

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A": NEW DELHI  
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 1063/Del/2022  
(Assessment Year: 2017-18)

Subhash Chand Dhingra, House No. 1/43, Shivaji Nagar, Gurgaon (Appellant) <b>PAN: AARPD8652J</b>	Vs.	ACIT, Central Circle-3(1), Gurgaon (Respondent)
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ITA No. 1060/Del/2022  
(Assessment Year: 2017-18)

Satish Kumar Dhingra, House No. 1/43, Shivaji Nagar, Gurgaon (Appellant) <b>PAN: AANPD1971A</b>	Vs.	ACIT, Circle-4(1), Gurgaon (Respondent)
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ITA No. 1061/Del/2022  
(Assessment Year: 2017-18)

Ashok Kumar Dhingra, House No. 1/43, Shivaji Nagar, Gurgaon (Appellant) <b>PAN: ABUPD6730B</b>	Vs.	ACIT, Circle-1(1), Gurgaon (Respondent)
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ITA No. 1062/Del/2022  
(Assessment Year: 2017-18)

Giriraj Dhingra, House No. 1/43, Shivaji Nagar, Gurgaon (Appellant) <b>PAN: ACHPD9434E</b>	Vs.	ACIT, Circle-1(1), Gurgaon (Respondent)
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Assessee by :	Smt. Kavita Jha, Adv Sh. Himanshu Aggarwal, Adv
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Revenue by:	Sh. P. Praveen Sidharth, CIT DR
Date of Hearing	23/11/2022
Date of pronouncement	07/02/2023

## O R D E R

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

The present four appeals have been preferred by the Assessee against the order u/s 263 the Income Tax Act, 1961 (hereinafter referred as 'the Act') dated 29.03.2022 of Ld. Pr. CIT, Faridabad (hereinafter referred as Ld. Revisional Authority) arising out of an the assessment order dated 14.11.2019 passed u/s 143(3) of the Act by the Assessing officer, ACIT, Circle-4(1), Gurgaon (hereinafter referred as the Ld. AO). As they involve similar questions of facts and law therefore to avoid repetition and contradictory findings they are taken up together for adjudication.

2. **Facts in brief** are that the respective assessee had filed their original return u/s 139(4) of the Act for Assessment Year 2017-18 which was revised u/s 139(5) of the Act. The computation of income of the original return the assessee had shown interest on enhanced compensation of land at Harsaru, Gurugram, Haryana and claimed deduction on the same @50% u/s 57 of the Act while in the revised return the assessee has not shown this income of interest received on enhanced compensation during the year under consideration. The Ld Revisional Authority observed that there was no entry of this amount either to show as income or to claim any deduction under any provisions in the revised return of income. It considered it as good as non-disclosure of income received. Ld. Revisional Authority observed that it is not the case of the assessee in the computation of income or in the revised income that the said interest is exempt u/s 10(37) of the Act or any other provisions of the Act. It believed that

in accounting method the assessee had to show the receipts and then may claim deduction and exemption but non-disclosure amounts to concealing of particulars of income.

3. Further, the Id Revisional Authority observed that the case of the assessee was selected for scrutiny assessment u/s 143 for following enquiry / clarification:-

- a. Reduction of income in revised return and claim of refund
- b. Income from other sources

4. The Ld. Revisional Authority was of the view that during the scrutiny the Ld. AO had issued standard questionnaire and Id AO did not examine the return. It believed that the Id AO has not applied his mind on the issues involved. The Ld. AO has merely done a formality of issuing standard questionnaire which is more applicable to business firm/ association rather than an individual who is filing the return of income showing income from salary, house property and income from other sources. It observed that the Id AO does not know that deduction u/s 57 pertains to interest on enhanced compensation and is not a payment.

5. Ld. Revisional Authority therefore, examined the record in regard to following issues in para 11 of its order as under:-

- "a) *Whether the interest received on enhanced compensation is exempt under any specific provisions of Income Tax Act, 1961?*
- b) *Whether the interest received on enhanced compensation is exempt has been stated by the jurisdictional High Court of Punjab & Haryana or Supreme Court?*
- c) *Whether the provisions of section 56(2)(viii); 57(iv) read with section 145A introduced from 01.04.2010 are applicable in the case of the assessee being statutory provisions brought in as law after judgments of the appellate authorities?*
- d) *Whether assessee without showing the receipt in the Return of Income or computation of income can claim any income exempted from taxation without specifying any provisions of law?*

- e) *Whether the Assessing Officer is exempt from following the jurisdictional High Court judgements on any legal issue [pronounced after considering the judgements of Hon'ble Supreme Court and statutory provisions of law] and need not to discuss or mention such issue and reasons for not following it in the assessment records or assessment order and whether such order is erroneous and prejudicial to the interest of revenue?*
- f) *Whether the interest received on enhanced compensation is taxable as income under the head "Income from Other Sources" under the provisions of Income Tax Act, 1961 in the A.Y. 2017-18?*
- g) *Whether an assessment order which is passed without inquiry and following the valid & applicable judgements of jurisdictional High Court of Punjab & Haryana, Supreme Court ignoring the statutory provisions and read with explanation 2 of section 263, can be held as erroneous and prejudicial to the interest of revenue by Principal Commissioner of Income Tax under section 263?"*

6. It believed that the Id AO had not conducted enquiry to examine whether the conditions necessary for exemption u/s 10(37) were fulfilled. Accordingly, show cause notice issued u/s 263 was issued to the assessee. On behalf of the assessee written submissions were submitted before Id Revisional Authority. Primarily and grossly on following;

First that the assessment order is not erroneous as the same was passed by the Id AO after conducting detailed enquiry and examination on the issue. In this context it was submitted that the interest u/s 28 of the Land Acquisition Act is allowed in view of the decision of the Hon'ble Supreme Court in the case of **CIT Vs. Ghanshyam (HUF) (2009) 315 ITR 1(SC)** and CIT-1, Gurgaon decision in case of co-owner Ashok Kumar Dhingra for Assessment Year 2016-17.

