

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 14728 of 2017

Date of Decision : 12.07.2017

Naresh Kumar Jain and others

....Petitioners.

versus

State of Haryana and others

....Respondents.

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE AMIT RAWAL.**

Present: Mr. P.R. Yadav, Advocate for the petitioners.

AJAY KUMAR MITTAL, J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioners have prayed for issuance of a writ in the nature of certiorari for quashing the letter dated 3.5.2010 (Annexure P-4) vide which the tax amounting of ₹ 15,82,907/- was deducted at source by the Land Acquisition Officer, Panchkula. Further, a writ of mandamus has been sought directing the respondents to refund the said amount deducted vide letter, Annexure P-4, as Tax Deduction at Source (TDS) and subsequent deduction made in the year 2016.

2. A few facts necessary for adjudication of the present petition as narrated therein may be noticed. As per jamabandi for the year 1963-64 (Annexure P-1), the father of the petitioners was owner of the land measuring 4 bigha 2 biswas comprised in Khasra No. 308 min situated in village Garhi Mundon, Tehsil Jagadhri, District Ambala (now Yamuna Nagar). The said land was acquired by the Government vide notification dated 28.1.2002 issued under Section 4 of the Land Acquisition Act, 1894 (in short "the Act") followed by notification dated 23.1.2003 under Section

6 of the Act. The award was passed on 20.1.2005 (Annexure P-2) allowing compensation at the rate of ₹ 6 lakhs per acre. As per deposit dated 3.8.2005 (Annexure P-3), a total compensation of ₹ 8,49,402/- was given to the father of the petitioners without deducting TDS. Against the award dated 20.1.2005 (Annexure P-2), the father of the petitioners filed reference under Section 18 of the Act and the Additional District Judge, Jagadhri vide award dated 30.7.2009 enhanced the compensation of ₹ 1560/- per square meter. The Land Acquisition Officer deposited the enhanced compensation after deducting TDS amounting to ₹ 15,82,907/- on the total interest vide letter (Form D) dated 3.5.2010 (Annexure P-4). On 29.09.2010, the father of the petitioners expired who had executed a Will in favour of the petitioners and their mother. The mother of the petitioners had also expired on 24.5.2012 and, therefore, the petitioners became entitled to (1/5th + 1/55th) share each. Thereafter, petitioner No.3 moved an application dated 22.11.2014 (Annexure P-5) to the Land Acquisition Officer for refund of the TDS along with interest from September, 2010. Another application dated 14.1.2015 (Annexure P-6) was also moved by petitioner No.3 for refund of the amount of TDS. This Court vide orders dated 15.1.2015/9.2.2015 (Annexure P-7 Colly) passed in RFA No. 238 of 2014 enhanced the compensation to ₹ 2402.40 per square meter. In pursuance thereto, the Land Acquisition Officer, Panchkula deposited the share of the petitioners without deducting TDS vide letter dated 14.5.2015 (Annexure P-8). According to the petitioners, in the year 2016 also, TDS from some of the remaining enhanced compensation was deducted, but no details were available. Reliance has been placed upon various judgments of the Apex Court as well as High Courts. Hence, the present writ petition.

3. Learned counsel for the petitioners submitted that the petitioners were entitled to refund of TDS in respect of the amount received by them on account of interest awarded under Section 28 of the Act on acquisition of the agricultural land. Reliance was placed upon the judgment of the Apex Court in **Commissioner of Income-tax v. Ghanshyam (HUF) (2009) 315 ITR 1 (SC)** and **Commissioner of Income Tax, Rajkot v. Govindbhai Mamaiya, Civil Appeal No. 8103 of 2009, decided on 4.9.2014** wherein similar principles were enunciated as laid down in **Ghanshyam (HUF)'s case (supra)**. Learned counsel has also relied upon the judgment of the Gujarat High Court in **Movaliya Bhikhubhai Balabhai v. Income Tax Officer-TDS-I, Surat, Special Civil Application No. 17944 of 2015** decided on 31.3.2016 wherein on the basis of the judgment of this Court in **Civil Revision No. 7740 of 2012 (Jagmal Singh and another v. State of Haryana and another)** decided on 18.7.2013, it was urged that the tax cannot be deducted at source.

4. After hearing the learned counsel for the petitioners, we do not find any merit in the writ petition.

5. Section 4 of the Income Tax Act, 1961 (hereinafter referred to as the “1961 Act”) provides for the basis of charge on the income of the assessee whereas the tax levied is collected either by way of tax deducted at source or by direct payment by the assessee. Tax deducted at source is one of the modes of “Collection and Recovery of Tax” prescribed under Part B of Chapter XVII of the Act. This is in substance, provision for recovery of tax payable by the assessee and do not in any manner affect the levy or the charge of tax. In certain cases obligation is cast on the person responsible for making such payments to deduct tax at source and deposit in

Government Treasury, but under Section 199 of the Act, the deduction so made under Chapter XVII of the Act and paid to the Central Government is to be treated as payment on behalf of the assessee. In other words, the TDS is provisional collection of tax by the revenue and is always subject to final determination at the time of filing of the return. The petitioners had received the amount of enhanced compensation and interest thereon. A perusal of Annexures P-3 and P-4 appended by the petitioners clearly shows that tax has been deducted on the element of interest on enhanced compensation and, therefore, would fall under Section 194A of the Act which relates to interest other than “interest on securities”.

