

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

**Before Sh. Satbeer Singh Godara, Judicial Member
&
Sh. M. Balaganesh, Accountant Member**

ITA No. 2406/Del/2024 : Asstt. Year : 2018-19

Mulkh Raj Mehta & Sons HUF, 374, Sector-15A, Hisar, Haryana-125001 (APPELLANT)	Vs	Pr. CIT, Rohtak, Haryana-124001 (RESPONDENT)
PAN No. AAIHM9927L		

**Assessee by : Sh. Mahfuzur Rahman, CA &
Sh. Surajh Bhan Nain, Adv.
Revenue by : Sh. B. S. Anand, Sr. DR**

Date of Hearing: 25.11.2024	Date of Pronouncement: 10.12.2024
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ORDER

Per Satbeer Singh Godara, Judicial Member:

This assessee's appeal for Assessment Year 2018-19, arises against the order of PCIT, Rohtak dated 18.03.2024 in DIN & Order No. ITBA/REV/F/REV5/2023-24/1062878615(1), in proceedings u/s 143(3) of the Income Tax Act, 1961 (in short "The Act").

2. Heard both the parties at length. Case file perused.
3. The assessee pleads the following substantive grounds in the instant appeal:

"1. That having regard to the facts and circumstances of the case and in law, the order under section 263 of the Income Tax Act, 1961 ("the Act") dated 18.03.2024 for A.Y. 2018-19 passed by the Ld. Principal Commissioner of Income Tax, Rohtak ["PCIT"], setting aside the assessment order 143(3) r.w.s. 144B of the Act dated 17.04.2021 passed by the Assessing Officer, National e-

Assessment Centre [“the Assessing Officer’1] 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. PCIT erred, so much so that, the assessment order passed by the Assessing officer do 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 having regard to the facts and circumstances of the case and in law, the PCIT erred in exercising the revisionary jurisdiction under section 263 of the Act by not appreciating that the assessment order was passed by the assessing officer following the decisions of the Hon’ble Supreme Court in the cases of CIT v. Ghanshyam (HUF) [2009] 182 Taxman 368/315 ITR 1(SC); CIT, Rajkot v. Govindbhai Mamaiya [2014] 52 taxmann.com 270/(2015) 229 Taxman 138/(2014) 367 ITR 498(SC); UOI v. Hari Singh [2018] 91 taxmann.com 20 (SC). Being so the assessment order passed under section 143(3) r.w.s. 144B of the Act dated 17.04.2021 was not amenable to revision under section 263 of the Act.

4. 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 Act.

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 setting aside the issue of taxability of interest u/s 28 of the Land Acquisition Act granted as part of enhanced compensation, which was duly scrutinized by the Assessing Officer while passing the assessment order under section 143(3) r.w.s. 144B of the Act.

6. That having regard to the facts and circumstances of the case and in law, the Ld. PCIT erred in not appreciating that even if the Assessing Officer has not specifically mentioned that he has examined/verified a particular issue in the assessment order, that would not ipso facto mean that there was non-application of mind on the part of the assessing officer on this issue.”

4. Suffice to say, the department’s endeavour in the instant case to assess the assessee’s interest received u/s 28 of the Land Acquisition Act, by invoking section 56(2)(viii) r.w.s.

145A clause (b) of the Act. The learned departmental representative seeks to buttress the point that the legislature has itself sought to assess such an interest income u/s 145B(1) by incorporating "the interest received by an assessee on any compensation or on an enhanced compensation" and therefore, his instant sole substantive ground deserves to be rejected.

5. We note in this factual backdrop that this tribunal's learned co-ordinate bench in ITA No. 1655/Del/2023 Pawan Kumar Vs. PCIT decided on 24.01.2024 has already rejected the Revenue's very stand placing reliance on hon'ble jurisdictional high court/Punjab & Haryana high court in Mahender Pal Narang Vs. CBDT (2020) 423 ITR 13, as under:

3. Briefly stated, the assessee is an individual. He filed his return for AY 2018-19 on 29.08.2018 declaring income of Rs. 6,35,470/-. His return was processed under section 143(1)(a) on 28.06.2019. His case was selected for complete scrutiny assessment under the e-assessment Scheme, 2019 on two issues, namely refund claim and winning from Lottery/crossword puzzle/horse races. The Ld. Assessing Officer ("AO") served notice under section 143(2) upon the assessee on 22.09.2019 followed by issue of notice under section 142(1) of the Act on 23.11.2020. The Ld. AO completed the assessment on 22.01.2021 under section 143(3) r.w. section 143(3A) and 143(3B) of the Act on income returned with the observation that on aforesaid two issues no addition is made.

4. In exercise of his powers vested in him under section 263 of the Act, the Ld. PCIT held the impugned order of the Ld. AO as erroneous and prejudicial to the interest of Revenue. According to Ld. PCIT, the Ld. AO should have taken into consideration, the binding decision of Hon'ble Jurisdictional High Court i.e Hon'ble Punjab & Haryana High Court dated 19.02.2020 in the case of Mahender Pal Narang vs. CBDT (2020) 423 ITR 13 (P&H) wherein the Hon'ble High Court has dealt with the controversy arising from the judgment of Hon'ble Supreme Court in the case of CIT vs. Ghanshyam HUF dated 16th July, 2009 relating to the taxability of interest received on compensation or enhanced compensation and also the amendments/provisions of section 56(2)(viii) introduced through Finance Act, 2009 effective from 01.04.2010 on the above issue, which the Ld. AO failed to do. The Ld. PCIT pointed out that the SLP filed against the order of the decision (supra) of the Hon'ble P&H

High Court has been dismissed by the Hon'ble Supreme Court vide its order dated 4th March, 2021 in Mahender Pal Narang vs. CBDT (2021) 279 Taxman 74 (SC). He, therefore, set aside the impugned assessment order with a direction to pass an order afresh after making requisite enquiries and proper verification with regard to taxability of interest on enhanced compensation.

5. Aggrieved, the assessee is in appeal before the Tribunal and all the grounds relate thereto.

6. The Ld. AR submitted that the assessment order was neither erroneous nor prejudicial to the interest of Revenue because (i) the Ld. AO has passed the order after making proper enquiries during assessment proceedings; (ii) the Ld. PCIT has exercised the jurisdiction under section 263 merely based on audit objection, which is not permissible and (iii) the Ld. AO has validly held that interest under section 28 of Land Acquisition Act, 1894 granted by the court is an integral part of enhanced compensation and exempt under section 10(37) of the Act in case of the assessee.

6.1 Elaborating the above contentions, the Ld. AR pointed out that in notice under section 142(1) of the Act dated 23.11.2020 (copy at Paper Book page 1-2), the Ld. AO required the assessee to furnish documentary evidence in support of claim that the amount of Rs. 6,86,17,767/- is received under section 28 of the Land Acquisition Act. The assessee responded vide letter (copy at pages 3-58 of Paper Book) that the assessee received enhanced compensation on compulsory acquisition of his agricultural land by Haryana Govt. of Rs. 6,86,17,767/- which included interest under section 28 of Land Acquisition Act of Rs. 3,97,56,460/- which was part of enhanced compensation as held by the Hon'ble Supreme Court in CIT vs. Ghanshyam HUF (2009) 315 ITR 1 (SC). It was claimed that the assessee was entitled to exemption under section 10(37) of the Act. The explanation of the assessee was accepted by the Ld. AO who passed the impugned assessment order dated 22.01.2021 without making any addition. The assessment was completed after carrying out proper enquiries which he ought to have carried out in respect of the enhanced compensation received by the assessee. It is not a case of 'lack of enquiry'. Merely because in his order the Ld. AO did not make elaborate discussion but was satisfied with the explanation of the assessee, the order could not be held to be erroneous. In support the decisions of Hon'ble Delhi High Court in CIT vs. Sunbeam Auto Ltd. (2011) 332 ITR 167 (Del) and decision of Hon'ble Rajasthan High Court in CIT vs. Ganpat Ram Bisnoi 296 ITR 292 (Raj.) were cited.

6.2 The Ld. AR invited our attention to Audit Memo at pages 399-402 of Paper Book in the case of the assessee wherein ITO (Audit) Hisar raised an audit objection observing that interest under section 28 of Land Acquisition Act of Rs. 3,97,56,460/- was chargeable to tax under section 56(2)(viii) of the Act and also referred to the decisions in

the cases of Shri Manjeet Singh HUF v. UOI & Others in CWP No. 15506 of 2013; Shri Puneet Singh vs. CIT (2019) 110 taxman.com 116 and Shri Mahendra Pal Narang vs. CBDT in CWP No. 17971 of 2019. The Ld. AR contended that the order of the Ld. PCIT is merely based on the audit objection without applying his independent mind and without considering the subsequent decisions of Hon'ble Supreme Court in the cases of (i) CIT vs. Govindbhai Mamaiya (2014) 52 taxmann.com 270 (SC) ; (ii) UOI vs. Hari Singh (2018) 91 taxmann.com 20 (SC); and (iii) ITO, TDS v. Muktanangiri Maheshgiri in Civil Appeal No. 18475 of 2017 dated 10.11.2017, wherein the ratio of decision of CIT vs. Ghanshyam (HUF) (2009) 181 Taxman 368 (SC) has been affirmed. The Ld. AR cited decisions wherein assumption of jurisdiction under section 263 on the basis of audit objection by the Audit wing of the Department has been held to be invalid.

6.3 The Ld. AR explained that the enhanced compensation awarded by the appellate authority/court to an assessee on acquisition of capital asset is chargeable to tax as capital gain in the year of receipt as per section 45(5) of the Act. However, in the case of an individual or HUF such capital gain from compulsory acquisition of agricultural land being capital asset is exempt from tax under section 10(37) of the Act.

6.4 The Ld. AR pointed out the distinction between interest awarded under section 34 and interest paid on excess compensation under section 28 of Land Acquisition Act. Whereas interest under section 34 is payable for delay in making payment after taking possession of the acquired land, interest under section 28 is awarded for accretion in the value of land and is therefore part of enhanced compensation.

6.5 In Ghanshyam's case (supra), the Hon'ble Supreme Court held that interest under section 28, unlike interest under section 34 is an accretion to the value and hence it is a part of enhanced compensation or consideration which is not the case under section 34 of the 1894 Act.

6.6 As to the alleged non-consideration of the decision of Hon'ble P & H High Court in Mahender Pal Narang's case (supra) by the Ld. AO, it is submitted that the Hon'ble Supreme Court dismissed the SLP of the assessee filed against the said decision of Hon'ble P & H High Court in limine and it is a settled law that the dismissal of SLP in limine does not amount to affirmation of the view taken by the High Court. Unless the judgment of the High Court is affirmed, at least, with short reasoning, the same would not amount to binding precedent.

6.7 The Ld. AR elaborated that the insertion of section 145A, section 145B, section 56(2)(viii) and section 57(iv) by the Finance (No.2) Act, 2009 w.e.f. 01.04.2010 does not change the character of interest under section 28 of the Land Acquisition Act granted by the court from 'capital receipt'

forming part of enhanced compensation as envisaged in section 45(5) of the Act to 'revenue receipt' chargeable to tax as income from other sources. The view taken by the Ld. AO that interest under section 28 of Land Acquisition Act received by the assessee is exempt under section 10(37) of the Act is not contrary to law. His assessment order is, therefore, not erroneous and not liable to be revised under section 263 of the Act.

7. The Ld. CIT-DR supported the order of the Ld. PCIT. He placed on record a copy of the decision of Hon'ble Punjab & Haryana High Court in Mahender Pal Narang v. CBDT reported in (2020) 423 ITR 13 (P&H) wherein the Hon'ble High Court held that interest received on compensation or enhanced compensation under Land Acquisition Act, 1894 is to be treated as 'income from other sources' and not under the head 'capital gains'. The Ld. CIT-DR drew our attention to para 9 and 10 of the decision (supra).

8. We have given our careful thought to the rival submissions and perused the records. The facts are not in dispute. The assessee received interest of Rs. 3,97,56,460/- on enhanced compensation from HUDA after the compulsory acquisition of his agricultural land on which TDS amounting to Rs. 39,75,646/- @ 10% was also deducted. The assessee claimed the said interest as exempt. On perusal of case records, the Ld. PCIT gathered that the Ld. AO had completed the assessment without carrying out necessary and proper enquiry which should have been made regarding applicable judgments on the taxability of interest on enhanced compensation. The Hon'ble Punjab & Haryana High Court has given the finding that interest received on compensation or enhanced compensation will be taxed as per amended provisions introduced through Finance (No.2) Act, 2009 w.e.f. 01.04.2010 and the judgment of the Hon'ble Supreme Court in the case of CIT vs. Ghanshyam HUF would not come to the rescue of the assessee. The Ld. PCIT therefore required the assessee to show cause as to why an appropriate order under section 263 of the Act be not passed. In response the assessee submitted that the amount received under section 28 of Land Acquisition Act is exempt from tax relying on the decision of Delhi Bench of the Tribunal in the case of Shri Puneet Singh, Karnal vs. ACIT pronounced on 08.12.2022 for AY 2011-12 wherein placing reliance upon the decision of Hon'ble Supreme Court in the case of Ghanshyam HUF (supra) decided in favour of the assessee. The submission of the assessee was not acceptable to the Ld. PCIT in view of the decision of Hon'ble P&H High Court in Mahender Pal Narang vs., CBDT and dismissal of SLP filed against it by the Hon'ble Supreme Court. He, therefore, set aside the assessment order and directed the Ld. AO to pass an order afresh.