Secondly it was also submitted on behalf of the assessee that there two views possible view beneficial to assessee to be preferred.

7. The Id Revisional Authority however, distinguished the law and citation relied on behalf of the assessee. It observed that there are many judgments of Hon'ble Supreme Court and Hon'ble Punjab and Haryana High Court and other respectable High Court in which it was held that the interest on enhanced compensation granted by the Civil Court u/s 28 of the Land Acquisition Act, 1894 is taxable. It observed that the decision of Punjab and Haryana High Court which are jurisdictional High Court in case of assessee hold the field and there is no judgment of Hon'ble Supreme Court to the contrary. The Id Revisional Authority distinguished the judgment of Hon'ble Supreme Court in the case of Ghanshyam HUF (supra) and observed that the issues there pertained to interpretation to section 45(5) of the Act as it stood prior 01.04.2004 and the Hon'ble Supreme Court did not have any question regarding the taxation of interest received. It was also observed as under:-

*"35.1. In this case [CIT, Faridabad v. Ghanshyam (HUF)] appeal was filed by the Commissioner of Income-tax, Faridabad where the Assessing Officer brought to tax the amount of enhanced compensation and the interest thereon received by the assessee in the year of receipt. The Assessing Officer brought to tax the amount of enhanced compensation of Rs.87,13,517/- received by the assessee during the previous year relevant to the assessment year 1999-2000. Similarly, interest on enhanced compensation of Rs.1,47,575/- received by the assessee during the previous year was also brought to tax in the year of receipt. On appeal, the Commissioner (Appeals) accepted the assessee's contention and deleted the amount of enhanced compensation and interest thereon from the total income of the assessee. The Tribunal upheld the order of the Commissioner (Appeals). The High Court also dismissed the revenue's appeal. However, the Hon'ble Supreme Court in the judgement in the last para held that the civil appeals filed by the Department stand allowed with no order as to costs. **It shows that the action of the Assessing Officer has been upheld of taxation of interest on enhanced compensation. The ratio decidendi is very clear and upheld the taxation of interest on enhanced compensation. It is the ratio decidendi which has a binding force.**"*

8. Ld Revisional Authority relied on the judgment of Hon'ble Supreme Court in case of **Mehendra Pal Narang Vs. CBDT (2021) 279 taxmann 74** wherein, the assessee's SLP was dismissed and the order of Punjab and Haryana High court was upheld. Ld Revisional Authority further referred to judgment of Punjab and Haryana High Court in case of **Karta Manjeet Singh (HUF) Vs. Union of India (2016) 65 taxmann.com 160 (Punjab and Haryana)** and observed in para 38 as follows:-

*"38, A writ was filed before Hon'ble Punjab and Haryana High Court claiming that the interest received on enhanced land compensation u/s 28 of the Land acquisition Act, 1894 does not fall for taxation under section 56 as income from other sources in view of judgment of the Apex Court in the case of CIT v. Ghanshyam (HUF) [2009] 315 ITR 1/182 Taxman 368. The Hon'ble High Court of Punjab and Haryana in the said case of Manjeet Singh (HUF) Karta Manjeet Singh v. Union of India reported in [2016] 65 taxmann.com 160 (Punjab & Haryana)/[2016] 237 Taxman 116(P&H) held that where assessee, a landowner, received interest under section 28 of Land Acquisition Act, 1894, said interest was taxable under section 56 as income from other sources in the year of receipt. The primary question for consideration that arises in this case relates to the nature of interest received by the assessee under section 28 of the Land Acquisition Act, 1894 or in other words, whether the interest which is received by the assessee partakes the character of income or not and in such a situation is it taxable under the provisions of the Income-tax Act, 1961. The assessee claimed that the amount of interest component contained under section 28 of the 1894 Act should form part of enhanced compensation in accordance with the decision of the Apex Court in CIT v. Ghanshyam (HUF)[2009] 315 ITR 1/182 Taxman 368. The Hon'ble jurisdictional High Court held that in the case of TMK Govindaraju Chetty v. Commissioner of Income-tax, Madras [66 ITR 465], Rama Rai &Ors. v. CIT, Andhra Pradesh [181 ITR 400] and K.S. Krishna Rao v. CIT, A.P. [181 ITR 408]; this position of law has been consistently reiterated by Supreme Court by holding that it is settled law that the interest received on delayed payment of the compensation is a revenue receipt eligible to income tax. The Hon'ble High Court dismissed the writ of the assessee in which it was claimed that the said interest did not fall for taxation under section 56 as income from other sources in view of*

*judgment of the Apex Court in the case of CIT v. Ghanshyam (HUF) [2009] 315 ITR 1/182 Taxman 368."*

9. Thereafter it referred to judgment of Punjab and Haryana High Court in case of **Puneet Singh Vs. CIT, Karnal** and observed in para 39 as below:-

*"39. The Hon'ble High Court of Punjab and Haryana in the case of Puneet Singh v. Commissioner of Income-tax, Kamal reported in [2019] 415 ITR 215(P&H); [2019] 110 taxmann.com 116 {Punjab & Haryana) held that where a landowner, received interest under section 28 of Land Acquisition Act, 1894, on enhanced compensation paid for acquisition of his land, 50 per cent of said interest was taxable as income from other sources as per provision of section 56(2)(viii) read with section 57(iv) and 145A(b) in year of receipt. It held as follows: -*

*"19. The cumulative effect of Section 145A(b) and Section 56(2) (viii) would be that any interest received on compensation or on enhanced compensation shall be taxable under the head 'income from other sources' in the year of receipt.*

*20. However, by Section 27 of the 2009 Act, a new clause (iv) in Section 57 has been inserted w.e.f. 01.04.2010 which lays down that in the case of income of the nature referred to in Section 56(2)(viii), a deduction of a sum equal to 50% of such income would be allowable thereunder and no deduction would be allowed under any other clause of Section 57..... "*

