IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.2276 of 2015 (O&M)
Date of decision: 3.11.2015

Ram Pal and others

……Petitioner

State of Haryana and others

…..Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Suresh Kumar Kaushik, Advocate for the petitioners.

Ms. Mamta Singh Talwar, DAG, Haryana with Mr. Saurabh Mago, AAG, Haryana.

Mr. Jagdish Manchanda, Advocate for respondent No.2 (HUDA).

Mr. Yogesh Putney, Advocate for respondent No.4.

Ajay Kumar Mittal,J.

1. The petitioners pray for quashing the certificate of deduction of tax at source, Annexure P.2 being contrary to the law laid down by the Apex Court in ***Commissioner of Income Tax, Faridabad vs. Ghanshyam (HUF),*** (2009) 315 ITR 1 as well as Circular dated 13.4.2011, Annexure P.4. Further prayer has been made for directing the respondents to refund the amount of tax deducted at source with interest.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioners were owners of agricultural land situated at Village Wazirabad, Tehsil and District Gurgaon. It was acquired by the State of Haryana for a public purpose i.e. for residential, commercial and institution of Sector 57, Gurgaon vide notification dated 24.8.2000 under Section 4 of the Land Acquisition Act, 1894 (in short, "the Act") followed by notification under section 6 of the Act on 21.7.2013. Award was passed on 21.7.2014. Thereafter, the petitioners filed reference petition under Section 28A(3) of the Act. The petitioners had not filed any petition under Section 18 of the Act. However, other land owners filed reference petitions. The reference petition was disposed of in terms of judgment in LA Case No.86 dated 7.5.2005 decided on 23.8.2011 by the Additional Sessions Judge Gurgaon. The petitioners were held entitled to compensation at the rate of ₹ 1697.83 per square yard alongwith other statutory benefits under sections 23(1A), 23(2) and 28 of the Act and the interest was to start from the date of application under section 28A of the Act. While depositing the amount of enhanced compensation with the reference court, the respondents though calculated the same as ₹ 7,46,591/- but deducted ₹ 45235/- as Tax Deduction at source (TDS) on the amount of enhanced compensation and paid a sum of ₹ 7,01,356/-. According to the petitioners, deduction of tax at source is required to be made in respect of compensation paid for acquisition of immovable property other than agricultural land. The interest was on the

excess amount of compensation which was awarded by the reference court and therefore, the same was part of enhanced compensation. Further the circular dated 13.4.2011, Annexure P.4 provides that in case of compensation on account of compulsory acquisition of agricultural lands, TDS should not be deduced. The petitioners met the respondents many times for releasing their amount with interest which was withheld by the department in lieu of TDS but they did not pay any heed. Hence the instant writ petition.

3. A written statement has been filed on behalf of respondent No.4 – Union of India through Commissioner of Income Tax (TDS) II, Chandigarh wherein it has been inter alia stated that the interest on enhanced compensation being revenue receipt and exigible to tax in the year of receipt in view of the amendment to sub section (2) of Section 56, clause (b) of Section 145A and Section 57(iv) by the Finance (No.2) Act 2009 w.e.f 1.4.2010 applicable to the assessment year 2013-14 and in view of the law laid down by this Court in ***CIT, Faridabad vs. Bir Singh,*** ITA No.209 of 2004 and ***CIT, Panchkula vs. Prem Singh*** decided on 16.12.2010. Thus, in view of the law laid down by the Apex court in ***Ghanshyam's*** case (supra), the interest under Section 28 of the Act is exigible to tax in the year of receipt. With regard to the refund on the basis of circular dated 13.4.2011 is concerned, the said circular relates to compensation only and exemption under Section 10(37) of the Income Tax Act, 1961 (in short, "the 1961 Act") and not on the amount of interest component received either under section 28 or 34 of the Act. Section 10(37) of the 1961 Act contemplates exemption on transfer of agricultural land on fulfilling conditions laid down under

section 2(14)(iii) of the 1961 Act which applies to income chargeable under the head 'capital gains' and not on interest which is taxable under the head income from other sources under section 56 of the 1961 Act. With regard to the issue of chargeability of interest under sections 28 and 34 of the Act by treating the same to be part of enhanced compensation, it is submitted that as held by this Court, the interest awarded by court on enhanced compensation is interest under section 28 of the Act and chargeable to tax in the year of receipt. The judgment in ***Bir Singh's*** case (supra) was delivered after considering the judgment of the Apex court in ***Ghanshyam's cas***e (supra). The judgment in ***Ghanshyam's*** case (supra) was delivered on 16.7.2009 whereas Amendment was made to sub section (2) of Section 56 of the 1961 Act by Finance (No.2) Act, 2009 w.e.f 1.4.2010 to the following effect:-

> "(viii) income by way of interest received on compensation or on enhanced compensation referred to clause (b) of section 145A."

Further amendment was carried out under Section 145A by inserting clause (b) by Finance Act, 2009 w.e.f 1.4.2010 to the following effect:-

> "(b) interest received by an assessee on compensation or enhanced compensation, as the case may be, shall be deemed to be the income of the year in which it is received. In view of the aforesaid amendments, the interest component on the amount of compensation or enhanced compensation being revenue receipt was exigible to tax in the year of receipt.

On these premises, prayer for dismissal of the petition has been made.

4. After hearing learned counsel for the parties, we find merit in the stand taken by the respondent authorities. Admittedly, interest had been

awarded to the petitioners on the enhanced compensation on account of acquisition of their land on which TDS was deducted by the respondent authorities. According to the petitioners, the action of the respondents in charging TDS is not legal and valid as per the law laid down in ***Ghanshyam's*** case (supra) and the circular dated 13.4.2011 issued by the respondents. It needs to be noticed that the judgment in Ghanshyam's case (supra) was delivered on 16.7.2009 by the Apex Court. Thereafter, amendments were made to Sections 56 and 145A of the 1961 Act w.e.f 1.4.2010 thereby including income by way of interest received on compensation or on enhanced compensation to be income of the year in which it was received. In view of the said amendments, the interest component on the amount of compensation or enhanced compensation being revenue receipt was exigible to tax in the year of receipt irrespective of the method of accounting employed. Similarly, in ***Bir Singh's*** case (supra), it was held that the interest awarded by court on enhanced compensation was interest under section 28 of the Act and chargeable to tax in the year of receipt. This court in ***Prem Singh's*** case (supra) while considering identical issue recorded as under:-

> "11. In this view of the matter, the interest component on enhanced compensation under section 28 is liable to be taxed under Section 56 of the Act even when compensation is treated as agricultural income and is not covered by Section 45(c) of the Act. We thus answer the questions in favour of the revenue and modify our order dated 5.7.2010 accordingly. The amount of interest on enhanced compensation is held to be taxable in the year of receipt irrespective of pendency of proceedings against award of enhanced compensation."

5. In view of the above, we do not find any error in the action of the respondents warranting interference by this Court. Consequently, finding no merit in the petition, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

November 3, 2015 **(Ramendra Jain)**
'gs' **Judge**