9. As to the issue of lack of necessary and proper enquiry during assessment proceeding, the Ld. AR demonstrated that in response to notice under section 142(1) of the Act issued by the Ld. AO the assessee submitted that interest of Rs.

3,97,56,460/- received by the assessee formed part of enhanced compensation as held by the Hon'ble Supreme Court in Ghanshyam HUF's case (supra) which the assessee claimed as exempt under section 10(37) of the Act. Pages 1 to 61 of the Paper Book refer. In our opinion, in the light of evidence available on records, it cannot be alleged as done by the Ld. PCIT that it is a case of 'no enquiry' or 'lack of enquiry'. No doubt that the Ld. AO did not discuss elaborately in the assessment order but that alone cannot make the order erroneous as held by the Hon'ble Delhi High Court in Sunbeam Auto Ltd.'s case (supra) and Hon'ble Rajasthan High Court in Ganpat Ram Bisnoi's case (supra). An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous as held by the Hon'ble Supreme Court in Malabar Industrial Co. Ltd. vs. CIT 243 ITR 83 (SC). None of these elements exist in the case at hand.

10. Perusal of the order of the Ld. PCIT shows that he assumed the revisionary power under section 263 of the Act mainly on the ground that the Ld. AO passed the order not in accordance with the binding decision of Hon'ble P & H High Court in Mahender Pal Narang's case (supra) against which SLP stands dismissed by the Hon'ble Supreme Court. This is not so. During assessment proceedings in response to notice under section 143(2) and 142(1) of the Act, with reference to specific query on receipt of interest under section 28 of Land Acquisition Act, the assessee explained vide letter at pages 3-5 of Paper Book that interest received under section 28 of the Land Acquisition Act has been held to be part of compensation by Apex Court in the case of CIT vs. Ghanshyam HUF reported as (2009) 315 ITR 1, the same being exempt under section 10(37) of the Act has not been included in the total income of the assessee while filing return of income. The Ld. AO accepted the explanation of the assessee.

11. The issue of amended provisions of section 56(2)(viii) by the Finance Act, 2009 and the decision of Hon'ble P & H High Court in Mahender Pal Narang's case was raised by the Ld. PCIT in notice under section 263 on the basis of audit objection (copy of audit memo of ITO Hisar at pages 399-402 of Paper Book). Before the Ld. PCIT the assessee explained that the amended provisions were not in connection with the decision of Hon'ble Supreme Court in Ghanshyam HUF's case but to make simple the taxation of interest income as earlier it was taxable on accrual/cash basis on the basis of accounting principles as held by the decision of Hon'ble Supreme Court in Rama Bai vs. CIT (1990) 181 ITR 400. It was also explained that insertion of section 145A, 145B, 56(2)(viii) and 57(iv) by the Finance (No.2) Act, 2009 did not change the character of interest under section 28 of the Land Acquisition Act from 'capital receipt' forming part of enhanced compensation as envisaged in section 45(5) of the Act to 'revenue receipt' chargeable to tax as 'income from other sources'. It was also explained to the Ld. PCIT that after analysing the

provisions of section 28 and 34 of Land Acquisition Act the Hon'ble Supreme Court held in the case of Ghanshyam HUF that interest is different from compensation. However, interest paid on the excess amount under section 28 depends upon a claim by a 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. It is thus evident that the view taken by the Ld. AO that interest under section 28 of Land Acquisition Act received by the assessee is exempt under section 10(37) of the Act is not contrary to law.

12. We notice that in CBDT Circular No. 5, dated 03.06.2010 reported in (2010) 324 ITR (St.) 293, it is stated that the Hon'ble Supreme Court in the case of Rama Bai Vs. CIT (supra) 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. With a view to mitigate the hardship section 145A has been substituted and clause (viii) in subsection (2) of section 56 has been inserted by the Finance (No.2) Act, 2009 so as to provide that the interest received on compensation or on 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. It is thus evident that the amended provisions of section 56(2)(viii) of the Act r.w. section 145A were brought on the statute to nullify the effect of Hon'ble Supreme Court's ruling in the case of Rama Bai and not Ghanshyam HUF. Moreover, it is brought to our notice by the Ld. AR that the decision in Ghanshyam HUF was pronounced in July, 2016 and the Finance Bill proposing amendment to section 56 was laid in February 2016. So the intention of the legislature could never be the overruling of the ratio laid down in Ghanshyam HUF case. The issue in Rama Bai case involved the taxability in the year of receipt. The facts and questions for determination in Rama Bai's case were different from those of Ghanshyam HUF's case. The position in Ghanshyam HUF's case has been affirmed by the Hon'ble Supreme Court in Hari Singh's case. Further, the Ld. AR submitted before us that SLP filed by the Revenue in Hari Singh's case has been withdrawn by the Revenue meaning thereby that now the issue has attained certainty.