10. In the same context it relied on the judgment of Punjab and Haryana High Court **Karnail Singh (2010) 326 ITR 501** and **Sant Ram Vs. Union of India in (2010) 328 ITR 77, Tuhi Ram Vs. Land Acquisition Collector (1993) 66 taxman 127**. Ld Revisional Authority was also referred to order of ITAT in **Puneet Singh Vs. ACIT in ITA No. 141/Del/2017 decided on 11.10.2017** and observed that in this judgment it was held by the coordinate bench that the interest received on enhanced compensation is liable to taxed under the head "income from other sources". Ld. Pr. CIT then

examined the judgment of Hon'ble Supreme Court in Union of India Vs. Hari Singh and observed in para 44 as follows:-

*"44. The Hon'ble Supreme Court of India in the case of Union of India v. Hari Singh reported in [2018] 254 Taxman 126 (SC); [2018] 302 CTR 458 (SC) had admitted the appeal on the issue whether the tax at source is to be deducted or not on the amounts which are paid as compensation or enhanced compensation, etc., on account of compulsory acquisition of land under the provisions of Land Acquisition Act, 1894. It held that the respondents shall file appropriate returns before the Assessing Officer(s) in respect of Assessment Years in question within a period of two months from today in case they feel that the compensation in respect of land belonging to them which had been acquired was agricultural land, and claim refund of the tax which was deducted at source and deposited with the Income Tax Department. While determining as to whether the compensation paid was for agricultural land or not, the Assessing Officer(s) will keep in mind the provisions of Section 28 of the Land Acquisition Act, 1894 and the law laid down by this Court in CIT v. Ghanshyam (HUF) [2009] 182 Taxman 368/315 ITR 1 (SC). In the case of CJT v. Ghanshyam (HUF) the Hon'ble Court has allowed the appeal of the department in which case the Assessing Officer has assessed the interest received on enhanced compensation as income from other sources under the Income Tax Act, 1961. The Hon'ble Supreme Court nowhere held that interest received u/s 28 of the Land Acquisition Act, 1894 is capital receipt and not taxable as income. The Hon'ble Supreme Court in para 24 held that 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. It further stated that this vital difference needs to be kept in mind in deciding this matter and 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, the 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. The Hon'ble Supreme Court has nowhere held that interest received on section 28 of Land Acquisition Act, 1894 is not taxable under Income Tax Act, 1961. It is being held with humility that the view which states that the interest received u/s 28 of Land Acquisition Act, 1894 because of the judgement of Hon'ble Supreme Court in the case of Ghanshyam (HUF) is not taxable as income under Income Tax Act, 1961 is wrong and not tenable. Otherwise, also in the case*

*of Hari Singh, the only question was deduction of TDS by the collector on the land being acquired. The Hon'ble Supreme Court very clearly and categorically held to follow the case of Nalini v. Dy. Collector, Land Acquisition 2006 (4) ILR Kerala 229 (para 6) wherein it has been laid down by Hon'ble Kerala High Court that the Land Acquisition Court has no jurisdiction to decide that issue and that is a matter to be decided by the Income- tax Officer, hence the order passed by the court below is correct and the remedy available to the petitioner is to get the TDC from the Land Acquisition Officer and claim refund from the Income Tax Officer."*

11. Consequently, it observed in para 55 and 56 of its order that there was semblance of enquiry and that too, in a very slipshod manner by the Id AO. It will pertinent to reproduce relevant para no. 55 and 56 herein as follows:-

*"55. It is clear that Assessing Officer had done only a semblance of enquiry and, that too, in very slipshod manner and Assessing Officer had accepted version of assessee without proper enquiry, as a result of which substantial amount of taxable income was not brought to tax. The Assessing Officer mechanically and casually accepted what the assessee wanted him to accept without any application of mind on the issue of (i) taxability of interest on the enhanced compensation (ii) deposits in the bank accounts. The evidence available on record shows that the returns of the assessee were not objectively examined or considered by the Assessing and it is because of such non-consideration of the issues on the part of the Assessing Officer that the revised return filed by the assessee stood automatically accepted without examination, verification and investigation in scrutiny proceedings. The assessment order is clearly erroneous as it was passed without proper examination or enquiry or verification or objective consideration of the claims made by the assessee and the Assessing Officer has completely omitted to examine the issues in question from consideration and made the assessment in an arbitrary manner.*

*56. Non holding such inquiry as is normal and not applying mind to relevant material would certainly be 'erroneous' assessment warranting exercise of revisional jurisdiction. The AO did not record a specific finding in regard to the chargeability of tax on interest from enhanced compensation and chargeability thereof as income from "other sources",*

*sources of deposits in the bank account on the basis of which the case of the assessee was selected for scrutiny through CASS. It demonstrates the non-application of his mind and the PCIT is required to cancel the order under section 263. It is a settled position of law that the failure to make enquiries which are called for on the facts of the case would itself make the assessment erroneous and prejudicial to the interest of revenue. If this kind of order is not subject to review, it may hamper the implementation of the provisions of Income Tax Act in true and correct manner. The Commissioner u/s. 263 has been assigned the duty in the interest of justice to review such kinds of order. The order of the Commissioner of Income Tax itself is subject to judicial scrutiny and order of the Assessing Officer made u/s 143(3) in furtherance to the order u/s 263 is further subject to judicial scrutiny, thereby giving the full opportunity to the assessee to express its views before the appropriate authorities. The Department will not have an opportunity if this wrong order has to be accepted although erroneous and prejudicial to the interest of revenue because the Assessing Officer has expressed his opinion although it may be on wrong assumption of facts and application of law."*

12. Thus, the Id Revisional Authority observed that in the light of amended provisions of section 263 the order passed is erroneous and prejudicial to the interest of revenue and liable to be interfered u/s 263 of the Act. Accordingly, referring to the various judicial citations to exercise powers of Revision u/s 263 of the Act in case of lack of enquiry, the Id Revisional Authority directed the Id AO to make further enquiry as per the observation of the Id Revisional Authority in the impugned order.

