

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

Before Shri Waseem Ahmed, Accountant Member and
Shri Soundararajan K., Judicial Member

ITA No. 118/Coch/2023
(Assessment Year: 2015-16)

Pallath Nafeesa Poolakkodan House Athirumada, Punnathala Tirur, Malappuram 676552 [PAN: ALIPN9300R]	vs.	The Income Tax Officer Tirur
(Appellant)		(Respondent)

Appellant by:	Shri Shaji Paulose, CA
Respondent by:	Smt. Girly Albert, Sr. D.R.

Date of Hearing:	01.10.2024
Date of Pronouncement:	03.10.2024

ORDER

Per Bench

This appeal filed by the assessee is directed against the order of the National Faceless Appeal Centre, Delhi [CIT(A)] dated 05.12.2022 for Assessment Year (AY) 2015-16.

2. The only interconnected issue raised by the assessee is that the learned CIT(A) erred in confirming the action of the AO by treating the interest received along additional compensation on account of land acquisition as income chargeable to tax.

3. The facts in brief are that the assessee in the present case, an individual and owns certain agricultural land along other co-owners (16 Co-owners). The land was acquired by the Government of Kerala in earlier year and compensation received against acquisition of land was claimed exempted

under section 10(37) of the Act. Subsequently, the Principal Sub-Court of Khozhikode vide award dated 18-03-2013 directed to pay additional compensation to the assessee and other co-owners along with interest. Accordingly, the assessee during the year under consideration received additional compensation of Rs. 1,64,36,212/- and interest on the same for Rs. 79,11,298/- only. The amount of additional compensation as well as the amount of interest was claimed as exempted income under section 10(37) of the Act. The assessee contended that interest received was in accordance with section 28 of Land Acquisition Act of 1894 which is part and parcel of amount of additional compensation eligible for exemption under section 10(37) of the Act. The assessee in this regard placed reliance on the judgment of Hon'ble Supreme Court in the case of CIT vs. Ghanshayam (HUF) reported in 315 ITR 31.

4. However, the AO held that only the part of additional compensation shall be subject to exemption under section 10(37) of the Act, and the amount of interest is required to be taxed as income under the head other sources as per the provision section 145A(b)r.w.s.56(2)(viii) of the Act. Accordingly, the AO treated interest amount of Rs. 79,11,298/- as income from other sources and after providing deduction of 50% as per the provision of section 57(iv) of the Act made addition of Rs. 39,55,649/- to the total income of the assessee.

5. The aggrieved assessee preferred an appeal before the learned CIT(A). The assessee before the learned CIT(A) made identical submission that the interest was received on enhanced compensation under section 28 of the Land Acquisition which is not taxable as income from other sources. However, the learned CIT(A) confirmed the addition made by the AO by placing reliance

on the judgment of Hon'ble Punjab & Haryana High Court in the case of Jagmal Singh & Other Vs. State of Haryana & others in CR No. 7740 of 2012.

6. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

7. The learned AR before us submitted that the interest on the enhanced compensation relates to the agricultural land which was not chargeable to tax and therefore the amount of interest cannot be made subject to the addition to the income of the assessee.

8. On the other hand, the learned Sr. DR before us vehemently supported the order of the authorities below.

9. We have heard the rival contentions of both the parties and perused the materials available on record. At the outset, we note that the facts involved in the case on hand are not in dispute. As such, there is no dispute that the assessee has received enhanced compensation for agricultural land along with interest computed under section 28 of the Land Acquisition Act. Thus, only question before us is whether the interest received on enhanced compensation shall be exempted u/s 10(37) of the Act chargeable to tax as income from other sources as per the provisions of section 56(2)(viii) r.w.s. 145A(b) of the Act. In this regard we note that the issue on hand is squarely covered in favour of the assessee by the judgment of Hon'ble Gujarat High court in the case of Movaliya Bhikhubhai Balabhai vs. ITO-TDS reported in 70 taxmann.com 45. The relevant finding of the Hon'ble Bench is extracted as under:

