

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI**

**BEFORE N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 1676/Del/2023
Asstt. Year: 2018-19

Gulshan Kumar, M/s. Gulshan Variety Store, Thana Road, Fatehabad, Haryana 125050. PAN AIUPK6598B	Vs.	Pr. CIT Rohtak.
(Appellant)		(Respondent)

Assessee by:	Shri Lalit Mohan, CA
Department by :	Shri T. James Singson, CIT, DR
Date of Hearing	28/11/2023
Date of pronouncement	13/02/2024

ORDER

PER ASTHA CHANDRA, JM

The appeal filed by the assessee is directed against the order dated 21.03.2023 of the Ld. Principal Commissioner of Income Tax, Rohtak ("**PCIT**") passed by him under section 263 of the Income Tax Act, 1961 (**the "Act"**) pertaining to Assessment Year ("**AY**") 2018-19.

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

"1 *That order dated 21.3.2023 u/s 203 of the Act by the learned Pr. Commissioner of Income Tax, Rohtak has been made without satisfying the statutory preconditions contained in the Act and is therefore without jurisdiction and thus, deserves to be quashed as such.*

- 2 *That initiation of proceedings u/s 263 of the Act on the basis of proposal of learned Assessing Officer is void-ab-initio therefore both initiation and consequent order u/s 263 of the Act without jurisdiction and thus, deserves to be quashed as such.*
- 3 *That initiation of proceedings u/s 263 of the Act on the basis of unsigned show cause notice by learned Pr. Commissioner of Income Tax, Rohtak is void-ab-initio therefore both initiation and consequent order u/s 263 of the Act without jurisdiction and thus, deserves to be quashed as such.*
- 4 *That the learned Pr. Commissioner of Income Tax has failed to appreciate that once the learned Assessing Officer on examination of the facts on record and after making all possible enquiries had accepted claim of the appellant then such an order of assessment could not be regarded as erroneous in as much as prejudicial to the interest of revenue merely because the learned Commissioner of Income Tax had a different opinion and that too, without having established in any manner that, view adopted by the learned Assessing Officer was an impossible or unsustainable view.*
5. *That the learned Principal Commissioner of Income Tax has failed to appreciate that action u/s 263 of the Act is otherwise too inapplicable on the factual matrix of the facts of the instant case since it is not a case of "lack of enquiry" or "lack of investigation" and therefore the invocation us 263 of the Act is not in accordance with law.*
6. *That further more the learned Principal Commissioner of Income tax has proceeded to set aside the order on mere speculation, generalized observations, theoretical allegations and assertions, without there being any supporting evidence and is therefore not in accordance with law.*
7. *That finding of the learned Principal Commissioner of Income Tax that "the AO had passed the order dated 3.12.2020 in a very causal manner without due diligence and without conducting proper enquiries and verification which should have been made with respect of amended provisions of the Finance Act, 2015 and binding decision of Jurisdictional Hon'ble Punjab & Haryana High Court and Hon'ble Apex Court on the taxability of interest on enhanced compensation" is factually incorrect, legally misconceived, contrary to facts on record and wholly untenable.*
8. *That even the conclusion that "interest on enhanced compensation during the assessment year under consideration ought to be treated as income from other sources u/s 56(2)(viii) of the Act" is not based on correct appreciation of facts and therefore untenable.*
9. *That the learned Pr. Commissioner of Income Tax has also failed to appreciate that, u/s 263 of the Act. an order of assessment cannot be set-aside to simply to make further enquiries and thereafter pass fresh order of assessment and as such, impugned order is contrary to law and hence, unsustainable."*

3. Briefly stated, the assessee is an individual who runs M/s. Gulshan Variety Store, Fatehabad. For the assessment year 2018-19 he filed his return declaring income of Rs. 27,900/- on 01.02.2019. The return was processed under 143(1)(a) of the Act on 27.02.2019. The case was, subsequently selected for complete scrutiny under the e-assessment scheme, 2019 on the issue, namely reduction of income in Revised Return and claim of refund and income from other sources. The Ld. Assessing Officer ("**AO**") served upon the assessee notice under section 143(2) of the Act on 28.09.2019. Notice under section 142(1) of the Act was issued on 10.02.2020, 21.08.2020 and 24.09.2020. The Ld. AO completed the assessment on 03.12.2020 under section 143(3) of the Act on total income of Rs. 27,900/- as returned by the assessee after taking into account all relevant material on record.

4. In exercise of power vested under him under section 263 of the Act the Ld. PCIT perused/examined the records of the assessee and found that in the ITR the assessee has claimed refund of TDS amount of Rs. 2,85,259/- deducted by HUDA under section 194A of the Act on the interest of Rs. 2852590/- received as enhanced compensation on the compulsory acquisition of his agricultural land. He further found that in the return of income the assessee has claimed interest of Rs. 2852590/- as exempt. He formed the opinion that the Ld. AO had completed the assessment without carrying out necessary and proper enquiry which he ought to have carried out in respect of the treatment of interest received on compensation or enhanced compensation. He, therefore, issued show cause notice dated 16.01.2023 under section 263(1) of the Act to which the assessee responded vide letter dated 14.02.2023.

5. The explanation was not acceptable to the Ld. PCIT who held in para 5.1 of his order as under:-

"5. I have carefully examined the facts of the case and the reply of the assessee as well as the material on record. It is evident that the assessee has received interest

on enhanced compensation during the assessment year under consideration which ought to be treated as "income from other sources and should have been taxed accordingly, under the head income from other sources by way of amendment introduced through Finance (No.2) Act, 2009 w.e.f 01.04.2010. For the taxing treatment of Interest on compensation/enhanced compensation special provisions has been made by way of Finance (No.2) Act 2009 by introducing a clause (viii) in sub-section 2 of section 56, clause(iv) in section 57 and clause (b) in Section 145A w.e.f 01.04.2010. From the assessment year 2010-11 onwards, the amount of compensation or enhanced compensation is taxable as "income from other sources after allowing deduction of a sum equal to 50% of such income in the year of receipt The Hon'ble Apex Court in the case of Malabar Industrial Co. Ltd V/s CIT in 243 ITR 83(SC) has held that both the pre requisites for invoking the provisions of Section 263 must be satisfied that order sought to be revised is erroneous and it must be prejudicial to the interest of revenue.

5.1 *However, it is seen from records that the A.O. failed to conduct necessary enquiries, in this regard or to consider the judgement of the Jurisdictional High Court i.e. Hon'ble Punjab & Haryana High Court dated 19.02.2020 in the case of Mahender Pal Narang vs. Central Board of Direct Taxes News Delhi wherein the Hon'ble High Court has dealt with all the controversies arising from the Judgement of Hon'ble Supreme Court in the case of CIT vs. Ghanshyam HUF dated 16th July 2009. The Hon'ble High Court has categorically given its finding that the order of Hon'ble Supreme Court in the case of Ghanshyam HUF, will not come to the rescue of the assessee after the amendments introduced through Finance (No.2) Act, 2009 w.e.f 01.04.2010. The said Judgement of the Hon'ble P & H High Court has also been endorsed by the Hon'ble Supreme Court of India dismissing the SLP against the judgement of Hon'ble High Court in Mahender Pal Narang vs. CBDT (2021) 279 Taxman 74(SC) vide its order dated 4th March 2021."*

6. Accordingly, the Ld. PCIT set aside the assessment order with a direction to Ld. AO to pass an order afresh in accordance with law.

7. Aggrieved, the assessee is in appeal before the Tribunal and all grounds relate thereto.

8. The Ld. AR invited our attention to page 65-67 of the Paper Book and submitted that on 6.10.2022 the successor Ld. AO sent proposal to the Ld. PCIT for initiation of proceedings under section 263. Therefore based on such a proposal, initiation of proceeding under section 263 of the Act by the Ld. PCIT is void-ab-initio. He referred to the decision of Hon'ble Calcutta High Court in PCIT vs. Reela Lakhani (2023) 457 ITR 603(Cal). He also pointed out that the unsigned show cause notice (copy at page 68 of Paper Book) was issued by the Ld. PCIT to the assessee.

8.1 The Ld. AR further submitted that it is incorrect to allege that the Ld. AO did not make requisite enquiry which he ought to have done. At page 29-31 of Paper Book is notice under section 142(1) of the Act dated 10.02.2020 along with questionnaire (No.9) regarding receipt of compensation and enhanced compensation & claim of exemption under section 10(37) of Rs. 49,23,440/-. Another notice under section 142(1) of the Act dated 21.08.2020 is at page 35-37 of Paper Book seeking further details and information. Yet another notice under section 142(1) of the Act dated 24.09.2020 (pages 39-42 of Paper Book) was issued inviting the attention of the assessee to the provisions of section 56(2)(viii) r.w.s 57(iv) and section 145B(1) of the Act.

8.2 The Ld. AR pointed out that the assessee submitted reply (page 43-44 of the Paper Book) stating inter alia that his agricultural land was compulsorily acquired by Land Acquisition Collector (LAC) and gave enhanced compensation as per court order. On this enhanced compensation the LAC gave interest under section 28 of the Land Acquisition Act. All amount of compensation and interest is exempt from Income Tax under section 10 of the Act. This view is also supported by the Hon'ble Supreme Court of India in CIT vs. Ghanshyam HUF (2009) 315 ITR 1(SC) dated 16.07.2009.

8.3 The Ld. AR also took us through the detailed reply dated 14.02.2023 submitted before the Ld. PCIT, copy of which is placed at pages 72-108 of the Paper Book. It contains the submission of the assessee on all the issues raised by the Ld. PCIT in his show cause notice under section 263(1) of the Act duly supported by precedents.

9. The Ld. CIT-DR supported the order of the Ld. PCIT and submitted that the Ld. PCIT has examined the records and has not just relied on the proposal of the Ld. successor AO.

10. We have considered the submission of the parties and perused the records. The facts are not in dispute. In our opinion, in the light of evidence available on records, it cannot be alleged as done by the Ld. PCIT that it is a case of 'no enquiry' or 'lack of enquiry'. No doubt that the Ld. AO did not discuss elaborately in the assessment order but that alone cannot make the order erroneous as held by the Hon'ble Delhi High Court in CIT vs. Sunbeam Auto Ltd. (2011) 332 ITR 167 (Del) and Hon'ble Rajasthan High Court in CIT vs. Ganpat Ram Bisnoi 296 ITR 292 (Raj.). An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous as held by the Hon'ble Supreme Court in Malabar Industrial Co. Ltd. vs. CIT 243 ITR 83 (SC). None of these elements exist in the case at hand.

11. Perusal of the order of the Ld. PCIT shows that he assumed the revisionary power under section 263 of the Act mainly on the ground that the Ld. AO failed to do the necessary inquiry about the taxability of the interest on enhanced compensation and passed the order not in accordance with the binding decision of Hon'ble P&H High Court in Mahender Pal Narang vs. CBDT (2021) 279 Taxman 74 (SC) against which SLP stands dismissed by the Hon'ble Supreme Court. This is not so. During assessment proceedings in response to notice under section 143(2) and 142(1) of the Act, with reference to specific query on receipt of interest under section 28 of Land Acquisition Act, the assessee explained that interest received under section 28 of the Land Acquisition Act has been held to be part of compensation by Apex Court in the case of CIT vs. Ghanshyam HUF reported as (2009) 315 ITR 1, the same being exempt under section 10(37) of the Act has not been included in the total income of the assessee while filing return of income. The Ld. AO accepted the explanation of the assessee.

12. The issue of amended provisions of section 56(2)(viii) by the Finance Act, 2009 and the decision of Hon'ble P & H High Court in Mahender Pal Narang's case was raised by the Ld. PCIT in notice under section 263 on the basis of the proposal submitted by the Ld. Successor AO. Before the Ld.

PCIT the assessee explained that the amended provisions were not in connection with the decision of Hon'ble Supreme Court in Ghanshyam HUF's case but to make simple the taxation of interest income as earlier it was taxable on accrual/cash basis on the basis of accounting principles as held by the decision of Hon'ble Supreme Court in Rama Bai vs. CIT (1990) 181 ITR 400. It was also explained that insertion of section 145A, 145B, 56(2)(viii) and 57(iv) by the Finance (No.2) Act, 2009 did not change the character of interest under section 28 of the Land Acquisition Act from 'capital receipt' forming part of enhanced compensation as envisaged in section 45(5) of the Act to 'revenue receipt' chargeable to tax as 'income from other sources'. It was also explained to the Ld. PCIT that after analysing the provisions of section 28 and 34 of Land Acquisition Act the Hon'ble Supreme Court held in the case of Ghanshyam HUF that interest is different from compensation. However, interest paid on the excess amount under section 28 depends upon a claim by a 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 enhanced value of the land which is not the case in the matter of payment of interest under section 34. It is thus evident that the view taken by the Ld. AO that interest under section 28 of Land Acquisition Act received by the assessee is exempt under section 10(37) of the Act is not contrary to law.

13. We notice that in CBDT Circular No. 5 dated 03.06.2010 reported in (2010) 324 ITR (St.) 293, it is stated that the Hon'ble Supreme Court in the case of Rama Bai Vs. CIT (supra) 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. With a view to mitigate the hardship section 145A has been substituted and clause (viii) in sub-section (2) of section 56 has been inserted by the Finance (No.2) Act, 2009 so as to provide that the 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. It is thus evident that the amended provisions of section 56(2)(viii) of the Act r.w. section 145A were brought on the statute to nullify the effect of Hon'ble Supreme Court's ruling in the case of Rama Bai and not Ghanshyam HUF. Moreover, the decision in Ghanshyam HUF was pronounced in July, 2016 and the Finance Bill proposing amendment to section 56 was laid in February 2016. So the intention of the legislature could never be the overruling of the ratio laid down in Ghanshyam HUF case. The issue in Rama Bai case involved the taxability in the year of receipt. The facts and questions for determination in Rama Bai's case were different from those of Ghanshyam HUF's case. The position in Ghanshyam HUF's case has been affirmed by the Hon'ble Supreme Court in UOI vs. Hari Singh (2018) 91 taxmann.com 20 (SC).

14. We have gone through the decision of the Hon'ble P & H High Court in the case of Mahender Pal Narang (supra). In that case the land of the assessee was acquired in AY 2007-08 and 2008-09. The enhanced compensation was received on 21.03.2016. In his return filed for AY 2016-17 he treated the interest received under section 28 of the 1894 Act as income from other sources and claimed deduction for 50% as per section 57(iv) of the 1961 Act. The return was processed under section 143(1) of the Act. An application under section 264 was made claiming that by mistake the assessee treated the interest income as income from other sources whereas the same is part of enhanced compensation. The revisional authority rejected the application under section 264 on 30.1.2019. It was in this factual matrix that the assessee filed writ petition before the Hon'ble P & H High Court. The question for consideration was "whether after the insertion of section 56(2)(viii) and 57(iv) of the Act w.e.f. 01.04.2010, can the assessee claim that interest received under section 28 of the Land Acquisition Act, 1894 will partake the character of the compensation and would fall under the head "capital gain" and not "income from other sources" ? It was argued by the assessee that there is no amendment in

section 10(37) and by insertion of sections 56(2)(viii) and 57(iv), the nature of interest under section 28 of the 1894 Act will remain that of compensation and decisions of the Hon'ble Supreme Court in the case of Ghanshyam (HUF) and the decision of Hon'ble Gujrat High Court in Movaliya Bhikhubhai Balabhai vs. ITO TDS (2016) 388 ITR 343 were relied upon.

15. It may be mentioned that the Hon'ble Supreme Court has affirmed its view taken in Ghanshyam HUF's case and the decision of Gujrat High Court in Movaliya's case in its decision in Hari Singh's case(supra). The decision of the Hon'ble Supreme Court in Hari Singh's case (supra) was not brought to the notice of Hon'ble P & H High Court while rendering decision in Mahender Pal Narang's case (supra). Hon'ble P&H High Court has thus rendered the decision in Mahender Pal Narang's case in its peculiar facts and circumstances. Accordingly, the opinion of the Ld. PCIT that the Ld. AO should have passed the assessment in accordance with the amended law and binding decision in Mahender Pal Narang's case (supra) overlooking the decision of Hon'ble Supreme Court in Ghanshyam's HUF's case is not sustainable. Reliance by the Ld. PCIT on the decision in Mahender Pal Narang's case is misplaced. Needless to emphasis that in V.M. Salgaocar and Bros Pvt. Ltd. vs. CIT 243 ITR 383 (SC), the Hon'ble Supreme Court has held that an order dismissing the SLP at the threshold without detailed reasons does not constitute any declaration of law or a binding precedent. Therefore, overemphasising the fact of dismissal of SLP in limine by the Hon'ble Supreme Court in Mahender Pal's case by the Revenue is not of any legal assistance to it.

16. Since the order of the Ld. AO is based on the decision of the Hon'ble Supreme Court in Ghanshyam HUF (supra) on the issue of taxability of interest received by the assessee under section 28 of Land Acquisition Act, it can at best be said to be a debatable issue on which two views are possible and the Ld. AO accepts one of the views. In this view of the matter too, the Ld. PCIT cannot assume revisional jurisdiction as held by the Hon'ble Delhi

High Court in CIT vs. Hindustan Coca Cola Beverages P Ltd. (2011) 331 ITR 192 (Del.)

17. Accordingly, on the facts and in the circumstances of the case as set out above, we hold that the order of the Ld. PCIT is not sustainable. Accordingly, we allow the appeal of the assessee and quash the impugned order of the Ld. PCIT.

18. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 13th February, 2024.

sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER
Dated: 13/02/2024

sd/-
(ASTHA CHANDRA)
JUDICIAL MEMEBR

Copy forwarded to-

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

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Date on which the fair order is placed before the Dictating Member for pronouncement	
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