13. The assessee is in appeal raising following **grounds of appeal** as reproduced below from the lead case argued on behalf of the assessee and revenue in ITA No. 1063/Del/2022, assessee Subhash Chand Dhingra, for Assessment Year 2017-18:-

"1. *That on the facts and circumstances of the case and in law, the order dated 29.03.2022 by the Principal Commissioner of Income Tax [‘PC IT’], under section 263 of the Income Tax Act, 1961 (‘the Act’) setting aside the assessment order dated 14.11.2019 passed by the Assistant Commissioner of Income Tax, Circle 4(1)*

*Gurgaon, [‘ACIT or “the Assessing Officer”] as erroneous and prejudicial to the interest of the Revenue is without jurisdiction, bad in law and void-ab-inttio.*

- 2. That on the facts and circumstances of the case and in law, the PCIT erred in exercising jurisdiction under section 263 in setting aside the issue of taxability of interest of enhanced compensation, which was discussed and scrutinized by the Assessing Officer while framing the assessment order under section 143(3) of the Act,*
- 3. That the PCIT erred on facts and in law, so much so that, the assessment order passed by the Assessing officer do not satisfy the statutory twin conditions prescribed down under section 263 of the Act, viz., (a) the order is erroneous; and (b) the order is prejudicial to the interest of Revenue.*
- 4. That the PCIT erred in law by ignoring the fact that the twin conditions are to be cumulatively satisfied to exercise revisionary jurisdiction under section 263 of the Act; thereby ignoring the dictum law laid down by the Hon'ble Supreme Court in the case of Malabar Industrial Co, Ltd. vs. CIT: 243 ITR 83 (SC); CIT v. Max India Ltd. 295 ITR 282 (SC) and CIT v. Kwality Steel Supplies Complex: 395 ITR I (SC).*
- 5. That the PCIT erred on facts and in law in exercising the revisionary jurisdiction under section 263 by not appreciating that the assessment order was passed by the assessing officer following the reasoning of the Commissioner of Income Tax (Appellate) - 1, Gurgaon [being superior appellate authority] in the case of Ashok Kumar Dhingra (brother of the assessee) for the A.Y. 2016-17. Being so the assessment order passed under section 143(3) on 14.11.2019 was not amenable to revision under section 263 of the Act.*
- 6. That on the facts and circumstances of the case and in law, the PCIT erred in exercising jurisdiction under section 263 in respect of the issue of taxability of interest of enhanced compensation, which was duly supported by judicial precedents and at best, therefore, could be said to be debatable ousting the jurisdiction under section 263 of the Act.*
- 7. That on the facts and circumstances of the case and in law, the PCIT erred in exercising jurisdiction under section 263 without appreciating the original assessment order was passed under the supervision of Commissioner, therefore, it cannot be re-stated by the*

*PCIT that the assessment order passed was without any application of mind. [Hari Iron Trading v. CIT: 263 ITR 437 P&H]*

8. *That the PCIT erred on facts and in law in not appreciating the nature of receipt of interest received on enhanced compensation under section 28 of the Land Acquisition Act 1894, is of capital in nature and therefore not taxable as interest. Ergo, the PCIT erred in setting - aside the assessment order without recording the prima facie finding on merits.*
9. *That the PCIT erred on facts and in law in not appreciating that the requisite enquiry was conducted by the Assessing Officer while allowing the exemption under section 10(37) of the Act and also no error, in fact, was pointed out by the PCIT in the said order of assessment,*
10. *That the PCIT erred on facts and in law in not appreciating that even if the Assessing Officer has not specifically mentioned that he has examined/ verified a particular issue in the assessment order, that would not ipso facto mean that there was non-application of mind on the part of the assessing officer on this issue. [Refer; Hari Iron Trading Co. v. CIT: 263 ITR 437 (P&H); CIT v. Eicher Ltd.: 294 ITR 3 IO(Deh); CIT v. Anil Kumar: 335 ITR 83 (Del.); CIT v. Gabriel India Ltd.: 203 ITR 108 (Bom.)]*
11. *That the PCIT erred in not following the binding principle laid down by the Hon'ble Supreme Court in the case of CIT vs. Ghanshyam: 315 ITR 1 and in various other judgements squarely applicable to the facts of the case of the appellant herein.*
12. *That the PCIT erred on facts and in law in not appreciating that Explanation 2 to section 263 of the Act is not applicable in the present facts."*

14. **Heard and carefully perused the record on Bench.**

15. **Submission for appellants.** On behalf of the assessee the Id counsel submitted that in the assessment proceedings all the relevant documents like copy of notices/ certificate from Land Acquisition Officer (LAO), revenue documents showing the land being agriculture in nature and that interest received was one u/s 28 of the Land Acquisition Act, 1894, were filed. It was submitted, by reliance placed on the revised return, the fact that the assessee was claiming

benefit by virtue of judgment of Hon'ble Supreme Court in case of **CIT Vs. Ghanshyam Dass and Ors. 315 ITR 1 (SC)** was specifically mentioned in the revised return. Reference was also placed in the case of **Union of India Vs. Hari Singh (Civil Appeal No. 15041/2017 order dated 15th September 2017)**. It was submitted that the AO after considering the nature of land and nature of interest received, respectfully followed the judgment of Hon'ble Supreme Court in **CIT Vs. Ghanshyam (HUF) (supra)** and allowed the interest earned u/s 28 of the Land Acquisition Act u/s 10(37) of the Act.

16. It was submitted that when the Id AO had duly applied his mind to the fact and law, the Ld. Revisional authority has exceeded his jurisdiction to hold that there was no enquiry. Ld. Counsel specifically referred to the fact that 'lack of enquiry' and 'inadequate enquiry' are different and the facts brought on record by assessee in fact show there was sufficient enquiry, so the order cannot be regarded as erroneous on the basis of lack of the enquiry. It was specifically submitted that the twin condition for invoking provisions of section 263 of the Act must cumulatively be satisfied and reliance in this regard was placed on the judgment:-

- Malabar Industrial Co. Ltd. v. CIT : 243 ITR 83 (SC)
- CIT vs. Max India Limited: 268 ITR 128 (P&H) [affirmed in 295 ITR 282 (SC)]
- CIT vs. Kwality Steel Suppliers Complex: 395 ITR 1(SC)
- Hari Iron Trading Co. vs. CIT: 263 ITR 437 (P&H)
- Vimgi Investment (P) Limited: 290 ITR 505 (Del)
- CIT vs. Gabriel India Limited: 203 ITR 108 (Bom)

17. Ld Counsel submitted that merely because the Id AO has not specifically mentioned that he had examined/ verified particular issue in the assessment order would not ipso facto mean that there was

none application of mind on the part of the Ld. AO on such issue and reference was made on following judgments:-

- Hari Iron Trading Co. vs. CIT: 263 ITR 437 (P&H),
- CIT vs. Eicher Limited: 294 ITR 310 (Del.),
- CIT vs. Anil Kumar Sharma: 335 ITR 83 (Del.),
- CIT vs. Gabriel India Limited: 203 ITR 108 (Bom)].

18. It was further submitted that the Id Pr. CIT cannot substitute his opinion in place of that of the AO to invoke his exceptional powers u/s 263. Reliance was also placed in this regard on the following judgments:-

- CIT vs. Sunbeam Auto Ltd.: 332 ITR 167 (Del.)
- CIT vs. Anil Kumar Sharma: 335 ITR 83 (Del.)
- CIT vs. Ganpat Ram Bishnoi: 152 Taxman 242 (Raj.)
- CIT vs. International Travel House: 344 ITR 554 (Del.)
- CIT vs. Vikas Polymers: 341 ITR 537 (Del.)
- Fab India Overseas vs. CIT: 244 CTR 380 (Del.)
- CIT vs. Vodafone Essar : 212 Taxman 184 (Del.)
- CIT vs. Arvind Jewellers 259 ITR 502 (Guj.)
- CIT vs. Ratlam Coal Ash Co. 171 ITR 141 (MP)
- CIT vs. Mehrotra Brothers 270 ITR 157 (MP)
- CIT vs. Associated Food Products (P) Ltd. 280 ITR 377 (MP)
- CIT vs. Girdhari Lai: 258 ITR 331 (Raj.)
- CIT vs. Raman Singh: 73 DTR 297 (MP.)
- CIT vs. Development Credit Bank Ltd: 323 ITR 206 (Bom.)
- CIT vs. New Delhi Television Ltd.: 262 CTR 604 (Del.)

19. On merits the Id counsel submitted that in the case **of CIT v. Ghanshyam (HUF)**, the Hon'ble Supreme Court held in unequivocal terms that the additional amount under section 23(1 A), solatium under section 23(2) and interest on excess compensation under

section 28 of the Land Acquisition Act form part of enhanced compensation under section 45(5)(b) and, therefore, is subject to tax under section 45(5) in the year of receipt. No contrary view is taken by the Supreme Court in the subsequent judgments and as on the date, law is fairly settled that the amount of interest received under section 28 of the land Acquisition Act is in the nature of capital gain. In this set of circumstances, it does not admit of any doubt as to the nature of receipt by way of interest under section 28 of the Land Acquisition Act in the hands of the appellant or the applicability of the Act to such amount.

20. It was submitted that section 45(5) of the Act makes no reference to the nature of property that is acquired but it deals with the category of cases which falls in the description of 'capital assets'. However, section 10(37) exempts specifically an income chargeable under the head 'capital gains' arising from the transfer of agricultural land. It is, therefore, clear that once the Hon'ble Supreme Court directed the Assessing Officer in the case of UOI vs. Hari Singh: 254 Taxman 126 (SC) that after examining the facts to apply the provisions contained in the Act with a specific reference to the agricultural land stating that in case if it is found that the compensation was received in respect of the agricultural land, the tax deposited with the Department shall be refunded to these depositors.

21. It was submitted that provisions of section 2(28)A read with section 56(2)(vii), 57(iv) and section 145A of the Act were not applicable as the assessee has received interest u/s 28 of the Land Acquisition Act, 1894.

22. It was specifically submitted that the judgment of P&H High Court in case of **Mehendra Pal Narang V. CBDT (2020) 120 Taxman.com 400 (P&H)** is dated 19.02.2020 while the assessment were concluded on 14.11.2019. Thus, the Id AO had rightly

considered the provisions of law as applicable then and benefitted the assessee.

23. It was submitted even otherwise when the two views are possible and datable that cannot be basis for holding an order to be erroneous. Reliance in this regard was placed on the following judgments:-

- CIT v Kwalitiy Steel Suppliers Complex: 395 ITR 1 (SC)
- CIT v. Kelvinator of India Ltd: 332 ITR 231 (Del)
- CIT v. DLF Limited: 350 ITR 555 (Del.)
- CIT v. Ansal Properties & India (P.) Ltd.: 315 ITR 225 (Del.)

24. Relying the Hon'ble Bombay High Court in the case of PCIT v. Cartier Leafin Pvt Ltd: [2020] 286 Taxman 222 it was submitted that when records suggest that assessing officer has made due enquiry during assessment proceedings before allowing claim of the assessee and arrived at one of possible views, then proceedings under section 263 of the Act is bad in law. Reliance was also placed on order of the coordinate bench of this Hon'ble Tribunal in the case of Eicher Motors Ltd. [Erstwhile Eicher Goodearth Investment Ltd] vs. CIT: 86 ITR(T) 530 decision dated 25.01.2021.

25. Specifically referring to the fact that in immediately preceding year 2016-17 in the case of brother of the assessee, Shri Ashok Kumar Dhingra benefit has been extended by Id CIT(A) and no appeal has been preferred by the Revenue. Thus, the principles of consistency require following the same proposition of assessment in case of quasi error. Ld counsel submitted that Chandigarh Bench of ITAT in case of Balwinder Singh Vs. PCIT in ITA No. 648/Chd/2018 in the similar circumstances allowed the appeal and the issue is squarely covered.

26. **Submissions of Revenue.** On the other hand the Id DR submit that Ld. Pr. CIT has rightly exercise his powers. It was

submitted that when the issue repeatedly treated by the jurisdictional Punjab and Haryana High Court in favour of the revenue then the Id AO was supposed to follow the same. Ld DR relied judgement of coordinate bench **Sh. Puneet Singh, Karnal vs Acit, Karnal decided on 11 October, 2017, DELHI 'SMC' BENCH, ITA No. 141/DEL/2017 [A.Y. 2013-14]**, to contend that view of Coordinate bench at Delhi is that this interest is taxable.

