

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

ITA No. 13 of 2008

Decided on 3.10.2012

Commissioner of Income Tax, Shimla.

...Appellant

Versus

Sh. Ruldo Ram, S/o Shri Rasila Ram, Village Chounka, P.OP.
Mail, Tehsil Dalhousie.

...Respondent

Appeal u/s 260-A of the Income Tax Act.

Coram:

Hon'ble Mr. Justice Deepak Gupta, Judge

Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting? No

For the Appellant : **Mr. Vinay Kuthiala, Senior
Advocate with Mr. Gaurav
Sharma, Advocate.**

For the Respondent : **Mr. K.D. Sood, Senior Advocate
with Mr. Sanjeev Sood,
Advocate.**

Deepak Gupta, Judge (oral):

Though these appeals stand admitted, formally no question of law has been framed. However, the following question of law arise for determination in this case:

(1) *Whether the interest granted to the land owner under Section 28 of the Land Acquisition Act, 1894 on the enhanced amount of compensation is to be calculated for the purpose of computation of tax on year to year basis or in the year in which the amount is actually credited to the landowner.*

2. This question does not survive in view of the pronouncement of the judgment of the Apex Court that the interest payable under Section 28 of the Land Acquisition Act,

1894 is a part of compensation and is not interest at all and therefore, must be taxed as compensation.

3. A reference may be made to the judgment of their Lordships of the Hon'ble Supreme Court in **Commissioner of Income Tax, Faridabad versus Ghanshyam, (HUF)**, (2009)8 SCC 412, wherein the Apex Court has held 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 the 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.

50. 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.

54. 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 dispute.”

4. In view of the aforesaid judgment of the Apex Court, this amount is to be treated as part of compensation itself and is not to be treated as interest. Therefore, the question of law framed above does not survive any more.

5. Accordingly, the present appeal is disposed of in terms of the judgment of the Apex Court and the Assessing Officer shall proceed accordingly. No order as to costs.

**(Deepak Gupta),
Judge**

**(Rajiv Sharma),
Judge**

October 3, 2012
(kalpana)