

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C': NEW DELHI
BEFORE
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

ITA No. 1963/Del/2024, A.Y.2013-14)

Jai Singh Karwal House No. 3, Model Town, Hansi, Haryana PAN : ABCPK4153H	Vs.	Principal Commissioner of Income Tax, Aayakar Bhawan, Opp, Mansarover park, Rohtak, Haryana
(Appellant)		(Respondent)

Appellant by	Sh. Kuldip Khare, CA
Respondent by	Shri Dayainder Singh Sidhu, CIT (DR)

Date of Hearing	17/10/2024
Date of Pronouncement	/11/2024

ORDER

PER YOGESH KUMAR U.S., JM :

This appeal is filed by the Assessee against the order of Principal Commissioner of Income Tax- Rohtak, dated 01/03/2024 for the Assessment Year 2013-14.

2. The grounds of Appeal are as under: -

"1. That having regard to the facts and circumstances of the case and in law, the order under section 203 of the Income Tax Act 1961 (" the Act") dated 28.03.2024 passed by the Ld. Principal Commissioner of Income Tax, Rohtak [PCIT], setting aside the assessment order 147 r.w.s. 1448 of the Act dated 29.03.2022 by the Assessing Officer, National e-Assessment Centre [the Assessing Officer"] as erroneous and prejudicial to the interest of the revenue, is without jurisdiction, bad in law and void-ab-initio.

2. That having regard to the facts and circumstances of the case and in law, the Ld. Principal Commissioner of Income Tax, Rohtak [PCIT) erred in passing order u/s 263 of the Act, so much so that, the assessment order passed by the Assessing officer does not satisfy the statutory twin conditions prescribed under section 263 of the Act. viz., (i) that the assessment order is erroneous; and (ii) that the assessment order is prejudicial to the interest of Revenue, which are to be cumulatively satisfied.

3. That the Honorable Principal C.I.T. has failed to appreciate the fact that once the learned A.O. on examination of facts on record and after considering all the submissions of the assessee with supporting evidence and judgements of Honorable Supreme Court on the same issue has accepted the claim of the appellant then such an order of assessment cannot be treated as erroneous in as much as prejudicial to the interest of revenue merely because the learned Principal Commissioner of IncomeTax had a different opinion.

The learned Principal C.I.T. has erred in passing the order under section 263 of Income Tax Act by invoking the explanation 2(d) of section 263 of the Income Tax Act, 1961.

5. That having regard to the facts and circumstances of the case and in law, the Ld. PCIT erred in exercising jurisdiction under section 263 of the Act in respect of the issue of taxability of interest u/s 28 of the Land Acquisition Act received as part of enhanced compensation, which was duly supported by judicial precedents and therefore, at best, could be said to be debatable issue ousting the jurisdiction under section 263 of the Income Tax Act, 1961.

6. That the learned Principal C.I.T. has erroneously relied on the judgement of Honorable Punjab & Haryana High Court in the case Mahender PalNarang Vs CBDT (423 ITR 13). dt.19.02.2020 on the ground that SLP in this case has been rejected by the Honorable Supreme Court ignoring the settled law that rejection of SLP without a speaking order cannot be treated as an order of Honorable Supreme Court.

7. That the Ld. PCIT has erred in assuming revisional jurisdiction u/s 263 of the Income Tax Act, 1961 as held by the Hon'ble Delhi High Court in CIT vs. Hindustan Coca as 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.”

3. Brief facts of the case are that, the Assessee filed return of income for the Assessment Year under consideration declaring an income of Rs. 2,02,730/-. The return was processed u/s 143(1) of the Income Tax Act, 1961 ('Act' for short) accepting the return income. Subsequently, it was noticed that during the year, the Assessee has received interest on compensation or enhanced compensation from the Land Acquisition Officer, HUDA, Hisar, in lieu of compulsory acquisition of land as awarded by State Government under the Land Acquisition Act. Further on perusal of the documents it was found by the A.O. that during the FY 2012-13 the Assessee received interest on compensation/enhanced compensation totaling to Rs. 32,42,205/- out of which 50% share of the Assessee is Rs. 16,21,153/-. A notice u/s 148 of the Act has been issued to the Assessee on 28/03/2021. The Assessee has replied to the notice issued u/s 142(1) of the Act. After considering the reply of the Assessee and Judgments quoted thereupon, the A.O. found that the submission of the Assessee are found to be in order and passed the Assessment order accepting the returned income vide Assessment Order dated 29/03/2023.

4. The Ld. PCIT by exercising the power conferred u/s 263 of the Act, passed an order on 01/03/2024, wherein held that the assessment order dated 29/03/2022 is erroneous in so far prejudicial to the interest of the Revenue, accordingly set aside the Assessment Order and directed the A.O. to pass fresh assessment order after giving the due opportunity of hearing to the Assessee. Aggrieved by the order of the Ld. PCIT dated 01/03/2024, the Assessee preferred the present Appeal on the grounds mentioned above.

5. The Ld. Counsel for the Assessee submitted that the question as to whether receipt of interest related to the additional compensation granted under Land Acquisition Act is a part of exempt income u/s 10(37) of the Act or not is a debatable issue, the A.O. while framing the Assessment u/s 147 of the Act has taken plausible view based on the decisions rendered by various Courts, which cannot be held to be erroneous while exercising power u/s 263 of the Act by the PCIT. The Ld. Counsel relying on several judicial pronouncements, sought for allowing the Appeal.

6. Per contra, the Department's Representative submitted that the contention of the Assessee has been wrongly accepted by the A.O. and the interest received u/s 28 of the Land Acquisition Act was wrongly

allowed as exempt u/s 10(37) of the Income Tax Act, whereas it was chargeable to tax under the head "Income from other sources". The Judgments relied upon by the Assessee have been rendered in respect of Assessment Years prior to introduction of Sections 56(2)(viii), 57(iv) and 145A(b) by Finance Act 2009 w.e.f 01/04/2010. Thus, submitted that the Appeal of the Assessee deserves to be dismissed.

7. We have heard both the parties and perused the material available on record. The case of the Assessee was reopened on the ground that the Assessee has received interest on compensation of Rs. 16,21,153/- being 50% share of the Assessee. A notice u/s 148 was issued to the Assessee on 28/03/2021. The Assessee filed ITR on 29/04/2021 declaring income of Rs. 2,04,970/-. Subsequently, show cause cum-notice u/s 142(1) of the Act has been issued on 21/03/2022 and the Assessee filed reply dated on 28/03/2022 wherein the Assessee mentioned as under: -

"Interest received u/s 28 of Land Acquisition Act and in all the Judgments it has been held that interest received u/s 28 of Land Acquisition Act is part of compensation and is totally exempt under 10(37) of Income Tax Act in case of compulsory acquisition of agricultural land."

The Assessee has also relied on following citation in support of the argument before the A.O.

- a) CIT Vs Ghanshyam HUF (2009) 315 ITR 0001
- b) C.I.T. vs. Govindbhai Mamaiya (2014) 367 ITR 0498 (SC) c) State of Punjab vs. Amarjit Singh (2011) 4 SCC 734
- d) Commissioner of Income Tax Vs. Chet Ram HUF Civil Appeal No.13053/2017 dated. Sept. 12,2017
- e) Union of India and Ors Vs Hari Singh and Others Civil Appeal No. 15041 of 2017 Dt. 15.09.2017
- f) Income Tax Officer-TDS2, Rajkot Vs Muktanandgiri Maheshgiri Civil Appeal No. 27333 of 2017 Dt. 10.11.2017.

8. After considering the reply given by the Assessee, the Ld. A.O. satisfied that the amount so received under the Land Acquisition Act, 1894 is not deserves to be brought to tax.

9. Thus, it is observed that, in the above assessment proceedings initiated u/s 147/148 of the Act, the A.O. has already examined the issue of interest received by the Assessee on the enhanced compensation under the Land Acquisition Act. Therefore, it is not a case wherein the Assessing Officer failed to conduct enquiry, rather it is the case where the Assessing Officer has conducted an enquiry and adopted one of the two views which was plausible view. The question would be as to whether in such circumstances, 'the power u/s 263 of the Act would be invoked by the PCIT or not?'. The above said question is no longer res-integra and the said issue is well settled in several decisions. In the case

of Malabar Industrial Co. Ltd. vs. Commissioner of Income Tax, (2000) 243 ITR 83 (SC), the Hon'ble Supreme Court held as under :-

“The phrase “prejudicial to the interests of the Revenue” has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the Revenue. For example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of Revenue ; or where two views are possible and the Income-tax Officer has taken one view which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue, unless the view taken by the Income-tax Officer is unsustainable in law.”

10. Further, the Hon'ble Supreme Court in the case of Pr. CIT vs. Canara Bank Securities Ltd., S.L.P.(C) No. 25651 of 2019, vide order dated 14th October, 2019 dismissed the Department's appeal affirming the view taken by the Bombay High Court in ITA No.1761 of 2016, dated February 11, 2019, wherein the High Court held that the question whether the income should be taxed as business income or has arisen

from other source was a debatable issue and the Assessing Officer had taken the plausible view that it was a business income after due enquiries and therefore it is not open for the Commissioner to take such an order in revision. Even in the present case, whether the receipt of interest related to the additional compensation granted under Land Acquisition Act, 1894 is a part of exempt u/s 10 (37) of the Act or not is a debatable issue, therefore, following the ratio laid down by the Hon'ble Supreme Court in Malabar Industrial Co. Ltd. vs. Commissioner of Income Tax (supra) and other decisions mentioned above, we are of the considered opinion that the impugned order of the Ld. PCIT is found to be erroneous, accordingly, order impugned of the Ld. PCIT is hereby quashed.

11. In the result, appeal filed by the Assessee is allowed.

Order pronounced in open Court on 12th November, 2024

Sd/-

(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Dated: 12/11/2024

R.N, Sr. PS

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT, NEW DELHI