27. **Findings on issues.** Giving thoughtful consideration to the matter on record and submissions as raised, the bench is of considered opinion that with regard to the fact of the case, there seems to be no dispute in the claim of the assessee that in the revised return filed by the assessee there was duly disclosed the fact that “during the year the assessee has received enhanced compensation to the tune of Rs. 23457253/- and interest of enhanced compensation of Rs. 35910400/- u/s 28 of Land Acquisition Act which is exempt from tax”. The validity to this claim was drawn from the decision of Hon’ble Supreme Court of India in the case of **Union of India and ors Vs. Hari Singh and ors in Writ No. 15041/2017** and following the decision of CIT(A)-1, Gurgaon in the case of **Virender Singh, S/o. Chattar Singh, Village Hassaru in appeal No. 460/2016-17** order dated 06.02.2018 for AY 2014-15. Hence, revised return was filed declaring interest income as exempt income.

28. Further in reply to the notice u/s 142(1) available at page no 14-17 of PB, again it was submitted as under:-

*"22.23 Regarding Difference in Income Tax Return and 26AS and reason for revising the return. The assessee received Interest on Enhanced Compensation to the tune of Rs. 35910400/- on which TDS was deducted to the tune of Rs. 3591040/-. The Income was claimed Exempt hence Difference in Total Income and 26AS-194A.*

*Earlier while filing the Original Return, the Interest received on Enhanced Compensation was offered for taxation under section 56 (2)(viii) in income from other sources and 50% deduction was claimed as per Section 57(iv) but later on there was judgment of Hon'ble Supreme Court in the case of Union of India Vs. Hari Singh and others and also the decision of CIT(A), Gurgaon in the case of Sh. Vijender Singh S/o Sh. Chatter Singh in Appeal No. 460/16-17 order dated 06-02-2018. Hence, following the decision of Hon'ble Supreme Court and CIT(A), Gurgaon, the assessee revised the return on 29-09-2018 and claimed the Interest Exempt.*

*Further I have to submit that Sh. Subhash Chand Dhingra along with oilier co-owner i.e. his three brothers namely Sh. Ashok Kumar Dhingra, Sh. Satish Chanel Dhingra, & Sh. Giriraj Dhingra received enhanced compensation in F.Y 2016-17 from State Government DRO-Cum-Lac Gurgaon.*

*The Share of Sh. Suhhash Chand Dhingra in Enhanced Compensation was to the tune of Rs. 2345^253/- and his share in interest on compensation was Rs. 35910400/-.*

*Regarding claim for exemption of interest received on compensation u/s 28 I have to submit the appeal of Sh. Ashok Kumar Dhingra brother and co-owner of the assessee for the A.Y. 2016-17 has been accepted in appeal vide appeal no. 387/18-19 on the ground that interest received u/s 28 on compensation for compulsory acquisition is exempt from tax. The copy of order is enclosed herewith at Page No. 41 to 58.*

*Regarding, certificate from the Department in this respect I have to submit that Interest received on compensation is appearing in 26AS statement. Copy of 26AS statement is attached at Page No. 26. The copy of certificate with statement of compensation received s enclosed herewith at Page No. 59 to 61 to prove that land has been acquired by the District Revenue Officer cum Land Acquisition Collector, Gurgaon.*

*The Copy of ITR of Dhingra Motors, Dhingra Automobiles, DGFC. Vinavak Fuel for the A.Y. 2017.-18 is enclosed herewith at Page No. 62 to 65.*

*Regarding interest received from DGFC Pvt. Ltd. to the tune of Rs. 3606053/- is 12% on the loan amount and interest paid to Suit. Krishna Dhingra to the tune of Rs, 470337/- and SCD & Sons to the tune of Rs. 54704A is about 9.5% on the loan amount Copy of account is enclosed at Page No 24 & 26. There*

*is no TDS liability on interest paid as there is no business activity.*

*I like to mentioned that original return was filed on 31.01.2018, where 50% deduction has been claimed on interest received on compensation. Copy of original ITR, Computation of income is attached at Page No. 1 to 6 of the paper book.*

*Then revise return has been filed on 29.09.2018 declaring interest income is exempt (copy enclosed at Page No. 9 to 13) which is to the tune of Rs. 12406303/- following the decision of Hon'ble Supreme Court of India and C1T(A)-R Gurgaon in the case of co-owner.*

*Hence, it is once again requested that assessment be framed on revise return and interest received on enhanced compensation be treated as exempt income."*

29. There upon the assessment was concluded. The assessment order is somehow silent of the fact of what specific enquires were raised in regard to this claim and how they were addressed by the assessee or on what basis the same were accepted by the Ld. AO. Expeditious will be to reproduce the assessment order itself in lead case ITA No. 1063/Del/2022, assessee Subhash Chand Dhingra:-

*"Original return of the income for AY 2017-18 was electronically furnished on 31.01.2018 with Acknowledgement Number 381145450310118, declaring an income of Rs. 3,01,05,170/-. Further a revised return of the income for AY 2017-18 was electronically furnished on 29.09.2018 with Acknowledgement Number 312813340290918, declaring an income of Rs. 1,21,49,970/- The return was accordingly processed u/s 143(1) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'). Subsequently, the case was selected for Limited Scrutiny by CASS. Notice u/s 143(2) was issued and served upon the assessee on 21.09.2019 by ITBA under e-assessment proceedings. Subsequently, notice u/s 142(1) along with questionnaires were issued on 27.09.2019 and 30.09.2019*

*The assessee is an individual having income from salary, house property and other sources. In response to various notices, the assessee made the submissions online during e-assessment proceedings. The submissions were studied and relevant documents were examined on test and check basis. Subject to the above observations, return of the assessee and replies filed by the assessee, the income is assessed as under:*

