

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri Chandra Poojari, AM & Shri George George K, JM

ITA No.123/Coch/2019 : Asst.Year 2014-2015

Sri.Abdul Kareem Pallathukadavil House Thuravumkara P.O. Kanjoor, Ernakulam District PAN : ARAPA2283J	Vs.	The Income-tax Officer Ward 1 & TPS, Aluva
(Appellant)		(Respondent)

Appellant by : Sri.T.John George
Respondent by : Sri.Shantom Bose

Date of Hearing : 16.07.2019	Date of Pronouncement : 17.07.2019
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ORDER

Per George George K, JM :

This appeal at the instance of the assessee is directed against the Commissioner of Income-tax's order dated 05.12.2018 passed u/s 263 of the Income-tax Act, 1961. The relevant assessment year is 2014-2015.

2. The solitary issue that is raised is whether the CIT is justified in invoking his revisionary power u/s 263 of the I.T.Act to bring to tax interest received on compensation / enhanced compensation?

3. Brief facts of the case are as follows:-

The assessee is an individual. For the relevant assessment year 2014-2015, the assessee had received enhanced compensation of Rs.8,80,56,564 for compulsory

acquisition of immovable property belonging to him. The enhanced compensation was awarded by the Hon'ble Sub Court, North Paravoor vide its order / decree dated 06.08.2012. Tax of Rs.88,05,656 was deducted from the award and balance Rs.7,92,50,909 was paid to the assessee. The assessee filed return of income for the assessment year 2014-2015 on 21.02.2015 disclosing total income of Rs.1,40,350 and claimed the TDS of Rs.88,29,502 as refund. The assessment was taken up for scrutiny by issuance of notice u/s 143(2) of the I.T.Act and the assessment u/s 143(3) of the I.T.Act was completed vide order dated 11.11.2016 on a total income of Rs.4,16,014.

4. Subsequently the CIT by invoking his revisionary powers issued notice u/s 263 of the I.T.Act. The CIT was of the view that the assessment completed vide order dated 11.11.2016 was erroneous and prejudicial to the interest of the revenue for the following reasons:-

"The income by way of interest received on compensation or enhanced compensation referred to in clause (b) of section 145A shall be chargeable to Income Tax under the head "income from other sources" as per clause (viii) introduced in sub section (2) of section 56 w.e.f. 1.4.2010 and applicable to A.Y. 2010-11 and subsequent years. Accordingly the amount of Rs.1,83,31,228/- received u/s 28 of the Land Acquisition Act, 1894 is to be taxed u/s 56(2)(viii) after allowing 50% deduction as specified in section 57(iv) [i.e. Rs.91,65,614/- is to be taxed u/s 56(2)(viii)] which was omitted to be taxed."

4.1 To the show cause notice issued to revise the assessment u/s 263 of the I.T.Act, the assessee filed the reply vide letter dated 05.12.2018. The objections raised in the assessee's letter

dated 05.12.2018 was rejected by the CIT and he passed revisionary order u/s 263 of the I.T.Act by setting aside the assessment order dated 11.11.2016. The relevant finding of the CIT reads as follows:-

"6. From a perusal of records, it is noticed that the aspect under review concerning this case, has not been considered by the Assessing officer while framing the assessment order. The relevant issue, i.e., the omission to tax the interest received on enhanced compensation amounting to Rs.1,83,31,228/- u/s 56(2)(viii) after allowing 50% deduction, as mentioned in para (2) of present order, was apparent omission on the part of the Assessing officer. This is so, as Rs.91,65,614/- being 50% of the interest on enhanced compensation, remained to be added back, as such. In respect of the above, the Assessing officer has neither made any observation in the assessment order, nor, obtained any supporting documents from the assessee, while allowing above interest on enhanced compensation amounting to Rs.1,83,31,228/-. Thus, it is evident, that no requisite disallowance / verification has been made by him while completing the assessment. Accordingly in my considered view, there is apparent error in the assessment order which is prejudicial to the interests of the Revenue, in the light of the scope of the Section 263 of the Act.

7. As discussed above, the Assessment Order; under consideration, is thus erroneous in so far as it is prejudicial to the interests of the Revenue, also. Accordingly, the Assessment Order on the above issues is set aside to the Assessing Officer for de-novo examination and to pass a speaking order in accordance with law and as per time limit specified under section 153 of the Income Tax Act, after affording due opportunity to the Assessee."

5. Aggrieved by the order of the CIT, the assessee has preferred this appeal before the Tribunal. The learned AR has filed a paper book enclosing the assessment order for assessment year 2011-2012 (the year in which the land was acquired), the judgment / decree dated 06.08.2012 of the Sub Court of North Paravoor, assessee's letter dated 18.10.2016 to

the Assessing Officer during the course of assessment proceedings, etc. The learned AR has also filed a brief written submission. The content of the same is that the interest received during the relevant assessment year, viz., A.Y.2014-2015 is u/s 28 of the Land Acquisition Act, 1894 and partake the character of compensation / enhanced compensation and would not be taxable since the original compensation received was exempt u/s 10(37) of the I.T.Act For the above said proposition, the learned AR has strongly relied on the judgment of the Hon'ble Supreme Court in the case of *CIT v. Ghanshyam (HUF) [(2009) 315 ITR 1 (SC)]*.

5.1 The learned Departmental Representative strongly supported the order of the Commissioner of Income-tax passed u/s 263 of the I.T.Act.

6. We have heard the rival submissions and perused the material on record. Certain agricultural property of the assessee was compulsorily acquired by the Government during the assessment year 2011-2012. The compensation awarded originally was Rs.3,00,35,666. The assessee filed the return of income for assessment year 2011-2012 and claimed that compensation so received was exempt from taxation. The assessment order completed u/s 143(3) of the I.T.Act for the assessment year 2011-2012 exempting the compensation so received being agricultural property which was compulsorily acquired by virtue of provisions of section 10(37) of the I.T.Act (copy of the assessment order for assessment year 2011-2012 is enclosed in the paper book filed by the assessee).

6.1 The assessee filed enhanced claim petition before the Sub Court, North Paravoor. The Sub Court allowed additional compensation including solatium and interest u/s 28 of the Land Acquisition Act, 1894. The total amount determined by the Hon'ble Sub Court was Rs.9,24,10,237. The break up of the same reads as follows:-

Additional value for land	Rs.4,47,82,047
Additional value for residential building	Rs.2,75,666
Interest @ 12% on enhanced value	Rs.46,52,425
Solatium @ 30% (of Rs.4,47,82,047)	1,34,34,614
Interest u/s 28 of the Land Acquisition Act allowed by the Court	
@ 9% from 19.08.2010 to 18.08.2011	Rs.56,83,028
@ 15% from 19.08.2011 to 12.02.2014	Rs.2,35,88,457
Total Compensation	Rs.9,24,16,237

6.2 Out of the above, the assessee received Rs.8,80,56,564 during the previous year relevant to the assessment year 2014-2015 (copy of the decree passed in LRA 3/2011 dated 06.08.2012 and its calculation statement are attached in the paper book filed by the assessee).

6.3 The solitary issue that is raised in this appeal is regarding the taxability of interest allowed by the Hon'ble Sub Court on enhanced compensation. The assessee had established before the Assessing Officer that the interest allowed by the Hon'ble Sub Court was u/s 28 of the Land Acquisition Act, 1894 and it was part and parcel of the enhanced value of land acquired and hence not taxable. In support of this contention, the assessee had relied on the judgment of the Hon'ble Supreme Court in the case of *CIT v. Ghanshyam (HUF) (supra)*. In the

said judgment the Hon'ble Apex Court had elaborately dealt with various types of interest allowed under the Land Acquisition Act. The Hon'ble Apex Court in the said judgment had clearly held that the interest awarded by the Sub Court u/s 28 of the Land Acquisition Act, 1894 is addition to the value of the asset acquired and such interest will be part of the amount of compensation. The essence of the finding of the Hon'ble Apex Court at para 24 of the judgment reads as follows:-

"24. 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."

6.4 In assessee's letter dated 18.10.2016 addressed to the Assessing Officer in the course of assessment proceedings, has clearly brought out this aspect. The Assessing Officer has discussed this issue in detail while deciding that the interest received u/s 28 of the Land Acquisition Act, 1894 in the light of the judgment of the Hon'ble Supreme Court, is part of compensation for acquisition of land and hence not liable to tax. The Hon'ble Sub Court had only allowed the interest u/s 28 of the Land Acquisition Act and not u/s 34 of the Land Acquisition Act. This is clear from the judgment / decree of the Hon'ble Sub Court, North Paravoor dated 06.08.2012, which is placed on record in the paper book filed by the assessee.

6.4 The Commissioner of Income Tax had sought to revise the assessment u/s 263 of the I.T.Act by stating that interest of Rs.1,83,31,228 received by the assessee u/s 28 of the Land Acquisition Act, 1894 was to be taxed u/s 56(2)(vi) of the I.T.Act. According to the learned Commissioner of Income-tax, the Assessing Officer has not considered the taxability of Rs.91,65,640 being 50% of the interest received, viz., Rs.1,83,31,228. According to the CIT, the Assessing Officer has not made any observation in the assessment order in this regard nor has he obtained any supporting document from the assessee while allowing the above interest as exempt. The learned CIT's observation is contrary to the facts. The Assessing Officer initially observed that the interest received is liable to be taxed u/s 56(2)(viii) of the I.T.Act. When the assessee pointed out that the interest awarded by the Sub Court was u/s 28 of the Land Acquisition Act, 1894 and in the light of the judgment of the Hon'ble Apex Court cited supra, the same cannot be brought to tax, the Assessing Officer had taken a conscious decision not to bring to tax the interest awarded u/s 28 of the Land Acquisition Act, 1894, since the original compensation itself was not liable to capital gain tax. The copy of the assessee's letter dated 18.10.2016 addressed to the Assessing Officer is enclosed in the paper book filed by the assessee. There is no omission on the part of the Assessing Officer to consider the deductibility of interest received u/s 28 of the Land Acquisition Act, 1894 nor was the order of assessment prejudicial to the interest of the revenue. In the instant case, no interest has been awarded by the Sub Court

u/s 34 of the Land Acquisition Act, 1894. It is a fact that the Pr.CIT had agreed that the interest was received u/s 28 of the Land Acquisition Act, 1894. The issue has been correctly decided by the Assessing Officer in the light of the judgment of the Hon'ble Supreme Court in the case of *Ghanshyam (HUF) (supra)* and hence there was no need for the Pr.CIT to invoke revisionary jurisdiction u/s 263 of the I.T.Act to set aside the assessment completed u/s 143(3) of the I.T.Act.

6.5 The decision relied by the learned Commissioner of Income-tax do not in any way support the order of revision u/s 263 of the I.T.Act. The first judgment relied on by the Pr.CIT is the judgment of the Hon'ble Apex Court in the cases of *Malabar Industrial Co. Ltd. v. CIT [243 ITR 83 (SC)]*. The said judgment does not deal with any land acquisition case, but relates to interest paid on belated payment of consideration on sale of certain rubber estate. The Hon'ble Apex Court upheld the action u/s 263 of the I.T.Act as there was no proper application of mind by the Assessing Officer about the nature of interest received. The second judgment relied on by the Pr.CIT is that of the Hon'ble Kerala High Court in the case of *Raja & Company v. CIT [335 ITR 381 (Ker.)]*. The Hon'ble Kerala High Court upheld the order u/s 263 of the I.T.Act since the Assessing Officer has not applied his mind about the applicability of section 40A(3) and 40(a)(ia) of the I.T.Act. In both the judgments relied on by the Commissioner of Income-tax, the revision u/s 263 of the I.T.Act was upheld as there was non-application of mind by the Assessing Officer, whereas in the instant case, the Assessing Officer had applied his mind on the

assessability of interest received u/s 28 of the Land Acquisition Act, 1894 in the light of the judgment of the Hon'ble Apex Court on the subject. Hence, this case is clearly distinguishable on facts and there is no case for any interference u/s 263 of the I.T.Act. Therefore, order u/s 263 of the I.T.Act passed by the Pr.Commissioner of Income-tax is quashed. It is ordered accordingly.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced on this 17th day of July, 2019.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K.)
JUDICIAL MEMBER

Cochin ; Dated : 17th July, 2019.
Devdas*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT Kochi.
4. The Pr.CIT Kochi.
5. DR, ITAT, Cochin
6. Guard file.

BY ORDER,

(Asstt. Registrar)
ITAT, Cochin