

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "G": NEW DELHI  
BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 1702/Del/2022  
(Assessment Year: 2018-19)

Sana Shah,  
744-745, Model Town,  
Panipat, Haryana  
(Appellant)  
**PAN: BOPPS2855R**

Vs. ITO,  
Ward-1,  
Panipat  
(Respondent)

Assessee by :	Ms. Aditi S. Mann, Adv Shri Bhanu Sanoriya, Adv
Revenue by:	Ms. Kajal Singh, Sr. DR
Date of Hearing	11/01/2023
Date of pronouncement	17/01/2023

ORDER

**PER ANUBHAV SHARMA, J. M.:**

1. The present appeal has been preferred by the Assessee against the order dated 31.05.2022 of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred as Ld. First Appellate Authority) arising out of an appeal before it against the assessment order dated 26.04.2021 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the AO (hereinafter referred as the Ld. AO).

2. Facts of the case are that the assessee had filed return of income of Rs. 196750/-, however, when the case was considered under the complete scrutiny it was found that the assessee had claimed exemption u/s 10(37) of the Act in terms of judgment of Hon'ble Supreme Court in **Union of India Vs. Hari Singh (Civil Appeal No. 15041/2017 order dated 15th September 2017)**

and **CIT V. Ghanshyam Dass & Ors.: [315 ITR 1(SC)]** with regard to interest received u/s 28 of the Land Acquisition Act, 1894. The assessee had submitted a letter from District Revenue Officer where it was stated that in total an amount of Rs. 8,25,64,962/- was paid to the assessee which included interest of Rs. 5,42,98,691/- after deducting TDS of Rs. 54,29,869/- and the total sum was paid u/s 28 of the Land Acquisition Act. It made clear that TDS was deducted on interest part only. Ld. AO observed that the assessee was actually in receipt of interest of amount of Rs. 5,97,28,560/- while in the return filed the assessee had claimed interest u/s 28 of the Land Acquisition Act to be Rs. 5,12,65,313/-. The Id AO taking into consideration the provision of sub-section (1) of Section 145B of the Act read with section 56(2)(viii) of the Act was of the view that interest part of the enhanced compensation amounting to Rs. 5,97,28,560/- was taxable and further extending the benefit of Section 54(4) of the Act of deduction of 50% proposed additions. However, addition of Rs. 2,71,49,345/- was made accepting the submission of assessee that interest of enhanced compensation was Rs. 5,42,98,690/- and not Rs. 5,97,28,560/-. The Id AO particularly relied on the judgment of Hon'ble Punjab and Haryana High Court in Mahendra Narang vs. CBDT: 120 taxmann.com 400 (P&H).

3. In appeal before the Id CIT(A) the addition was sustained. The assessee is in appeal before this Tribunal raising following grounds of appeal:-

- "1. *That the Commissioner of Income-tax (Appeals) ["CIT(A)"] erred on facts and in law in upholding the order of the assessing officer ["(AO)"] and assessing the income of the Appellant at Rs. 2,71,49,345/- as against Rs.1,96,750/- returned by the Appellant.*
2. *That the CIT(A) erred on facts and in law in not appreciating that the interest on enhanced compensation paid to Appellant under Section 28 of the Land Acquisition Act, 1894 forms partakes nature of enhanced compensation and is exempt from tax under Section 10 (37) of the Income Tax Act, 1961 ("the Act") in view of the judgment of the Hon'ble Apex Court in the case of CIT Ghanshyam Dass & Ors.: [315 ITR 1(SC)] and various other judicial precedents.*

3. *That the CIT(A) erred on facts and in law by not appreciating that it is an undisputed fact that prior to its compulsory acquisition, the land in question was being used for agricultural purposes and certificate issued from Land Acquisition Officer Distt. Panipat establishes that the interest on enhanced compensation was paid to the Appellant under Section 28 of the Land Acquisition Act, 1894, and is hence not exigible to tax.*
4. *That the CIT(A) erred on facts and in law by upholding the said addition on the ground that the word interest used in Section 56 (2)(viii) and Section 145B covers interest received on any compensation without appreciating that interest received by the Appellant under Section 28 forms part of enhanced value of land and exempt from tax as per Section 10 (37).*
5. *That the CIT(A) grossly erred on facts and in law by holding that interest received on enhanced compensation is taxable under Section 56 (2) (viii) of the Act by relying on Mahendra Narang vs. CBDT: 120 taxmann.com 400 (P&H), which is in the teeth of the decision of the Hon'ble Supreme Court in CIT Ghanshyam Dass & Ors. (supra).*
6. *Without prejudice to ground no. 5, CIT(A) grossly erred on facts and in law in holding that the decision of Mahendra Pal Narang (supra) was wholly binding on the ground that Special Leave Petition against the same was dismissed on 04.03.2021 without appreciating that since the same was dismissed in limine, there was no merger of the High Court order with that of the Hon'ble Supreme Court, and thus the decision in the case of CIT vs. Ghanshyam (supra) would still hold the field.*
7. *That CIT(A) erred on facts and in law in upholding the addition of Rs. 2,71,49,345/- made by the AO without considering that substitution of section 145A of the Act was brought in by Finance (No.2) Act, 2009 to mitigate hardship caused to the assessee on account of the decision on the Hon'ble Apex Court in Rama Bai vs. CIT: [181 ITR 400], and was not in connection with its decision in CIT vs Ghanshyam (supra).*
8. *That the CIT(A) erred on facts and in law in not appreciating that the interest on enhanced compensation partakes nature of compensation received by the Appellant, falling under the head "Capital Gains" and not "Income from Other Sources" and is exempt by virtue of Section 10(37) of the Act."*

