

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

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No. 163/Asr/2023**  
Assessment Year: 2017-18

Income Tax Officer  
Ward-1, Hoshiarpur

**(Appellant)**

**Vs.** Sh. Harpinder Singh Gill,  
C/o M/s Delta Rubber Industry,  
Focal Point, Hoshiarpur  
[PAN: AAPPG 6615A]  
**(Respondent)**

Appellant by : None (Written submission)

Respondent by: Sh. S. M. Surendranath, Sr. DR

Date of Hearing: 13.07.2023

Date of Pronouncement: 27.07.2023

**ORDER**

**Per Dr. M. L. Meena, AM:**

This appeal has been filed by the Revenue against the order of the Ld. CIT(A) National Faceless Appeal Centre (NFAC), Delhi dated 28.03.2023 in respect of Assessment Year 2017-18.

2. The Revenue has raised the following grounds of appeal:

- “1. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs. 2,97,13,906/- made by the AO on account of compensation received on compulsory acquisition of land as Short Term Capital Gain claimed by assessee as exempt income under RFCTLAAR Act on the basis that the circumstances in which the appellant had purchased the land as highlighted by the AO in his order are not at all relevant to decide on the issue of taxability of the award and as soon as the award satisfies the conditions mandated under section 96 of the RFCTLAAR Act, the compensation received is eligible for exemption from Income-tax without considering the fact that assessee has acted on a pre-designed and manipulative manner in order to make evasion of taxes and hatched a conspiracy for abetment of tax evasion by way of colourful device. Decision of Hon'ble Supreme Court in the case of Commnr. Of Customs (Preventive) Vs. M/s AafloatTextiles(I) Pvt. Ltd. And Ors. In Civil Appeal No. 2447 of 2007 is attracted in this case.
2. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in holding that it is not a case where the appellant is trying to pass on a taxable receipt as an exempt income by misrepresenting the facts, or is trying to introduce his own unaccounted money in his books under the garb of a tax free receipt. The money received is undoubtedly on account of compulsory acquisition of land, and therefore, is tax free. The Ld. CIT(A) has not appreciated the fact that the assessee has not suffered any displacement or loss of livelihood and hence compensation received was not as per spirit of RFCTLAAR Act and hence beyond the scope of CBDT's circular 36/2016.
3. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in holding that if the observations of the AO regarding the circumstances under which the land was purchased in the full Knowledge of its imminent acquisition, and with some sort of collusion are correct, the appropriate remedy is to review the award itself by the competent authority. However, as long as the award stands, in view of the specific provisions of the RFCTLAAR Act read with CBDT circular no. 36 (supra), it cannot be brought under the tax net, as per the extant law. The Ld. CIT(A) has not appreciated the fact that it has been clearly mentioned in the RFCTLAAR Act that amount received against the acquisition is only

*compensatory, it does not provide any artificial enrichment to the recipient. It does not contain a profit and income element. Accordingly, it has been kept exempt from any types of taxes. The assessee has not suffered any displacement or loss of livelihood. He has invested only with the knowledge and eye on the exempt income which is just an outcome of fraud committed by the assessee with deliberate design.*

4. *That it is prayed that the order of Ld. CIT(A) be set aside and that of the Assessing Officer restored.*
5. *That the appellant requests for leave to add or amend or alter the grounds of appeal before the appeal is heard and disposed of.”*

3. Briefly, the fact as per record are that the appellant, is an individual, having income from the firm M/s Delta Rubber as a partner, filed his return of Income for the relevant Assessment Year (A.Y.) 2017-18, on 30.03.2018 declaring total income of Rs. 8,64,060/-. Apart from the said income assessee has also disclosed income from capital gain amounting to Rs 3,20,51,226/- that was received by him on account of total compensation received from NHAI from SDM, Hoshiarpur against compulsory acquisition of his land that was claimed exempted for the purpose of tax as per circular no. 36/2016 issued by the CBDT and the same was assessed and processed by the department u s 143(1). Thereafter the case of the assessee was selected for compulsory scrutiny. The case was selected for scrutiny to verify the claim of Payment of compensation on acquisition of Immovable property, High rate of refund of TDS, and Large Increase in capital.