*Returned Income : Rs 1,21,49,970/-*

*Assessed Income : Rs 1,21,49,970/-*

*Assessed u/s 143(3) of the Income-tax Act, 1961 at income of Rs 1,21,49,970/- Give credit of prepaid taxes, charge interest u/s 243A, 234B, 234C and 234D as applicable as per provisions of the Act. Issue necessary forms i.e. Demand notice, challans etc.*

30. At the same time to conclude that interest received on compensation or enhanced compensation under the Land Acquisition Act, 1894 is to be treated as income from other sources and not under the head capital gains the Id CIT(A) while exercising revisionary powers has primarily relied on the judgment of various judgments of Hon'ble Punjab and Haryana High Court in **Karta Manjeet Singh (HUF) Vs. Union of India (2016) 65 taxmann.com 160** (Punjab and Haryana) was decided on dated 14.01.2014, **Karnail Singh (2010) 326 ITR 501** was decided on 13/8/2009 and **Sant Ram Vs. Union of India in (2010) 328 ITR 77** was decided on 20/10/2009, **Tuhi Ram Vs. Land Acquisition Collector (1993) 66 taxman 127** was decided on 13/12/1991 and ITAT order in **Puneet Singh Vs. ACIT in ITA No. 141/Del/2017 is of 11.10.2017**. The date of decision in case of **Mahender Pal Narang Vs. CBDT 423 ITR 13 (P&H)** is of 19/2/20. As a matter of fact the assessment was concluded on 14.11.2019.

31. Thus it can be reasonably concluded that even before the judgment of **Mahender Pal Narang Vs. CBDT, (supra)**, the consistent view of Hon'ble Punjab and Haryana High Court has been that interest received on delayed payment of compensation under either Section 28 or u/s 34 is taxable as income from other sources in the year of the receipt under the act.

32. In regard to this controversy, which Ld AR, claims is a debatable point with divergent views, a coordinate bench in **ITA No. 499/Del/2021 Shri Pranav Saran Vs. ACIT**, relied by Ld. AR,

took notice of the same and after discussing the checkered history of litigation and judicial pronouncements, held as under:-

*"16. By the Finance Act (Number 2) Act 2009 with effect from 1 April 2010 there is an amendment Under the provisions of Section 56 (2) (viii) which provided that income by way of interest received on compensation or on enhanced compensation referred to in clause (B) of Section 145A is an income. A corresponding provision was also introduced u/s 57 (iv) providing for deduction of a sum equal to the 50% of the income chargeable to tax under the above provision. The provisions of Section 145A (B) was also introduced providing that interest received by the assessee shall be deemed to be the income of the year in which it is received. Subsequently with retrospective effect from 1.4.2017 The Finance Act 2018 provided that income by way of interest received on compensation or enhanced compensation is chargeable to tax as income from other sources Under the provisions of Section 56 (2) (viii) of the act.*

***17. Hon'ble High Court of Punjab and Haryana has taken a consistent view that interest received on delayed payment of compensation under either Section 28 or u/s 34 is taxable as income from other sources in the year of the receipt under the act.*** Such view was after considering the order of the Hon'ble Supreme Court in *Dr Shyam Lal Narula, Bikram Singh, (supra)*. In the cases of *Puneet Singh versus CIT (2019) 110 taxmann.com 16* and *Manjeet Singh HUF versus Union of India (2016) 65 taxmann.com 160*, wherein similar issue was involved, in those decisions the interest received u/s 28 of the land acquisition act was in question and it was held that same is chargeable to tax u/s 56 of the act. It further held that the decision of the Hon'ble Punjab and Haryana High Court in case of *CIT versus Bir Singh HUF* does not require any consideration in view of the judgment of the Hon'ble Supreme Court in case of *Ghanshyam HUF*. The Hon'ble High Court also held that in view of the authoritative pronouncement of the Hon'ble Supreme Court in case of *Shaymlal Narula, Govindraja Chetty, Amarjit Singh, Sunder and Bikram Singh, Rama Bai and K S Krishna Rao*, the assessee cannot derive any benefit from the observation made by the Hon'ble Supreme Court in the case of *Ghanshyam HUF*.

18. This issue arose before the Hon'ble Gujarat High Court in case of *Movaliya Bhikhubhai Balabhai vs. ITO (2016) 70 taxmann.com 45 (Gujarat)*, wherein it has been held that interest on compensation or enhanced compensation u/s 28 of the land acquisition act forms part of compensation and not an interest as contemplated Under the provisions of Section 145A of the act and therefore same are not taxable Under the head income from other sources and revenue was not justified in deducting tax at source u/s 194A of the act. Before the Hon'ble Gujarat High Court, revenue placed reliance upon the decision of the Hon'ble Punjab and Haryana High Court in case of *Hari Kishan versus Union of India* and *CIT versus Bir Singh HUF*. The reliance was also placed upon the decision of the Hon'ble Supreme Court in case of *Dr Sham Lal Narula, Govindaraju and Bikram Singh*. The Hon'ble Gujarat High Court after considering all the decisions of the various courts disagreed with the view taken by the Hon'ble Punjab and Haryana High Court and held that interest received u/s 28 of the income tax act is part of the compensation and is not an interest as contemplated u/s 145A of the income tax act and therefore same is not taxable u/s 56 (2) of the act.