4. Heard and perused the record.

5. On behalf of the assessee it was submitted that the Ld. Tax Authorities below have fallen an error in not taking into consideration the judgment of Hon'ble Hon'ble Supreme Court in **CIT Vs. Ghanshyam Dass and Ors.315 ITR 1 (SC)** and have mechanically relied on the judgment of Punjab and Haryana High Court in case of

**Mahendra Pal Narang case (supra).** It was submitted that in **CIT Vs. Ghanshyam (HUF) (supra)** it was held that interest received u/s 28 forms part of the enhanced compensation and exempted from tax u/s 10(37) of the Act, therefore, provision of section 145B and section 56(2)(viii) have been wrongly invoked.

6. On the other hand the Id DR submitted that the Id tax authorities below have rightly applied the binding precedent of jurisdictional High Court of Hon'ble Punjab and Haryana High Court.

7. Giving thoughtful consideration to the matter on record at the outset the bench is of considered opinion that as the land which was acquired is situated in the District Panipat, Haryana. The jurisdictional High Court happens to be Hon'ble Punjab and Haryana High Court.

8. The Hon'ble Bombay High Court in the case of **Subramaniam -vs.- Siemens India Ltd. (1985) 156 ITR 11 (Bom.)** held that so far as the legal position is concerned, the ITO would be bound by a decision of the Supreme Court as also by a decision of the High Court of the State within whose jurisdiction he is functioning, irrespective of the pendency of any appeal or special leave application against the judgment. He would equally be bound by a decision of another High Court on the point, because not to follow that decision would be to cause grave prejudice to the assessee. However, in the case where there is conflict of views between different High Courts, ITO must follow the decision of the High Court within whose jurisdiction he is functioning. The **Hon'ble Rajasthan High Court in the case of CIT -vs.- Sunil Kumar (1996) 212 ITR 238 (Raj.)** held that the decision of the Jurisdictional High Court is binding on the Income tax Authorities and the Tribunal within the jurisdiction of the Court and the contrary decision of another High Court is not relevant, and that a point decided by the Jurisdictional High Court can no longer be considered to be a debatable issue. Then in the case of **CIT -vs.- Smt. Aruna Luthra (2001) 252 ITR 76 (P&H)(FB)**, the Full

bench of the Hon'ble Punjab & Haryana High Court has held that once the jurisdictional High Court or Supreme Court decides a particular issue, the judgment of jurisdictional High Court/Supreme Court would relate back to the date when particular section was inserted in the Act.

9. Coming to the claim of assessee based on the basis of judgment of Hon'ble Supreme Court of India in **CIT Vs. Ghanshyam (HUF) (supra)** it is pertinent to mention that the same was of 16.07.2009 however, subsequent amendments in the Act have been taken note by Hon'ble Punjab and Haryana High Court in the judgment of **Mehendra Pal Narang V. CBDT (2020) 120 Taxman.com 400 (P&H)** and which has been thoroughly relied by the Ld. Tax authorities below. The contention raised before this bench have been considered by the Hon'ble Punjab and Haryana High Court and relevant paras are reproduced below:-

6. *Learned counsel for the petitioner argued that there is no amendment in section 10(37) of the 1961 Act and by insertion of sections 56(2)(viii) and 57(iv), the nature of interest under section 28 of the 1894 Act will remain that of compensation. To fortify the submission, he relies upon the decision of the Supreme Court in CIT v. Ghanshyam (HUF) [2009] 182 Taxman 368/315. The contention is that as per the decision of the Apex Court, the interest under section 28 of the 1894 Act is not compensatory for delay but would be treated akin to compensation. He buttresses his contention by relying upon Central Board of Direct Taxes Circular No. 5 of 2010 to contend that the amendment brought in 2010 was to remove the hardships created by the decision of the Supreme Court in Rama Sai v. Taxman 496/[1990] 181 ITR 400. Reliance is placed upon the decision of Gujarat High Court in Movaliya Bhikhubhai Balabhai v. ITO [2016 70 taxmann.com 45/388 ITR 343.*

7. *Before dealing with the contentions, relevant portion of the circular is quoted below:*

*'46. Rationalizing the provisions of taxation of interest received on delayed compensation or on enhanced compensation.*

*46.1 The existing provisions of Income-tax Act provide that income chargeable under the head "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. Further, the Hon'ble Supreme Court in the case of Rama Sai v. CIT (181 ITR 400) has 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.*

*46.2 With a view to mitigate the hardship, section 145A is amended to provide that the interest received by an assessee on compensation or enhanced compensation shall be deemed to be his income for the year in which it was received, irrespective of the method of accounting followed by the assessee.*

*46.3 Further, clause (viii) is inserted in the sub-section (2) of the section 56 so as to provide that income by way of interest received on compensation or on enhanced compensation referred to in clause (b) of section 145A shall be assessed as "income from other sources" in the year in which it is received.*

*46.4 Applicability- This amendment has been made applicable with effect from 1st April, 2010, and will accordingly apply in relation to assessment year 2010-11 and subsequent assessment years.'*

*8. Section 45 of the 1961 Act deals with capital gains. By Finance Act, 1987, sub-section (5) was inserted in Section 45 and as per its clause (b), the enhanced compensation shall be chargeable under the head "Capital gains" of the previous year in which the amount is received by the assessee. This issue came up before Apex Court in Ghanshyam's case (supra). Considering Sections 45(5) and 155(16) of the 1961 Act, it was held that enhanced compensation received under the 1894 Act may be received in multiple stages but the same is to be treated as "deemed income" at the time when it is received and is to be taxed on receipt basis. It was further held, the fact that enhanced compensation is in dispute and the withdrawal is conditional will not make a difference. While dealing with the said issue, it was held that interest on enhanced value of land forms part of compensation and is exigible to tax in the year of receipt whereas interest on delayed payment of enhanced compensation is income in a different nature.*

*9. The scheme with regard to chargeability of interest received on compensation and enhanced compensation has undergone a sea change with the insertion of sections 56(2) (viii) and 57(iv) of the 1961 Act. Section 56 deals with income from other sources and a specific provision has been inserted by way of sub-section whereby the interest received on compensation or enhanced compensation, as referred to in clause (b) to section 145A has been included under the head 'Income from other sources'. In clause (iv) to section 57, deduction of fifty per cent is provided on interest received on compensation or enhanced compensation.*

10. In view of the amendments, the decision of Apex Court in Ghanshyam's case (supra) does not come to the rescue of the petitioner to claim that interest received under section 28 of the 1894 Act is to be treated as compensation and to be dealt with under "Capital gains". The fact that there is no amendment carried out under section 10(37) of the 1961 Act will not change the position. Section 10 deals with deductions and sub-section (37) thereof deals with capital gains arising from transfer of agricultural land, it nowhere provides as to what is to be included under the head "Capital gains". The argument raised is not well founded.

11. Learned counsel has relied on Circular No. 5 of 2010 by merely reading clause 46.1. The said clause talks about undue hardship being caused as arrears of interest being taxable on accrual basis. Clause 46.2 states that Section 145A is amended to overcome the difficulty, by deeming the income for the year in which it is received. Clause 46.3 has been ignored in which section 56(2)(viii) is dealt with that interest on compensation or on enhanced compensation referred to in clause (b) of section 145A shall be assessed as "income from other sources".

10. The Id CIT(A) has also taken into consideration the aforesaid observations of Hon'ble P&H High Court and specifically observed that "the Hon'ble High Court had considered the decision of the Hon'ble Apex Court in the case Ghanshyam (HUF) (supra). The SLP filed by the assessee had been dismissed by Hon'ble Apex Court in (2021) 126 taxmann.com 105(SC) decided on 04.03.2021. The decision of Hon'ble Jurisdictional High Court on similar issue is wholly binding on me. Hence, it is held that interest received on enhanced compensation is taxable u/s 56(2)(viii) of the Act."

11. The bench is of considered opinion that the Id Tax Authorities Below have not fallen in any error in following the judgment of jurisdictional High Court. That being so, there is no merit in the grounds of appeal, therefore, **appeal stands dismissed.**

Order pronounced in the open court on 17/01/2023.

-Sd/-  
**(N.K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

-Sd/-  
**(ANUBHAV SHARMA)**  
**JUDICIAL MEMBER**

Dated:17/01/2023  
A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR  
ITAT, New Delhi