“10. In the facts of the present case, it is an admitted position that the interest on which the tax is sought to be deducted at source under section 194A of the Act is interest under section 28 of the Act of 1894 and not under section 34 thereof. As

noted hereinabove, the petitioner's application for a certificate under section 197 of the I.T. Act for no deduction of tax at source has been rejected on the ground that the interest amount received under section 28 of the Act of 1894 is taxable as per the provisions of section 57(iv) read with section 56(2)(viii) and section 145A(b) of the I.T. Act. Section 145A of the I.T. bears the heading "Method of accounting in certain cases". Section 145A(b) provides that notwithstanding anything to the contrary contained in section 145, interest received by an assessee on compensation or on enhanced compensation, as the case may be, shall be deemed to be the income of the year in which it is received. Clause (viii) of sub-section (2) of section 56 of the I.T. Act provides for income by way of interest received on compensation or on enhanced compensation referred to in clause (b) of section 145A which is chargeable as income from other sources. The first respondent Income Tax Officer seeks to tax the interest received by the petitioner under section 28 of the Act of 1894 as income from other sources under section 56(2)(viii) read with section 145A(b) of the I.T. Act. In the opinion of this court, in the light of the law laid down by the Supreme Court in the case of Ghanshyam (HUF) (supra), the interest received under section 28 of the Act of 1894 would not fall within the ambit of the expression "interest" as envisaged under section 145A(b) of the I.T. Act, inasmuch as, the Supreme Court in the above decision has held that interest under section 28 of the Act of 1894 is not in the nature of interest but is an accretion to the compensation and, therefore, forms part of the compensation. At this stage it may be apt to quote the following part of the decision of the Supreme Court in Ghanshyam (HUF)'s case (supra):

"54. Section 45(5) read as a whole [including clause (c)] not only deals with reworking as urged on behalf of the assessee but also with the change in the full value of the consideration (computation) and since the enhanced compensation/consideration (including interest under Section 28 of the 1894 Act) becomes payable/paid under the 1894 Act at different stages, the receipt of such enhanced compensation/consideration is to be taxed in the year of receipt subject to adjustment, if any, under Section 155(16) of the 1961 Act, later on. Hence, the year in which enhanced compensation is received is the year of taxability. Consequently, even in cases where pending appeal, the court/tribunal/authority before which appeal is pending, permits the claimant to withdraw against security or otherwise the enhanced compensation (which is in dispute), the same is liable to be taxed under Section 45(5) of the 1961 Act. This is the scheme of Section 45(5) and Section 155(16) of the 1961 Act. We may clarify that even before the insertion of Section 45(5)(c) and Section 155(16) w.e.f. 1-4-2004, the receipt of enhanced compensation under Section 45(5)(b) was taxable in the year of receipt which is only reinforced by insertion of clause (c) because the right to receive payment under the 1894 Act is not in doubt.

55. *It is important to note that compensation, including enhanced compensation/consideration under the 1894 Act, is based on the full value of property as on the date of notification under Section 4 of that Act. When the court/tribunal directs payment of enhanced compensation under Section 23(1-A), or Section 23(2) or under Section 28 of the 1894 Act it is on the basis that award of the Collector or the court, under reference, has not compensated the owner for the full value of the property as on date of notification."*

Thus, it is clear that the Supreme Court after considering the scheme of section 45(5) of the I.T. Act has categorically held that payment made under section 28 of the Act of 1894 is enhanced compensation, as a necessary corollary, therefore, the contention that payment made under section 28 of the Act of 1894 is interest as envisaged under section 145A of the I.T. Act and has to be treated as income from other sources, deserves to be rejected.

11. It has been vehemently contended on behalf of the first respondent that the above decision has been rendered prior to the substitution of section 145A of the I.T. Act by Finance (No. 2) Act, 2009 with effect from 1st April, 2010, and hence, would have no applicability to the facts of the present case. The scope and effect of the substitution (with effect from 1st April, 2010) of section 145A, as also amendment made in section 56(2) by Act 33 of 2009 have been elaborated in the following portion of the departmental circular No. 5/2010, dated 3.6.2010, as follows:

"Rationalizing the provisions for taxation of interest received on delayed compensation or on enhanced compensation.-

- 46.1 *The existing provisions of Income Tax Act, 1961, provide that income chargeable under the head "Profits and gains of business or profession" or "Income from other sources", shall be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee. Further the Hon'ble Supreme Court in the case of Smt. Rama Bai v. CIT [\(1990\) 84 CTR \(SC\) 164 : \(1990\) 181 ITR 400 \(SC\)](#) 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.*
- 46.2 *With a view to mitigate the hardship, section 145A is amended to provide that the interest received by an assessee on compensation or enhanced compensation shall be deemed to be his income for the year in which it was received, irrespective of the method of accounting followed by the assessee.*
- 46.3 *Further, clause (viii) is inserted in sub-section (2) of the section 56 so as to provide that income by way of interest received on*

compensation or 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.

46.4 *Applicability. - This amendment has been made applicable with effect from 1st April, 2010, and it will accordingly apply in relation to assessment year 2010-11 and subsequent assessment years."*

Thus, the substitution of section 145A by Finance (No. 2) Act, 2009 was not in connection with the decision of the Supreme Court in Ghanshyam (HUF)'s case (supra) but was brought in to mitigate the hardship caused to the assessee on account of the decision of the Supreme Court in Rama Bai v. CIT [1990] 181 ITR 400/[1991] 54 Taxman 496 whereby it was held that arrears of interest computed on delayed or enhanced compensation shall be taxable on accrual basis. Therefore, when one reads the words "interest received on compensation or enhanced compensation" in section 145A of the I.T. Act, the same have to be construed in the manner interpreted by the Supreme Court in Ghanshyam (HUF)'s case (supra).

12. On behalf of the first respondent, reliance has been placed upon decisions of different High Courts taking a different view. This court is not in agreement with the view adopted by the other High Courts which are not consistent with the law laid down in the case of Ghanshyam (HUF) (supra). In Manjet Singh (HUF) Karta Manjeet Singh's case (supra), the Punjab and Haryana High Court has chosen to place reliance upon various decisions of the Supreme Court rendered during the period 1964 to 1997 and has chosen to brush aside the subsequent decision of the Supreme Court in Ghanshyam (HUF)'s case (supra) which is directly on the issue by observing that the assessee cannot derive any benefit from the observations made by the Supreme Court as quoted therein. In Hari Kishan's case (supra), the Punjab and Haryana High Court has placed reliance upon its earlier decision in the case of Manjet Singh (HUF) Karta Manjeet Singh (supra). In Bir Singh (HUF)'s case (supra), the Punjab and Haryana High Court has held that under the scheme of the 1894 Act, interest under section 34 is part of compensation while interest under section 28 is not the interest which partakes the character of compensation and is treated differently. In the opinion of this court, the above view of the Punjab and Haryana High Court is contrary to what has been held in the decision of the Supreme Court in Ghanshyam (HUF)'s case (supra) wherein it has been held that interest under section 28 unlike interest under section 34 is an accretion to the value, hence it is a part of enhanced compensation or consideration which is not the case with interest under section 34 of the 1894 Act. This court is in agreement with the view adopted by the Punjab and Haryana High Court in Jagmal Singh's case (supra), which has been extensively referred to in paragraph 4.1 above. The decision of the Delhi High Court in Sharda Kochhar's case (supra), having been rendered in the context of a different controversy would have no applicability to the facts of the present case.

13. The upshot of the above discussion is that since interest under section 28 of the Act of 1894, partakes the character of compensation, it does not fall within the ambit of the expression "interest" as contemplated in section 145A of the I.T. Act. The first respondent - Income Tax Officer was, therefore, not justified in refusing to grant a certificate under section 197 of the I.T. Act to the petitioner for non-deduction of tax at source, inasmuch as, the petitioner is not liable to pay any tax under the head "income from other sources" on the interest paid to it under section 28 of the Act of 1894."

10. In the above detailed finding, the Hon'ble Gujarat High Court has discussed the law laid down by the Hon'ble Supreme court in the case of *CIT v. Ghanshyam (HUF)* [2009] 182 Taxman 368 (SC) and the effect of amendment brought in by inserting clause (b) to section 145A of the Act as well as finding of the Hon'ble Punjab and Haryana High court in case of *Jagmal Singh v. State of Haryana* [Civil Revision No. 7740 of 2012 which was relied upon by the learned CIT(A). Thus, respectfully following the finding of the Hon'ble Gujarat High Court, we hereby hold that the interest received by the assessee on enhanced compensation under section 28 of the Land Acquisition Act is not chargeable to tax as income from other sources. Thus, we set aside the finding of the ld. CIT(A) and direct the AO to delete the addition made by him. Hence, the ground of appeal filed by the assessee is hereby allowed.

11. In the result, appeal filed by the assessee allowed

Order pronounced on 03rd October, 2024 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-
(Soundararajan K.)
Judicial Member

Sd/-
(Waseem Ahmed)
Accountant Member

Cochin, Dated: 03rd October, 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