

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

ITA No.204 of 2017

Date of decision: May 10, 2018

The Commissioner of Income Tax (TDS) 1, Chandigarh

.....Appellant

Vs.

M/s Dedicated Freight Corridor Corporation Limited

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA**

Present: Mr. Denesh Goyal, Sr. Standing Counsel for the appellant-
Revenue.
Ms. Radhika Suri, Sr. Advocate with Mr. Manpreet Singh,
Advocate.

Ajay Kumar Mittal, ACJ.

1. The appellant-revenue has filed the present appeal under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 30.6.2016 Annexure A.3 passed by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (in short, "the Tribunal") in ITA No.131/Chd/2016 for the assessment year 2013-14, claiming following substantial questions of law:-

“i) Whether on the facts and circumstances of the case, the Hon’ble ITAT is right in holding that the payment @ 12% per annum of the amount of compensation paid and recorded as interest in the “Award of Compensation” of the Punjab Government is enhanced/additional compensation ignoring the facts that initial notification was

published on 22.4.2010 and competent authority/DFCCIL-cum-district Revenue Officer announced award on 27.2.2012. Thus payment @ 12% has been given for delay in payment which is clearly in the nature of interest?

ii) Whether on the facts and circumstances of the case, the Hon'ble ITAT is right in holding that payment @ 12% per annum is enhanced/additional compensation ignoring that it has been recorded as interest in the "Award of Compensation" of the Punjab Government vide award dated 27.2.2012. The Hon'ble Supreme Court of India in the case of Navinchandra Mafatlal vs. Commissioner of Income Tax (1954) 26 ITR 758 (SC) has held that the words should be read in their ordinary, natural and grammatical meaning?

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. An inspection was conducted in the premises of M/s Dedicated Freight Corridor Corporation Limited, Mini Secretariat, Ludhiana on 31.12.2012. During the course of inspection, the Assessing Officer found that TDS amounting to ₹21,85,982/- for the quarter ending 30.6.2012 was deposited on 22.10.2012 after due date and TDS amounting to ₹43,12,169/- for the quarter ending 30.9.2012 was deposited on 22.10.2012 after due date. Further, during the period from 1.4.2012 to 31.12.2012, TDS amounting to ₹31,75,13,979/- on interest payments towards compensation paid in respect of non agricultural land as per the provisions of Section 194A read with Section 206AA of the Act was not deducted. The Assessing Officer issued show cause notice to the respondent assessee who submitted that the delay in depositing TDS of ₹21,85,982/- was due to non availability of TAN as the same was allotted in the month of October, 2012

itself. So far as the issue of interest on payments of compensation for agricultural land for the period from 1.4.2012 to 31.12.2012 was concerned, it was submitted that interest @ 12% per annum was to be paid from the date of initial notification to the date of payment as per the provisions of the Land Acquisition Act, 1894 (in short, “the 1894 Act”) and this interest was part of land compensation amount. No specific interest due to delayed payment or any other reason over and above the land compensation had been paid to the land owners. Therefore, TDS was not deducted on this compensation. The Assessing Officer recorded that payment of compensation had been made from 16.4.2012 onwards. As per provisions of section 203A of the Act read with Rule 114A, the assessee was under obligation to apply for TAN allotment in Form 49B within one month from the end of the month in which the tax was deducted. Thus, the Assessing Officer held the assessee to be liable to pay interest under Section 201(1A) at ₹2,29,528/- for the quarter ending 30.6.2012 and ₹1,30,502/- for the quarter ending 30.9.2012. The Assessing Officer further held that in the light of Section 56(viii) and clause (b) of Section 145A of the Act, interest component was not a part of the cost of land. Thus, the assessee was liable to deduct TDS as per provisions of Section 194A of the Act on the amount of interest paid. The Assessing Officer created demand of ₹5,28,43,296/- under Section 201(1)/201(1A) of the Act vide order dated 10.2.2014, Annexure A.1. Aggrieved by the order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals). Vide order dated 30.11.2015, Annexure A.2, the Commissioner of Income Tax (Appeals), [CIT(A)] partly allowed the appeal and confirmed the demand for liability of interest under Section 201(1A) of the Act for ₹2,29,528/- for the quarter ending 30.6.2012 and ₹1,30,502/- for the quarter ending 30.9.2012. The CIT(A) deleted liability of demand created under

Section 194A of the Act amounting to ₹4,33,77,833/- and interest thereon under Section 201(1A) of the Act amounting to ₹91,05,383/- holding that interest on compensation for acquiring agricultural land was additional compensation and not interest. Aggrieved by the order, the revenue filed appeal before the Tribunal. Vide order dated 30.6.2016, Annexure A.3, the Tribunal dismissed the appeal filed by the revenue. Hence the instant appeal by the revenue.

3. We have heard learned counsel for the parties and perused the record.

4. It has been categorically recorded by the Tribunal that according to clause (b) of Section 145A of the Act, interest received by an assessee on compensation or on enhanced compensation shall be deemed to be the income of the year in which it was received. Further as per Section 56(viii) of the Act, income by way of interest received on compensation or enhanced compensation referred to in clause (b) of Section 145A of the Act shall be chargeable to income tax under the head “income from other sources”. TDS is deducted under Section 194A of the Act on the payment of interest other than interest on securities. The Tribunal further recorded that the payment had been made as per Section 23(1A) of the 1894 Act which was erroneously mentioned as interest in the award of competent authority. The clarification in this regard had been issued by the Special Secretary revenue, Government of Punjab which was also sent to Chief Commissioner of Income Tax. Thus, the Tribunal concurred with the CIT(A) that the impugned amount was additional compensation paid as per Section 23(1A) of the 1894 Act and not liable to deduction of tax under Section 194A of the Act. The relevant findings recorded by the Tribunal read thus:-

“7. We have carefully considered the submissions. We find that as per provisions of clause (b) of Section 145A of the Income Tax Act, 1961 interest received by an assessee on compensation or on enhanced compensation as per the case may be, shall be deemed to be the income of the year in which it is received. Further as per provisions of Section 56(viii) of the Income Tax Act, 1961, income by way of interest received on compensation or enhanced compensation referred to in clause (b) of Section 145A shall be chargeable to income tax under the head income from other sources. TDS is deducted under Section 194A on the payment of interest other than interest on securities. Also, as per provisions of Section 194LA, TDS is deducted on payment of compensation on acquisition of certain immovable property other than agricultural land. Furthermore, the competent authority in this regard has clearly clarified that word interest has been wrongly used. It is infact an enhanced compensation. This statement of the competent authority is unambiguous and it has also been accepted by the Assessing Officer in the remand report. It is undisputed that the payment in this regard does not relate to any award by the court regarding payment of interest. The payment has been made as per Section 23(1A) of the Land Acquisition Act, 1894 which was erroneously mentioned as interest in the award of competent authority. The clarification in regard has been issued by the Special Secretary revenue, Government of Punjab. Letter was also issued to the Chief Commissioner of Income Tax, Chandigarh clarifying the position. In these circumstances, we agree with the learned

CIT(A) that impugned amount was additional compensation as per Section 23(1A) of the Land Acquisition Act, of 1894 and not liable to deduction of tax under Section 194A of the IT Act. It is settled law that it is the substance of the transaction which has to be taken into account in assessment proceedings and not the nomenclature to the same. The Revenue in grounds of appeal has referred to the decision of Hon’be Jurisdictional High Court in the case of Manjit Singh (HUF) vs. UOI and others (supra). The learned DR was not at all in a position to explain as to how this decision helps the case of revenue. Accordingly, we do not find any merit in the grounds raised by the revenue. Accordingly, we uphold the order of learned CIT(A).”

5. Learned counsel for the appellant revenue has not been able to point out any error or illegality in the findings recorded by the Tribunal warranting interference by this Court. No substantial question of law arises. Consequently, the appeal stands dismissed.

	(Ajay Kumar Mittal) Acting Chief Justice
May 10, 2018 'gs'	(Tejinder Singh Dhindsa) Judge
Whether speaking/reasoned	Yes
Whether reportable	Yes