

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE "A" BENCH : PUNE
[THROUGH VIRTUAL HEARING]

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

I.T.A.No.1332/PUN./2023
Assessment Year 2016-2017

Shri Kusum Jayram Thakur Dhutum, Post-Jasai, Taluka-Uran, Dist.Raigad. PIN – 410 206. Maharashtra. PAN ASWPT3777H	vs.	The Income Tax Officer, Ward-3, Trifred Tower, III Floor, Opp. Khanda Colony, New Panvel, Panvel – 410 206. Maharashtra.
(Appellant)		(Respondent)

For Assessee :	S/Shri CH Naniwadekar & Kiran Sanmane
For Revenue :	Shri Ramnath P Murkude

Date of Hearing :	01.05.2024
Date of Pronouncement :	03.05.2024

ORDER

PER SATBEER SINGH GODARA, J.M. :

This assessee's appeal for assessment year 2016-17, arises against the National Faceless Appeal Centre [in short the "NFAC"] Delhi's Din and Order No.ITBA/NFAC/S/250/2023-24/1057489745(1), dated 30.10.2023, involving proceedings u/s.143(3) of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties. Case file perused.

2. The assessee pleads the following substantive grounds in the instant appeal :

1. "CIT(A) has erred in Confirming the addition made by Assessing Officer as to Interest u/s.28 of Land Acquisition Act, 1894

granted by the Court, as Income from Other Sources u/s 56(2), against Assessee's claim as Additional Compensation for Acquisition of Agricultural Land.

Appellant prays to hold the same as exempt u/s 10(37) of the Act, 1961.

2. CIT(A) has erred in not following Pune ITAT Jurisdictional Tribunal decisions which are binding on him, brought to his Notice.

Appellant prays to delete addition sustained by CIT(A).

3. The Order u/s 143(3) passed is Bad in Law and abinitio invalid as Notice u/s 143(2). Not issued by Jurisdictional Officer (Para-1 of Assessment Order).

Appellant prays for cancellation of Order.

4. CIT(A) is not Just and Fair in not cancelling the Order and Confirming addition.

5. Assessee denies Liability to Interest under subsections of Sec.234.

6. Appellant prays to add, alter, amend, take additional grounds, submit additional evidence appellate Proceedings."

3. Suffice to say, the assessee's sole substantive grievance raised herein seeks to reverse both the learned lower authorities action assessing it's interest received u/sec.28 of the Land Acquisition Act, 1894 granted by the learned Reference Court, u/sec.56(2)(viii) r.w.s.145A of the Act *qua* the amount in question of Rs.2,65,38,689/- in the Assessing Officer's assessment herein

dated 27.12.2018. Both the learned Assessing Officer as well as the NFAC herein are of the opinion that in light of the foregoing statutory amendment in the Act, such an interest income of enhanced land acquisition compensation is no more exempt from taxation.

4. Both the learned representatives reiterated their respective stands during the course of hearing. It transpires during the course of hearing that the Assessing Officer before us is learned ITO, Ward-3, Panvel. This being the clinching fact, it is noticed that the tribunal's recent coordinate bench(es) order in Raghunath Budhaji Patil, Uran vs. ITO ITA.No.235/PUN./2023 decided on 27.04.2023 has already settled the issue in assessee's favour and against the department going by jurisdictional bench of hon'ble high court as under :

"3. We have given our thoughtful consideration to vehement rival stands against and in support of the lower authorities findings holding the assessee's interest income received under section 28 of the Land Acquisition Act, 1894 as taxable under the head income from "Other" sources under section 56(2)(viii) of the Act. The assessee's case before us is that such an interest income is part of the land acquisition compensation itself and not taxable, therefore, in light of Ghanshyam(HUF) Vs. CIT [2009] 315 ITR 1 (SC). Learned counsel thereafter quoted [2016] 138 DTR 229 (Guj) Moraliya B Balashai Vs. ITO and [2019] 471 ITR 169 (Bom), Ruesh R.Shah Vs. Union of India and

vehemently contended that the learned lower authorities action under challenge is hardly sustainable in law.

4. *Mr.Jasnani on the other hand has quoted this tribunal's co-ordinate bench's order in Basweshwar Mallikarjun Bidwe Vs. ITO in ITA No.1012/PUN/2017 dated on 05.10.2020 in department's favour as under :*

"3. Succinctly, the facts of the case are that the assessee filed his return declaring total income of Rs.42,370/-. He received enhanced compensation at Rs.38,19,709/- and interest u/s.28 of the LAA amounting to Rs.68,32,020/- on compulsory acquisition from The Special Land Acquisition Officer (MIW), Latur against the land situated at Village Khadgaon, Tq. Latur. In the column of exempt income in the return, the assessee showed figures of total interest at Rs.68,32,020/- and agriculture income at Rs.2,37,900/-. On being called upon to explain as to why the interest was not shown separately as income u/s.56(2)(viii) of the Income-tax Act, 1961 (hereinafter also called 'the Act') Act, the assessee made certain submissions which did not find favour with the Assessing Officer (AO). Treating 50% of the interest income as deductible in terms of section 57(iv), the AO added net interest income of Rs.34,16,010/- u/s. 56(2)(viii) of the Act. The ld. CIT(A), relying on certain decisions, which we will advert to in the later part of the order, jettisoned the claim of the assessee thereby

approving the view of the AO in bringing to tax the interest income u/s.56(2)(viii) of the Act. Aggrieved thereby, the assessee has approached the Tribunal.

4. *We have heard both the sides through virtual court and cogitated over the relevant material on record. Indisputably, the amount of net interest income computed by the AO u/s.56(2)(viii) of the Act pertains to section 28 of the LAA. The assessee treated such amount as part of the enhanced compensation of land and claimed the same as exempt from tax on the ground that the land itself was agricultural. To buttress the contention that interest u/s 28 of the LAA is a part of compensation and hence not chargeable to tax, the ld. AR chiefly relied on the judgment of the Hon'ble Supreme Court in CIT Vs. Ghanshyam (HUF) (2009) 315 ITR 1 (SC) before the Tribunal in which it has been held that interest u/s.28 under The Land Acquisition Act, is to be taxed as part of consideration on receipt basis. This judgment was delivered on 16-07-2009. The Finance (No.2) Act, 2009 w.e.f. 01-04-2010 inserted clause (viii) to section 56(2) providing that: "income by way of interest received on compensation or on enhanced compensation referred to in sub-section (1) of section 145B" shall be chargeable to income-tax under the head "Income from other sources". Section 145B(1) provides that: "Notwithstanding anything to the contrary contained*

in section 145, the interest received by an assessee on any compensation or on enhanced compensation, as the case may be, shall be deemed to be the income of the previous year in which it is received". Thus it is palpable that post the decision in Ghanshyam (supra), a statutory amendment has been carried out providing that income by way of interest received on compensation or on enhanced compensation shall be chargeable to income-tax under the head "Income from other sources".

5. *The question of taxability of interest received u/s 28 of the LAA came up for consideration before Hon'ble Punjab & Haryana High Court in the case of Manjet Singh (HUF) Karta Manjeet Singh Vs. Union of India (2016) 237 Taxman 0116 (P&H). It noted another judgment of three Judges of the Hon'ble Apex Court in Bikram Singh vs. Land Acquisition Collector, (1997) 224 ITR 551(SC) following Dr. Shamlal Narula vs. CIT (1964) 53 ITR 151 (SC) holding that interest under Section 28 of the 1894 Act was a revenue receipt and is taxable. After considering all the available relevant material including the judgment in Ghanshyam (HUF) (Supra) and also the statutory amendments carried out w.e.f. A.Y. 2010-11, the Hon'ble High Court, vide its judgment dated 14.01.2014, decided this issue in favour of the Revenue by holding that interest u/s.28 of LAA was chargeable to tax u/s. 56(2)(viii) of the*

Act. The SLP filed against the judgment in the case of Manjet Singh Vs. Union of India has since been dismissed by the Hon'ble Supreme Court on 18-12-2014 (SLP No. 34642 of 2014) holding that "Heard ld. Counsel for the petitioners and perused the relevant material. We do not find any legal and valid ground for interference. The special leave petitions are dismissed."

