

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH : "E" NEW DELHI]**

**BEFORE DR. B. R. R. KUMAR, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

I.T.A. No. 2197/DEL/2019 (A.Y 2013-14)

<p>Mulakh Raj Mehta & Sons [HUF] House No. 374, Sector : 15A, Hisar [Haryana] – 125 001. PAN No. AAIHM9927L (APPELLANT)</p>	Vs.	<p>Income Tax Officer, Ward : 2, Hisar. (RESPONDENT)</p>
---	-----	---

Assessee by	Shri K. Sampath, Advocate; & Shri V. Raj Kumar, Adv.;
Department by	Shri Atiq Ahmad, Sr. D. R.;

Date of Hearing	05.12.2022
Date of Pronouncement	08.12.2022

ORDER

PER YOGESH KUMAR U.S., JM

This appeal is filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-5 [hereinafter referred to CIT (Appeals) Ludhiana, dated 10.01.2019 for assessment year 2013-14.

2. The assessee has raised the following substantive grounds of appeal:-

“1. On the facts and circumstances of the case, the assessment order passed by the AO is bad in law & against the facts of the case.

2. On the facts and circumstances of the case, the learned AO erred in law in adding the interest u/s 28 of the Land Acquisition Act. In Ghanshyam HUF Honourable Apex court has distinguished the nature of interest u/s 28 in compensation and is part of compensation exempt u/s 10(37) of the Income Tax Act. As per the judgment the interest received by the assessee u/s 28 of the Land Acquisition Act is a part of compensation which is exempt u/s 10(37) of the Income Tax Act, 1961.

3. The learned AO ignored the distinction between Section 28 & 34 of Land Acquisition Act by blindly following the judgement of Honourable Punjab & Haryana High Court in the case of Manjeet Singh (HUF) Karta Manjeet Singh Vs. Union of India.

4. The learned AO erred in treating the rejection of SLP in the case of Manjeet Singh (HUF) Karta Manjeet Singh Vs. Union of India as order of Honorable Supreme Court.

5. The learned AO erred in treating the interest awarded u/s 28 of the Land Acquisition Act as interest received under Section 56 of Income Tax Act.

6. *The learned AO failed to make distinction between interest granted under statutory provisions and interest granted under discretion of honorable Courts.*

7. *The learned AO failed to apply his own mind on the case judiciously and has decided the case by blindly following the judgement of Honorable Punjab & Haryana High Court in the case of Manjeet Singh (HUF) Karta Manjeet Singh Vs. Union of India.”*

3. Brief facts of the case are that, the return declaring income of Rs. 9,75,560/- was filed by the assessee which was processed u/s 143(1) of the Income Tax Act ('Act' for short). The case was selected for scrutiny under CASS. On completion of the scrutiny assessment proceedings, an order u/s 143(3) of the Act was passed and the return income was accepted. Subsequently, the proceedings u/s 147 of the Act, was initiated and an assessment order came to be passed on 09/06/2017 u/s 143(3)/147 of the Act, wherein an addition of Rs. 37,87,803/- has been made on account of interest on enhanced compensation.

4. Aggrieved by the assessment order dated 09/06/2017, the assessee has preferred an appeal before the CIT(A). The Ld.CIT(A) vide order dated 10/01/2019 dismissed the appeal by confirming the addition made by the A.O.

5. Aggrieved by the order of the CIT(A) dated 10/01/2018, the assessee has preferred the present appeal.

6. The Ld. Counsel for the assessee submitted that the interest on enhanced compensation u/s 28 of Land Acquisition Act cannot be added, the addition made by the A.O. which was confirmed by the CIT(A) is contrary to the ratio laid down by the Hon'ble Supreme Court in the case of CIT Vs. Ghanshyam 315 ITR 1 (S.C). The Ld. Counsel further submitted that the

authorities have erroneously treated interest awarded u/s 28 of the Land Acquisition Act as interest received u/s 56 of the Act.

7. Per contra, the Ld. DR has relied on the orders of the Lower Authorities.

8. We have heard the parties, perused the material on record and gave our thoughtful consideration.

9. Certain Land belonging to the assessee was acquired by the Land Acquisition Officer, HUDA. The Compensation, enhanced compensation and interest thereon was awarded in lieu thereof by the HUDA/various Courts. It is not in dispute that the assessee has received interest on enhanced compensation amounting to Rs. 75,73,605/- during the year under consideration u/s 28 of the Land Acquisition Act. The assessee claimed exemption in view of Apex Court Judgment in the case of Ghanshyam HUF (Supra), which has not been considered by the A.O. and the Ld. A.O. has observed as under:-

“The aforementioned position was confronted to the assessee. In response, Shri R. N. Aggarwal, C.A., counsel for the assessee attended the proceedings and he was fair enough to concede that the proposed addition of Rs. 37,86,803/- may be made being 50% of the interest received during the year U/s 28 of the Act on compensation/enhanced compensation, as per order sheet entry dated 09.06.2017 subject to no penal action. Accordingly, an addition of Rs. 37,86,803/- is hereby made in the income of the assessee view of the above discussion.”

10. In the appeal proceedings, the Ld.CIT (A) has confirmed the addition made by the CIT(A) by observing that the assessee himself through his representative accepted and conceded that proposed addition of Rs. 37,86,802/- may be made being 50% of the interest received during the year

u/s 28 of the Land Acquisition Act on enhanced compensation. Thus, the Ld.CIT(A) by observing the said fact and on the merit confirmed the addition made by the A.O.

11. In our view, the right of appeal of an assessee cannot be taken away by the A.O. or CIT (A) irrespective of the admission or consent given by the assessee. The principle of estoppels is not applicable to income tax proceedings. The authorities should bear in the mind that the right income of the assessee to be taxed in the right assessment year. Hence, in our opinion, the issue in hand deserves to be decided on merit irrespective of the consent given by the representative of the assessee before the A.O.

12. The moot question in the present appeal as to whether the interest received u/s 28 of the Land Acquisition Act, 1894 is part of compensation exempt u/s 10 (37) of the Act or not. The identical question has been dealt by the Co-ordinate Bench of this Tribunal in ITA No. 5084/Del/2019 in the case of ITO Vs. Girish Kumar wherein by relying on the Apex Court judgment in the case of CIT vs. Ghanshyam HUF 315 ITR 1 held as under:-

“8. As per Section 10(37) of the Act, any income chargeable under the head of capital gain arising from transfer of agricultural land by way of compulsory acquisition under the law is exempt from taxation. Further, as per provisions of Section 56(2) (vi) of the Act, income by way of interest received on compensation on an enhanced compensation is taxable and a deduction of a sum equal of 50% of such income is allowable u/s 57(iv) of the Act on that interest. The interest under Land Acquisition Act, is payable under two different Sections i.e. Section 34 & Section 28 of Land Acquisitions Act. There is no dispute in so far as payment of interest u/s 34 of the Land Acquisition Act is concerned. Now, the question whether the interest paid under the provisions of Section 28 of Land Acquisition Act is a

part of enhanced compensation or is it taxable as interest income or not. The said issue has been considered by the Hon'ble Supreme Court in the case of CIT Vs. Ghanshyam HUF 315 ITR 1 held that the interest paid on the excess amount u/s 28 of Land Acquisition Act, 1894, depends upon a claim by the person whose land is acquired, where as interest u/s 34 of Land Acquisition Act is for delay in making payment. Interest u/s 28 of Land Acquisition Act is a part of enhanced value of land which is not the case in the matter of payment of interest u/s 34 of the Land Acquisition Act. The relevant portions of the Judgment of the Apex Court are hereunder:-

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

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

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

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

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

13. Thus, the decision of the Apex Court in the case of Ghanshyam HUF (Supra) being binding precedent irrespective of the amendment or changes which have been incorporated in the Income Tax Act since, there is no corresponding amendment to Section 23 (1A) or Section 28 of the Land Acquisition Act, 1894.

14. By considering the ratio laid down by the Hon'ble Supreme Court in the case of Ghanshuam HUF (Supra) we are of the opinion that the grounds of

appeal deserves to be allowed and the addition made by the A.O. which was confirmed by the CIT(A) is deserves to be set aside.

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

Order pronounced in the Open Court on : 08.12.2022.

Sd/-
(B. R. R. KUMAR)
ACCOUNTANT MEMBER
Dated : 08/12/2022

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

R.N, Sr. PS

Copy forwarded to :

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

ASSISTANT REGISTRAR
ITAT NEW DELHI