

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

Before Shri Sanjay Arora, Accountant Member and
Shri Anil Kumar Dugar, Judicial Member

ITA No. 1006/Coch/2022
(Assessment Year: 2015-16)

Abdul Azeez Poolakkodan Poolakkodan House Randathani P.O. Malappuram 676510 [PAN: ACPPA2490P]	vs.	Income Tax Officer, Ward-1 Tharif Bazar, Opp. Town Hall Tirur 676101
(Appellant)		(Respondent)

Appellant by:	Shri Anil D. Nair, Advocate
Respondent by:	Smt. J.M. Jamuna Devi, Sr. D.R.

Date of Hearing:	17.04.2024
Date of Pronouncement:	19.04.2024

ORDER

Per: Sanjay Arora, AM

Vide the instant Appeal, the Assessee agitates the dismissal of his appeal contesting the order under section 154 of the Income Tax Act, 1961 (the Act), dated 04.04.2018, for Assessment Year (AY) 2015-16 by the Commissioner of Income Tax (Appeals), Income Tax Department [CIT(A)] dated 26.10.2022.

2. The background facts, in brief, are that the assessee received an additional compensation of Rs.3,49,58,790/- (including interest at Rs.1,13,59,249) in respect of his share in agricultural land sold by him along with others during the previous year relevant to AY 2010-11, and exemption on income arising on which had been claimed u/s. 10(37) of the Act and allowed in assessment for that year. While accepting the assessee's claim, like-wise, for the current year, the Assessing Officer (AO) brought to tax 50% of the interest, i.e., Rs.56,79,625, u/s. 56(2)(viii) r/w s. 57(iv) of the Act vide assessment u/s. 143(3) dated 22.12.2017. The assessee moved

the AO on 15.12.2018, seeking rectification of his assessment inasmuch as the interest allowed was allowed u/s. 28 of the Land Acquisition Act, 1894 (LAA), which stands held as part of the compensation by the Hon'ble Apex Court in *CIT vs. Ghanshyam (HUF)* [2009] 315 ITR 1 (SC), i.e., as part of the transfer consideration and, thus, exempt u/s. 10(37) of the Act. The same did not find favour with the AO, in whose opinion there was no mistake in his order; the assessment being in accordance with the provisions of law. The view being reiterated in first appeal by the Id. CIT(A) per the impugned order, the assessee is in second appeal.

3. We have heard the parties, and perused the material on record.

3.1 Sections 56(2)(viii) and 57(iv), applied by the AO in disallowing the assessee's claim for exemption of interest on enhanced compensation from tax, which stand brought on the statute by Finance (No.2) Act, 2009, read as:

56. Income from other sources.—

(1) Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income-tax under the head "Income from other sources", if it is not chargeable to income-tax under any of the heads specified in section 14, items A to E.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely:—

(i) dividends; ... (vii)

(viii) income by way of interest received on compensation or on enhanced compensation referred to in clause (b) of section 145A;

57. Deductions.—

The income chargeable under the head "Income from other sources" shall be computed after making the following deductions, namely:—

(i) ... (iii)

(iv) in the case of income of the nature referred to in clause (viii) of sub-section (2) of section 56, a deduction of a sum equal to fifty per cent of such income and no deduction shall be allowed under any other clause of this section.

3.2 The facts as narrated above are not in dispute. Further, even as there is nothing on record to exhibit that the interest received by the assessee falls u/s. 28 of LAA; the assessee on the last occasion the case came up for hearing relying on a certificate dated 13.12.2018 by the Office of the Special Tahsildar, Koyilandy for the purpose, which was found invalid as the same was after the date of assessment, so that it could not form part of the record. We refer thereto as this aspect is integral to the assessee's claim inasmuch as the Apex Court has held only interest u/s. 28, as opposed to interest u/s. 34, as part of compensation and, thus, capital in nature. This, however, would not detain us inasmuch as it becomes clear on a plain reading of s.28 of LAA which, along with s. 34 thereof, forming part of the assessee's submissions, was read out during hearing, that the same pertains to interest on delayed payment of enhanced compensation, as opposed to s.34 interest, which relates to delayed payment of the initial award, held as compensatory and, thus, liable to tax as income, i.e., in terms of the decision in *Ghanshyam (HUF)* (supra). Without doubt, inasmuch a decision by the Apex Court is declaratory of the law of the land, any decision inconsistent therewith is, to that extent, liable to be regarded as mistaken and amended (refer, inter alia, *Asst. CIT v. Saurashtra Kutch Stock Exchg. Ltd.* [2008] 305 ITR 227 (SC)).

3.3 Sections 56(2)(viii) and 57(iv) came on the statute w.e.f. 01.04.2010, i.e., AY 2010-11 onwards. The decision in *Ghanshyam (HUF)* (supra) is for AY 1999-00. The said decision by the Hon'ble Apex Court thus has no bearing on the said provisions, invoked by the AO in bringing the impugned interest to tax. Even as observed by the Bench during hearing, it is only where a Constitutional Court declares the same as *ultra vires* the Act (i.e., on a view that interest u/s. 28 of LAA is capital in nature), that would entitle the assessing authority to disregard the same. The Hon'ble Apex Court per its Constitutional Bench decision in *Punjab Distilling Industries Ltd. v. CIT* [1965] 57 ITR 1 (SC) explained that there is no conflict between a receipt being capital in nature and, by fiction of law, an income chargeable

to tax under the Act. That is, the nature of the receipt as capital, which is the purport of the decision in *Ghanshyam (HUF)* (supra), would not *per se* preclude interest from being, at the same time, subject to tax. Further, per its larger bench decision in *Sham Lal Narula (Dr.) v. CIT* [1964] 53 ITR 151 (SC), not referred to in its later decision in *Ghanshyam (HUF)*(supra), the Apex Court held the provisions of s. 28 and 34 of LAA as analogous, i.e., compensatory, and, thus, not part of compensation (pg. 156). The decision in *P.V. Kurien v. CIT* [1962] 46 ITR 288 (Ker), holding interest on enhanced compensation as capital in nature, was negated by the Hon'ble Court (pgs. 157-158). The upshot thereof is that even *de hors* s. 56(2)(viii), applied by the AO, it may not be possible to say that interest u/s. 28 of LAA is not income, much less of it being regarded as so by him as 'mistaken', liable to be rectified u/s. 154.

3.4 For the reason/s afore-stated, we find no merit in the assessee's challenge.

4. In the result, the assessee's appeal is dismissed.

Order pronounced in the open court on April 19, 2024.

Sd/-
(Anil Kumar Dugar)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Cochin, Dated: April 19, 2024
n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar
ITAT, Cochin