6. Question of deduction of tax at source on interest u/s 28 of the LAA once again came up for consideration before the Hon'ble jurisdictional High Court in a batch of 13 petitions with the lead case of Shivajirao S/o Dnyanoba Ghanwat & Ors. VS. The State of Maharashtra & Ors. (WP No. 5402 of 2013). The petitioners contended that the tax was deducted at source on the entire amount of compensation awarded in Land Acquisition proceedings, including the interest u/s 28 of the Land Acquisition Act, which was not deductible in the light of the judgment of the Hon'ble Supreme Court in Ghanshyam (HUF) (supra). Per contra, the Respondent made out a case that tax at source was rightly deductible as there was no difference between the interest granted u/s 28 and 34 of the LAA. This view was bolstered on the basis of an earlier judgment of the Hon'ble Supreme Court in Bikram Singh (supra) 224 ITR 551 (SC). The Hon'ble Bombay High Court, vide its judgment dated 27.08.2013 (copy at pages 69

onwards of the assessee's paper book), recorded the petitioner's contention in para 8 and that of the respondent in paras 3 read with 4. In para 5 of the judgment, their Lordships found that: 'Section 34 casts obligation upon Collector to pay interest after compensation is worked out. Section 28 puts similar obligation upon the Court when the Court finds that the compensation awarded under section 11 was inadequate. Therefore, there is no change in nature of interest either u/s.28 or section 34. Even if court hikes compensation for land and interest is awarded under Section 28 of the Act, upon such increased compensation, in the light of larger Bench judgment, the Department and Disbursing Authorities are bound to effect deduction of TDS'. On the interplay between the Hon'ble Apex Court judgments in Ghanshyam (supra) & Bikram Singh (supra), the Hon'ble Bombay High Court in para 4 found the: 'issue to be squarely covered by the larger Bench judgment of the Apex court' in Bikram Singh (supra). Then it noted in para 9 of the judgment that: "We have perused para 24 and 25 of the judgment of the Apex Court in Commissioner of Income Tax Vs. Ghanshyam (supra). We find that the Hon'ble Apex Court there, was not called upon to look into the Larger Bench judgment delivered earlier in case of Bikram Singh (supra). In para 7, the Hon'ble Larger Bench has found that the interest

paid u/s.28 is not by way of any charge on compensation determined u/s.23(1). We, therefore, with respect, follow the larger Bench judgment of the Hon'ble Apex Court". Thus it is plentifully lucid that the Hon'ble jurisdictional High Court has categorically held that interest u/s 28 of the Land Acquisition Act is chargeable to tax.

7. *The ld. AR submitted that the Hon'ble jurisdictional High Court has not correctly appreciated the legal position inasmuch as the decision in the case of Ghanshyam (supra) was binding and ought to have been followed. He unsuccessfully tried to convince the Tribunal that the decision rendered by the Hon'ble Bombay High Court should not be preferred over certain other decisions in favour of the assessee. We find that in certain decisions, the issue has been decided in assessee's favour. Notwithstanding any contrary view expressed by a non-jurisdictional Hon'ble High Court, the Tribunal, being an authority inferior in hierarchy to its jurisdictional High Court, is bound by the verdict of its superior Hon'ble High Court and cannot read, consider or understand the judgments of the Hon'ble Supreme Court in a way different from the one understood by the Hon'ble jurisdictional High Court unless such a view has been subsequently reversed/modified by the Hon'ble Supreme Court.*

8. *The ld. AR then submitted that the Hon'ble Supreme Court in Union of India and others Vs. Hari Singh and others (2018) 302 CTR 0458 (SC) has considered a similar issue and decided the same in favour of the assessee. It was then contended that since the judgment of the Hon'ble jurisdictional High Court was rendered prior to that of Hon'ble Supreme Court in Hari Singh and others (supra), the latter should be followed in preference to the former.*

9. *We are unable to find any relevance of the judgment of Hon'ble Supreme Court in Hari Singh and others (supra), insofar as the issue under consideration is concerned. In that case, the Land Acquisition Collector deducted tax at source from compensation on account of compulsory acquisition of land and deposited the same with the exchequer. A writ petition was filed in the High court urging that no deduction of tax at source was permissible in view of the provisions of section 194LA of the I.T. Act, since the land which was acquired was agricultural land and this provision categorically mentions that in respect of agricultural land, tax at source was not to be deducted. The Hon'ble High Court directed the Income-tax Department to refund the amount to the collector and held: "that the Collector will determine whether the compensation paid is for property other than the agricultural land or otherwise and whether deduction*

of tax at source was permissible under other provisions of law.....". Aggrieved thereby, the Revenue approached the Hon'ble Supreme Court pleading that the matter should have been remitted to the AO for deciding the nature of land acquired and not the Collector as it was the AO who was to come to the conclusion whether land was agricultural or not. Accepting the contention on behalf of the Revenue, the Hon'ble Supreme Court held that the claimant should approach the concerned AO and raise the issue that no tax was payable on compensation/enhanced compensation which was received by them as their land was agricultural land. It was further observed that, while determining as to whether the compensation paid was for agricultural land or not, the AO will keep in mind the provisions of Section 28 of the Land Acquisition Act and the law laid down by this Court in CIT, Faridabad Vs. Ghanshyam (HUF) in order to ascertain whether the interest given under the said provision amounts to compensation or not. It is abundantly clear that the judgment in the case of Hari Singh and others (supra) is based on altogether different factual matrix in which the question was as to whether it was the Collector or the AO who will decide as to whether any tax was payable on compensation/enhanced compensation. This issue came to be decided by Hon'ble Supreme Court by holding that the

AO was the competent authority. There is no adjudication on the point as to whether interest u/s.28 of the Land Acquisition Act is chargeable to tax separately or part of enhanced compensation. There is a simple direction to the AO to consider this aspect of the matter.

10. *In view of the foregoing discussion, it is manifest that the judgment of the Hon'ble jurisdictional High Court holding that interest u/s.28 under the LAA is chargeable to tax, is intact and has not been disturbed in any manner by the Hon'ble Supreme Court in the case of Hari Singh and others (supra). On a specific query, the ld. AR could not point out as to whether the judgment of the Hon'ble jurisdictional High Court in Shivajirao (supra) has been reversed or modified in any manner by the Hon'ble Supreme Court. Respectfully following the judgment of the Hon'ble jurisdictional High Court in Shivajirao (supra) and the judgment of Hon'ble Punjab & Haryana High Court in Manjeet Singh (supra) along with the statutory amendment carried out to section 56(2) inserting clause (viii) w.e.f. 01-04-2010, it is overt that the ld. CIT(A) has taken an unexceptionable view in the matter pertaining to the A.Y. 2013-14. We, therefore, uphold the same. This ground is not allowed."*

5. We have heard the foregoing vehement rival contentions. It transpires that the instant issue of taxability of the assessee's interest income received under section 28 of the Act is covered in assessee's favour as per the hon'ble high court's Bombay bench holding that the same is not taxable under section 56(2)(viii) of the Act as against the Revenue's contentions that the Aurangabad bench of the very hon'ble jurisdictional high court has taken a divergent view against the taxpayer in *Shivajirao and Others Vs. State Writ Petition No.5042/2013* dated 27.08.2013(supra).

6. Faced with the situation, we are of the opinion that it is the Bombay and not Aurangabad bench of the hon'ble jurisdictional high court whose decision would prevail in the given facts and circumstances as the assessee, his land/capital asset forming subject matter of compulsory acquisition as well as "situs" of the Assessing Officer who has framed assessment before us dated 28.11.2017, are covered within its territorial jurisdiction notified from time to time. We thus quote *PCIT Vs. ABC Paper Limited [2022] 447 ITR 1 (SC)* and decide the instant sole substantive ground as well as the main appeal is assessee's favour. Ordered accordingly.

5. We adopt the detailed discussion *mutatis mutandis* "for Panel" to accept the assessee's instant sole substantive grievance on merits.

No other ground/argument raised or pressed before us during the course of hearing.

6. This assessee's appeal is allowed in above terms.

Order pronounced in the open Court on 03.05.2024.

Sd/-
[DR. DIPAK P. RIPOTE]
ACCOUNTANT MEMBER

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 03rd May, 2024

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The Pr. CIT, Pune concerned
4.	D.R. ITAT, "A" Bench, Pune.
5.	Guard File.

//By Order//

//True Copy //

Sr. Private Secretary, ITAT, Pune Benches,
Pune.