

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH  
(VIRTUAL COURT)

श्री एन.के.सैनी, उपाध्यक्ष एवं श्री महावीर सिंह, उपाध्यक्ष  
BEFORE: SHRI. N.K.SAINI, VP & SHRI MAHAVIR SINGH, VP

आयकर अपील सं./ ITA No. 63 & 64/Chd/2020  
निर्धारण वर्ष / Assessment Year : 2011-12

The I.T.O., Ward-1 Panchkula.	बनाम	Smt. Chawli Devi, W/o-Sumer Chand, Village-Ramgarh, Panchkula.
स्थायी लेखा सं./PAN NO: AGPPD 1598 P		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

राजस्व की ओर से/ Revenue by : Smt. Meenakshi Vohra, Addl.CIT-DR  
निर्धारिती की ओर से/Assessee by : Shri Vineet Krishan, Adv.

सुनवाई की तारीख/Date of Hearing : 17/05/2021  
उद्घोषणा की तारीख/Date of Pronouncement : 17/05/2021

**आदेश/Order**

**PER: BENCH**

These two appeals by the Department are directed against the separate orders dated 30/10/2019 and 31/10/2019 of Ld. CIT(A), Panchkula.

2. Since these appeals belonging to the same assessee and heard together, therefore, for the sake of convenience and brevity, these are disposed off by this common order.

3. First we shall deal with the appeal of the department in ITA No. 63/Chd/2020 for the A.Y. 2011-12. Following grounds have been raised in this appeal.

“1. Whether on the facts and in the circumstances of the case, the Commissioner of Income Tax (Appeals) is right in law in holding that the interest received by the Assessee under section 28 of the Land Acquisition Act,

*1894 during the impugned year on the compulsory acquisition of agricultural land is in the nature of compensation and exempt under section 10(37) of the Income Tax Act, 1961 and is not chargeable to tax under the head 'Income from Other Sources' under section 56 of the Income Tax Act, 1961?*

2. *Whether on the facts and in the circumstances of the case, the Commissioner of Income Tax (Appeals) is right in law in disregarding the statutory provision of Clause(viii) under sub-section 2 of section 56 of the Income Tax Act, 1961 read with Clause (b) of section 145A according to which the interest on compensation or enhance compensation is chargeable to tax under the head 'Income from Other Sources' in the year of receipt irrespective of the method of accounting employed subject to deduction of a sum equal to 50% of such income under Clause (iv) of Section 57 of the Income Tax Act, 1961?*
3. *Whether on the facts and in the circumstances of the case the Commissioner of Income Tax (Appeals) grossly erred in disregarding the decision of the Hon'ble Jurisdiction High Court in the case of Manjeet Singh Vs. Union of India & Others reported as [2016] 237 TAXMAN 116 (Punj&Har) and the decision in the case of Commissioner of Income Tax, Panchkula Versus Prem Singh decided on 16.12.2010 in C. M. No. 27928-29-CII-2010 wherein the decision of the Hon'ble Apex Court in the case of Commissioner of Income Tax Versus Ghanshyam Dass (HUF) reported as [2009] 315 ITR 1(SC) was considered and it was held that the interest on enhanced compensation under section 28 of the Land Acquisition Act, 1894 is chargeable to tax under section 56 of the Income Tax Act, 1961 as income of the year in which it is received irrespective of the method of accounting employed subject to deduction of a sum equal to 50% of such income under Clause (iv) of section 57 of the Income Tax Act, 1961 notwithstanding that the compensation or enhanced compensation is exempt under section 10(37) of the Income Tax Act, 1961?*

4. *It is prayed that the order of Ld. CIT(A) be set-aside and that of the AO be restored.*
5. *The appellant craves leave to add or amend the grounds of appeal before the appeal is heard and disposed off.”*

4. From the aforesaid ground, it would be clear that the grievance of the department relates to the chargeability of the interest on compensation or enhanced compensation.

5. During the course of hearing, the Id. Counsel for the assessee at the very outset has stated that an identical issue having similar facts and similar grounds of appeal was a subject matter of the appeal in the case of ITO Vs Shri Lakshmi Chander Gupta (HUF) wherein the issue has been decided by the ITAT Chandigarh Bench 'A' Chandigarh in ITA No. 68/Chd/2020 for the A.Y. 2011-12 vide order dated 23/12/2020. Copy of the said order was furnished which is placed on record.

6. In her rival submissions, the Id Sr.DR was fair enough to concede that the facts related to the present case are similar and the issue is squarely covered vide aforesaid referred to order dated 23/12/2020 in the case of ITO Vs Shri Lakshmi Chander Gupta (HUF) in ITA No. 68/Chd/2020.

7. After considering the submissions of both the parties and the material placed on record, it is noticed that a similar issue having identical facts has already been decided by the ITAT Chandigarh Bench 'A' Chandigarh in the case of ITO Vs Shri Lakshmi Chander Gupta (HUF) in ITA No. 68/Chd/2020 vide order dated 23/12/2020 wherein the relevant finding have been given in para 7 to 9 of the order which read as under:

*“7. We have heard the rival submissions of the parties and perused the material on record including the cases relied*

upon by the parties. As pointed out by the Ld. Counsel the Ld. CIT(A) has decided the issue involved in this appeal in favour of the assessee by following the ratio laid down by the Hon'ble Supreme Court in the case of CIT vs. Ghanshyam 'HUF'(supra) and the decisions of the coordinate Benches of the Tribunal in the cases of Som Nath vs. ITO, ITA No. 552/Chd./2016 and in a group case of Surinder Kumar and others in ITA N.539 to 543/Chd/2016, ITA No.547 to 551/chd/2016, ITA No. 368/2014, ITA No. 948/Chd/2016 and ITA No.949/Chd/2016. The Ld. CIT(A) has further reproduced the findings of the order of the coordinate Bench. The findings of the coordinate Bench in the group case discussed above read as under:

- "7. The core ground involved in these appeals is regarding the taxability of interest received on enhanced compensation u/s 28 of the Land Acquisition Act, 1894. Now, there are two questions involved in these appeals, first issue is, regarding the year of taxability of the interest income whether it has to be taxed in the year of receipt in the light of the decision of the Hon'ble Supreme Court in the case of Ghanshyam (HUF) (supra) or is to be taxed on the basis of apportionment for each year from the date of acquisition of lands till the receipt of the compensation in the light of the decision of the Hon'ble Supreme Court in the case of Rama Bai (supra); the second issue involved is as to whether the interest awarded u/s 28 of the Land Acquisition Act on enhanced compensation is to be treated as part of the enhanced compensation and will not be taxable separately as interest income under the Head 'income from other sources'?
8. We find that both these issues are covered by the aforesaid decision of the Hon'ble Supreme Court in the case of Ghanshyam (HUF) (supra) holding the same to be in the nature of compensation itself. The Court also dealt with the other aspect namely, the "year of tax and answered this question by holding that it has to be tested on receipt basis, which means it would be taxed in the year in which it is received. The said findings given in the case of Ghanshyam (HUF) (supra) have been reiterated by the Hon'ble Supreme Court in the case of Govindbhai Mamaiya (supra) observing as under:

*"In so far as the second question is concerned, that is also covered by another judgment of this Court in Commissioner of Income Tax, Faridabad vs. Ghanshyam (HUF) reported in (2009) 8 SCC 412, 6 albeit, in favour of the Revenue. In that case, the court drew distinction between the "interest" earned under Section 28 of the*

*Land Acquisition Act and the "interest" which is under Section 34 of the said Act. The Court clarified that whereas compensation given to the assessee of the land acquired would be 'income', the enhanced compensation/consideration becomes income by virtue of Section 45(5)(b) of the Income Tax Act. The question was whether it will cover "interest" and if so, what would be the year of taxability. The position in this respect is explained in paras 49 and 50 of the judgment which make the following reading:*

*"49. 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.*

*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 (J-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. "*

8. *It is clear from the above that whereas interest under Section 34 is not treated as a part of income subject to tax, the interest earned under Section 28, which is on enhanced compensation, is treated as a accretion to the value and therefore, part of the enhanced compensation or consideration making it exigible to tax. After holding that interest on enhanced compensation under Section 28 of 1894 Act is taxable, the court dealt with the other aspect namely, the year of tax and answered this question by holding that it has to be tested on receipt basis, which means it would be taxed in the year in which it is received. It would mean that converse position i.e. spread over of this interest on accrual basis is not permissible."*

9. *The Ld. counsels for assessee has further brought our attention the latest decision of the Hon'ble Supreme Court in the case of CIT Vs. Chet Ram (HUF) dated 12.9.2017 in Civil Appeal No. 13053/2017 wherein also the Hon'ble Supreme Court has again reiterated the proposition laid down in the case of Ghanshyam (HUF) (supra), which we find has been further reiterated in the case of Union of India vs. Hari Singh & others in Civil Appeal No. 1504 of 2017 dated 15.9.2017, as under: 9*

*"(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. "*

- 9.1 *The said decision as rightly pointed out by the Ld. counsel for assessee have been rendered by the Hon'ble Apex Court subsequent to the decision passed by the Hon'ble Jurisdictional High Court in the case of Manjeet Singh(HUF) (supra) which had dealt, with the decisions of the Hon'ble Apex Court in Ghanshyam, HUF (supra). Therefore, in view of the same, the proposition laid down in Ghanshyam, HUF (supra) remains and which having been laid down by the Hon'ble Apex Court is the law of the land and has to be followed by all lower authorities. In view of the above, we hold that the interest received by the assessee during the impugned year on the compulsory acquisition of its land u/s 28 of the Land Acquisition Act, is in the nature of compensation and not interest which is taxable under the head income from other sources u/s 56 of the Act as held by the authorities below. The compensation being exempt u/s 10(37) of the Act is not disputed. In view of the same the order passed by the CIT(Appeals) upholding the addition made by the AO on account of interest on enhanced compensation is, not sustainable. The ratio of the order laid down vide order dt. 09/07/2018 in a group of cases in ITA No. 1413 to 1437/CHD/2016 would apply mutatis-mutandis to the core issue of taxability of interest received on enhanced compensation.*

10. *In view of the above discussion, these appeals of the assessee are hereby allowed. "*

8. *As pointed out by the Ld. Counsel for the assessee, the Ld. CIT(A) has decided the issue involved in this case in favour of the assessee by following the ratio laid down by the Hon'ble Supreme Court as well as the decisions of the Coordinate Benches. We further notice that the coordinate Bench has*

*decided the identical issue in favour of the assessee after considering the judgments relied upon by the Ld DR.*

9. *The Ld. DR did not bring to our notice any case law contrary to the findings of the Coordinate Bench in the cases referred above to substantiate the contention of the revenue. In our considered view, the findings of the Ld. CIT(A) are based on the ratio laid down by the Hon'ble Supreme Court in the case of Ganshyam HUF (supra) and the decisions of the Coordinate Benches discussed above. We therefore, do not find any reason to interfere with the findings of the Ld. CIT (A). Hence, respectfully following the decisions of the coordinate Benches, discussed above, we uphold the order passed by the Ld. CIT(A) and dismiss the appeal of the Revenue.”*

So respectfully following the order dated 23/12/2020 of the ITAT Chandigarh Bench 'A' Chandigarh referred to above, we do not see any merit in this appeal of the department and therefore, do not see any valid ground to interfere with the findings given by the Id. CIT(A).

8. Since the order of the Id. CIT(A) for deleting the quantum addition has been affirmed in the former part of this order, therefore, penalty levied U/s 271(1)(c) of the Act by the A.O. on the basis of the addition which has been deleted in the quantum addition was rightly deleted by the Id. CIT(A), so, we do not see any valid ground to interfere with the findings given by the Id. CIT(A) in the impugned order. Accordingly, we do not see any merit in the appeal of the department also.

9. In the result, both these appeals of the department are dismissed.

(Order pronounced in the open Court on 17/05/2021)

Sd/-  
महावीर सिंह,  
(MAHAVIR SINGH)  
उपाध्यक्ष / VICE PRESIDENT  
Date: 17/05/2021  
\*Ranjan

Sd/-  
एन.के.सैनी,  
(N.K. SAINI)  
उपाध्यक्ष / VICE PRESIDENT

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File