Being not satisfied with the reply of the assessee, the Assessment for the A.Y. 2018-19 was completed by the AO on 30.12.2019 at total income of Rs. 3,05,77,966/-.

4. The assessee being aggrieved with the Assessment Order, went in appeal before the Ld. CIT(A) who has granted relief to the assessee by observing as under:

5.1 Submissions of the appellant are considered carefully. The undisputed facts of the case are that during the year, the appellant received compensation totaling to Rs. 3,20,51,226/- on compulsory acquisition under Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013(RFCTLARR Act) of land belonging to the appellant. The appellant, in his Return of Income claimed the said receipt as exempt in terms of CBDT circular No. 36 of the year 2016 dated 25.10.2016. However, in the assessment order, the AO denied the claim of the appellant by essentially relying up on following reasons:

1. 1. The aim and objectives, and the purpose and scope of the RFCTLAAR Act was to provide adequate compensation to affected persons for their rehabilitation and resettlement, and not for undue enrichment;
2. The assessee's claim is not consistent with the letter and spirit of the RFCTLAAR Act. When no loss was suffered by assessee, he had no case for exemption. Since the land was purchased immediately before and after the two notifications, of which the assessee had information, his purported claim of loss, for development of a residential colony, not substantiated by any evidence, was all a fabricated story to get undue benefit. Hence it was beyond the scope of CBDT circular;
3. The matter of some people getting undue enrichment on account of supposed inside information was also under investigation by other agencies.
4. Hence, it was not a normal case of compensation to a sufferer but a colorable device and abuse of law.

5.2 The matter has been examined. There is no dispute that the land belonging to the appellant was acquired by the Government (NHAI) as per the provisions of RFCTLAAR Act, and in lieu thereof, he received compensation of Rs. 3,20,51,226/-. Section 96 of the Act mandates that on compulsory acquisition of land, compensation provided to the owner of the land shall be exempt from Income-tax:

**96. Exemption from income-tax, stamp duty and fees.**-No income-tax or stamp duty shall be levied on any award or agreement made under this Act, except under section 46 and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.

5.3 Also, subsequent to the enactment of the RFCTLAAR Act, by way of circular no. 36 of 2016, Central Board of Direct Taxes (CBDT) mandated that:

*“3..... The matter has been examined by the Board and it is hereby clarified the compensation received in respect of award or agreement which has been exempted from levy of income-tax vide section 96 of the RFCTLAAR 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.”*

5.4 A conjoint reading of section 96 of the RFCTLAAR Act and circular no. 36 of 2016 (supra) makes it clear that any compensation paid as an award made under the RFCTLAAR Act shall be exempt from the levy of Income-tax, unless it falls in section 46 of the RFCTLAAR Act.

5.5 Section 46 of the RFCTLAAR Act is reproduced below for reference:

**46. Provisions relating to rehabilitation and resettlement to apply in case of certain persons other than specified persons.**—(1) Where any person other than a specified person is purchasing land through private negotiations for an area equal to or more than such limits, as may be notified by the appropriate Government, considering the relevant State specific factors and circumstances, for which the payment of Rehabilitation and Resettlement Costs under this Act is required, he shall file an application with the District Collector notifying him of—

(a) intent to purchase;

(b) purpose for which such purchase is being made; (c) particulars of lands to be purchased.

(2) It shall be the duty of the Collector to refer the matter to the Commissioner for the satisfaction of all relevant provisions under this Act related to rehabilitation and resettlement.

(3) Based upon the Rehabilitation and Resettlement Scheme approved by the Commissioner as per the provisions of this Act, the Collector shall pass individual awards covering Rehabilitation and Resettlement entitlements as per the provisions of this Act.

(4) No land use change shall be permitted if rehabilitation and resettlement is not complied with in full.

(5) Any purchase of land by a person other than specified persons without complying with the provisions of Rehabilitation and Resettlement Scheme shall be void ab initio:

Provided that the appropriate Government may provide for rehabilitation and resettlement provisions on sale or purchase of land in its State and shall also fix the limits or ceiling for the said purpose.

(6) If any land has been purchased through private negotiations by a person on or after the 5th day of September, 2011, which is more than such limits referred to in sub-section (1) and, if the same land is acquired within three years from the date of commencement of this Act, then, forty per cent, of the compensation paid for such land acquired shall be shared with the original land owners.

Explanation.—For the purpose of this section, the expression—

(a) —original land owner refers to the owner of the land as on the 5th day of September, 2011;

(b) —specified persons includes any person other than— (i) appropriate Government; (ii) Government company; (iii) association of persons or trust or society as registered under the Societies Registration Act, 1860 (21 of 1860), wholly or partially aided by the appropriate Government or controlled by the appropriate Government.

5.6 Section 46 of the Act deals with application of provisions relating to rehabilitation and resettlement in case of land purchased through private negotiations, later on extended to those cases as well where land is purchased by persons other than the Government, Government Company and Trust or Society aided or controlled by the Government.

5.7 Therefore, what emerges from section 96, and section 46 of RFCTLAAR Act and CBDT circular no. 36 of 2016 (supra) is that no income-tax is to be levied on any award made under the RFCTLAAR Act except under Section 46, which deals with the purchase of land by a person other than a specified person through private negotiations. The benefit of Section 96 is not available when a land is purchased through private negotiations by a person other than a specified person under Section 46(1).

5.8 Therefore, in case other than those covered by Section 46 of the 2013 Land Acquisition Act, the levy of income-tax is barred by Section 96. It is not a case of the AO that the acquisition of land related to the present appeal falls within the purview of section 46 of the RFCTLAAR Act. It being so, the law is very clear in terms of section 96 of the RFCTLAAR Act read with circular no. 36 of 2016 - that no Income-tax can be levied on such award.

5.9 The circumstances in which the appellant had purchased the land as highlighted by the AO in his order are not at all relevant to decide on the issue of taxability of the award. Section 96 (and, indeed, circular no 36 of 2016) places no fetters on the blanket exemption granted to the award which is not covered under section 46 of the RFCTLAAR Act. As soon as the award satisfies the conditions mandated under section 96 of the RFCTLAAR Act, the compensation received is eligible for exemption from Income-tax.

5.10 Further, the AO has based his addition on the assertion that *the amount of compensation is not for suffering any displacement or loss of livelihood but a result of undue enrichment; Accordingly, it is not as per the spirit of the RFCTLAAR Act particularly section 96.* Without going into the veracity of the two versions of the events as put forward by the appellant and the AO, it is noted that if there has been any violation of legal provisions or moral spirit of RFCTLAAR Act or for that matter any law in force for the time being, except Income-tax Act, 1961, the appropriate course of remedial or penal action can only be taken under those laws/Acts by the designated authorities competent to do so. In the instant case, it is for the authority competent to grant the award to re-examine the issue, if it deems fit. However, as long as there is an award under section

96 of the RFCTLAAR Act which does not fall within the purview of section 46, the same shall be exempt from the levy of Income- tax.

5.11 It is settled that morality is an approach, and it cannot be converted into principles. Under Indian laws, subjects are not taxable according to the spirit of the statute but only by its plain words. Courts are not concerned with morality while interpreting law, but rather with the letter of the law. Further, morality in law interpretation can come into picture *only* when it is felt that there is an ambiguity in law. Interpretation of law is indifferent to the issue of morality, unless such moral principles are implicit in the scheme of legal or contractual provisions that they are required to deal with. In this regard, reliance is placed on the decision of Hon'ble Supreme Court in the case of *Dr. T.A. Quereshi vs. CIT (SC) (2006) (287 ITR 547)* in which it was held by the Hon'ble Apex court that:

***'We fully agree with the High Court that the assessee was committing a highly immoral act However, cases are to be decided by courts on legal principles and not on one's own moral views. Law is different from morality...'***

5.12 As brought out above, the legal principles in this case are plain - the award, not related to the private negotiations, under the RFCTLAAR Act is exempt from the levy of Income-tax. Any violation of RFCTLAAR Act can only be examined by the authority competent to do so. It alone can decide whether there is any case of wrongful award being given or is there a need to modify/cancel the award. The morality of the issue cannot be a relevant factor for the purposes of adjudicating on the issue of taxability thereof, as held by the Supreme Court in the decision cited above.

