



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on: 05 March 2024**
Judgment pronounced on: 08 April 2024

+ ITA 769/2023 & CM APPL 65057/2023

PRINCIPAL COMMISSIONER OF INCOME TAX 10

..... Appellant

Through: Mr. Abhishek Maratha, Senior
Standing Counsel.

versus

INDERJIT SINGH SODHI (HUF)

..... Respondent

Through: Mr. Gautam Jain, Mr. Manish
Yadav, Advocates.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR

KAURAV

J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J.

1. The present appeal involves an examination of the taxability of the interest component, earned on compensation or enhanced compensation, ordered under Land Acquisition Act, 1894 [**“Act of 1894”**].

2. The instant appeal has been preferred by the Revenue against the order passed by the Income Tax Appellate Tribunal [**“ITAT”**] dated 19.06.2020, whereby, the ITAT deleted the addition made by the Assessing Officer [**“AO”**] under Section 56(2)(viii) of the Income Tax Act, 1961 [**“Act”**] for the Assessment Year [**“AY”**] 2016-17.



3. We may note that *vide* order dated 15.12.2023, we had briefly noticed the substantial questions of law arising in the present appeal in terms of paragraph nos.5 and 5.1, which read as under:-

“5. The central issue which arises for consideration is: whether interest received by the respondent/assessee under Section 28 and 34 of the Land Acquisition Act, 1894 would fall under the provisions of Section 10(37) and Section 56(2)(viii) of the Income Tax Act, 1961 [in short, “Act”]?”

5.1. We may note that it would also be necessary to examine the provisions of Section 45(5)(c) of the Act.”

4. At the outset, we are formally admitting the instant appeal on the following substantial question of law:-

Whether the ITAT has erred in setting aside the concurrent view of the AO and the Commissioner of Income Tax (Appeals) [“CIT(A)”] which held that after amendment of Section 56 of the Act *vide* Finance (No.2) Act, 2009 (w.e.f. 01.04.2010), no benefit can be derived by the respondent-assessee from the decision of the Hon’ble Supreme Court in the case of **CIT v. Ghanshyam (HUF)** [(2009) 315 ITR 1 (SC)]?

5. The facts of the case would show that the respondent-assessee had filed its Income Tax Return [“ITR”] on 05.08.2016, declaring the income to the tune of Rs.3,08,920/-. The said ITR filed by the respondent-assessee was selected for scrutiny and a notice dated 24.04.2017 was served upon him under Section 143(2) of the Act. Subsequently, another notice under Section 142(1) of the Act was issued, calling upon the respondent-assessee to furnish the relevant information as asked for. The reply to the said notice was duly submitted by the respondent-assessee.



6. Upon perusal of the aforesaid reply and the material which was placed on record, the AO found that the respondent-assessee had claimed an exemption on the receipt of income amounting to Rs.26,93,84,780/- on the basis of the following grounds:-

- i. Compensation on compulsory acquisition of land amounting to Rs.18,86,63,176/-.
- ii. Interest received on the said acquisition amounting to Rs.8,02,13,161/- and,
- iii. Dividend income to the tune of Rs.5,08,443/-.

7. Thereafter, the AO *vide* email dated 13.11.2018, made an enquiry under Section 133(6) of the Act from the District Revenue Officer-cum Land Acquisition Collector [**“Collector”**], asking about the details of payments of Rs.18,86,63,176/- and Rs.8,02,13,161/-. It was informed by the Collector that the enhanced compensation was released in light of the judgment in the case titled as **Ram Chander & Ors. v. State of Haryana & Ors.** and the respondent-assessee herein was a petitioner in the said case and therefore, he was entitled for the consequential benefits, including the interest on enhanced compensation.

8. *Vide* letter dated 14.12.2018, the AO called upon the respondent-assessee to explain as to why the element of interest claimed as exempt should not be treated as income from other sources.

9. On considering the response submitted by the respondent-assessee to the aforesaid query, the AO, while relying upon various judicial pronouncements, took the view that the receipt of interest must be treated as income chargeable to tax under Section 56(2)(viii) of the Act and therefore, it allowed the statutory deduction of 50% of the



interest income under Section 57(iv) of the Act. Accordingly, an amount of Rs.4,01,06,580/- was added to the taxable income of the respondent-assessee and *vide* assessment order dated 23.12.2018, the total income of the respondent-assessee was assessed to be Rs.4,04,15,500/-.

10. Being aggrieved by the said assessment order, the respondent-assessee preferred an appeal before the CIT(A), wherein, the appeal came to be dismissed *vide* order dated 30.09.2019. The CIT(A) found that since Section 56 of the Act was amended by the Finance (No.2) Act, 2009, which led to the introduction of Section 56(2)(viii) of the Act with effect from 01.04.2010, therefore, the decision relied upon by the respondent-assessee herein was not applicable as the same pertained to the year prior to the said amendment.

11. Against the order of the CIT(A), the respondent-assessee preferred an appeal before the ITAT, whereby, *vide* order dated 19.06.2020, the appeal of the respondent-assessee was allowed. While relying upon the judgment of the Hon'ble Supreme Court in the case of *Ghanshyam (supra)*, the ITAT drew an equivalence between the interest received under Section 28 of the 1894 Act and the enhanced compensation. It was further held that since the interest amounts to accretion to the value of compensation, therefore, the same must be treated as a part of compensation.

12. It is in the aforesaid context that the Revenue has preferred the instant appeal against the order of the ITAT.

13. Learned counsel appearing on behalf of the Revenue submitted that the ITAT has erroneously rejected the concomitant findings of the



AO and the CIT(A) that the issue at hand is purely driven by Section 56 of the Act. He contended that the decision relied upon by the ITAT in the case of *Ghanshyam (supra)* cannot be treated to be an authority to delete the additions made in the income of the respondent-assessee as the said decision was passed before the amendment came in the year 2010. He, therefore, submitted that the addition made by the AO does not suffer from any infirmity as the same was based upon the extant provisions of Section 56(2)(viii) of the Act which came into effect subsequent to the amendment in question.

14. Learned counsel has relied upon the decisions of the High Court of Punjab and Haryana in the cases of **Manjeet Singh (HUF) Karta Manjeet Singh v. Union of India and Ors.** [CWP No.15506 of 2013], **Puneet Singh v. CIT** [2018 SCC OnLine P&H 7124], **Jagmal Singh & Ors. v. State of Haryana & Anr.** [RA-CR No.46 CII of 2014] and **Sunder Lal v. Union of India** [2015 SCC OnLine P&H 20525], to substantiate his arguments.

15. *Per contra*, learned counsel appearing on behalf of the respondent-assessee vehemently opposed the submissions advanced on behalf of the Revenue to submit that the ITAT has correctly relied upon the decision in the case of *Ghanshyam (supra)* to conclude that the interest in question is also a part of the enhanced compensation and hence, liable to be exempted.

16. Learned counsel submitted that the ITAT has given its findings after duly considering the amendment in Section 56 of the Act and therefore, no substantial question of law arises in the present appeal. He further contended that the issue under consideration is already settled as



the interest under Section 28 of the Act of 1894, which is paid on the enhanced compensation on compulsory acquisition of agricultural land, is accretion to the value of land and hence, it is exempt under Section 10(37) of the Act on account of being a part of the enhanced compensation.

17. We have heard the learned counsels appearing on behalf of the parties and perused the record.

18. The solitary question which arises for our consideration in the present appeal is whether the interest on enhanced compensation received by the respondent-assessee partakes the character of income from other sources under Section 56(2)(viii) of the Act, to be considered as separable from the enhanced compensation.

19. At the outset, it is significant to refer to Sections 28 and 34 of the Act of 1894, which deal with the payment of interest on compensation, and read as under:-

"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."

20. A reading of Section 28 of the Act of 1894 indicates that the said provision comes into play in cases where the Court finds that some higher compensation ought to have been provided by the Collector. In such situations, the Court may direct for payment of an interest on the excess awarded amount. Whereas, Section 34 of the Act of 1894 stipulates that the Collector shall award interest on the compensation at the rate of 9% per annum from the date of taking possession. It further lays down the condition that in case of non-payment despite expiry of a period of one year, the said interest on the amount of compensation which remains unpaid, shall be awarded at the rate of 15% per annum, calculable from the date of such expiry.

21. It is the contention of the respondent-assessee that the interest awarded under Section 28 of the Act of 1894, as discussed above, shall constitute a part of the compensation itself. The ITAT has also drawn strength from the observation of the Hon'ble Supreme Court in the case of *Ghanshyam (supra)* and the relevant paragraph of the said decision reads as under:-

"35. 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 the 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 enhanced value of the land which is not the case in the matter of payment of interest under Section 34."



22. However, *vide* Finance (No.2) Act, 2009 (with effect from 01.10.2010), Clause (viii) of sub-Section 2 to Section 56 of the Act was inserted and the same is extracted hereunder as:-

“56. Income from other sources.—

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

[(viii) income by way of interest received on compensation or on enhanced compensation referred to in [sub-section (1) of Section 145-B].]”

23. For the sake of clarity, Section 145-B of the Act is reproduced as under:-

“[145-B. Taxability of certain income.—(1) Notwithstanding anything to the contrary contained in Section 145, the interest received by an assessee on any compensation or on enhanced compensation, as the case may be, shall be deemed to be the income of the previous year in which it is received.

(2) Any claim for escalation of price in a contract or export incentives shall be deemed to be the income of the previous year in which reasonable certainty of its realisation is achieved.

(3) The income referred to in sub-clause (xviii) of clause (24) of Section 2 shall be deemed to be the income of the previous year in which it is received, if not charged to income-tax in any earlier previous year.]”

24. A conjoint reading of the aforementioned provisions i.e., Sections 56(2)(viii) and 145-B of the Act vividly stipulate that the income received by way of interest on compensation or on enhanced compensation shall be chargeable to tax under the head ‘income from other sources’. Therefore, since the position with respect to the imposition of tax on interest on compensation or enhanced compensation, as it exists today, came into being only in the year 2010,



the conclusions drawn from the decision in *Ghanshyam (supra)*, which was passed in the year 2009, are unsustainable in the facts of the present case.

25. Further, much reliance has been placed by the ITAT upon the decision of the Hon'ble Supreme Court in the case of **CIT v. Govindbhai Mamaiya** [(2014) 16 SCC 449], which relies upon the case of *Ghanshyam (supra)* to hold that the interest on enhanced compensation received under Section 28 of the Act of 1894 is exigible to tax on receipt basis. However, a deeper analysis of the decision in *Govindbhai Mamaiya (supra)* would show that it does not deal with any issue pertaining to the change in the taxability, put in place through the concerned amendment of 2010. Therefore, the said decision lacks any applicability in the facts and circumstances of the present case.

26. Notably, a three-Judges Bench of the Hon'ble Supreme Court in the case of **Sham Lal Narula (Dr.) v. CIT** [(1964) 53 ITR 151], while considering the interest under Section 28 of the Act of 1894 to be analogous to the interest under Section 34 of the Act, took the view that the same did not form part of compensation. The relevant extract of the said decision is culled out as under:-

“9. ---

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 the 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 Section 28 of the Act, just like under Section 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.**

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[Emphasis supplied]



27. The decision in *Sham Lal Narula (supra)* was subsequently followed by the Hon'ble Supreme Court in the case of **Bikram Singh v. Land Acquisition Collector** [(1997) 10 SCC 243], wherein, it was held that interest under Section 28 of the Act of 1894 was in the nature of a revenue receipt and hence, the same was considered to be taxable. The relevant paragraphs of the said decision read as under:-

“8. The controversy is no longer *res integra*. This question was considered elaborately by this Court in *Sham Lal Narula (Dr) v. CIT* [(1964) 53 ITR 151 : AIR 1964 SC 1878] . 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 p. 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.**”

9. This position of law has been consistently reiterated by this Court in the case of *T.N.K. Govindaraju Chetty v. CIT* [(1967) 66 ITR 465 : AIR 1968 SC 129] , *Rama Bai v. CIT* [1990 Supp SCC 699 : (1990) 181 ITR 400] and *K.S. Krishna Rao v. CIT* [(1990) 181 ITR 408 (SC)] . **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 exigible to income tax.** It is true that in amending the definition of “interest” in Section 2(28-A), 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.”

[Emphasis supplied]

28. In the case of *Puneet Singh (supra)*, the High Court of Punjab and Haryana, while enunciating the effect of Section 145A(b) and Section 56(2)(viii) of the Act, has held as under:-

“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 with effect from April 1, 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 per cent. 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 : . . .

(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 I. T. A. No. 132 of 2018 where the assessee had received Rs. 11,30,561 as interest income, held that the interest payment received on compensation/enhanced compensation to the tune of Rs. 5,65,280 (50 per cent. of Rs. 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 Commissioner of Income-tax (Appeals) 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.”

[Emphasis supplied]

29. Considering the foregoing discussion, we affirm the concurrent findings of the AO and CIT(A) and find that the view taken by the ITAT is unsustainable, as the same is based on an incorrect appreciation of law. The 2010 amendment was a conscious departure by the Legislature from the earlier position and the said departure holds good law, as on date. There is no question with respect to the *vires* of the amendment before us or regarding any ambiguity in the language of the amendment. The only concern is regarding the enunciation of the applicable law and we hold the same to unequivocally mean that interest, whether on compensation or on enhanced compensation, shall be considered as income from other sources and shall be exigible to income tax.

30. We, accordingly, answer the substantial question of law which has arisen in the instant appeal in affirmative and in favour of the Revenue. We, thus, hold that the ITAT has erred in relying upon the decision of *Ghanshyam (supra)*, ignoring the changes brought about by Finance (No.2) Act, 2009, which came into effect in the year 2010.

31. In the light of the aforesaid judicial pronouncements and the concerned amendment, we set aside the order of the ITAT dated 19.06.2020. Consequently, the appeal stands allowed and the



concurrent findings of the AO and CIT(A) are hereby affirmed. Pending application(s), if any, are disposed of.

PURUSHAINDR KUMAR KAURAV, J.

YASHWANT VARMA, J.

APRIL 08, 2024/MJ