

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H', NEW DELHI**

**BEFORE SH. S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SH. SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No.1180/Del/2023
Assessment Year: 2019-20

Vachaspati Sharma Village – Hayatpur Garhi Harsaru, Hayatpur, Gurgaon PAN No.FNQPS2021R	Vs	ITO Ward-4 Gurgaon
(APPELLANT)		(RESPONDENT)

Appellants by	Sh. Suraj Bhan Nain, Advocate Sh. K.L. Pahwa, Advocate
Respondent by	Ms. Sapna Bhatia, CIT DR

Date of hearing:	11/09/2024
Date of Pronouncement:	21/11/2024

ORDER

SH. SUDHIR KUMAR, JM :

The above captioned appeal by the assessee is directed against the order of the NFAC/Commissioner of Income Tax (Appeals), Delhi [hereinafter referred to as "CIT(A)"], vide order dated 27.03.2023 pertaining to A.Y. 2019-20 arises out of the order passed by the Assessing Officer dated 17.09.2021 u/s 143(3) of the Income Tax Act,1961[hereinafter referred as 'the Act']

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

1. That having regard to the facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred both in law and on facts in confirming the addition of Rs. 2,39,47,720/- made by the Ld. Assessing Officer under the head "other sources" u/s 56 of the Income-tax Act on account of interest u/s 28 of the Land Acquisition Act 1894 of Rs. 4,78,95,440/- received by the appellant during the year, which was part of enhanced compensation for compulsory acquisition of his agricultural land exempt u/s 10(37) of the Income Tax Act 1961.

2. That having regard to the facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred both in law and on facts in confirming the action of the Ld. Assessing Officer charging interest u/s 234B and u/s 234D of the Income Tax Act 1961.

3. That the appellant craves the leave to add, modify, amend, or delete any of the grounds of appeal at the time of hearing or before decision of appeal.

3. The brief facts of the case are that the assessee is a farmer. He has furnished his original return of income for A.Y.2019-20 electronically on 15.06.2019, subsequently filed revised return

of income on 19.07.2019 declaring taxable total income at Rs.17,08,910/-. The case of the assessee has been selected for scrutiny by issuing notice u/s. 143 (2) of the Act. The assessee had ancestral rural agricultural land situated at Badha in the district of Gurgaon which was acquired by the Government of Haryana for public interest. The assessee has received enhanced compensation including interest u/s. 28 of the Land Acquisition Act 1894 of Rs.4,78,95,44/- during the year as per the decision of the Court. The assessee has claimed the total enhanced compensation including interest u/s 28 of the Act as exempted u/s 10(37) of the Act. According to AO the interest u/s 28 of the Land Acquisition Act received by assessee is "Income from other Sources" and after allowing 50% deduction u/s 57(iv) of the Act on gross interest received, the AO has completed the assessment order u/s 143(3) of the Act. The assessing officer has determined the total income at Rs 25682162/- by making the addition of Rs 2,39,47720/-.

4. Aggrieved the order of the assessing officer the assessee has filed the appeal before the Ld CIT(A) who vide his order dated 27-03-2023 dismissed the appeal against which the assessee is in appeal before us.

5. The issue involved in this appeal is that whether interest u/s. 28 of the Land Acquisition Act 1894 awarded by the Court is a revenue receipt chargeable to tax as Income from Other Sources or is an integral part of enhanced compensation, and thus, is a capital receipt, which is exempt u/s. 10 (37) of the Act being received on compulsory acquisition of agricultural land by the State Government.

6. The Ld AR has submitted that the enhanced compensation awarded by the appellate authority/ court to an assessee on acquisition of capital asset is chargeable to tax as capital gains in the year of receipt as per Section 45(5) of the Act. He has further submitted that the Section 10 (37) of the Act, provides that in the case of an assessee being individual or a HUF, capital gains arising from the transfer of agricultural land, being capital asset by way of compulsory acquisition under any law, or a transfer the consideration for which is determined or approved by the Central Government, or the Reserve Bank of India is exempt from tax. Thus, in the case of an individual or HUF, such capital gain arising from compulsory acquisition of agricultural land being capital asset is exempt from tax u/s 10(37) of the Act.

7. It is submitted that where an agricultural land is acquired for public purposes by the Government, the Land Acquisition Authority (Collector) award compensation to the landowner under the Land Acquisition Act. In cases, where a landowner files reference u/s 18 of the Land Acquisition Act against such award of compensation granted by the Land Acquisition Officer, the Court may also award additional amount under Section 23(1-A), solatium under Section 23(2) and interest u/s 28 of the Land Acquisition Act to the assessee apart from market value of land on the date of acquisition forming part of enhanced compensation. In subsequent appeal to High Court and/or Hon'ble Supreme Court, the Court may confirm, enhance, or reduce the market price of acquired land. It may be noted that the assessee is entitled to interest u/s 34 of Land Acquisition Act only if there is delay in payment of compensation on or before taking possession of the acquired land. He has further submitted that award of interest under section 28 of the Land Acquisition Act 1894 discretionary and is determine by the court and awarded by the court is part of enhanced compensation and receipt is in capital in nature.

8. Section 34 and 28 of the Land Acquisition Act 1894 are under:-

Section 34 of the 1894 Act reads as under: -

"34. Payment of interest

When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of nine per centum per annum from the time of so taking possession until it shall have been so paid or deposited.

Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date or expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry."

Thus, the interest under section 34 of the 1894 Act is mandatory and is payable where there is delay in payment of compensation from the date of possession of acquired land by the Collector. Hence, interest under

section 34 is for delay in making payment after taking the possession of the acquired land.

Therefore, the interest awarded under section 34 of the Land Acquisition Act, 1894 awarded on account of delay in payment of compensation being mandatory in nature is revenue receipt and chargeable to tax as 'Income from Other Sources' u/s 56 of the Income Tax Act.

Section 28 of the 1894 Act reads as under: -

"28. Collector may be directed to pay interest on excess compensation If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of nine per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court.

Provided that the award of the court may also direct that where such excess or any part thereof is paid into court after the date of expiry of a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into court before the date of such expiry."

9. The issue with regard to taxability awarded on enhanced compensation u/s 28 of the land Acquisition Act 1894 was considered by the Supreme Court and in the case of **CIT vs Ghanshyam (HUF) [2009] 182 Taxman 368/315 ITR 1 SC** the Hon'ble Supreme Court held that;

23. In addition to the market value of the land, as above provided, the Court shall in every case award a sum of 30 per cent on such market value, in consideration of the compulsory nature of acquisition. This is under section 23(2) of the 1894 Act. In short, section 23(2) talks about solatium. Award of solatium is mandatory. Similarly, payment of additional amount under section 23(1A) is mandatory. The award of

interest under section 28 of the 1894 Act is discretionary. Section 28 applies when the amount originally awarded has been paid or deposited and when the Court awards excess amount. In such cases interest on that excess alone is payable. Section 28 empowers the Court to award interest on the excess amount of compensation awarded by it over the amount awarded by the Collector. The compensation awarded by the Court includes the additional compensation awarded under section 23(1A) and the solatium under section 23(2) of the said Act. This award of interest is not mandatory but is left to the discretion of the Court. Section 28 is applicable only in respect of the excess amount, which is determined by the Court after a reference under section 18 of the 1894 Act. Section 28 does not apply to cases of undue delay in making award for compensation (See: Ram Chand v. Union of India [1994] 1 SCC 44). In the case of Shree Vijay Cotton & Oil Mills Ltd. v. State of Gujarat [1991] 1 SCC 262, this Court has held that interest is different from compensation.

24. To sum up, interest is different from compensation. However, interest paid on the excess amount under

section 28 of the 1894 Act depends upon a claim by the 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.

32. The issue to be decided before us what is the meaning of the words "enhanced compensation/consideration" in section 45(5)(b) of the 1961 Act? Will it cover "interest"? These questions also bring in the concept of the year of taxability.

33. It is to answer the above question that we have analysed the provisions of sections 23, 23(1A), 23(2), 28 and 34 of the 1894 Act. As discussed hereinabove, Section 23(1-A) provides for additional amount. It takes care of the increase in the value at the rate of 12% per annum. Similarly, under Section 23(2) of the

1894 Act there is a provision for solatium which also represents part of the enhanced compensation. Similarly, Section 28 empowers the court in its discretion to award interest on the excess amount of compensation over and above what is awarded by the Collector. It includes additional amount under Section 23(1-A) and solatium under Section 23(2) of the said Act. Section 28 of the 1894 Act applies only in respect of the excess amount determined by the court after reference under Section 18 of the 1894 Act. It depends upon the claim, unlike interest under section 34 which depends on undue delay in making the award. It is true that "interest" is not compensation. It is equally true that Section 45(5) of the 1961 Act refers to compensation. But as discussed hereinabove, we have to go by the provisions of the 1894 Act which awards "interest" both as an accretion in the value of the lands acquired and interest for undue delay. 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. So also additional amount under Section 23(1-A) and solatium under Section 23(2) of the 1961 Act forms part of

enhanced compensation under Section 45(5)(b) of the 1961 Act....." It may also be apt to quote the following part of the decision of the Supreme Court in Ghanshyam (HUF)'s case (supra):

35 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. 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 Hon'ble 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 part of enhanced compensation.