5.13 The reliance of the AO on the investigation being done by the E.D. and Vigilance Bureau is irrelevant for the purposes of computing the tax liabilities. There are agencies, including the two mentioned by the AO, competent to examine the legal transgressions, including criminal conspiracy, if any, in the matter. If found guilty, the appellant would face legal consequences under the relevant civil and criminal laws. However, for taxability of a particular receipt, it is not a relevant factor.

5.14 Further, even if it is accepted that the appellant was a beneficiary of some aside information, the award received by him cannot be termed as a colorable device. In this case there is no dispute on the fact that the receipt in

question is an award under section 96 of the RFCTLAAR Act. It is not a case where the appellant is trying to pass on a taxable receipt as an exempt income by misrepresenting the facts, or is trying to introduce his own unaccounted money in his books under the garb of a tax free receipt. The money received is undoubtedly on account of compulsory acquisition of land, and therefore, is tax free.

5.15 Finally, if the observations of the AO regarding the circumstances under which the land was purchased in the full knowledge of its imminent acquisition, and with some sort of collusion are correct, the appropriate remedy is to review the award itself by the competent authority. However, as long as the award stands, in view of the specific provisions of the RFCTLAAR Act read with CBDT circular no. 36 (supra), it cannot be brought under the tax net, as per the extant law. As such, the addition made by the AO is not sustainable, and the same is directed to be deleted.

5. The Ld. DR submitted that the Ld. CIT(A) has erred in law and on the facts and in the circumstances of the case in deleting the addition of Rs. 2,97,13,906/- made by the AO as Short Term Capital Gain on account of compensation received on compulsory acquisition of land being claimed by assessee as exempt income under RFCTLAAR Act. He argued that the circumstances in which the appellant had purchased the land as highlighted by the AO in his order are not at all relevant to decide on the issue of taxability of the award and as soon as the award satisfies the conditions mandated under section 96 of the RFCTLAAR Act, the compensation received is eligible for exemption from Income-tax without considering the fact that assessee has acted on a pre-designed and manipulative manner in order to make evasion of taxes and hatched a

conspiracy for abetment of tax evasion by way of colourful device. Decision of Hon'ble Supreme Court in the case of Commnr. Of Customs (Preventive) Vs. M/s AafloatTextiles(I) Pvt. Ltd. And Ors. In Civil Appeal No. 2447 of 2007 is attracted in this case. He submitted that it is not a case where the appellant is trying to pass on a taxable receipt as an exempt income by misrepresenting the facts, or is trying to introduce his own unaccounted money in his books under the garb of a tax free receipt. The Ld. DR has admitted the fact on record that the money received is undoubtedly on account of compulsory acquisition of land, and therefore, is tax free. However, the Ld. CIT(A) has not appreciated the fact that the assessee has not suffered any displacement or loss of livelihood and hence compensation received was not as per spirit of RFCTLAAR Act and hence beyond the scope of CBDT's circular 36/2016. He further submitted that the Ld. CIT(A) has erred in law in holding that if the observations of the AO regarding the circumstances under which the land was purchased in the full Knowledge of its imminent acquisition, and with some sort of collusion are correct, the appropriate remedy is to review the award itself by the competent authority. However, as long as the award stands, in view of the specific provisions of the RFCTLAAR Act read with CBDT circular no. 36 (supra), it cannot be brought under the tax net, as per the extant law. The

Ld. CIT(A) has not appreciated the fact that it has been clearly mentioned in the RFCTLAAR Act that amount received against the acquisition is only compensatory, it does not provide any artificial enrichment to the recipient. It does not contain a profit and income element. Accordingly, it has been kept exempt from any types of taxes. The assessee has not suffered any displacement or loss of livelihood. He has invested only with the knowledge and eye on the exempt income which is just an outcome of fraud committed by the assessee with deliberate design. He prayed that the order of Ld. CIT(A) be set aside and that of the Assessing Officer restored.

6. None appeared for the assessee, however a written submission is filed on record, in support of the impugned order which reads as under:

*"In addition to the statement of facts and grounds of appeal it is submitted that this is the case of assessee being partner in M/s Delta Rubber, E-33. Focal Point, Phagwara Road, Hoshiarpur. During the year assessee has tiled his returned income of Rs 8,64,060/- as on 30.03.2018. Apart from the said income assessee has also disclosed income from capital gain amounting to Rs 3,20,51,226/- that was received by him on account of total compensation received from NHAI from SDM, Hoshiarpur against compulsory acquisition of his land that was exempted for the purpose of tax as per circular no. 36/2016 issued by the CBDT and the same was assessed and processed by the department u s 143(1). Thereafter the case of the assessee was selected for compulsory scrutiny. Aggrieved by die order assessee has filed appeal before Hon'ble Commissioner of Income Tax (Appeals) wherein the appeal of the assessee was allowed.*

*Thereafter, aggrieved by the order of Hon'ble CIT(A), department challenged the order before your good self.*

SUBMISSION OF ASSESSES

Sir, it is submitted that during the year assessee has received total compensation of Rs 3,20,51,226/- from National Highway authority of India through SDM, Hoshiarpur against the acquisition of his agriculture land details of which is as under :

- (i) Rs. 1,98,59,226/- against land measuring 28.25 Marlas at village Kliawaspur on 29.04.2016.
- (ii) Rs. 69,66,000/- against land measuring 11.61 Marlas at village Hardokhanpur on 17.05.2016.
- (iii) Rs.52,26,000/- against land measuring 11.61 Marlas at village Hardokhanpur on 17.05.2016.

Sir, in respect of compensation received from the sale of said land assessee has claimed exemption in his returned income under the head other income as compensation received on acquisition of land. The said exemption is as per circular no. 36/2016 issued by CBDT, which provides that compensation received in respect of award or agreement which has been exempted from levy of income tax vide section 96 of the RFCTLAAR Act shall also not be taxable under the Income Tax Act.

Sir, in the Assessment Order Ld. AO denied the claim of appellant by relying upon the following reasons:

1. The aim and objectives, and the purpose and scope of the RFCTLAAR Act was to provide adequate compensation to affected persons for their rehabilitation and resettlement, and not for undue enrichment;
2. The assessee's claim is not consistent with the letter and spirit of the RFCTLAAR Act. When no loss was suffered by assessee, he had no ease for exemption. Since the land was purchased immediately before and after the two notifications, of which the assessee had information, his purported claim of loss, for development of a residential colony, not substantiated by any evidence, was all a fabricated story to get undue benefit. Hence it was beyond the beyond the scope of CBDT circular;
3. Die matter of some people getting undue enrichment on account of supposed inside information was also under investigation by other agencies,

4. Hence, it was not a normal ease of compensation to a sufferer but a colorable device and abuse of law.

Sir, the Hon'ble CIT(A) allowed the appeal of the assessee by holding and considering as under;

5.6 Section 46 of the Act deals with application of provisions relating to rehabilitation and resettlement in case of land purchased through private negotiations, later on extended to those cases as well where land is purchased by persons other than the Government, Government Company and Trust or Society aided or controlled by the Government.

5.7 Therefore, what emerges from section 96, and section 46 of RFCTLAAR Act and CBDT circular no. 36 of 2016 (supra) is that no income-tax is to be levied on any award made under the RFCTLAAR Act except under Section 46, which deals with the purchase of land by a person other than a specified person through private negotiations. The benefit of Section 96 is not available when a land is purchased through private negotiations by a person other than a specified person under Section 46(1).

5.8 Therefore, in cases other than those covered by Section 46 of the 2013 Land Acquisition Act, the levy of income-tax is barred by Section 96. It is not a case of the AO that the acquisition of land related to the present appeal falls within the purview of section 46 of the RFCTLAAR Act. It being so, the law is very clear in terms of section 96 of the RFCTLAAR Act read with circular no. 36 of 2016 — that no Income-tax can be levied on such award.