6. It may also be noticed that 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 in clause (b) of Section 145A.”

Further, amendment was also carried out in Section 145A of the 1961 Act by inserting clause (b) by Finance (No.2) Act, 2009 w.e.f. 1.4.2010 as under: -

“(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.”

The cumulative effect of the aforesaid amendments would be that the interest component on the amount of compensation or enhanced compensation would be exigible to tax in the year of receipt irrespective of

the method of accounting being employed by the assessee.

7. Adverting to the judgment of the Apex Court in **Ghanshyam's case (supra)** on which reliance has been placed by learned counsel for the petitioners, it may be noticed that a Division Bench of this Court in **Manjeet Singh (HUF) Karta Manjeet Singh v. Union of India and others, CWP No. 15506 of 2013** decided on 14.1.2014 to which one of us (Ajay Kumar Mittal, J.) was a member had dealt with the similar issue holding that the petitioners cannot derive any benefit from **Ghanshyam's case (supra)** with the following observations: -

“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.Govindaraju 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.”

8. 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.”

9. In view of the above and also the amendments made by the Finance (No.2) Act, 2009 w.e.f. 1.4.2010 noticed hereinbefore, no advantage can be derived by the petitioners from the judgment in **Ghanshyam's case (supra)**.

10. Similarly, the judgment in **Govindbhai Mamaiya's case (supra)** relied upon by the learned counsel would be of no help to the petitioners as in the said case, the judgment in **Ghanshyam's case (supra)** was followed.

11. Examining the issue of taxability of interest under Section 28 of the Act, in **Commissioner of Income Tax v. Bir Singh (HUF), ITA No. 209 of 2004** decided on 27.10.2010, it was held by the Division Bench of this Court that the interest awarded by court on enhanced compensation under Section 28 of the Act was chargeable to tax as income from other sources in the year of receipt. Division Bench of this Court again in **Commissioner of Income Tax, Panchkula v. Prem Singh** decided on 16.12.2010 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.

12. Adverting to the judgment of the Gujarat High Court in **Movaliya Bhikhubhai Balabhai's case (supra)**, it may be noticed that since the **Jagmal Singh's case (supra)** on the basis of which the said case was decided, has been overruled by this Court in **CWP No. 10125 of 2015 (Attar Singh and others v. State of Haryana and others)** decided on 3.9.2015 to which one of us (Ajay Kumar Mittal, J.) was a member, with the following observations:-

“The judgment of learned Single Judge in **Jagmal Singh's case (supra)** (Annexure P-5) on which reliance has been placed by the petitioners being contrary to the aforesaid pronouncements cannot be taken to be interpreting the legal provisions correctly and is, thus, overruled.”

Thus, we are unable to concur with the view expressed by the Gujarat High Court in **Movaliya Bhikhubhai Balabhai's case (supra)**.

13. Still further, this Court in **Sarti v. Haryana State Industrial and Infrastructure Development Corporation Ltd. and others, CWP No. 9739 of 2011** decided on 30.5.2011 dealing with the issue of tax deducted at source under similar circumstances had recorded as under:-

“8. This Court, in Income Tax Appeal No. 209 of 2004, decided on 27.10.2010 (Commissioner of Income Tax, Faridabad v. Bir Singh (HUF), Ballabgarh) had held that interest paid to the assessee under Section 28 of the Land Acquisition Act, 1894 (for brevity, “1894 Act”) on

enhanced amount of compensation in respect of the acquired land falls for taxation under Section 56 of the Act as “income from other sources” and is exigible to tax in the year of receipt under cash system of accountancy. It had also been observed that where the assessee is not maintaining books of accounts by adopting any specific method, it shall be treated to be cash system of accountancy. In the present case, the interest received by the petitioner was on account of delay in making the payment of enhanced compensation and, therefore, would fall under Section 28 of the 1894 Act. Such payment could not par-take the character of compensation for acquisition of agricultural land and, thus, was not exempt under the Act. Once that was so, the tax at source had been rightly deducted by the payer.”

14. In view of the above, the tax at source has been rightly deducted and the petitioners can claim the refund, if any, admissible to them by filing the income tax returns in accordance with law.

15. Accordingly, the writ petition is dismissed with the aforesaid observations.

(AJAY KUMAR MITTAL)
JUDGE

July 12, 2017
gbs

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes