

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

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No.643/Del/2023
Assessment Year: 2013-14

Land Acquisition Officer, Huda Complex, Sector-14, Gurgaon	Vs.	DCIT (TDS), Gurgaon
PAN :RTKLO0706G		
(Appellant)		(Respondent)

Assessee by	None
Department by	Ms. Jaya Choudhary, CIT(DR)

Date of hearing	25.11.2024
Date of pronouncement	05.12.2024

ORDER

PER SATBEER SINGH GODARA, JM

This assessee's appeal for assessment year 2013-14, arises against the Commissioner of Income Tax (Appeals)-1 [in short, the "CIT(A)"], Gurgaon's order dated 28.03.2017 passed in case No. 212/15-16 involving proceedings under section 201(1)/201(1A) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

2. Case called twice. None appeared at the assessee's behest. We accordingly proceeded *ex-parte* against him.

3. It is next noticed with the able assistance coming from the Revenue side that the CIT(A) has declined the assessee's lower appeal *in limine* on the ground that he had failed to explain 47 days' delay in filing thereof. It is noticed in this factual backdrop that the assessee had duly filed the corresponding contention petition explaining the impugned delay on the ground of circumstances beyond control. That being the case, we quote Collector, Land & Acquisition vs. Mst. Katiji & Others (1987) 167 ITR 471 (SC) that assessee's lower appeal ought to have been admitted since the said delay of 47 days stood duly explained.

4. We now come to merits of the assessee's sole substantive ground, wherein he has been treated as the assessee in default under section 201(1) read with section 201(1)(A) of the Act for not having deducted TDS on land acquisition compensation and interest thereupon, as the case may be, paid to the landowners.

6. The Revenue vehemently contends in the light of the said findings that it was very much incumbent for the assessee to have

deducted 20% TDS as the corresponding recipients/deductees had not disclosed their PAN's.

7. We do not see any merit in the Revenue's instant vehement contentions once it has come on record that this tribunal in assessee's appeal ITA Nos. 39 to 41/Del/2021 for the immediately preceding as many assessment years 2010-12 to 2012-13; has already accepted his contentions as under:

"7. We have heard the Ld. Representatives of the parties and carefully considered their arguments. We have also perused the material on record. The assessee is Land Acquisition Office and is governed by the provisions of Land Acquisition Act, 1984. The LAO acquired land from the land owners under compulsory acquisition for public purposes as per the directions of Haryana Urban Development Authority (HUDA). The land owners got enhanced compensation which was awarded by the court on which they received interest.

7.1 The issue for consideration is whether the impugned interest received by the land owners on enhanced compensation is 'income from other sources' under section 56 of the Act attracting the TDS provision enshrined under section 194A of the Act. In the assessment proceedings for the assessment year 2012-13 the assessee submitted before the Ld. AO that no TDS is required to be deducted on the interest payments which fall under section 28 of the LA Act, relying on the decision of the Hon'ble Jurisdictional High Court in the case of Jagmal Singh (supra) and during appellate proceedings filed an affidavit that interest on enhanced compensation was paid to the ITA Nos. 39 40 41/06/2011 Land Acquisition Office vs DCTT 11 recipient land owners under section 28 of the LA Act and submitted that the provision of section 194A do not apply for the reason that interest under section 28 is a part of the amount of compensation itself. It was pointed out that there is vital difference between interest awarded under section 28 and interest paid under section 34 of the LA Act. Interest under section 28, unlike under section 34 is an accretion in value and regarded as part of the compensation itself which is not the case of interest under section 34 of the LA Act. Interest under section 34 is for delay in making payment after the amount is determined. In the additional grounds taken before us also it has been

urged that interest under section 28 of LA Act is in the nature of compensation and not interest which is taxable as income from other sources under section 56 of the Act. Following the judgment of Hon'ble Punjab & Haryana High Court in Jagmal Singh (supra) and the judgment of the Hon'ble Supreme Court in Ghanshyam (HUF) (supra) we hold that the interest received by the land owners on enhanced compensation awarded by the court is not in the nature of income from other sources under section 56 of the Act. Consequently, the TDS provisions of section 194A will not be attracted.

7.2 It has also been urged in the additional grounds that interest on enhanced compensation under section 28 of LA Act, being an integral part of consideration is exempt from capital gains tax under section 10(37) of the Act. We agree. Agricultural land situate in any area referred to in item (a) or item (b) of section 2(14)(iii) of the Act do not fall within the ambit of agricultural land and thus constitute 'capital asset' under section 2(14) of the Act. Compulsory acquisition of capital asset under any law is 'transfer under section 2(47)(iii) of the Act. Accordingly, any profit or gain arising from transfer of such a capital asset is exigible to capital gains tax under section 45 of the Act in the previous year in which the transfer took place. However, capital gains arising from transfer of agricultural land situate in any area referred to in item (a) or item (b) of section 2(14)(iii) by way of compulsory acquisition under any law is exempt from tax under section 10(37) of the Act. Accordingly, any income by way of capital gains engrained in the receipt of compensation and/ or enhanced compensation is exempt in the hands of the recipient land owners. This is obvious from the reading of the provisions of section 10(37) of the Act.

8. In the light of the legal provisions set out above and following the judgment of the Hon'ble Supreme Court in Ghanshyam (HUF) (supra), we hold that interest received by the land owners on enhanced compensation awarded to them by the court under section 28 of the LA Act is not in the nature of income from other sources in the hands of the recipient land owners under section 56 of the Act and therefore, the LAO was not under any legal obligation to comply with the TDS provisions of section 194A of the Act. Accordingly, we allow the grounds raised by the assessee by way of additional grounds taken before the Tribunal. The assessee succeeds. The original grounds become infructuous.”

8. We make it clear that the Revenue have not pointed out any distinction of facts or law, as the case may be, in all these assessment years.

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

Order pronounced in the open court on 5th December, 2024

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Dated: 5th December, 2024.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi