

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL, “SMC” BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

आ.अ.सं./ITA No.570/SRT/2023 (AY 2016-17)

(Hearing in Hybrid)

Hasmukhbia Kadvabhai Ramani P.No.180 Shantivan Society, Nr. Jakat Naka, Sarthana Jakat Naka, Surat-395006 PAN No: AJJPR 0148 L	Vs	Income Tax Officer, Ward-2(3)(2), Surat, Aaykar Bhavan, Majura Gate, Surat-395001
अपीलार्थी/ Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से /Assessee by	Shri Suraj P. Soni, CA
राजस्व की ओर से /Revenue by	Shri Vinod Kumar, Sr-DR
अपील पंजीकरण /Appeal instituted on	18.08.2023
सुनवाई की तारीख /Date of hearing	10.11.2023
उद्घोषणा की तारीख /Date of pronouncement	10.11.2023

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the order of National Faceless Appeal Centre, Delhi [for short to as “Ld. NFAC/Ld. CIT(A)”] dated 21.06.2023 for assessment year 2016-17, which in turn arises from the addition made by the Assessing Officer in assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) dated 07.12.2018. The assessee has raised the following ground of appeal: -

Section	Issue	Ground of Appeal
Sec.10(27)	Solatum received u/s 28 of Land Acquisition on Act be held as not interest chargeable u/s 56 of the Inc Tax Act 1961	Since, the appellant has received solatium u/s 28 of the Land Acquisition Act along with increased compensation the same is not an interest received as envisaged in Section 56 of the Income Tax Act 1961, and is not chargeable to tax, since, the same is received on compulsory

		<i>acquisition of the Agricultural Land Situated in the remote area having a population of less than 10000.</i>
<i>Section 56</i>	<i>Addition of Rs.42,07,939 on account of solatium on increased compensation.</i>	<i>Since the solatium/interest received along with increased compensation is in the nature of capital receipt is not covered by Section 56(2)(viii) hence is not taxable to Income Tax. Interest received on increased compensation partake the character of capital receipt which is not taxable u/s 56(2)(viii).</i>
<i>Misc.</i>	<i>Misc.</i>	<i>The appellant craves leave to add, amend, alter or delete any other ground or grounds at any time during the pendency of the appeal.</i>

2. Rival submission of Ld. Authorized Representative (Ld.AR) for the assessee and Ld. Senior Departmental Representative (Ld. Sr-DR) for the Revenue heard and record perused. The Ld.AR for the assessee submits that during the relevant financial year under consideration, the assessee received compensation on account of compulsory acquisition of assessee's rural agricultural land by Government of Gujarat. The assessee received enhanced compensation as well as compensation awarded by Land Acquisition Collector. Initially land acquisition collector determined compensation which was not adequate and on the request of assessee and other persons, whose lands were acquired by common Notification of Government of Gujarat under, the Land Acquisition Collector made reference for to Civil Court. The Ld. Principal Senior Civil Judge, Gondal, Rajkot vide order dated 07.04.2014 enhance the compensation. The assessee received his enhanced compensation under section 28 of Land Acquisition Act, 1894. Copy of award passed by Ld. Principal Senior Civil Judge, Gondal is filed. The Ld. AR for the assessee submits that the enhanced compensation does not contain any interest as per

Section 34 of Land Acquisition Act, 1894. The compensation, enhanced compensation, solatium and interest on such enhanced compensation is not taxable as per the decision of Hon'ble Apex Court in the case of CIT vs. Ghanshyam (HUF) 315 ITR 1, 182 Taxman 368 (SC). The Ld. AR for the assessee further submits that Ld.CIT(A) allowed 50% relief to assessee, which is without basis.

3. On the other hand, Ld. Sr-DR for the Revenue supported the order of NFAC/Ld. CIT(A) and submits that assessee has already got 50% relief. Though, ld CIT(A) allowed partial relief and the revenue has not filed due to low tax effect. The additional compensation, the interest received on additional compensation is liable to be taxed under section 56 of the Act under "income from other sources".
4. I have considered the rival submissions of both the parties and perused records carefully. I have also deliberate on case law relied on by Ld. AR for the assessee. I have also considered the written submission filed by the assessee though, such written submissions are filed without seeking permission of the Bench at the time of hearing. I find that the Assessing Officer while passing assessment order noted that on verification of details in Form 26AS that assessee has received interest income of Rs.42,07,939/- and Rs.1,62,283/- from Executive Engineer and Central Bank of India respectively. On further verification, the Assessing Officer found that assessee has received total interest income of Rs.43,70,222/- from State Government on which Tax Deducted at Sources. The Assessing Officer by issuing show cause notice asked the assessee as to why

the total entire receipt be not treated under the head “income from other sources” as per the details in Form-26AS. In response to show cause, the assessee filed his reply and contended that he has received interest on delayed compensation on account of compulsory acquisition of his rural agricultural land acquired by the Government of Gujarat. The interest income received by assessee does not fall under the head “income from other sources” and for remaining part of interest income of Rs.1,62,284/- the assessee received from Central Bank of India, the assessee stated that such interest could not be included in total income due to mistake. The assessee submitted that he has no objection if interest received from Central Bank of India is added to his income. Though, the assessee objected for making addition on part of compensation received against acquisition of such land. The Assessing Officer not accepted the contention of assessee and entire compensation included the interest thereon treated as “income from other sources”.

5. Aggrieved by the addition made by Assessing Officer the assessee filed appeal before Ld. CIT(A). Before Ld. CIT(A) assessee submitted that his agricultural land was acquired by State Government of Gujarat under the Land Acquisition Scheme notified during 1998 to 2000 for a Government project named Servo Irrigation Scheme. The assessee and other co-owners were not satisfied with the compensation and sought reference to Civil Court for enhanced compensation. On the reference, Ld. Principal Senior Civil Judge, Gondal vide order dated 07.04.2014 awarded additional

compensation along with interest and solatium. The assessee received such additional compensation and solatium in the year under consideration. The assessee submitted that he has received additional compensation of Rs.18,36,320/-, interest & solatium on additional compensation of Rs.42,07,939/- thereby aggregated compensation of Rs.60,44,259/-. The compensation falls within the purview of Section 10(37) of the Act and same is exempted. Interest part of Rs.42,07,939/- is received under section 28 of the Act form part of compensation and is not taxable under section 56.

6. The Ld. CIT(A) after considering the submission of assessee held that compensation received by assessee has three components (a) enhanced compensation (b) solatium and (c) interest on compensation. The enhanced compensation and solatium shall be treated as exempt income and the interest on the compensation is liable for deduction @ 50% under section 57(iv)/56(2)(viii) and assessee was accordingly allowed 50% relief on such components. I find that Ld. Principal Senior Civil Judge, Gondal while enhancing the compensation directed the Government of Gujarat to pay difference amounts *i.e.*, original amount awarded by Land Acquisition Collector vis-à-vis the enhanced compensation awarded by Ld. Principal Senior Civil Judge, Gondal to the assessee and other interested persons, with interest @ 9% for first year and @ 15% for remaining years, together with solatium @ 30% on additional amount from the date of notification issued till the date of award. I find that Ld. Principal Senior Civil Judge, Gondal while granting such interest

in excess of sum which was awarded by Land Acquisition Collector, as per the Section 28 of Land Acquisition Act, 1894. For appreciation of facts, the provisions of Section 28 and under Section 34 of the Land Acquisition Act, 1894 is extracted below:

Section 28

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.”

“Provided that the award of the court may also direct where such excess or part thereof is paid into court after the date of expiry of one year from the date on which possession is taken, interest at the rate of 15% per annum shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into the court before the date of such expiry.”

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 interest income is received.

7. On careful perusal of award, I find that the assessee was granted additional compensation and the statutory interest as per Section 28 of Land Acquisition Act, 1894. I find that Hon'ble Apex Court in the case of Ghanshyam (HUF) (supra) while considering the taxability of compensation on acquisition of asset held that interest paid on excess amount under section 28 of Land Acquisition Act, 1894 is a part of amount of compensation, however, interest under section 34

is only for delay in making payment after compensation is determined interest under section 28 of Land Acquisition Act, 1894 a part of enhanced value of land. Thus, this statutory interest awarded by Ld. Principal Senior Civil Judge, Gondal is the component of compensation. No interest under section 34 is awarded to assessee as per the judgment of Ld. Principal Senior Civil Judge, Gondal, therefore, the interest component of Rs.42,07,939/- is not taxable income. I find that NFAC/Ld. CIT(A) restricted the allowed only 50% relief to assessee without any basis or reasoning.

8. I further find that coordinate bench of Delhi Tribunal in DCIT Vs Dinesh Sharma (165 ITD 685 Delhi) by following the decision of Hon'ble Apex Court in the case of Ghanshyam (supra) also held that where compensation received under compulsory acquisition of land was enhanced by Court on appeal of assessee land owner, interest received on enhanced compensation would be calculated under section 28 of land acquisition act and such interest would be exempted from tax. In view of factual and legal position, the ground raised by assessee is allowed.
9. In the result, the appeal of the assessee is allowed.

Order pronounced on 10/11/2023 in open court.

Sd/-
(PAWAN SINGH)
[न्यायिक सदस्य JUDICIAL MEMBER]

सूरत/Surat, Dated: 10/11/2023
Dkp. Out Sourcing Sr.P.S

Copy to:

1. Appellant-
2. Respondent-
3. CIT(A)-
4. CIT
5. DR
6. Guard File

By order

// True Copy //

Senior Private Secretary/ Private
Secretary/Assistant Registrar, ITAT, Surat