, section 51 of R&R provides for establishment of land acquisition, rehabilitation and resettlement authority for disposal of the disputes arising out of acquisition, compensation, rehabilitation and resettlement. Section 69 provides that in determination of amount of compensation to be awarded for land acquired including the rehabilitation and resettlement entitlement, the authority shall take into consideration whether the Collector has followed the parameters set out u/s 26 of section 30.

14. The form of award is mentioned in section 70 of the R&R Act which refers to section 28. Thus, the award for the purpose of R&R Act not only includes the market value of the land but also rehabilitation and resettlement entitlements allowed to the land holders arising out the social impact assessment and study of the prospective acquisition of the land. Therefore, for the purpose of the section 96 of the R&R Act, not

only a monetary compensation of the land and interest upon it but the quantifiable monetary benefits arising out of rehabilitation and resettlement entitlements of the land owners, shall be part of the Award under the R&R Act and no income tax can be levied on such payments.

15. In the light of the aforesaid, the findings of the Id Tax Authorities below are held to be erroneous as they have failed to examine the issue in correct context to the law arising out of R&R Act. Grounds are decided in favour of the assessee. **Accordingly, the appeal is allowed.**

Order pronounced in the open court on 23/11/2022.

-Sd/-  
(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER

-Sd/-  
(ANUBHAV SHARMA)  
JUDICIAL MEMBER

Dated:23/11/2022  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi