

आयकर अपीलीय अधिकरण पुणे न्यायपीठ “एक-सदस्य” मामला पुणे में

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “SMC”, PUNE**

**सुश्री सुषमा चावला, न्यायिक सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM**

आयकर अपील सं./ ITA No. 291/PUN/2017

निर्धारण वर्ष / Assessment Year : 2012-13

Jyoti Jayantrao Indurkar,
Amol Enterprises, Shop No.15,
Basweshwar Mangal Karyalaya,
Latur-413 512
PAN : AAFPI9170E

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-1, Latur.

.....प्रत्यर्थी / Respondent

Appellant by : Shri S. N. Puranik

Respondent by : Shri Jogesh Kamath

सुनवाई की तारीख / Date of Hearing : 13.08.2018	घोषणा की तारीख / Date of Pronouncement : 31.08.2018
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आदेश / ORDER

PER SUSHMA CHOWLA, JM

The appeal filed by the assessee is against the order of Commissioner of Income Tax (Appeals)-2, Aurangabad dated 17.11.2016 relating to assessment year 2012-13 against order passed under section 143(3) of the Income Tax Act, 1961 (in short 'the Act').

2. The assessee has raised following grounds of appeal:-

“1. The learned CIT(A)-2 Aurangabad has erred both on facts and in law in confirming addition of Rs.35,15,954/- u/s 56 (2)(viii) of Income Tax Act ignoring legal position that said Interest received U / s 28 of Land Acquisition Act is part of enhanced compensation and thereby exempt u/s.10(37) of IT Act. Hence, the impugned addition may please be deleted.

2. The learned CIT(A) has erred in not following the law laid down by Hon Supreme Court in Ghanshyam HUF 315 ITR 1 and Govindbahi Mamaiya 367 ITR 498 that the Interest received U/s.28 of Land Acquisition Act is part & parcel of enhanced compensation.

3. Appellant prays for just and equitable relief.

4. Appellant prays for cancellation/reduction of Interest charged u/s. 234B.

5. Appellant prays to add, alter, amend, clarify, modify, take Additional Ground/ s and/ or withdraw the Ground/s during Appellate Proceeding.”

3. The issue raised in the present appeal is against taxability of interest received under Land Acquisition Act.

4. Briefly in the facts of the case, the assessee had received compensation/enhanced compensation on the land at Harangul which is compulsorily acquired for MIDC, Latur by the Government. The assessee gave details of the compensation/enhance compensation totaling Rs.97,68,423/- and the same is tabulated at page 4 of the assessment order. However, in the computation of income, the assessee had not offered the interest of Rs.70,37,907/- for taxation under section 56(2)(viii) of the Act. The assessee was asked to furnish details of compensation and interest received. The assessee furnished the order of Joint Civil Judge (S.D), Latur dated 31.12.2009. As per the said order, the assessee had received enhanced compensation @ Rs.20/- per Sq. ft after deduction 25% towards development and interest @9% per annum for the first year and thereafter, @15% of the per annum. The para 6 of the assessment order is reproduced as under : *“the amount payable to the claimant, shall carry interest*

@9% per annum for the first year and thereafter 15% per annum from the date of notification i.e. 04/03/1993 till realization of entire amount in favour of claimant." The Assessing Officer, thus, observed that the assessee had earned the amount as interest only. In reply, the assessee claimed that said interest was received under section 28 of the Land Acquisition Act, 1894 and the interest under section 28 of the Land Acquisition Act is not taxable in view of the Judgment of the Hon'ble Supreme Court in the case of CIT Rajkot Vs. Govindbhai Mamaiya, which was delivered on 04.09.2014 (2014 STPL 599 SC). The Assessing Officer took note of the amended section 56(2) w.e.f. 01.04.2010 and also to section 145A of the Act and held that the interest received on compensation or enhanced compensation, was taxable in the year of receipt only. He then referred to the Circular No.05/2010 dated 03.06.2010 wherein the provisions for taxation of interest received on delayed compensation or enhanced compensation was clarified. The Assessing Officer also observed that the deduction of 50% of the interest under section 57 was provided by inserting clause (iv) to section 57 of the Act. The assessee stressed that the interest received under section 28 of the Land Acquisition Act, 1894 was not taxable in view of the judgment of Hon'ble Supreme Court of India in the case of CIT Vs. Ghanshyam (HUF) (SC), reported as 315 ITR 1 and other decisions. The Assessing Officer held that the said interest should be taxable in the hands of the assessee and after allowing deduction under section 57(iv) of the Act, added sum of Rs.35,18,954/- in the hands of the assessee.

5. The CIT(A) upheld the order of Assessing Officer in turn relying on the ratio laid down by the Hon'ble Supreme Court in the case of Bikram Singh & Others Vs. The Land Acquisition Collector, 224 ITR 551 (SC). He also observed that the decision given in CIT Vs. Ghanshyam (HUF) (supra.) had not considered by the earlier Larger Bench Judgment.

6. The assessee is in appeal before us against the order of CIT(A).

7. The Ld. AR for the assessee stressed that perusal of the order of Joint Civil Judge (S.D), Latur, copy of which is placed in the paper book would clearly prove the case of the assessee that the interest in additional compensation was under section 28 of the Land Acquisition Act and not under 34 of the Land Acquisition Act. He further pointed out that Pune Bench of the Tribunal in the case of Dnyanoba Shajirao Jadhav Vs. ITO, in ITA No.168/PUN/2016 order dated 29th January, 2018 has decided similar issue and held that the interest received under section 28 of the Land Acquisition Act was capital receipt and the interest received under section 34 was revenue receipt and exigible to tax.

8. The Ld. DR for the Revenue placed reliance on the orders of the Authorities below.

9. On perusal of the record and after hearing both the Authorized Representatives, the issue which arises in the present appeal is with regard to the taxability of compensation received by the assessee which has been taxed in the hands of the assessee under section 56(2)(viii) of the Act on which deduction of 50% has been allowed under section 57(iv) of the Act. The case of the assessee before Authorities below and even before us is that the assessee had received interest under section 28 of the Land Acquisition Act. The Pune Bench of the Tribunal in the case of Dnyanoba Shajirao Jadhav Vs. ITO (supra.) has already deliberated upon the issue and has also taken note of the provisions of Land Acquisition Act and the decision of the Hon'ble Apex Court in the case of CIT Vs. Ghanshyam (HUF) (supra.) wherein it has been laid down that in case interest is received under section 28 of the Land Acquisition Act, then said interest was not taxable in the hands of the assessee. However, in case the interest is received under section 34 of the Act then the said interest is

taxable in the hands of the assessee. The Tribunal had also taken note of the order of CIT(A) in the said case by relying on the decision of Hon'ble Supreme Court in the case of Bikram Singh (supra.). The Tribunal has held as under:

“10. The Commissioner of Income Tax (Appeals) while confirming the order of Assessing Officer has observed that the case of assessee is covered by the decision of Hon'ble Apex Court in the case of Bikram Singh & Ors. Vs. Land Acquisition Collector & Ors. (supra) as the said judgment is delivered by Larger Bench and prevails over the decision rendered in the case of Commissioner of Income Tax Vs. Ghanshyam (HUF) (supra) which is though subsequent in time but is rendered by Division Bench. We do not concur with the findings of Commissioner of Income Tax (Appeals) to make the addition. Undisputedly, while rendering the decision in the case of Commissioner of Income Tax Vs. Ghanshyam (HUF) (supra) the judgment of Larger Bench in the case of Bikram Singh & Ors. Vs. Land Acquisition Collector & Ors. (supra) was not considered. However, we find that there is no conflict of law laid down in both the cases. The Hon'ble Supreme Court in the case of Commissioner of Income Tax Vs. Ghanshyam (HUF) (supra) has clearly marked the distinction between the interest received u/s. 23(1A) and 23(2) r.w.s. 28 of the L.A. Act vis-à-vis interest on delayed payment of compensation u/s. 34 of the L.A. Act. The Larger Bench of Hon'ble Supreme Court of India in the case of Bikram Singh & Ors. Vs. Land Acquisition Collector & Ors. (supra) has held that the interest received u/s. 34 of the Act on delayed payment of compensation is a revenue receipt and is exigible to tax. Both the judgments rendered by the Hon'ble Apex Court have held that payment of interest on delayed ITA No.168/PUN/2016, A.Y. 2011-12 payment of compensation u/s. 34 of the L.A. Act are liable to tax under the provisions of Income Tax Act.”

10. The Tribunal set aside the order of CIT(A) and remanded the issue back to the file of Assessing Officer to determine whether interest received was under provisions of section 28 or section 34 of the Land Acquisition Act.

11. Applying the same principle to the facts and issue in the present appeal, the plea of the assessee is that interest received on enhanced compensation is not taxable as the said interest was received under section 28 of the Land Acquisition Act. The said aspect is not clear from the perusal of the record and it is deemed fit to restore the issue back to the file of Assessing Officer for the limited purpose of verifying the claim of the assessee. In case the interest is received under section 28 of the Land Acquisition Act, then same is not taxable in the hands of the assessee and in case, the interest is received under section

34 of the Land Acquisition Act, the same is taxable in the hands of the assessee. The assessee is directed to furnish complete details before the Assessing Officer and the Assessing Officer shall decide the issue after affording reasonable opportunity of hearing to the assessee. Accordingly, grounds of appeal raised by the assessee are allowed for statistical purposes.

12. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced on 31st day of August, 2018.

Sd/-

(SUSHMA CHOWLA)

न्यायिक सदस्य/JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 31st August, 2018.

SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT (Appeals)-2, Aurangabad.
4. The Pr. CIT-2, Aurangabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक-सदस्य" बेंच,
पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव /Private Secretary

आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.