5.9 The circumstances in which the appellant had purchased the land as highlighted by the AO in his order are not at all relevant to decide on the issue of taxability of the award. Section 96 (and, indeed, circular no 36 of 2016) places no fetters on the blanket exemption granted to the award which is not covered under section 46 of the RFCTLAAR Act. As soon as the award satisfies the conditions mandated under section 96 of the RFCTLAAR Act, the compensation received is eligible for exemption from Income-tax.

5.10 Further, the AO has based his addition on the assertion that the amount of compensation is not for suffering any displacement or loss of livelihood but a result of undue enrichment; Accordingly, it is not as per the spirit of the RFCTLAAR Act particularly section 96. Without going into the veracity of the two versions of the events as put forward by the appellant and the AO. it is noted that if there has been any violation of legal provisions or moral spirit of RFCTLAAR Act or for that matter any law in force for the time being, except Income-tax Act, 1961, the appropriate course of remedial or penal action can only be taken under those laws/Acts by the designated authorities competent to do so. In the instant case, it is for the authority competent to grant the award to re-

examine the issue, if it deems fit. However, as long as there is an award under section 96 of the RFCTLAAR Act which does not fall within the purview of section 46, the same shall be exempt from the levy of Income tax.

5.11 It is settled that morality is an approach, and it cannot be converted into principles. Under Indian laws, subjects are not taxable according to the spirit of the statute but only by its plain words. Courts are not concerned with morality while interpreting law, but rather with the letter of the law. Further, morality in law interpretation can come into picture only when it is felt that there is an ambiguity in law. Interpretation of law is indifferent to the issue of morality, unless such moral principles are implicit in the scheme of legal or contractual provisions that they are required to deal with. In this regard, reliance is placed on the decision of Hon'ble Supreme Court in the case of Dr. T.A. Quereshi vs. CIT (SC) (2006) (287 HR 547) in which it was held by the Hon'ble Apex court that:

*He fully agree with the High Court that the assessor was committing a highly immoral act.....However, cases are to be decided by courts on legal principles and not on one's own moral views. Law is different from morality.*

5.12 As brought out above, the legal principles in this, as, in plain the award, not related to the private negotiations, under the RFCTLAAR Act is exempt from the levy of Income tax. Any violation of RFCTLAAR Act can only be examined by the authority competent to do so. It alone can decide whether there is any case of wrongful award being given or is there a need to modify/cancel the award. The morality of the issue cannot be a relevant factor for the purposes of adjudicating on the issue of taxability thereof, as held by the Supreme Court in the decision cited above.

5.13 The reliance of the AO on the investigation being done by the Ed, and Vigilance Bureau is irrelevant for the purposes of computing the tax liabilities. There are agencies, including the two mentioned by the AO, competent to examine the legal transgressions, including criminal conspiracy, if any in the matter. If found guilty, the appellant would face legal consequences under the relevant civil and criminal laws. However, for taxability of a particular receipt, it is not a relevant factor.

5.14 Further, even if it is accepted that the appellant was a beneficiary of some inside information, the award received by him cannot be termed as a colorable device. In this case there is no dispute on the fact that the receipt in question is an award under section 96 of the RFCTLAAR Act. It is not a case where the appellant is trying to pass on a taxable receipt as an exempt income by misrepresenting the facts, or is trying to introduce his own unaccounted money in his books under the garb of a tax free receipt. The money

received is undoubtedly on account of compulsory acquisition of land, and therefore, is tax free.

5.15 Finally, if the observations of the AO regarding the circumstances under which the land was purchased in the full knowledge of its imminent acquisition, and with some sort of collusion are correct, the appropriate remedy is to review the award itself by the competent authority. However, as long as the award stands, in view of the specific provisions of the RFCTLAAR Act read with CBDT circular no. 36 (supra), it cannot be brought under the tax net, as per the extant law. As such, the addition made by the AO is not sustainable, and the same is directed to be deleted."

Sir, it is submitted that Hon'ble CIT(A) after considering the submission of assessee allowed the appeal.