10. In the case of **Movaliya Bhikhubhai Bakabhi v ITO [2016] 70 taxmann.com 45/388 ITR 343** (GUJ) the Hon'ble Gujarat High Court held that :-

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 the Act. The first respond 197 of the I.T. Act to the petitioner for non-deduction of tax at source, inasmuch as, the petitioner for non-deduction of tax at source, in as much as the petitioner is not liable to pay any tax under the head income from other sources" on the much as, the petitioner is thon 28 of the Act of 1894.

"14. The petitioner had earlier challenged the communication dated 9th February, 2015 whereby its application for a certificate under section 197 of the IT Act had been rejected and subsequently, tax on the interest payable under section 28 of the Act of 1894 has already been deducted at source. Consequently,

the challenge to the above communication has become infructuous and hence, the prayer clause came to be modified. However, since the amount paid under section 28 of the Act of 1894 forms part of the compensation and not interest, the second respondent was not justified in deducting tax at source under section 194A of the IT Act in respect of such amount. The petitioner is, therefore, entitled to refund of the amount wrongly deducted under section 194A of the I.T. Act.

11. Reliance has also placed on the following judgments

:-

1. *CIT, Faridabad vs. Ghanshyam (HUF) [29] 182 Taxman 368 (SC)*
2. *CIT, Rajkot Vs. Govindbhai Mamaiya [2014] 52 taxman.com 27 (SC)*
3. *Surjit Kumar Chetal Vs. CIT-XV [2017] 86 taxmann.com 121 (Delhi)*
4. *Movaliya Bhikhubhai Balabhai v. ITO [2016] 70 taxmann.com 45 (Guj).*
5. *Hon'ble Supreme Court in the case of Shri Brahmamarkash & Ors. Vs. HSIIDCL & Ors.*
6. *UOI & Ors. V. Hari Singh & Ors. reported at [2018] 91taxmann.com 2 (SC)*

7. *ITO-TDS 2, Rajkot V. Muktanandgiri Maheshgiri in Civil Appeal No.18475 of 2017 dated 10.11.2017*
8. *Hon'ble Supreme Court in M.A. No.1236 of 2019 arising in WPC No. 59/2016 in the case of Shri Brahamparkash & Ors. vs. HSIIDCL & Ors. order dated 19.07.2019.*
9. *Jai Bhagwan Singh & Ors. Vs. HSIIDCL & Ors.*
10. *Writ Petition (Civil) No. 1226 of 2018 filed before the Hon'ble Supreme Court in the case of Jai Bhagwan Singh & Ors. dated 08.05.2019*
11. *Hon'ble Supreme Court in WP(C) No. 1226/2018 in the case of Jai Bhagwan Singh & Ors. vs. HSIIDCL & Ors. Order dated 08.05.2019*
12. *Hon'ble ITAT in the case of Ram Kishan vs. ITO in ITA NO. 5391/Del/2017*
13. *Hon'ble ITAT in the case of Paramjeet Singh Vs. ACIT in ITA No. 1393/Del/2017*
14. *Hon'ble ITAT in the case of Shri Umang Sitani Vs. ITO, Ward 31 (4), New Delhi ITA No.3843/Del/2018*
15. *Kamla Devi Vs. ITO, Ward- 5, Hisar in ITA No.1418/Del/2022*
16. *Hon'ble ITAT in the case of Manjeet Singh Vs. ITO, Ward- 2, Karnal in ITA No.1391/Del/2017*
17. *Decision of P & H High Court in the case of HSIDC Ltd. Vs. Savitri and Another in CR No.2509 of 2012 dated 29.11.2011.*

18. *HSIDC Ltd. Vs. Savitri Devi and Ors. SLP (C) No. 019887/2014*
19. *Decision in the case of Ajay Kumar Vs. State of Haryana and Another in CR No.3236 of 2013*
20. *HUDA vs. Mandir Nar Singh Puri and Ors. in C. R. No. 7953 of 2013 dated 21.12.2013 (P & H High Court)*
21. *Supreme Court in the case of Income-tax Officer TDS-1 Surat Vs. Movaliya Bhikhulbhai Balabhai SLP(C) No.018495 / 2017*
22. *Decision in the case of Gujarat High Court in the case of ITO-TDS 2, Rajkot Vs. Muktanadgiri Maheshgiri vs. District Development*
23. *Hon'ble ITAT in the case of Hisar Vs. Hari Singh Saini in ITA No.1539/Del/2020*
24. *In the case of Mahender pal Narang Vs. CBDT New Delhi [2020] 120 taxmann.com 400 (P & H)*
25. *Hon'ble Supreme Court in the case of Shivappa Etc. Etc. vs. The Chief Engineer & Ors. (Civil Appeal) No. 2649-2700 of 2023 judgment dated 1.04.2023*

12. In all the cases it was decided that interest u/s 28 of the Land Acquisition Act 1894 granted by the court form part of the enhanced compensation is exempted u/s 10(37) of the Act except the case of Mahender Pal Narang vs CBDT New Delhi [2020] taxmann.com 400 P&H).