19. An interesting fact was noted by the Hon'ble Gujarat High Court that Hon'ble Punjab and Haryana High Court in case of *Jagmal Singh versus State of Haryana* in civil revision number 7740 of 2012 on 18 Jul 2013 has clearly held that the interest u/s 28 is part of the compensation unlike u/s 34 of the act which is income. This was the solitary judgment of the Hon'ble Punjab and Haryana High Court taking a view that interest on compensation u/s 28 of the land acquisition act is not an income chargeable to tax as interest but is part of compensation. However, in the latest decision of Hon'ble Punjab & Haryana High Court in the case *Mahindra Pal Narang vs. CBDT (2020) 423 ITR 13* dated 19/2/2020 wherein the Hon'ble High Court considered the provisions of Section 10 (37), 56 (2) (viii), 57 (iv), 145A (b) of the income tax act. It rejected the reliance by the assessee on the decision of Hon'ble Supreme Court in *Ghanshyam HUF*. It further rejected the reliance by the assessee on the decision of the Hon'ble Gujarat High Court in *Movaliya's* case holding that the Hon'ble Gujarat High Court did not read properly the paragraph number 46.3 of the circular number 5 of 2010 where all interest received on

*compensation or on enhanced compensation shall be assessed as income from other sources in the year in which it is received. It further held that in view of the amendment to the provisions of the income tax act decision of the Hon'ble Supreme Court in the case of Ghanshyam does not come to the rescue of the assessee. It further held that the language of the income tax act with respect to the chargeability of interest as income is plain, simple and unambiguous and therefore no scope of taking outside aid for giving any interpretation to this subsection or clauses are required. Thus it held that interest received on compensation or enhanced compensation is to be treated as income from other sources and not under the head capital gains. Special leave petition against this decision has been dismissed by the Hon'ble Supreme Court.*

20. Thus, there are divergent views on this taxability of interest on the enhanced compensation awarded u/s 28 of the Land Acquisition Act wherein the Hon'ble Punjab & Haryana High Court has consistently taking a view that it is an income to be treated under the head 'income from other sources'. The Hon'ble Gujarat High Court has decided this issue in favour of the assessee following the decision of Hon'ble Supreme Court in the case of Ghanshyam (*supra*). **Since the AO of the present case falls under the jurisdiction of Hon'ble Delhi High Court, therefore following the dictum that, if one High Court is in favour of the assessee, then in absence of any jurisdictional High Court, that should be followed in favour of the assessee. Thus, ratio of Hon'ble Punjab & Haryana High Court may not have any binding precedent.** Thus, the interest on the enhanced compensation u/s 28 of the Land Acquisition Act is not taxable."

33. Furthermore, a Coordinate bench at Delhi in **Sh. Puneet Singh, Karnal vs Acit, Karnal decided on 11 October, 2017, DELHI 'SMC' BENCH, ITA No. 141/DEL/2017 [A.Y. 2013-14]**, which was relied by Ld. DR, had held as follows;

"15. The decisions of the Hon'ble P&H High Court in the case of Manjeet Singh and in the case of Sunderlal and Anr. Dated 21.09.2015 (*Supra*) and in the case of Jagmal Singh and Ors. (*Supra*) being the latest decisions of Hon'ble Jurisdictional Punja b and Haryana High Court on this issue and these decisions having considered the decision of the Hon'ble

*Supreme Court in the case of CIT vs. Ghanshyam (Supra) and also considering the fact that the Hon'ble Supreme Court has dismissed the SLP filed in the case of Manjit Singh (HUF) (Supra), it is held that the interest received u/s 28 of the Land Acquisition Act is not exempt under the act as it could not partake the character of compensation for acquisition of agricultural land. It is held that the interest received on enhanced compensation in the appellant's case is liable to tax under the head income from other sources. Accordingly, the grounds of appeal raised by the assessee are dismissed."*

34. The bench is of considered opinion that certainly judicial decision subsequent to the assessment order may not be the valid basis for exercising the revisionary powers. However, in the case in hand the assessment order is infact silent as to the fact that if the Ld. AO had made any enquiry into the issue and if Ld. AO had taken into consideration the judicial pronouncements, relied on behalf of the assessee, then for what substantial reasons the judgments of jurisdictional High Court, i.e Hon'ble Punjab and Haryana High Court in favour of Revenue have not been relied.

35. Pertinent here is to take note of the law that decision of jurisdictional High Court is binding, even if contrary view is held by non-jurisdictional High Courts. It is also now settled that if there is conflicting views rendered by different High Courts, the view taken by the jurisdictional High Court is binding in the jurisdictional area of the respective High Court. **The Hon'ble Bombay High Court in the case of Subramaniam vs. Siemens India Ltd. (1985) 156 ITR 11 (Bom.)** has held that the AO is supposed to follow a decision of the Supreme Court and of the High Court of the State within whose jurisdiction he is functioning and in the case where there is conflict of views between different High Courts, AO 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.)** has further 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.

36. There is no doubt to the legal proposition, as cited by Ld Counsel of appellant, that the assessment order need not be disclosing all the facts and reasoning for accepting the claim. But when the question is of taking a call on the basis of judicial pronouncements qua the issues, then to the mind of this Bench, there should be very categorical reasoning reflected in the assessment order that for what good reasons a particular view is accepted to benefit or deny the claim. The absence of same can very well be taken to be a case to assume there was no enquiry. The questions of fact may not require much reasoning and can be collated and correlated by reading the notice and replies, but how a legal controversy is dealt with by Ld. AO, needs to be exhibited and reflected in the form of reasons recorded in the assessment order. That not being done, the Ld. Revisional Authority was right to conclude that Ld. AO has not taken into consideration the relevant and prevalent principles of law as laid by Jurisdictional High Court in favour of Revenue. Assessment in the absence of such reasoning is certainly erroneous and prejudicial to the interest of the Revenue.

37. Thus, without any doubt the matter in dispute was one which had divergent views. Certainly in one of the connected cases one of the CIT(A) has also given benefit to brother of the assessee but the matter of fact is that as far as the Hon'ble jurisdictional Punjab and Haryana High court's view is concerned the consistent view was that it is an income to be treated under the head 'income from other sources'. The co-ordinate benches at Delhi have also recognized the same. So the Id AO, while exercising powers in regard to compensation for the land falling in the State of Haryana, was supposed to follow the same. If he intended to distinguish it should

have been reflected in the order. A case of lack of enquiry by the Ld. AO, as held by the Ld. Revisional Authority, needs to be sustained. This discussion thus distinguished all the case laws cited on behalf of the Ld. AR. Thus, the grounds raised by the assessee have no substance. **The appeals are dismissed.**

Order pronounced in the open court on 07/02/2023.

-Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

-Sd/-  
(ANUBHAV SHARMA)  
JUDICIAL MEMBER

Dated: 07/02/2023  
A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR  
ITAT, New Delhi