Sir, department has preferred the appeal before your goodself on the following three grounds:

1. That on the facts and in the circumstances of the case Ld. CIT(A) has erred in law in deleting the addition of Rs 2,97,13,906/- by the AO on account of compensation received on compulsory acquisition of land as short term capital gain claimed by the assessee as exempt income under RFCTLAAR Act on the basis that the circumstances in which the appellant has purchased the land as highlighted by the AO in his order are not relevant to decide on the issue of taxability of the award as soon as the award satisfies the condition mandated under section 96 of the RFCTLAAR Act, the compensation received is eligible for exemption from income Tax without considering the fact that assessee has acted on pre-designed and manipulative manner in order to make evasion of taxes and hatched a conspiracy for abetment of tax evasion by way of colourful device. Decision of Hon'ble Supreme Court in the case of Cummnr of Customs (Preventive) Vs. M/s Aafloat (Textiles) (1) Pvt. Ltd and Ors in Civil Appeal No. 2447 of 2007 is attracted in this case.

2 That on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law holding that if is not a case where the appellant is trying to pass on a taxable receipt as an exempt income by misrepresenting the facts, or is trying to introduce his own unaccounted money in his books under the garb of a tax free receipts The money received is undoubtedly on account of compulsory acquisition of land therefore is tax free. The Ld CIT(A) has not appreciated the fact that the assessee has not suffered any displacement or loss of livelihood and hence compensation received was not at the spirit of RECTLAAR Act and hence beyond the scope of CBDT Circular 36/2016.

3. *That on the facts and in the circumstances of the case, the Id CIT(A) has erred in law in holding that if the observations of the AO regarding the circumstances under which the land was purchased in the full knowledge of its imminent acquisition and with some sort of collusion are correct, the appropriate remedy is to review the award itself have the competent authority. However, as long as the award stands, in view of the specific provisions of the RECTLAAR Act read with CBDT circular no 36 (supra), it cannot be brought under the tax net, as per the extant law. The Id CIT(A) has not appreciated the fact that it has been clearly mentioned in the RECTLAAR Act that amount received against the acquisition is only compensatory, it does not provide any artificial enrichment to the recipient. It does not contain a profit and income element accordingly, it has been kept exempt from any types of taxes. The assessee has not suffered any displacement or loss of livelihood. He has invested only with the knowledge and eve on the exempt income which is just an outcome of fraud committed by the assessee with deliberate design.*

*Sir, in this regard it is submitted as under:*

- a. That the circumstances in which the appellant had purchased the land as highlighted by the AO in his order are not at all relevant to decide on the issue of taxability of the award. Section 46 (and, indeed, circular no 36 of 2016) places no fetters on the blanket exemption granted to the award which is not covered under section 46 of the RECTLAAR Act. As soon as the award satisfies the conditions mandated under section 96 of the RECTLAAR Act, the compensation received is eligible for exemption from Income-tax.*
- b. That there is no violation as per Income Tax Act. Any violation of RECTLAAR Act can only be examined by the authority competent to do so and by the Income Tax authority. In the present case assessee received compensation as per RECTLAAR Act and that competent authority had never objected regarding the compensation received by assessee. Thus, it cannot be stated that assessee acted in pre-designed and manipulative manner.*
- c. That, since no loss was suffered by assessee, hence he was not entitled to exemption is a bizarre thought to be reckoned with. Firstly, there is no such pre-condition under the RECTLAAR Act, 2013, while granting the compensation. Further, it is undisputed that the land acquired was a barren land not even under cultivation. Even if it had been acquired from*

*the original owner, who neither had his residence nor any business set up on this land, the status as to loss suffered by him would not have been different. Since it was assessee's property on the date of acquisition, being a case of compulsory acquisition, the assessee had no say as to terms of acquisition and to the extent needed by NHAI, it was acquired, irrespective how it was to affect the utilization of the left out land. Assessee's plan to convert into residential colony, was shattered when the acquisition was made from the centre of the land for road construction, leaving the balance scattered on two sides of the proposed road.*

- d. That the Ld. AO exceeded jurisdiction when he explored the possible violation, not under the Income Tax Ct but under a different law, for which he is not empowered to act The CBDT circular relied by the assessee has very limited jurisdiction on AO and when he accepted that the compensation received by assessee was under the RFCTLAAR At, 2013, he was bound to allow the exemption as claimed by assessee.*
- e. That the entire case build by the AO is for alleged violation of RFCTLAAR Act, is beyond the jurisdiction of AO and the exemption claimed as per CBDT circular has to be allowed. In the present case assessee received compensation as per RFCTLAAR Act and that competent authority had never objected regarding the compensation received by assessee.*
- f. In this case there is no dispute on the fact that the receipt in question is an award under section 96 of the RFCTLAAR Act. It is not a case where the appellant is trying to pass on a taxable receipt as an exempt income by misrepresenting the facts, or is trying to introduce his own unaccounted money in his books under the garb of a tax free receipt. The money received is undoubtedly on account of compulsory acquisition of land, and therefore, is tax free.*

*Thus considering the facts and circumstances of the case it is requested that the order of Hon'ble CIT(A) may kindly be confirmed and the appeal of department may kindly be dismissed."*

7. We have heard the rival contentions, perused the material on record, impugned order, written submission and case law cited before us. Admittedly, it is an undisputed fact on record that the disputed receipt of

2,97,13,906/- in question was a compensation award received by the assessee on compulsory acquisition of its land under section 96 of the RFCTLAAR Act. The department has admitted that the disputed money received was undoubtedly on account of compulsory acquisition of land, under Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCTLARR Act) of the land belonging to the assessee who has received total compensation of Rs. 3,20,51,226/- from National Highway Authority of India through SDM, Hoshiarpur against acquisition of his agriculture land as per following details:-

- (i) Rs. 1,98,59,226/- against land measuring 28.25 Marlas at village Khawaspur on 29.04.2016.
- (ii) Rs. 69,66,000/- against land measuring 11.61 Marlas at village Hardokhanpur on 29.04.2016.
- (iii) Rs.52,26,000/- against land measuring 11.61 Marlas at village Hardokhanpur on 17.05.2016.

8. The Section 46 of the RFCTLAAR Act deals with application of provisions relating to rehabilitation and resettlement in case of land purchased through private negotiations, later on extended to those cases as well where land is purchased by persons other than the Government,

Government Company and Trust or Society aided or controlled by the Government. In our view, what emerges from section 96, and section 46 of RFCTLAAR Act and CBDT circular no. 36 of 2016 (supra) as discussed by the Ld. CIT(A) is that no income-tax is to be levied on any award made under the RFCTLAAR Act except under Section 46, which deals with the purchase of land by a person other than a specified person through private negotiations. Thus, the benefit of Section 96 is not available when a land is purchased through private negotiations by a person other than a specified person under Section 46(1). Therefore, in cases other than those covered by Section 46 of the 2013 Land Acquisition Act, the levy of income-tax is barred by Section 96.

9. From the above, it is evident that the AO has exceeded the jurisdiction as he explored the possible violation, not under the Income Tax Act but under a different law, for which he is not empowered to act. In view of the CBDT circular no. 36 of 2016 (supra) the AO has very limited jurisdiction to vary the claim of the appellant assessee in terms of the RFCTLAAR Act, 2013 and when he has accepted that the compensation award received by assessee, under the RFCTLAAR Act, 2013, he was duty bound to allow the exemption as claimed by assessee. Since, the entire case build by the AO is for alleged violation of RFCTLAAR Act, is being

beyond its jurisdiction and hence, the exemption claimed as per CBDT circular has to be allowed.

10. In the present case, the assessee has received compensation as per RFCTLAAR Act and that competent authority had never objected to the said compensation received by assessee. Meaning thereby, that there was no dispute on the fact regarding the receipt in question was an award under section 96 of the RFCTLAAR Act. In view of that matter, we hold that the money received is undoubtedly on account of compulsory acquisition of land, and therefore, it is held to be tax free.

11. In the above view, we find no infirmity or adversity in the impugned order of the Id. CIT(A). Therefore, the order of the Ld. CIT(A) is sustained.

12. In the result, the appeal of the Revenue is dismissed.

*Order pronounced in the open court on 27.07.2023*

**Sd/-  
(Anikesh Banerjee)  
Judicial Member**

**Sd/-  
(Dr. M. L. Meena)  
Accountant Member**

*\*GP/Sr.PS\**

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(Appeals)
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T.

True Copy  
By Order