13. In the case of Rupesh Rasshmikant Shah v. union Of India [2019] 108 taxmann.com 181 the Hon'ble Bombay High Court held that :-

Section 4 read with sections 2(28A) and 194A, of the Income-tax Act, 1961 Income Chargeable as (Interest on compensation) - Whether interest awarded on compensation in motor accident claim cases from date of Claim Petition till passing of award or in case of Appeal, till judgment of High Court in such Appeal, is not 'income' and therefore would not be exigible to tax Held, yes Whether further, provision of deducting tax at source cannot govern taxability of amount which is being paid, hence, section 194A provision relating to deduction of tax at source also cannot make interest income chargeable to tax if it otherwise is not, as it is not a charging provision Held, yes Whether however, interest which maybe paid for delay in depositing awarded amount, would not form part of compensation and, therefore, would fall in bracket of interest income and would be exigible to tax under normal provisions - Held, yes [Paras 59 and 61] [In favour of assessee]

14. Ld AR of the assessee has submitted that memorandum explaining the provisions in the finance bill (No-2)2009 was placed before the parliament and these amendments were made to remove the hardship of the assessee as per the decision of the Hon'ble Supreme Court in the case of Rama Bai v CIT [1990] 181 400 (SC). These amendments were not in connection with or to overrule the decision of the Hon'ble Supreme Court in Ghanshyam (HUF)'s case.

15. He has further submitted that in the cases of Manjeet Singh HUF Karta Manjeet Singh vs Union of India[2016]65 taxmann.com 160 (Punjab& Haryana), Puneet Singh v CIT Karnal [2019] 110 taxmann.com 116 (Punjab & Haryana) and Ram Pal and others v State of Haryana and others held that the interest u/s 28 of Land Acquisition Act 1894 received on enhanced compensation paid for acquisition of land is taxable as income from other sources as per the provision of section 56(2) read with section 57(iv) and 145A(b) of the Act in the year of receipt of the interest. He has further submitted that the 81 farmers have moved the Civil Writ Petition 590/2016 under Article 32 of the constitution before the Hon'ble Supreme Court in the name of Brahama Parkash & ors vs Haryana State Industrial and Infrastructure development corporation Ltd and this writ petition was decided in the appeal no 15041 of 2017

Union of India and Ors vs Hari Singh and ors. The Hon'ble Supreme Court held that :-

2. While determining as to whether the compensation paid was for agricultural land or not, the Assessing Officer(s) will keep in mind the provisions of Section 28 of the Land Acquisition Act and the law laid down by this Court in Commissioner of Income Tax, Faridabad v. Ghanshyam (HUF) [2009 (8) SCC 412] in order to ascertain whether the interest given under the said provision amounts to compensation or not.

16 The Ld AR has submitted that Hon'ble Supreme Court and Hon'ble Income Tax Appellate Tribunal have decided that the interest u/s 28 of Land Acquisition Act is an accretion to the value, hence it is a part of enhanced compensation or consideration received on compulsory acquisition of agriculture land and not income from other sources.

17 The Ld DR has submitted that in the case of DR Shamlal Narula v CIT Hon'ble Supreme Court held that statutory interest paid u/s 34 of the Predecessor Act is paid for the delayed payment of the compensation amount is a revenue receipt liable to tax under the Act. He has further submitted

that after the judgment of the Ghanshyam's HUF case (Supra) the legislature introduced the provisions of section 56(2) (viii) vide an amendment w.e.f.1-04-2010 by the Finance Act (No2) Act ,2009. She has further submitted that in the case of Mahender Pal Narang v DBDT New Delhi [2020]120 taxmann.com 400(P&H) Hon'ble High Court has taken the dissenting view from the view of the Hon'ble Gujarat High Court in the case of Movaliya Bhikhubhai Balabhai (Supra) and held that interest received on compensation or enhanced compensation is to be treated as income from other sources. Reliance has placed on the following judgments;-

1. *Bikram Singh Vs. Land Acquisition Collector*
2. *TMK Vs Govindaraju Chetty Vs. Commissioner of Income Tax*
3. *PCIT vs. Inderjit Singh Sodhi (HUF) ITA 769/2023 &CM APPL 65057/2023 Decided on 08-04-2024 by Hon'ble High Court.*

18. In the case of Mahender Pal Narang v DBDT New Delhi [2020]120 taxmann.com 400(P&H) the Hon'ble Punjab & Haryana High Court (Jurisdictional High Court) held that ;-

27. The interpretation aforesaid has the legislative acceptance by way of incorporation of Section 145A(b) and 56(1) (vii) w.e.f. 1-4-2010 by Finance (No. 2) Act, 2009 whereby now irrespective of system of accountancy being followed by the assessee, the interest on enhanced compensation shall be taxable in the year of receipt."

