

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI**

BEFORE

**SHRI M BALAGANESH, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 892/Del/2023
Asstt. Year: 2018-19

Smt. Purnima Sareen 744-745, Model Town, Panipat, Haryana-132103 PAN BOKPS2116C (Appellant)	Vs.	Pr. CIT, Rohtak (Respondent)
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Assessee by:	Dr. Rakesh Gupta, Advocate Shri Deepesh Garg, Advocate
Department by:	Shri P.N. Barnwal, CIT-DR
Date of Hearing:	21.11.2023
Date of pronouncement:	29.01.2024

ORDER

PER ASTHA CHANDRA, JM

The appeal filed by the assessee is directed against the order dated 21.03.2023 of the Ld. Principal Commissioner of Income Tax, Rohtak (**"PCIT"**) passed by him under section 263 of the Income Tax Act, 1961 (**the "Act"**) pertaining to Assessment year (**"AY"**) 2018-19.

2. The assessee has raised the following grounds of appeal:-

"1. That having regard to facts & circumstances of the case, Ld. PCTT has erred in law and on facts in assuming jurisdiction u/s 263 of Income Tax Act, 1961 and has erred in holding the assessment order dated 09-02-2021 as erroneous as well as prejudicial to the interest of revenue and that too by recording incorrect facts and findings and in violation of principles of natural justice.

2. That having regard to facts & circumstances of the case, Ld. PCTT has erred in law and on facts in setting aside the order passed by the assessing officer u/s 143(3) dated 09. 02-2021 with the direction to pass

an order afresh in accordance with law and further erred in holding that AO failed to conduct proper enquiries with respect to amended provisions of Finance Act, 2015 & binding decision of jurisdictional High Court and Hon'ble Apex Court with regard to interest on enhanced compensation and that too by recording incorrect facts and findings and without observing the principles of natural justice and more particularly when all the details/information/evidences were available on the record at the time of assessment proceedings.

3. In any view of the matter and in any case, order passed under section 263 is bad in law and against the facts and circumstances of the case & is barred by limitation and the same is not sustainable on various legal and factual grounds.

4. That the appellant craves the leave to add, amend, modify, delete any of the grounds of appeal before or at the time of hearing and all the above grounds are without prejudice to each other.”

3. Briefly stated, the assessee is an individual. She filed her return for A.Y. 2018-19 on 23.07.2018 declaring income of Rs. 3,13,080/-. Her return was processed on 13.11.2019 under section 143(1)(a) of the Act. Her case was selected for complete scrutiny assessment under the E-assessment Scheme, 2019 on three issues, namely, refund claim, winnings from lottery/crossword Puzzle/horse races and sales turnover/receipts. The Ld. Assessing Officer (“AO”) issued notice under section 143(2) of the Act on 28.09.2019. He also issued notice(s) under section 142(1) dated 24.12.2019, 05.08.2020, 21.08.2020 and letter dated 30.12.2020 calling for details. In response thereto, the assessee filed her reply vide communication received by the Ld. AO on 19.08.2020, 04.09.2020 and 05.01.2021. The Ld. AO examined the same in the light of CASS reasons. The Ld. AO completed the assessment on 09.02.2021 under section 143(3) read with Section 143(3A) and 143(3B) of the Act on income returned with the observation that on the aforesaid three issues, no addition is made.

4. In exercise of his powers vested in him under section 263 of the Act, the Ld. PCIT held the impugned order of the Ld. AO as erroneous and prejudicial to the interest of Revenue. According to Ld. PCIT, the Ld. AO should have taken into consideration, the binding decision of Hon'ble Jurisdictional High Court i.e Hon'ble Punjab & Haryana High Court dated 19.02.2020 in the case of Mahender Pal Narang vs. CBDT (2020) 423 ITR 13

(P&H) wherein the Hon'ble High Court has dealt with the controversy arising from the judgment of Hon'ble Supreme Court in the case of CIT vs. Ghanshyam HUF (2009) 315 ITR 1 (SC) dated 16th July, 2009 relating to the taxability of interest received on compensation or enhanced compensation and also the amendments/provisions of section 56(2)(viii) introduced through Finance Act, 2009 effective from 01.04.2010 on the above issue, which the Ld. AO failed to do. The Ld. PCIT pointed out that the SLP filed against the order of the decision (supra) of the Hon'ble P&H High Court has been dismissed by the Hon'ble Supreme Court vide its order dated 4th March, 2021 in Mahender Pal Narang vs. CBDT (2021) 279 Taxman 74 (SC). He, therefore, set aside the impugned assessment order with a direction to pass an order afresh after making requisite enquiries and proper verification with regard to taxability of interest on enhanced compensation.

5. Aggrieved, the assessee is in appeal before the Tribunal and all the grounds relate thereto.

6. We have heard the Ld. Representatives of the parties and perused the records. Their arguments have duly been considered carefully.

7. The facts are not in dispute. The assessee received Rs. 5,42,98,962/- as interest on enhanced compensation from the Indian Oil Corporation Ltd. after the compulsory acquisition of her agricultural land on which TDS amounting to Rs. 54,29,869/- @ 10% was also deducted u/s 194A of the Act. In her return the assessee claimed the said interest as exempt.

8. On perusal of case records, the Ld. PCIT gathered that the Ld. AO had completed the assessment without carrying out necessary and proper enquiry which should have been made regarding applicable judgments on the taxability of interest on enhanced compensation. The Hon'ble Punjab & Haryana High Court has given the finding that interest received on compensation or enhanced compensation will be taxed as per amended provisions introduced through Finance (No.2) Act, 2009 w.e.f. 01.04.2010 and the judgment of the Hon'ble Supreme Court in the case of CIT vs. Ghanshyam HUF would not come to the rescue of the assessee. The Ld.

PCIT therefore required the assessee to show cause as to why an appropriate order under section 263 of the Act be not passed. In response the assessee submitted that the amount received under section 28 of Land Acquisition Act is exempt from tax relying on the decision of Delhi Bench of the Tribunal in the case of Shri Puneet Singh, Karnal vs. ACIT pronounced on 08.12.2022 for AY 2011-12 wherein placing reliance upon the decision of Hon'ble Supreme Court in the case of Ghanshyam HUF (supra) decided in favour of the assessee. The submission of the assessee was not acceptable to the Ld. PCIT in view of the decision of Hon'ble P&H High Court in Mahender Pal Narang vs., CBDT and dismissal of SLP filed against it by the Hon'ble Supreme Court. He, therefore, set aside the assessment order and directed the Ld. AO to pass an order afresh.

9. As to the issue of lack of necessary and proper enquiry during assessment proceeding, the Ld. AR demonstrated that in response to notice(s) under section 142(1) of the Act dated 24.12.2019, 05.08.2020 and 21.08.2020 and letter dated 30.12.2020 issued by the Ld. AO the assessee submitted that interest of Rs. 5,42,98,962/- received by the assessee formed part of enhanced compensation as held by the Hon'ble Supreme Court in Ghanshyam HUF's case (supra) which the assessee claimed as exempt under section 10(37) of the Act. In our opinion, in the light of evidence available on records, it cannot be alleged as done by the Ld. PCIT that it is a case of 'no enquiry' or 'lack of enquiry'. No doubt that the Ld. AO did not discuss elaborately in the assessment order but that alone cannot make the order erroneous as held by the Hon'ble Delhi High Court in CIT vs. Sunbeam Auto Ltd. (2011) 332 ITR 167 (Del) and Hon'ble Rajasthan High Court in CIT vs. Ganpat Ram Bisnoi 296 ITR 292 (Raj.). An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous as held by the Hon'ble Supreme Court in Malabar Industrial Co. Ltd. vs. CIT 243 ITR 83 (SC). None of these elements exist in the case at hand.

10. Perusal of the order of the Ld. PCIT shows that he assumed the revisionary power under section 263 of the Act mainly on the ground that the Ld. AO passed the order not in accordance with the binding decision of Hon'ble P & H High Court in Mahender Pal Narang's case (supra) against which SLP stands dismissed by the Hon'ble Supreme Court. This is not so. During assessment proceedings in response to notice under section 143(2) and 142(1) of the Act, with reference to specific query on receipt of interest under section 28 of Land Acquisition Act, the assessee explained that interest received under section 28 of the Land Acquisition Act has been held to be part of compensation by Apex Court in the case of CIT vs. Ghanshyam HUF reported as (2009) 315 ITR 1, the same being exempt under section 10(37) of the Act has not been included in the total income of the assessee while filing return of income. The Ld. AO accepted the explanation of the assessee.

11. The issue of amended provisions of section 56(2)(viii) by the Finance Act, 2009 and the decision of Hon'ble P & H High Court in Mahender Pal Narang's case was raised by the Ld. PCIT in notice under section 263 on the basis of audit objection. Before the Ld. PCIT the assessee explained that the amended provisions were not in connection with the decision of Hon'ble Supreme Court in Ghanshyam HUF's case but to make simple the taxation of interest income as earlier it was taxable on accrual/cash basis on the basis of accounting principles as held by the decision of Hon'ble Supreme Court in Rama Bai vs. CIT (1990) 181 ITR 400. It was also explained that insertion of section 145A, 145B, 56(2)(viii) and 57(iv) by the Finance (No.2) Act, 2009 did not change the character of interest under section 28 of the Land Acquisition Act from 'capital receipt' forming part of enhanced compensation as envisaged in section 45(5) of the Act to 'revenue receipt' chargeable to tax as 'income from other sources'. It was also explained to the Ld. PCIT that after analysing the provisions of section 28 and 34 of Land Acquisition Act the Hon'ble Supreme Court held in the case of Ghanshyam HUF that interest is different from compensation. However, interest paid on the excess amount under section 28 depends upon a claim by a person

whose land is acquired whereas interest under section 34 is for delay in making payment. This vital difference needs to be kept in mind in deciding this matter. 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. 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. It is thus evident that the view taken by the Ld. AO that interest under section 28 of Land Acquisition Act received by the assessee is exempt under section 10(37) of the Act is not contrary to law.

12. We notice that in CBDT Circular No. 5 dated 03.06.2010 reported in (2010) 324 ITR (St.) 293, it is stated that the Hon'ble Supreme Court in the case of Rama Bai Vs. CIT (supra) has held that arrears of interest computed on delayed or enhanced compensation shall be taxable on accrual basis. This has caused undue hardship to the taxpayers. With a view to mitigate the hardship section 145A has been substituted and clause (viii) in sub-section (2) of section 56 has been inserted by the Finance (No.2) Act, 2009 so as to provide that the interest received on compensation or on enhanced compensation referred to in clause (b) of section 145A shall be assessed as income from other sources in the year in which it is received. It is thus evident that the amended provisions of section 56(2)(viii) of the Act r.w. section 145A were brought on the statute to nullify the effect of Hon'ble Supreme Court's ruling in the case of Rama Bai and not Ghanshyam HUF. Moreover, the decision in Ghanshyam HUF was pronounced in July, 2016 and the Finance Bill proposing amendment to section 56 was laid in February 2016. So the intention of the legislature could never be the overruling of the ratio laid down in Ghanshyam HUF case. The issue in Rama Bai case involved the taxability in the year of receipt. The facts and questions for determination in Rama Bai's case were different from those of Ghanshyam HUF's case. The position in Ghanshyam HUF's case has been affirmed by the Hon'ble Supreme Court in UOI vs. Hari Singh (2018) 91 taxmann.com 20 (SC).

13. We have gone through the decision of the Hon'ble P & H High Court in the case of Mahender Pal Narang (supra). In that case the land of the assessee was acquired in AY 2007-08 and 2008-09. The enhanced compensation was received on 21.03.2016. In his return filed for AY 2016-17 he treated the interest received under section 28 of the 1894 Act as income from other sources and claimed deduction for 50% as per section 57(iv) of the 1961 Act. The return was processed under section 143(1) of the Act. An application under section 264 was made claiming that by mistake the assessee treated the interest income as income from other sources whereas the same is part of enhanced compensation. The revisional authority rejected the application under section 264 on 30.1.2019. It was in this factual matrix that the assessee filed writ petition before the Hon'ble P & H High Court. The question for consideration was "whether after the insertion of section 56(2)(viii) and 57(iv) of the Act w.e.f. 01.04.2010, can the assessee claim that interest received under section 28 of the Land Acquisition Act, 1894 will partake the character of the compensation and would fall under the head "capital gain" and not "income from other sources" ? It was argued by the assessee that there is no amendment in section 10(37) and by insertion of sections 56(2)(viii) and 57(iv), the nature of interest under section 28 of the 1894 Act will remain that of compensation and decisions of the Hon'ble Supreme Court in the case of Ghanshyam (HUF) and the decision of Hon'ble Gujrat High Court in Movaliya Bhikhubhai Balabhai vs. ITO TDS (2016) 388 ITR 343 were relied upon.

14. It may be mentioned that the Hon'ble Supreme Court has affirmed its view taken in Ghanshyam HUF's case and the decision of Gujrat High Court in Movaliya's case in its decision in Hari Singh's case(supra). The decision of the Hon'ble Supreme Court in Hari Singh's case (supra) was not brought to the notice of Hon'ble P & H High Court while rendering decision in Mahender Pal Narang's case (supra). Hon'ble P&H High Court has thus rendered the decision in Mahender Pal Narang's case in its peculiar facts and circumstances. Accordingly, the opinion of the Ld. PCIT that the Ld. AO

should have passed the assessment in accordance with the amended law and binding decision in Mahender Pal Narang's case (supra) overlooking the decision of Hon'ble Supreme Court in Ghanshyam's HUF's case is not sustainable. Reliance by the Ld. PCIT and the Ld. CIT-DR on the decision in Mahender Pal Narang's case is misplaced. Needless to emphasis that in V.M. Salgaocar and Bros Pvt. Ltd. vs. CIT 243 ITR 383 (SC), the Hon'ble Supreme Court has held that an order dismissing the SLP at the threshold without detailed reasons does not constitute any declaration of law or a binding precedent. Therefore, overemphasising the fact of dismissal of SLP in limine by the Hon'ble Supreme Court in Mahender Pal's case by the Revenue is not of any legal assistance to it.

15. Since the order of the Ld. AO is based on the decision of the Hon'ble Supreme Court in Ghanshyam HUF (supra) on the issue of taxability of interest received by the assessee under section 28 of Land Acquisition Act, it can at best be said to be a debatable issue on which two views are possible and the Ld. AO accepts one of the views. In this view of the matter too, the Ld. PCIT cannot assume revisional jurisdiction as held by the Hon'ble Delhi High Court in CIT vs. Hindustan Coca Cola Beverages P Ltd. (2011) 331 ITR 192 (Del.)

16. Accordingly, on the facts and in the circumstances of the case as set out above, we hold that the order of the Ld. PCIT is not sustainable. Accordingly, we allow the appeal of the assessee and quash the impugned order of the Ld. PCIT.

17. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 29th January, 2024.

sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

Dated: 29/01/2024

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

ASSISTANT REGISTRAR
ITAT, New Delhi

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Date on which the typed draft is placed before the Other Member	
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