

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ITA-132-2018 (O&M)

Date of Decision: 19.11.2018

Puneet Singh

....Appellant.

Versus

Commissioner of Income Tax, Karnal

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.**

PRESENT: Mr. Divya Suri, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. This order shall dispose of a bunch of three appeals bearing ITA Nos.132, 163 and 165 of 2018 as according to learned counsel for the parties, identical questions of law and facts are involved therein. For brevity, the facts are being extracted from ITA-132-2018.

2. ITA-132-2018 has been preferred by the assessee under Section 260A of the Income Tax Act, 1961 (in short “the Act”) against the order dated 11.10.2017 (Annexure A-12) passed by the Income Tax Appellate Tribunal, Delhi 'SMC' Bench, New Delhi (hereinafter referred to as “the Tribunal”) in ITA No. 1388/DEL/2017, for the assessment year 2010-11, claiming the following substantial questions of law:-

- I. Whether under the facts and circumstances of the case, is the amount of interest on land acquisition compensation allowed bifurcation and spread over

w.e.f. the date of acquisition to the date of payment pursuant to the Provisions of Section 145A(b) by the Finance Act, 2009 w.e.f 01.04.2010 read with Section 5 of Income Tax Act, 1961?

- II. Whether under the facts and circumstances of the case, the interest received on compensation/enhanced compensation by the assessee as awarded by the Court on a reference u/s 18 of the Land Acquisition Act, 1894 has to be spread over on an annual basis right from the date of delivery of possession till the date of order of the Court according to Rama Bai vs. CIT (1990) 181 ITR 400 (SC) and K.S.Krishna Rao vs. CIT (1990) 181 ITR 408 (SC)?
- III. Whether under the facts and circumstances of the case, when the period involved is 8 years from land acquisition to the date of receipt of the compensation (2010) for acquisition proceedings (2002), while amendment u/s 56(2)(viii) by the Finance Act, 2009 w.e.f. 01.04.2010, is the land owner barred from claiming the benefit of 'Nil Rate Slab' of income prescribed by the Statute for the respective years?
- IV. Whether under the facts, circumstances and nature of the case wherein a salaried person is allowed to set off the salary arrears in the relevant previous

assessment years for the services having been rendered in past, can the landowner whose land has been acquired 8 years back, be allowed to set off of the interest income in case had the payment been made before amendment (Finance Act, 2009 w.e.f. 01.04.2010) hence outside the purview of chargeability to tax?

3. A few facts necessary for adjudication of the instant appeal as narrated therein may be noticed. Government of Haryana vide notifications dated 2.1.2002 issued under Sections 4 and 6 of the Land Acquisition Act, 1894 (in short “the 1894 Act”) acquired the land measuring 344.31 acres situated within the revenue estate of village Budha Khera, Hadbast No.1, Tehsil and District Karnal for the development and utilization of land as residential and commercial area for Sector 9 Part 32 and 33, Urban Estate, Karnal. The Land Acquisition Collector passed the award. Being aggrieved, the landowners filed references under Section 18 of the 1894 Act which were accepted with costs and compensation was enhanced vide award dated 11.8.2009. Form D dated 27.5.2010 and 30.3.2011 (Annexure P-1) were drawn by the Land Acquisition Officer. Form 16A dated 22.3.2010 (Annexure A-2) was issued by the Land Acquisition Officer for the interest of ₹ 14,71,162/- on which TDS of ₹ 1,66,682/- was deducted for the financial year ending 31.3.2010. The assessee filed his return of income on 31.7.2011 under Section 139(1) of the Act for an amount of ₹ 4,11,477/- qua income from salary and interest. The said return was processed under Section 143(1) of the Act on 26.5.2011. The assessee claimed refund of ₹ 1,79,587/- out of TDS deducted on compensation/ enhanced compensation

of agricultural land acquired by the Government of Haryana. The Land Acquisition Officer, Panchkula vide letter dated 19.11.2014 verified the aforesaid amount of ₹ 14,71,162/- and deduction of TDS thereon. The Assessing Officer after having recorded the reasons on 7.4.2015 (Annexure A-3) for initiation of the reassessment proceedings, had issued notice under Section 148 of the Act. The appellants in all the three appeals filed CWP-2605-2015 claiming refund and this Court vide order dated 1.7.2015 (Annexure A-4) disposed of the said writ petition with a direction to the respondent to complete the reassessment proceedings by 31.8.2015 and in the event of their remaining any refund, the same be paid within four weeks of the conclusion of the reassessment proceedings. The assessee filed objections to the notice issued under Section 148 of the Act which were rejected by the respondent vide letter dated 7.8.2015 (Annexure A-5). The assessee submitted written pleadings dated 6.8.2015 (Annexure A-6) before the Assessing Officer during the reassessment proceedings. The Assessing Officer vide assessment order dated 29.10.2015 (Annexure A-7) made addition of ₹ 5,65,280/- (50% of ₹ 11,30,561/-) as 50% of the interest amount received on compensation was taxable in the year of receipt as per provisions of Section 56(2)(viii) read with Section 57(iv) of the Act and assessed the income of the assessee at ₹ 9,76,760/-. Feeling aggrieved by the order, Annexure A-7, the assessee filed an appeal on 16.11.2015 (Annexure A-8) before the Commissioner of Income Tax (Appeals) [for brevity “the CIT(A)”]. The assessee furnished written submissions dated 15.12.2016 (Annexure A-9) before the CIT(A). The CIT(A) vide order dated 6.1.2017 (Annexure A-10) upheld the addition made by the Assessing Officer and dismissed the appeal. Still dissatisfied, the assessee filed an

appeal on 10.2.2017 (Annexure A-11) before the Tribunal. The Tribunal vide order dated 11.10.2017 (Annexure A-12) dismissed the appeal upholding the order of the CIT(A). Hence, the present appeals by the assessee.

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

5. The primary question for consideration that arises in these appeals 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.

6. 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."

"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."

7. 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.

8. 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.

9. 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 v. Union of India reported as JT 2001(8) SC 130** 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.”

10. Examining 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**.

11. 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.

12. 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."

13. Further, this Court in **CIT v. Bir Singh (HUF), ITA No.209 of 2004 decided on 27.10.2010** had 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.

14. Learned counsel for the assessee has placed reliance upon the judgment of the Apex Court in **CIT v. Ghanshyam (HUF) (2009) 8 SCC 412** to contend that the interest on enhanced compensation was exempt

under Section 10(37) of the Act. In **Ghanshyam (HUF)'s case (supra)**, it was held as under:-

“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.”

15. 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.

16. The Tribunal relying upon the decision of this Court in **Manjeet Singh (HUF) Karta Manjeet Singh v. Union of India and others, CWP-15506-2013** decided on 14.1.2014 against which the SLP having been dismissed by the Supreme Court, had held that the interest received under Section 28 of the 1894 Act is not exempt under the Act as it could not partake the character of compensation for acquisition of agricultural land. It was further held that the interest received on enhanced

compensation in the case of the assessee was liable to tax under the head 'income from other sources' in the year of receipt.

17. Furthermore, the Finance (No.2) Act, 2009 (in short “the 2009 Act”) effective from 01.04.2010 has amended Section 145A and inserted Clause (viii) in sub-Section (2) of Section 56 in the Act. Section 145A(b) substituted by the 2009 Act reads thus:-

“145A. Method of accounting in certain cases.-

Notwithstanding anything to the contrary contained in section 145,-

(a) XX XX XX

(b) interest received by an assessee on compensation or on enhanced compensation, as the case may be, shall be deemed to be the income of the year in which it is received.”

Clause (viii) in sub-section (2) of Section 56 as inserted by 2009 Act is in the following terms:-

“56. Income from other sources.-

(1) XX XX XX

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following income shall be chargeable to income-tax under the head “Income from other sources”, namely:-

(i) to (vii) XX XX XX

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

(ix) XX XX XX”

18. The scope and effect of the substitution of Section 145A by 2009 Act effective from 01.04.2010 as also insertion of Clause (viii) made in Section 56(2) have been elaborately discussed in the departmental Circular No.5/2010 dated 3.6.2010 in the following terms:-

“Rationalizing the provisions for taxation of interest received on delayed compensation or on enhanced compensation.- **46.1** The existing provisions of Income-tax Act, 1961, provide that income chargeable under the head “Profits and gains of business or profession” or “income from other sources”, shall be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee. Further, the Hon'ble Supreme Court in the case of Rama Bai v. CIT has held that arrears of interest computed on delayed or enhanced compensation shall be taxable on accrual basis. This has caused undue hardship to the taxpayers.

46.2 With a view to mitigate the hardship, section 145A is amended to provide that the interest received by an assessee on compensation or enhanced compensation shall be deemed to be his income for the year in which it was received, irrespective of the method of accounting followed by the assessee.

46.3 Further, clause (viii) is inserted in the sub-section (2) of the section 56 so as to provide that income by way of interest received on compensation or on enhanced

compensation referred to in clause (b) of section 145A shall be assessed as “income from other sources” in the year in which it is received.

46.4 Applicability.- This amendment has been made applicable with effect from 1st April, 2010, and will accordingly apply in relation to assessment year 2010-11 and subsequent assessment years.”

19. The cumulative effect of Section 145A(b) and Section 56(2)(viii) would be that any interest received on compensation or on enhanced compensation shall be taxable under the head 'income from other sources' in the year of receipt.

20. However, by Section 27 of the 2009 Act, a new clause (iv) in Section 57 has been inserted w.e.f. 01.04.2010 which lays down that in the case of income of the nature referred to in Section 56(2)(viii), a deduction of a sum equal to 50% of such income would be allowable thereunder and no deduction would be allowed under any other clause of Section 57. The said provision reads thus:-

“57. Deductions.- The income chargeable under the head “Income from other sources” shall be computed after making the following deductions, namely:-

(i) to (iii) XX XX XX

(iv) in the case of income of the nature referred to in clause (viii) of sub-section (2) of section 56, a deduction of a sum equal to fifty per cent of such income and no deduction shall be allowed under any other clause of this section.”

21. The Assessing Officer in ITA-132-2018 where the assessee had received ₹ 11,30,561/- as interest income, held that the interest payment received on compensation/enhanced compensation to the tune of ₹ 5,65,280/- (50% of ₹ 11,30,561/-) is taxable as income from other sources as per provisions of Sections 56(2)(viii) read with 57(iv) and Section 145A(b) of the Act for the assessment year 2010-11. The CIT(A) and the Tribunal had upheld the order of the Assessing Officer in that regard.

22. No illegality or perversity could be pointed out by learned counsel for the assessee in the concurrent findings of fact recorded by the authorities below which may warrant interference by this Court. No question of law, much less, substantial question of law arise in these appeals.

23. Accordingly, finding no merit in the appeals, the same are hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

November 19, 2018
gbs

(MANJARI NEHRU KAUL)
JUDGE

Whether Speaking/Reasoned

Yes

Whether Reportable

Yes