The High Court of Punjab & Haryana again in the case of Mahender Pal Narang v. DBDT, while dissenting from the view taken by the High Court of Gujarat in the case of Movaliya Bhikhubhai Balabhai (supra) held that the words "interest received on compensation or enhanced compensation" in Sections 56(2) (viii) and 57(iv) was plain, simple and unambiguous and therefore, any interest received on compensation or enhanced compensation shall be assessable as income from other sources and not under the head capital gains. The note worthy observations of the Hon'ble Bench reads as under:

"9. The scheme with regard to chargeability of interest received on compensation and enhanced compensation has undergone a sea change with the insertion of

sections 56(2)(viii) and 57(iv) of the 1961 Act. Section 56 deals with income from other sources and a specific provision has been inserted by way of sub-section 2(viii), whereby the interest received on compensation or enhanced compensation, as referred to in clause (b) to section 145A has been included under the head 'Income from other sources'. In clause (iv) to section 57, deduction of fifty per cent is provided on interest received on compensation or enhanced compensation.

The SLP filed against the said order has been dismissed by the Hon'ble Supreme Court of India in [2021] 126 taxmann.com 105 (SC).

In does nothco amendments, the decision of Apex Court in Ghanshyam's case (supra) does not come to the rescue of the petitioner to claim that interest received under section 28 of the 1894 Act is to be treated as compensation and to be dealt with under "Capital gains". The fact that there is no amendment carried out under section 10(37) of the 1961 Act will not change the position. Section 10 deals with deductions and sub-section (37) thereof deals with capital gains arising from transfer of agricultural land,

it no where provides as to what is to be included under the head "Capital gains". The argument raised is not well founded.

12. Gujarat High Court in Movaliya Bhikhubhai Balabhai's case (supra) while dealing with deduction of tax at source relying upon Circular No. 5 of 2010 held that amendment to the provisions of the 1961 Act by Finance Act, 2010 Act was not in connection with the decision of Supreme Court in Ghanshyam's case (supra) but to mitigate the hardship caused by the decision of Supreme Court in Rama Bai's case (supra). It was held that interest under section 28 of the 1894 Act continues to part take the character of compensation and will not fall within the ambit of expression "interest". In view of discussion above, we with utmost respect are not in agreement with the view taken by Gujarat High Court. There is another aspect, le, the language of sections 56(2)(viii) and 57(iv) of the 1961 Act is plain, simple and unambiguous. There is no scope of taking outside aid for giving an interpretation to newly inserted sub-sections and clauses.

13. *In view of the above, it is held that the interest received on compensation or enhanced compensation is to be treated as 'income from other sources' and not under the head 'Capital gains'.* (Emphasis supplied).

Views of the various Benches of the Tribunal:

The Bangalore Bench of the ITAT in the case of Smt. Lakshamma v. ITO, following the decision rendered by the High Court of Gujarat in the case of Movaliya Bhikhubhai Balabhai (supra), has taken the view that interest received enhanced compensation under section 28 of Land Acquisition Act, 1894 (Predecessor on Act) is eligible for exemption under section 10(37) of the Act in view of the reasoning of the Supreme Court in Ghanshyam's case (supra) that interest under section 28 was a part of compensation. Same view stands expressed by the various Benches of the Tribunal on the basis of the decision rendered in Ghanshyam's case (supra).

Position under the Successor Act:

In respect of chargeability of tax on interest received on compensation or enhanced compensation, the Parliament while bringing into force the new Land Acquisition Act namely, the Successor Act, where under by incorporating the provisions of Section 96, the amount of interest received on compensation or enhanced compensation stands excluded from the liability of payment of income tax. The relevant provisions read as under:

"Section 96 - Exemption from income-tax, stamp duty and fees.

Income tax or stamp duty shall be levied on any award or agreement made under this Act, except under section 46 and no person claiming on agreement made under agreement shall be liable to pay any fee for a copy of the same."

Award as per Section 70 of the Successor Act is deemed to be a decree within the meaning of clause (2) of Section 2 of the Code of Civil Procedure, 1908 and compensation including interest on enhanced compensation is determined there under. Thus, the

language of Section 96 of the Successor Act, does not leave any doubt in the mind that if any land whether agricultural or non-agricultural is either acquired or is a result of an agreement, would not fall within the mischief of Income-tax Act and in other words, exemption is liable to be granted. However, it may be kept in mind that the Successor Act came into existence w.e.f. 1-1-2014 and therefore, the transactions of interest on compensation and/or enhanced compensation which partake character of compensation would not be taxable under the Act in view of the provisions the of Sections 3(1)(1) and 96 of the Successor Act. However, the transactions with regard to taxability of interest on compensation and enhanced compensation received by the assessee under sections 28 and 34 of the Predecessor Act would be governed by the existing provisions of the Act. The Central Board of Direct Taxes in tune with the provisions of Section 96 of the aforesaid Act has issued a Circular clarifying that 'compensation' received in respect of an award or agreement shall not be taxable under the provisions of the Act. The word compensation includes the element of interest under the said Act.

Conclusion:

The judgments rendered by the Hon'ble High Court of Punjab & Haryana taking the view that interest on compensation and enhanced compensation received by the assessee under sections 28 and 34 of the Predecessor Act are taxable as 'income from other sources' in view of the law laid down in Dr. Shamlal Narula's case(supra) and necessary amendment made thereafter in the provisions of Section 56(2) (viii) of the Act by the Legislature, lays down the law correctly. The construction put forth by three Judges Bench in Dr. Shamlal Narula's case(supra) which has held the field for sufficiently long time without having been overruled and/or adversely commented upon by a Constitutional Bench, and thereafter, an amendment in line therewith, would be nothing but an approval of such a decision. The Principle of stare decisis is also applicable to the judgments of the Supreme Court. The decision rendered by a Division Bench in Ghanshayam's case (supra) may be binding on another Division Bench but would not have a binding effect over and above the construction put forth by a

Larger Bench of the Supreme Court; and therefore, the decision which has been rendered in Dr. Shamlal Narula's case(supra) being a predominant view would continue to have its binding character. Thus, the judgment of the Larger Bench is binding on the Division Bench. The amendment seeks to tax the interest element received by the assessee on enhanced compensation as well as on compensation under the head income from other sources in view of the principle that such interest was a revenue receipt. The judgment rendered in Ghanshyam's case (supra), which is a Division Bench judgment of the Supreme Court, has not dealt with the judgment in Dr. Shamlal Narula's case (supra) and other cases thereafter decided by the various co-equal Benches of the Supreme Court. The Hon'ble High Court of Gujarat in Movaliya Bhikhubhal Balabhal's case (supra) and Delhi in Surjit Kumar Chetal (supra) have not considered the effect of the Judgment rendered in the case of Dr. Shamlal Narula's (supra) and the effect of the amendments made thereafter, in Sections 1458, 56(2) (viii) and 57(iv) of the Act. The position with regard to taxability of interest on enhanced compensation and/or interest on compensation received becomes inevitably more clear

when the Legislature itself by way of an amendment in the provisions of Section 57(iv), introduced simultaneously, with the engrafting of the provisions of Section 56(2)(viii), providing for fifty per cent of the deduction of the amount referred to in Section 56(2)(viii) i.e., amount of interest on enhanced compensation and/or interest on compensation received by the assessee.

The distinction brought about in Ghanshyam's case (supra) that interest under section 28 of the Predecessor Act is part of the amount of compensation and therefore, exigible to tax under 45(5) of the Act stands obliterated by the amendment with the introduction of the provisions of Sections 145B, 56(2)(viii) and 57 (iv) in the Act vide which interest received on compensation and enhanced compensation has been made taxable as 'income from other sources', and if that be so then the question of the provisions of Section 10(37) of the Act for exemption of interest awarded under section 28 of the Land Acquisition Act from taxability would not come into play inasmuch as such interest is taxable as per the judgment of the Larger Benches of the Supreme Court in Dr. Shamlal

Narula case etc, being not a part of compensation and even otherwise interest component of compensation received under section 28 being not expressly exempted there under. Had the intention of the Legislature been to exempt the interest on compensation or enhanced compensation under section 10(37) of the Act, then a provision would have been engrafted there under in view of the pronouncement earlier thereto rendered by the Hon'ble Supreme Court in Ghanshyam's case(supra), more so when the provisions of Section 56(2)(viii) were introduced in the Act providing there under that interest of compensation or enhanced compensation would be taxable as income from other sources. The intention of the Legislature is thus, pellucid.

The issue in question now stands settled with the decision of the Hon'ble Supreme Court of India in Mahnder Pal Narang vs. CBDT, Ministry of Finance [2021] in [2021] 126 taxmann.com 105 (SC).

I light of the above submission, along with the decision of the Ld.CIT(A) upholding the order of the AO, it is prayed that the finding of the Revenue may be upheld.

19. In the case of **PCIT-10 vs Inderjit Singh Sodhi (HUF) ITA 769/2023 & CM Appeal no 65057/2023** the Hon'ble Delhi High Court Held that;

*21. It is the contention of the respondent-assessee that the interest awarded under section 28 of the Act of 1894, as discussed above, shall constitute a part of the compensation itself. The ITAT has also drawn strength from the observation of **Hon'ble the Supreme Court in the case of Ghanshyam (supra)** and the relevant paragraph of the said decision reads as under :-*

“35. To sum up, interest is different from compensation. However, interest paid on the excess amount under section 28 of the 1894 Act depends upon a claim by the person whose land is acquired whereas interest under Section 34 is for the 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."

22. However, vide Finance (No.2) Act, 2009 (with effect from 01.10.2010), Clause (viii) of sub-Section 2 to Section 56 of the Act was inserted and the same is extracted hereunder as:- "56. Income from other sources.

(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:--

[(viii) income by way of interest received on compensation or on enhanced compensation referred to in [sub-section (1) of Section 145-B].]"

23. For the sake of clarity, Section 145-B of the Act is reproduced as

under:-

"[145-B. Taxability of certain income. (1) 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.

(2) Any claim for escalation of price in a contract or export incentives shall be deemed to be the income of the previous year in which reasonable certainty of its realisation is achieved.

(3) The income referred to in sub-clause (xviii) of clause (24) of Section 2 shall be deemed to be the income of the previous year in which it is received, if not charged to income-tax in any earlier previous year.]"

24. A conjoint reading of the aforementioned provisions i.e., Sections 56(2)(viii) and 145-B of the Act vividly stipulate that the income received by way of interest on compensation or on enhanced compensation shall be chargeable to tax under the head 'income from other sources'. Therefore, since the position with respect to

the imposition of tax on interest on compensation or enhanced compensation, as it exists today, came into being only in the year 2010, the conclusions drawn from the decision in Ghanshyam (supra), which was passed in the year 2009, are unsustainable in the facts of the present case.

25. Further, much reliance has been placed by the ITAT upon the decision of the Hon'ble Supreme Court in the case of CIT v. Govindbhai Mamaiya [(2014) 16 SCC 449], which relies upon the case of Ghanshyam (supra) to hold that the interest on enhanced compensation received under Section 28 of the Act of 1894 is exigible to tax on receipt basis. However, a deeper analysis of the decision in Govindbhai Mamaiya (supra) would show that it does not deal with any issue pertaining to the change in the taxability, put in place through the concerned amendment of 2010. Therefore, the said decision lacks any applicability in the facts and circumstances of the present case.

26. Notably, a three-Judges Bench of the Hon'ble Supreme Court in the case of Sham Lal Narula (Dr.) v.

CIT [(1964) 53 ITR 151], while considering the interest under Section 28 of the Act of 1894 to be analogous to the interest under Section 34 of the Act, took the view that the same did not form part of compensation. The relevant extract of the said decision is culled out as under:-

"9.—

As we have pointed out, earlier, as soon as the Collector has taken possession of the land either before or after the award the title absolutely vests in the Government and thereafter the owner of the land so acquired ceases to have any title or right of possession to the land acquired. Under the award he gets compensation for both the rights. Therefore, the interest awarded under Section 28 of the Act, just like under Section 34 thereof, cannot be a compensation or damages for the loss of the right to retain possession but only 27. The decision in Sham Lal Narula (supra) was subsequently followed by the Hon'ble Supreme Court in the case of Bikram Singh v. Land Acquisition Collector [(1997) 10 SCC 243], wherein, it was held that interest under Section 28 of the Act of 1894 was

in the nature of a revenue receipt and hence, the same was considered to be taxable.

The relevant paragraphs of the said decision read as under:-

"8. The controversy is no longer res integra. This question was considered elaborately by this Court in Sham Lal Narula (Dr) v. CIT [(1964) 53 ITR 151: AIR 1964 SC 1878). Therein, K. Subba Rao, J., as he then was, considered the earlier case-law on the concept of "interest" laid down by the Privy Council and all other cases and had held at p. 158 as under:

"In a case where title passes to the State, the statutory interest provided thereafter can only be regarded either as representing the profit which the owner of the land might have made if he had the use of the money or the loss he suffered because he had not that use. In no sense of the term can it be described as damages or compensation for the owner's right to retain possession, for he has no right to retain possession after possession was taken under Section 16 or Section 17 of the Act. We, therefore, hold that the

statutory interest paid under Section 34 of the Act is interest paid for the delayed payment of the compensation amount and, therefore, is a revenue receipt liable to tax under the Income Tax Act."

9. *This position of law has been consistently reiterated by this Court in the case of T.N.K. Govindaraju Chetty v. CIT [(1967) 66 ITR 465: AIR 1968 SC 129], Rama Bai v. CIT [1990 Supp SCC 699 : (1990) 181 ITR 400] and K.S. Krishna Rao v. CIT [(1990) 181 ITR 408 (SC)]. Thus by a catena of judicial pronouncements, it is settled law that the interest received on delayed payment of the compensation is a revenue receipt exigible to income tax. It is true that in amending the definition of "interest" in Section 2(28-A), interest was defined to mean interest payable in any manner in respect of any money borrowed or debt incurred including a deposit, claim or other similar right or obligation and includes any service, fee or other charges in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised. It is seen that the word "interest" for the purpose of the Act was interpreted by the inclusive definition. A literal construction may lead to the*

conclusion that the interest received or payable in any manner in respect of any moneys borrowed or a debt incurred or enumerated analogous transaction would be deemed interest. That was explained by the Board in the circular referred to hereinbefore."

[Emphasis supplied)

28. In the case of Puneet Singh (supra), the High Court of Punjab and Haryana, while enunciating the effect of Section 145A(b) and Section 56(2)(viii) of the Act, has held as under:-

"19. The cumulative effect of section 145A(b) and section 56(2)(viii) would be that any interest received on compensation or on enhanced compensation shall be taxable under the head "Income from other sources" in the year of receipt.

20. However, by section 27 of the 2009 Act, a new clause (iv) in section 57 has been inserted with effect from April 1, 2010 which lays down that in the case of income of the nature referred to in section 56(2)(viii), a deduction of a sum equal to 50 per cent. of such

income would be allowable there under and no deduction would be allowed under any other clause of section 57. The said provision reads thus:

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

(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."

21. The Assessing Officer in 1. T. A. No. 132 of 2018 where the assessee had received Rs. 11,30,561 as interest income, held that the interest payment received on compensation/enhanced compensation to the tune of Rs. 5,65,280 (50 per cent. of Rs. 11,30,561) is taxable as income from other sources as per provisions of sections 56(2)(viii) read with 57(iv) and section 145A(b) of the Act for the assessment year 2010-11. The Commissioner of Income-tax (Appeals) and the Tribunal had upheld the order of the Assessing Officer in that regard.

22. No illegality or perversity could be pointed out by learned counsel for the assessee in the concurrent findings of fact recorded by the authorities below which may warrant interference by this court. No question of law, much less, substantial question of law arise in these appeals.

23. Accordingly, finding no merit in the appeals, the same are hereby dismissed."

[Emphasis supplied]

29. Considering the foregoing discussion, we affirm the concurrent findings of the AO and CIT(A) and find that the view taken by the ITAT is unsustainable, as the same is based on an incorrect appreciation of law. The 2010 amendment was a conscious departure by the Legislature from the earlier position and the said departure holds good law, as on date. There is no question with respect to the vires of the amendment before us or regarding any ambiguity in the language of the amendment. The only concern is regarding the enunciation of the applicable law and we hold the same to unequivocally mean that interest, whether on

compensation or on enhanced compensation, shall be considered as income from other sources and shall be exigible to income tax.

30. We, accordingly, answer the substantial question of law which has arisen in the instant appeal in affirmative and in favour of the Revenue. We, thus, hold that the ITAT has erred in relying upon the decision of Ghanshyam (supra), ignoring the changes brought about by Finance (No.2) Act, 2009, which came into effect in the year 2010.

20. We find that Hon'ble Punjab & Haryana High Court in Mahender Pal Narang vs. DBDT New Delhi [2020]120 taxmann.com 400 (P&H) held that interest issued on the compensation for enhanced compensation is to be treated as income from other sources and did not follow the principles laid down by Hon'ble Gujrat High Court and Special Leave Petition against the aforesaid judgment has also been dismissed. In the case of PCIT vs Inderjit Singh Sodhi (HUF) the Hon'ble Delhi High Court observed that the enhanced compensation as income from other sources. The Hon'ble Supreme Court has not dealt with Finance (No-2) act of 2010 in the case of Hari Singh while the Hon'ble Delhi High Court has discussed the finance

Act (No-2)/2010 and the judgement of Ghanshyam das (HUF) both. The interest on compensation or on enhanced compensation cannot be considered as compensation and shall be chargeable to tax under the head income from other sources. The Ld CIT(A) has rightly decided that interest received on compensation or enhanced compensation is to be treated as the income from other sources u/s 56(2)(viii) of the Act.

21. In view of the above discussion, we do not find any infirmity in the order of the Ld CIT(A). The appeal has no force.

22. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 21.11.2024.

SD/-

(S. RIFAUZ RAHMAN)
ACCOUNTANT MEMBER

NEHA, Sr. PS

Date:- .11.2024

Copy forwarded to:

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

SD/-

(SUDHIR KUMAR)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI