IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 267 of 2005 (O&M)

Date of Decision: 9.2.2016

Atamjit Singh

....Appellant.

Versus

Commissioner of Income Tax-II, Jalandhar

...Respondent.

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

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE RAJ RAHUL GARG.

PRESENT: Mr. Ravish Sood, Advocate for the appellant.

Mr. Rajesh Sethi, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. This order shall dispose of two appeals bearing ITA Nos. 267 and 268 of 2005 as according to learned counsel for the parties, the issue involved is identical. For brevity, the facts are being extracted from ITA No. 267 of 2005.

2. This appeal has been preferred by the assessee under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 11.11.2004 (Annexure A-1) passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (hereinafter referred to as "the Tribunal") in ITA No. 540(ASR)/1998, for the assessment year 1991-

92. The appeals were admitted by this Court vide order dated 31.1.2006 for determination of the following substantial question of law:-

> Whether on the facts and in the circumstances of the case, interest under Sections 234-A and 234-B of the Income Tax Act, 1961 was payable by the assessee in respect of assessment year 1991-92?

3. Briefly stated, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee is an individual and had income from interest on bank deposits and agricultural income. He had filed his return of income on 23.8.1989 for the assessment year 1989-90. The land of the assessee was acquired by the Land Acquisition Organization Department (Punjab), Chandigarh on 18.8.1979. Against the said acquisition, the assessee filed an appeal and the compensation awarded by the Land Acquisition Collector was enhanced by the District Judge, Jalandhar and thereafter by this Court vide order dated 18.1.1989. The enhanced amount of compensation of ₹ 11,56,299/- and interest thereon amounting to ₹ 15,78,607/- for the period from 19.5.1982 to 27.10.1991 was received by the assessee in November, 1991 as the Government of Punjab had filed Special Leave Petition against the enhancement in the Supreme Court. The Land Acquisition Collector released the payment in November, 1991 along with interest as per the copy of computation (Annexure A-6). The Land Acquisition Collector also deducted the tax to the tune of ₹ 1,72,861/- at the rate of 11.02% of the total amount of interest. The Assessing Officer vide assessment order dated 15.10.1997 under Section 143(3) of the Act computed and assessed the interest for the relevant previous year at ₹ 1,74,450/-. The Assessing Officer in the assessment order directed for

charging of interest under Sections 234A and 234B of the Act. The credit of Tax Deducted at Source (TDS) relating to the interest income for the relevant year was not allowed for calculating interest under Section 234B of the Act. The credit of the TDS including the TDS relevant to that year was allowed in the assessment year 1992-93 and refund was worked out in that assessment year as per demand notice dated 15.10.1997 (Annexure A-7) under Section 156 of the Act. Feeling aggrieved, the assessee filed appeals before the Commissioner of Income Tax (Appeals) [for brevity "the CIT(A)"]. The CIT(A) vide orders dated 4.8.1998 (Annexures A-2 and A-3, respectively) for the assessment years 1986-87 to 1991-92 and for the assessment year 1992-93 dismissed the appeals. Against the orders, Annexures A-2 and A-3, the assessee filed appeals before the Tribunal. The Tribunal vide order dated 11.11.2004 (Annexure A-1) dismissed the appeals. Hence, the instant appeals.

4. After hearing learned counsel for the parties, we do not find any merit in the appeals.

5. The issue arising for consideration in these appeals relates to chargeability of interest under Sections 234A and 234B of the Act.

6. Interpreting the provisions relating to chargeability of Interest under Sections 234A, 234B and 234C of the Act, the Constitution Bench in **Commissioner of Income-Tax v. Anjum M.H. Ghaswala and others (2001) 252 ITR 1** while considering the issue relating to power of Settlement Commission to waive levy of interest under these provisions noted that on analysis of the Scheme of Levy of Interest, it is discernible that the interest contemplated for default in furnishing of return under Section 234A of the Act, default in payment of

advance tax under Section 234B of the Act and interest for deferment of advance tax under Section 234C of the Act is mandatory in nature and in the absence of any power expressly conferred on the Settlement Commission, waiver would be outside the purview of the Settlement Commission under Chapter XIX-A of the Act. The relevant observations recorded by the Apex Court read thus:-

> "Sections 234A, 234B and 234C in clear terms impose a mandate to collect interest at the rates stipulated therein. The expression shall used in the said Section cannot by any stretch of imagination be construed as may. There are sufficient indications in the scheme of the Act to show that the expression shall used in Sections 234A, 234B and 234C is used by the Legislature deliberately and it has not left any scope for interpreting the said expression as may. This is clear from the fact that prior to the Amendment brought about by the Finance Act, 1987, the Legislature in the corresponding Section pertaining to imposition of interest used the expression may thereby giving a discretion to the authorities concerned to either reduce or waive the interest. The change brought about by the Amending Act (Finance Act, 1987) is a clear indication of the fact that the intention of the Legislature was to make the collection of statutory interest mandatory. In this connection, we may usefully refer to the judgment of this Court in Jaywant S. Kulkarni & Ors. v. Minochar Dosabhai

Shroff & Ors. AIR 1988 SC 1817 wherein this Court held that when the Legislature changes the expression may to shall by amendment of the statute, it is clear that it intended to make the provision mandatory from the existing directory provision."

7. Learned counsel for the assessee has referred to the judgment in **Commissioner of Income Tax v. Nahar Spinning Mills Ltd. (2011) 339 ITR 557 (P&H)** wherein the issue before the Division Bench of this Court was relating to chargeability of interest under Section 234B of the Act in the case of minimum alternative tax assessment of the company under Section 115J of the Act. The question was answered against the assessee and, therefore, it in no manner helps the case of the assessee.

8. Thus, it would be concluded that wherever interest under Sections 234A, 234B and 234C of the Act is leviable/chargeable, it is clearly spelt out from the plain reading of the provisions, that there is a mandate to collect interest at the rates stipulated therein.

9. Further, delving into the issue relating to taxability of interest received on enhanced compensation, this Court in **Manjeet Singh v. Union of India and others (2016) 237 Taxman 116** to which one of us (Ajay Kumar Mittal, J.) was a member, had elaborately dealt with the same as under:-

"7. The primary question for consideration that arises in these petitions relates to the nature of interest received by the landowner-assessee under Section 28 of the 1894 Act. In other words, whether the interest which is received by the assessee-landowner partakes the character of income or not and, in such a situation is it taxable under the provisions of the Act.

8. It would be apposite to quote herein below Sections 28 and 34 of 1894 Act which read thus:-

> “28. Collector may be directed to pay interest on excess compensation. - If the sum which, in the opinion of the court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of [nine per centum] per annum from the date on which he took possession of the land to the date of payment of such excess into Court."
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> "34. Payment of interest.- When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of nine per centum per annum from the time of so taking possession until it shall have been so paid or deposited.
>
> Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession

is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry."

9. The award of interest under Section 28 of the 1894 Act applies when the amount originally awarded has been paid or deposited and when the Court awards excess amount. In such cases interest on that excess alone is payable. Section 28 empowers the Court to award interest on the excess amount of compensation awarded by it over the amount awarded by the Collector. The compensation awarded by the Court includes the additional compensation awarded under Section 23(1A) and the solatium under Section 23(2) of the said Act. Section 28 is applicable only in respect of the excess amount, which is determined by the Court after a reference under Section 18 of the 1894 Act.

10. Under Section 34 of the 1894 Act, the Collector awards interest on the compensation offered at the rate of 9% per annum for a period of one year from the date of taking possession and thereafter at the rate of 15% per annum from the date of expiry of one year on the amount of compensation or part thereof which remains unpaid or deposited before the date of

such expiry.

11. A plain reading of Sections 23(1A), 23(2) as also Section 28 of the 1894 Act clearly spells out that additional benefits are available on the market value of the acquired lands under Section 23(1A) and 23(2) whereas Section 28 is available in respect of the entire compensation. The Constitution Bench of the Supreme Court in Sunder's case (supra) had approved the following observations of the Division Bench of this Court in State of Haryana vs. Smt.Kailashwati and others, AIR 1980 P&H 117:-

> "10. Once it is held as it inevitably must be that the solatium provided for under Section 23(2) of the Act forms an integral and statutory part of the compensation awarded to a landowner, then from the plain terms of Section 28 of the Act, it would be evident that the interest is payable on the compensation awarded and not merely on the market value of the land. Indeed the language of Section 28 does not even remotely refer to market value alone and in terms talks of compensation or the sum equivalent thereto. The interest awardable under Section 28 therefore would include within its ambit both the market value and the statutory solatium. It would be thus evident that the provisions of Section 28 in terms warrant and authorize the

grant of interest on solatium as well."

12. Adverting to the case law on the subject, inevitably, reference is made to the judgment by the three Judges bench of the Supreme Court in the case of Dr. Shamlal Narula v. CIT , [1964] 53 ITR 151, which had considered the issue regarding award of interest under the 1894 Act. Interest under Section 28 of the 1894 Act was considered akin to interest under Section 34 thereof as both were held to be on account of keeping back the amount payable to the owner and did not form part of compensation or damages for the loss of the right to retain possession. It was noticed as under:-

> "As we have pointed out earlier, as soon as the Collector has taken possession of the land either before or after the award the title absolutely vests in the Government and thereafter owner of the land so acquired ceases to have any title or right of possession to the land acquired. Under the award he gets compensation for both the rights. Therefore, the interest awarded under s. 28 of the Act, just like under s. 34 thereof, cannot be a compensation or damages for the loss of the right to retain possession but only compensation payable by the State for keeping back the amount payable to the owner."

The principle of Dr.Shamlal Narula's case (supra) had subsequently been applied by three Judges Bench of the Apex Court in a later decision in T.N.K.Govindaraju Chetty v. CIT, (1967) 66 ITR 465.

13. Further Section 2(28A) of the Act defines “interest” and was inserted by Finance Act, 1976 to be effective from 1.6.1976. It reads thus:-

> “'interest' means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) and includes any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised.”

The expression 'interest' occurring in sub-section (28A) of Section 2 of the Act widens the scope of the term 'interest' for the purposes of the Act.

14. Another three Judges bench of the Apex Court in Bikram Singh vs. Land Acquisition Collector, (1997) 224 ITR 551 following Dr. Shamlal Narula's case (supra) and taking into consideration definition of “interest” in Section 2(28A) of the Act had recorded that interest under Section 28 of the 1894 Act was a revenue receipt and is taxable. It was held as under:-

> “The controversy is no longer res integra. This question was considered elaborately by this

Court in Dr. Shamlal Narula vs. Commissioner of Income-tax, Jammu [51 ITR 151]. Therein, K. Subba Rao, J., as he then was, considered the earlier case law on the concept of "interest" laid down by the Privy Council and all other cases and had held at page 158 as under: "In a case where title passes to the State, the statutory interest provided thereafter can only be regarded either as representing the profit which the owner of the land might have made if he had the use of the money or the loss he suffered because he had not that use. In no sense of the term can it be described as damages or compensation for the owner's right to retain possession, for he has no right to retain possession after possession was taken under Section 16 or Section 17 of the Act. We, therefore, hold that the statutory interest paid under Section 34 of the Act is interest paid for the delayed payment of the compensation amount and, therefore, is a revenue receipt liable to tax under the Income tax Act."

This position of law has been consistently reiterated by this Court in the case of TMK Govindaraju Chetty vs. Commissioner of Income-tax, Madras [66 ITR 465], Rama Rai & Ors. vs. CIT, Andhra Pradesh [181 ITR 400] and

K.S. Krishna Rao vs. CIT, A.P. [181 ITR 408]. Thus by a catena of judicial pronouncements, it is settled law that the interest received on delayed payment of the compensation is a revenue receipt eligible to income tax. It is true that in amending the definition of "interest" in Section 2(28A) interest was defined to mean interest payable in any manner in respect of any money borrowed or debt incurred including a deposit, claim or other similar right or obligation and includes any service, fee or other charges in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised. It is seen that the word "interest" for the purpose of the Act was interpreted by the inclusive definition. A literal construction may lead to the conclusion that the interest received or payable in any manner in respect of any moneys borrowed or a debt incurred or enumerated analogous transaction would be deemed interest. That was explained by the Board in the circular referred to hereinbefore. But the question is: whether the interest on delayed payment on the acquisition of the immovable property under the Acquisition Act would not be eligible to income-tax? It is seen that this Court has consistently taken the view that it is a revenue receipt. The amended definition of "interest" was not intended to exclude the revenue receipt of interest on delayed payment of compensation from taxability. Once it is construed to be a revenue receipt, necessarily, unless there is an exemption under the appropriate provisions of the Act, the revenue receipt is exigible to tax. The amendment is only to bring within its tax net, income received from the transaction covered under the definition of interest. It would mean that the interest received as income on the delayed payment of the compensation determined under Section 28 or 31 of the Acquisition Act is a taxable event."

15. Now, we advert to the judgment of the Apex Court in Ghanshyam (HUF)'s case (supra) on the basis of which learned counsel for the assessee had sought reconsideration of judgment of this Court in CIT v. Bir Singh, ITA No.209 of 2004 decided on 27.10.2010 where Division Bench of this Court has held that element of interest awarded by the court on enhanced amount of compensation under Section 28 of the 1894 Act falls for taxation under Section 56 as 'income from other sources' in the year of receipt.

16. The reliance was placed upon following observations in Ghanshyam (HUF)'s case (supra):-

"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 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 the enhanced value of the land which is not the case in the matter of payment of interest under Section 34."

17. In view of the authoritative pronouncements of the Apex Court in Dr. Sham Lal Narula, T.N.K.Govindaraja Chetty, Amarjit Singh, Sunder, Bikram Singh's cases (supra), Rama Bai vs. CIT (1990) 181 ITR 400 and K.S.Krishna Rao v. CIT, (1990) 181 ITR 408, the assessee cannot derive any benefit from the aforesaid observations quoted above."

10. Appeal carried to the Apex Court by the assessee therein by way of Special Leave to Appeal (C) No. 34642 of 2014 was dismissed by the Supreme Court on 18.12.2014 with the following order:-

"Heard learned counsel for the petitioners and perused the relevant material.

We do not find any legal and valid ground for interference. The Special Leave Petitions are dismissed."

11. The judgments relied upon by the learned counsel for the assessee-appellant in **State of Punjab v. Amarjit Singh and another (2011) 2 SCR 617 (SC)** and **Commissioner of Income Tax v. Govindbhai Mamaiya (2014) 367 ITR 498 (SC)** were based on the judgment of the Supreme Court in **Commissioner of Income Tax v. Ghanshyam (HUF) (2009) 315 ITR 1 (SC)**, which was dealt with by this Court in **Manjeet Singh's case (supra)** as noticed hereinabove.

12. Still further, on the strength of judgment of the Apex Court in **Commissioner of Income Tax, West Bengal-II, Calcutta v. Hindustan Housing and Land Development Trust Ltd. (1986) 161 ITR 524 (SC),** it was urged that till the lis relating to right to receive enhanced compensation along with interest thereon had not attained finality, no taxable income could be said to accrue to the assessee. The factual matrix and the issue involved in **Hindustan Housing and Land Development Trust Ltd's case (supra)** needs to be examined. In the said case, certain land belonging to the assessee was requisitioned and compulsorily acquired by the State. The arbitrator awarded the compensation for the period of requisition. Thereupon, the State Government preferred an appeal in the High Court. During the pendency of the appeal, the State Government deposited the amount on account of additional compensation payable under the award which the assessee was allowed to withdraw on furnishing of surety bond for

refunding the amount on appeal being allowed. The question that arose in those facts whether this amount which was received by the company, in pursuance to the arbitrator award which was in dispute in appeal filed by the State Government, could the same be treated to be assessee's income during the previous year when the same was received. The Apex Court held that since there was no absolute right to receive the amount and the extra amount of compensation was in dispute in appeal filed by the State Government, therefore, no income accrued to the assessee. It was, however, clarified that there is a clear distinction between cases where the right to receive payment is in dispute and it is not a question of merely quantifying the amount to be received, and cases where there is no challenge to the right to receive the payment but the quantification of the amount payable alone is left to be ascertained in accordance with settled or accepted principles. The relevant observations of the Apex Court in that behalf read as under:-

> "There was no absolute right to receive the amount at that stage. If the appeal was allowed in its entirety, the right to payment of the enhanced compensation would have fallen altogether. This is a case which must be distinguished from that decided by this Court in **Kedarnath Jute Mfg. Co. Ltd. v. Commissioner of Income Tax (1971) 82 ITR 363 (SC)**, where the liability to sales tax arose immediately on a dealer effecting sales which were subject to sales tax and what remained to be done was a mere quantification of that liability."

13. Herein, the assessee in pursuance to the order of the High

Court dated 18.1.1989 had received the payment of enhanced compensation along with interest in terms thereof. It was not shown that the payment was released to the assessee conditionally and that the right to receive the compensation by the assessee itself was in jeopardy. The quantification of the compensation was assailed by the State and there was no challenge to the legality and validity of the acquisition proceedings. Thus, no advantage can be derived by the assessee-appellant from the law enunciated in the said pronouncement.

14. Once it is held that the interest received by the assessee on the compensation amount was taxable, equally the interest under Sections 234A and 234B of the Act was exigible in the facts and circumstances of the present case.

15. In view of the above, the substantial question of law as claimed by the assessee is decided against the assessee. Consequently, the appeals are dismissed.

(AJAY KUMAR MITTAL)
JUDGE

February 9, 2016 **(RAJ RAHUL GARG)**
gbs **JUDGE**