**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

CWP-10848-2008
Date of Decision:-11.04.2023

Kapoor Singh ….Petitioner

Vs.

Chief Commissioner of Income Tax Officer and anr. ….Respondents

**CORAM:- HON'BLE MS. JUSTICE RITU BAHRI**
**HON'BLE MRS. JUSTICE MANISHA BATRA**

**Present:-** Mr. Rajesh Garg, Sr. Advocate with
Ms. Neha Matharoor, Advocate
for the petitioner

Ms. Gauri Neo Rampal, Sr. Standing counsel and
Mr. Aditya Mehtani, Jr. Standing counsel
for the respondents.

**Ritu Bahri, J.**

The petitioner-assesee has approached this Court by filing the present writ petition for issuance of writ in the nature of certiorari for quashing order dated 07.05.2008 (P-8) rejecting the petitions filed by the petitioner for waiver of interests charged under Section 234 (B) of the Income Tax Act, 1961 (for short 'Act 1961').

The facts as stated in the petition are that petitioner received compensation by the Collector, as the land belonging to the petitioner was acquired by the State Government in the year 1995. Not satisfied with the compensation, the petitioner preferred an appeal, wherein compensation was enhanced by the authorities. On 11.11.2000, along with enhanced compensation, the petitioner received interest amounting to Rs.30,79,445/-. Again on 06.11.2001, he received further enhanced compensation and interest thereon amounting to Rs.,25,60,333/-.

Both the above amount were assessed on accrual basis from assessment year 1995-1996 to 2000-01. However, while framing assessment, no interest was charged under Section 234 (B) and 234 (C). The assessment was cancelled under Section 263 at the instance of the CIT for non-charging of interest under Section 234 (B) and 234 (C) being erroneous. The AO passed fresh order of assessment by charging interest under Section 234 (B) and 234 (C). The assessee had sought waiver of interest charged under Section 234B and 234C on the ground that he had received the aforesaid amount after the close of the financial year relevant to the assessment year 1995-96 to 2000-01 and assessee could not visualize the receipts during the relevant years.

The petitioner filed petition for waiver of interest charged under Section 234 (B) before the Chief Commissioner of Income Tax, Chandigarh on 03.10.2006 (P-3), in view of clause (e) of para 2 of circular (P-1). Respondent No. 1 vide letter dated 03/04.10.2007 (P-4) informed the petitioner that his petitions for waiver of interest are liable to be rejected as the same are not covered under the instructions of CBDT. It was observed that the circular issued by the Board empowers him to waive interest charged under Section 234 ( C ) and not under Section 234 (B) of the Act for short or late payment of installments during the relevant financial years. The petitioner again wrote a letter dated 21.02.2007 (P-5) to clarify the matter and empower the Chief Commissioner to waive interest under Section 234 (B). The petitioner filed written arguments before respondent No. 1 (P-7). Subsequently, respondent No. 1 vide order dated 07.05.2008, the claim of the petitioner was rejected. Hence the present petition.

Learned counsel for the respondent has referred to ***Division Bench judgment of this Court in a case of Commissioner of Income Tax, Faridabad vs.***

***Smt. Burfi, passed in ITA No. 356-2007, decided on 01.09.2010*** wherein this Court was dealing with the following substantial question of law:-

> *Whether, on the facts and circumstances of the case, the Hon'ble ITAT is right in holding that assessment of interest cannot be made until the matter is finally settled by the High Court, in contradiction with the judgment of Hon'ble jurisdictional High Court of Punjab & Haryana following the judgment of Apex Court in the case of CIT Vs. Rama Bai (181 ITR 400) whereby interest on enhanced compensation is to be taxed on accrual basis irrespective of the pendency of appeal in higher courts in respect of enhanced compensation [ITA No. 176 of 05 and ITA No. 177 of 05 in the case of CIT, Faridabad Vs. Naresh Kumar and CIT, Faridabad Vs. Dilbagh Singh, respectively)?"*

The appeals were allowed and in para NO. 10, it has been observed as under:-

> *10. However, the position with regard to receipt of interest on account of delayed payment received under Section 34 of the Land Acquisition Act, 1894 (in short "1894 Act") would be different where the assessee is following cash system of accountancy. In cash system of accountancy, the income is taxed in the year of receipt and since the assessee had received the amount during the year in question, the same was taxable in the assessment year 2002-2003. Further, under cash system it cannot be said that the assessee had not received any income from interest under Section 34 of the 1894 Act.*

Learned counsel for the respondent has referred to judgment of this Court in a case of ***Nepal Saini vs. ITO, Ward-1 (3) Faridabad, 2010 SCC Online P&H 10922*** wherein the question before this Court was that whether the enhanced compensation received by the assessee is taxable in its year of receipt even though the matter with regard to the amount of compensation has not been finally adjudicated. Further whether the assessee was liable to file return with regard to receipt of enhanced compensation in its year of receipt even thought the appeal filed by assessee for further enhancement and one filed by HAD/State for reduction of the enhancement are pending before this Court. This appeal was dismissed, keeping in view the judgment of Hon’ble the Supreme Court in a case of **Commissioner of Income Tax vs. Ghanshyam (HUF) 2009 315 ITR 1 (SC) wherein it has been** held that irrespective of the fact, whether litigation with regard to award of compensation had attained finality or not, under Section 45(5(b) of the Act, which was inserted retrospectively w.e.f. 1.4.1988, taxability of income shall be in the year of receipt. In the instant case, as noticed above, the Tribunal has rightly held that the amount received by the assessee on account of enhanced compensation would be liable to be included in the income chargeable to tax in the current assessment year.

The above mentioned judgments lays down that interest on enhanced compensation is taxable in the year when the compensation was received. In the present case, the assessee was seeking waiver of interest under Section 234 (B) of Act 1961 by filing an application on 04.01.2006 (P-3), in view of clause (e) of para 2 of circular (P-1), relevant to the assessment year 1995-96 to 2000-01.

The petitioner received compensation along with interest on 10.11.2000 and 06.11.2001. This income has to be considered as income in the next assessment year i.e 2001-2002 and by taking this as income for the year 1995-96 to 2000-2001, no interest can be charged as per Section 234 (B) and 234 (C) of Act 1961, as this income was never in the hands of the assessee in the year 2000-2001.

Consequently, the writ petition is allowed and order dated 07.05.2008 (P-8) is set aside

**(RITU BAHRI)**
**JUDGE**

**(MANISHA BATRA)**
**JUDGE**

11.04.2023
*G Arora*

*Whether speaking/reasoned* : Yes/No
*Whether reportable* : Yes/No