

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
AND
MS. PADMAVATHY S, ACCOUNTANT MEMBER**

ITA No. 614/Coch/2022
Assessment Year : 2015-16

Shri Anvar Ali Poolakkodan, Poolakkodan House, Randathani (PO), Malappuram District – 676 510. PAN: BCTPP4669J	Vs.	The Income Tax Officer, Ward – 1 & TPS, Tirur.
APPELLANT		RESPONDENT

Assessee by	:	Shri K Kittunair, Advocate
Revenue by	:	Smt J M Jamuna Devi, Sr. AR

Date of Hearing	:	11-01-2023
Date of Pronouncement	:	30-03-2023

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal is filed by assessee against order dated 22.03.2022 passed by NFAC, Delhi for A.Y. 2015-16 on following grounds of appeal:

<i>Grounds of Appeal</i>	<i>Tax effect relating to each ground of appeal (see note below)</i>
<ol style="list-style-type: none"> 1. CIT(A) erred in considering the nature of interest u/s 28 of LA Act which was explained by SC CIT V Ghanshyam(HUF). 2. Supreme Court in Mahender Pal Narang V CBDT dismissed the SLP filed against the order of Punjab and Haryana HC which held interest u/s28 is to be treated as income from other sources. SC dismissed SLP in limeline.If such an order is non-speaking, it is not a declaration of law. 3. Gujarat High Court in Movaliya Bhikhubhai Balabhai V ITO analysed nature of Sec28 interest and whether the amendment to sec 145A of IT Act changes the premise set up by CIT V Ghanshyam(HUF),It held interest u1s28 partakes the character of compensation. 4. The Delhi ITAT in Shri Pranav Saran V ACIT held if one High Court is in favour of the assessee,then in absence of any jurisdictional High Court, that should be followed. 5. The assessee craves to add /alter any of the grounds before or at the time of hearing. 6. Detailed Grounds of Appeal are enclosed as Annexure to Memorandum of Appeal 	490440
<i>Total tax effect (see note below)</i>	490440

2. Brief facts of the case are as under:

2.1 Assessee is an individual and filed his return of income for year under consideration on 26.11.2015 declaring total income of Rs.2,93,240/-. The case was selected for scrutiny and the same was processed u/s. 143(1) of the act. The Ld.AO called for

various details from which it was noticed that Hon'ble Subordinate judge of Kozhikode awarded additional compensation of Rs.29,19,31,155/- with interest at the rate of 9% pa. for a period of one year from 23.04.2014 and thereafter at the rate of 15% pa. till the date of payment. The Ld.AO noted that assessee was one of the co-owners of the land acquired by Government of Kerala and assessee's share amounted to Rs.66,30,466/- being the additional compensation along with interest on the compensation being Rs. 31,91,464/- for the relevant Assessment Year. The Ld.AO observed that assessee had not declared long term capital gain and interest income earned by assessee was not declared as income from other sources. Accordingly a notice u/s. 148 of the act was issued on 01.06.2018, as according to the Ld.AO income has escaped assessment within the meaning of section 147 of the act. Assessee in response to the notice u/s. 148, filed the return of income declaring total income of rs.2,93,240/- and other exempted income of Rs.98,21,930/-.

2.2 Assessee also submitted that, the assessee claimed entire amount received as exempt u/s. 10(37) including the interest received as the said land acquired was agricultural land. On verification of the various details, the assessing officer was convinced regarding the principle amount received by assessee as additional compensation to be exempt u/s. 10(37) of the act however in respect of the interest of Rs.31,91,464/- the Ld.AO was of the opinion that as per section 145A(b) and 56(2)(vii) w.e.f. 01.04.2010, the income by way of interest on compensation or enhanced compensation is taxable in the year of receipt and the

same is assessable under the head income from other sources. The assessee was issued a preassessment notice proposing to assess the income by way of interest received on additional compensation amounting to Rs.32,91,464/- under the head income from other sources.

2.3 The Ld.AO in the proposed notice allowed deduction u/s. 57(iv), equivalent to 50% of the interest. The Ld.AO thus computed the proposed addition as under:

<i>Interest received on additional compensation</i>	- Rs.31,91,464
<i>LESS: Deduction u/s. 57(iv) (50% of the interest)</i>	<u>-Rs.15,95,732</u>
<i>Income from Other Sources</i>	Rs.15,95,732

2.4 The assessee relied on various decisions of *Hon'ble Supreme Court* in case of *CIT vs. Ghanashyam* reported in (2009) 315 ITR 1, wherein it is held that, interest u/s. 28 of LA Act forms part of the land acquisition amount. The Ld.AO after considering various submissions of the assessee rejected the same and made addition to the extent of 50% of the interest received by assessee on the additional compensation.

2.5 Aggrieved by the order of the Ld.AO, assessee filed appeal before the Ld.CIT(A).

3. Before the Ld.CIT(A), assessee filed various submissions and relied on various decisions of *Hon'ble Supreme Court*. After considering all the details filed by assessee, the Ld.CIT(A) held as under:

“30. The aforesaid analysis of the issue at hand through the catena judicial pronouncements on the subject discussed above, one can only arrive at the inescapable conclusion that the interest received u/s 28 of the Land Acquisition Act shall partake the character of revenue

receipt as per the extant provisions of section 56(2)(viii) of the Income-tax Act, 1961. In this view of the matter, no infirmity is found in the action of the A.O. in treating the interest of Rs.31,91,464/- as revenue receipt eligible to tax u/s. 56(2)(viii) read with section 57(iv) of the Act. Consequently, the ground of appeal raised by the appellant in this behalf fails.”

4. Aggrieved by the order of the Ld.CIT(A), assessee is in appeal before this *Tribunal*.

4.1 All the grounds raised by the assessee are interconnected to one single issue being disallowance of interest received by assessee by holding it to be revenue in nature.

4.2 Before us, the Ld.AR contended that the interest is received by assessee on the excess amount u/s. 28 of the Act, and therefore assumes the character of compensation. The Ld.AR submitted that, interest received u/s. 34 is for delay in making payment which is different from the interest received u/s. 28 of the Act. The Ld.AR thus submitted that, interest u/s. 28 is a part and parcel enhanced value of the land. It is thus submitted that section 28 of the LA Act, 1984, applies in respect of excess amount determined by the court, and therefore, is compensatory in nature.

4.3 On the contrary, the Ld.DR submitted that, the entire interest received by the assessee will not partake the nature of compensation or the enhanced compensation. It is submitted by the Ld.DR that, the interest received by assessee includes 2 components;

- 1) Interest on the compensation at 9% and
- 2) The other part is an interest at 15% pa till the date of payment.

4.4 He submitted that the nature of the interest received by the assessee has been rightly held to be revenue in nature by the authorities below and has been rightly taxed under the head "Income from other sources".

We have perused the submissions advanced by both sides in the light of records placed before us.

4.5 There is no dispute regarding the principle compensation received by assessee pursuant to an award passed by Subordinate judge of Kozhikode. The award included additional compensation with interest at the rate of 9% pa. for a period of one year from 23.04.2014. The award also included interest of 15% pa. till the date of payment. In our considered view, the interest of 9% received by assessee for a period of one year on the additional compensation was by way of accretion to the value and therefore would not fall within the ambit of the expression "interest" as envisaged u/s. 145A(b) of the act. In support of this, we refer and rely on section 28 of the Land Acquisition act, 1894 that reads as under:

"Section 28

'Collector may be directed to pay interest on excess compensation - If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the court may direct that the Collector shall pay interest on such excess at the rate of nine per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court'."

7. Now referring to section 34 of Land Acquisition act, it is clear that an additional interest of 15% is payable on the amount of compensation which has not been paid or deposited before the

expiry of the period of one year. For the sake of convenience, we shall reproduce the said section along with proviso herein.

“Section 34

“Payment of interest - When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of nine per centum per annum from the time of so taking possession until it shall have been so paid or deposited:

*Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, **interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry**”.*

Emphasis supplied.”

8. On the reading of section 34 along with the proviso, it is clear that any interest received by the assessee at the rate of 15% for not depositing the compensation within the time frame as directed by the court would assume the character of income. We therefore are of the opinion that only such interest amount i.e. attributed for delayed deposit of the compensation can be treated as income in the hands of the assessee.

9. In the present facts of the case, the Ld.AO treated the entire interest received to be income from other sources on which benefit of deduction u/s. 57(iv) has been allowed as deduction. This computation of disallowance is not in accordance with law. What could be considered for disallowance is only in respect of the interest amount computed at 15%, received by the assessee. We therefore, remand this issue to the Ld.AO for necessary verification. The assessee is directed to file the award passed or

the intimation issued by the Collector bifurcating the interest payment computed at 9% and/or 15%. The Ld.AO is directed to consider only the interest that is computed on the compensation at 15% for disallowance, and to grant necessary deduction u/s. 57 of the act, if any.

Accordingly, the grounds raised by the assessee stands partly allowed for statistical purposes.

In the result, the appeal filed by the assessee stands partly allowed for statistical purposes.

Order pronounced in open court on 30th March, 2023.

Sd/-
(PADMAVATHY S)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Cochin,
Dated, the 30th March, 2023.
/MS /

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|---------------|---------------------|
| 1. Appellant | 4. CIT(A) |
| 2. Respondent | 5. DR, ITAT, Cochin |
| 3. CIT | 6. Guard file |

By order

Assistant Registrar,
ITAT, Cochin