13. We have gone through the decision of the Hon'ble P & H High Court in the case of Mahender Pal Narang (supra). In that case the land of the assessee was acquired in AY 2007-08 and 2008-09. The enhanced compensation was received on 21.03.2016. In his return filed for AY 2016-17 he treated the interest received under section 28 of the 1894 Act as income from other sources and claimed deduction for 50% as

per section 57(iv) of the 1961 Act. The return was processed under section 143(1) of the Act. An application under section 264 was made claiming that by mistake the assessee treated the interest income as income from other sources whereas the same is part of enhanced compensation. The revisional authority rejected the application under section 264 on 30.1.2019. It was in this factual matrix that the assessee filed writ petition before the Hon'ble P & H High Court. The question for consideration was "whether after the insertion of section 56(2)(viii) and 57(iv) of the Act w.e.f. 01.04.2010, can the assessee claim that interest received under section 28 of the Land Acquisition Act, 1894 will partake the character of the compensation and would fall under the head "capital gain" and not "income from other sources" ? It was argued by the assessee that there is no amendment in section 10(37) and by insertion of sections 56(2)(viii) and 57(iv), the nature of interest under section 28 of the 1894 Act will remain that of compensation and decisions of the Hon'ble Supreme Court in the case of Ghanshyam (HUF) and the decision of Hon'ble Gujrat High Court in Movaliya Bhikhubhai Balabhai vs. ITO TDS (2016) 388 ITR 343 were relied upon.

14. *It may be mentioned that the Hon'ble Supreme Court has affirmed its view taken in Ghanshyam HUF's case and the decision of Gujrat High Court in Movaliya's case in its decision in the case of UOI vs. Hari Singh (2018) 91 taxmann.com 20 (SC). The decision of the Hon'ble Supreme Court in Hari Singh's case (supra) was not brought to the notice of Hon'ble P & H High Court while rendering decision in Mahender Pal Narang's case (supra). Hon'ble P&H High Court has thus rendered the decision in Mahender Pal Narang's case in its peculiar facts and circumstances. Accordingly, the opinion of the Ld. PCIT that the Ld. AO should have passed the assessment in accordance with the amended law and binding decision in Mahender Pal Narang's case (supra) overlooking the decision of Hon'ble Supreme Court in Ghanshyam's HUF's case is not sustainable. Reliance of the Ld. CIT-DR on the decision in Mahender Pal Narang's case is misplaced. Needless to emphasis that in V.M. Salgaocar and Bros Pvt. Ltd. vs. CIT 243 ITR 383 (SC), the Hon'ble Supreme Court has held that an order dismissing the SLP at the threshold without detailed reasons does not constitute any declaration of law or a binding precedent. Therefore, overemphasising the fact of dismissal of SLP in limine by the Hon'ble Supreme Court in Mahender Pal's case by the Revenue is not of any legal assistance to it.*

15. *Record reveals that the order of the Ld. PCIT was prompted solely by the audit objection. Hon'ble P & H High Court has held in CIT vs. Sohana Woollen Mills (2008) 296 ITR 238 (P&H) that mere audit objection cannot lead to an inference that the order of the Ld. AO is erroneous or prejudicial to the interest of the Revenue.*

16. *Since 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. In this view of the matter too, the Ld. PCIT cannot assume revisional jurisdiction as held by the Hon'ble Delhi High Court in CIT vs. Hindustan Coca Cola Beverages P Ltd. (2011) 331 ITR 192 (Del.)

17. Accordingly, on the facts and in the circumstances of the case as set out above, we hold that the order of the Ld. PCIT is not sustainable. Accordingly, we allow the appeal of the assessee and quash the impugned order of the Ld. PCIT."

6. We adopt the learned co-ordinate bench foregoing reasoning *mutatis mutandis* to accept the assessee's instant sole substantive grievance on merits in very terms. Necessary computation shall follow as per law.

7. No other ground or arguments has been pressed before us.

8. This assessee's appeal is allowed in above terms.
Order Pronounced in the Open Court on 10/12/2024.

Sd/-
(M. Balaganesh)
Accountant Member
Dated: 10/12/2024

Sd/-
(Satbeer Singh Godara)
Judicial Member

Subodh Kumar, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR