

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "SMC": NEW DELHI  
BEFORE Shri C.M. Garg, Judicial Member**

ITA No. 693/Del/2023  
(Assessment Year: 2018-19)

Virender Rathee, 7, Vishwa, Jatwara Mohalla, district Jhajjar, Bahadurgarh, Haryana (Appellant) <b>PAN: AKRPR2303Q</b>	Vs. ITO, Ward-5, Rohtak  (Respondent)
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Assessee by :	Shri Pawan Chhikara, CA
Revenue by:	Shri Om Parkash, Sr. DR

Date of Hearing	02/05/2023
Date of pronouncement	07/07/2023

**ORDER**

**PER C. M. GARG, J. M.:**

1. This is an appeal filed by the assessee against the order of the Id CIT(A), National Faceless Appeal Centre (NFAC) dated 19.01.2023 for AY 2018-19.

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

*"1. The Ld. CIT(A), NFAC, has committed gross injustice to the appellant by and passed the order u/s 250 of the Income Tax Act, 1961 upholding the order of Ld. Assessing Officer which is illegal and bad in law and contrary to the facts and circumstances of the case, material/ evidence on the records as well as passed without application of mind and is liable to be set aside.*

*2. That the impugned order of the Ld. CIT (A), NFAC, in mechanically upholding/ endorsing the order of Assessment dated 18-03-209.1 is bad in law and is liable to be set aside.*

*3. The Ld. CIT (A), NFAC, has erred in facts and law in upholding the action of the A.O, not deleting the addition made for interest received on enhanced compensation on account of compulsorily acquisition of Agriculture land even without Considering our detailed reply with so many ruling announced by the Honorable Apex Court and High court, Tribunal in this regard which clearly said that the Interest awarded to the Land owner on enhanced compensation by Apex court on compulsorily acquisition of his Agriculture Land as per section 28 of*

*the Land acquisition act, 1894 is only an accretion to the value of land and not in the nature of interest and the same is liable to be treated as per the provision of section 45(5) read with section 10(37) of the I.T Act, 1961 and if the Original compensation is Taxable then the same will also be taxable and if original compensation is exempt u/s 10(37) on account of compulsorily acquisition of agriculture Land then the same will also be exempt because this interest has been awarded by the Apex court under the provision of section 28 of the Compulsorily Land acquisition act, 1894, a certificate issued by the Land Acquisition Officer about the nature of this interest has also submitted before the Ld. CIT(A), NFAC. Hence, this order of assessment passed by the Ld. CIT(A), NFAC, u/s 250 of the Income Tax Act, 1961 against the assessee should be null and void as per the law.*

*4) That the Ld. CIT(A), NFAC, has erred in facts and law in upholding the order of assessment without appreciating the various contentions/submissions/ evidences, case law and replies filed during the proceedings before NFAC.*

*5) That the Ld. CIT(A), NFAC, has erred in facts and law in passing their order on surmises and conjectures, on mere pretense and apprehension without any support from the material on records.*

*6) The Ld. CIT(A) has erred in fact and law in upholding the order passed by Ld. A.O who has made an addition on account of Interest on enhanced compensation which was otherwise an exempt income.*

*7) Any other grounds of appeal at the time of hearing."*

3. The Id counsel of the assessee submitted that the Ld. CIT (A), NFAC, has erred in facts and law in upholding the action of the A.O, not deleting the addition made for interest received on enhanced compensation on account of compulsorily acquisition of Agriculture land even without Considering our detailed reply with so many ruling announced by the Honorable Apex Court and High court, Tribunal in this regard which clearly said that the Interest awarded to the Land owner on enhanced compensation by Apex court on compulsorily acquisition of his Agriculture Land as per section 28 of the Land acquisition Act, 1894 is only an accretion to the value of land and not in the nature of interest and the same is liable to be treated as per the provision of section 45(5) read with section 10(37) of the I.T Act, 1961 and if the Original compensation is Taxable then the same will also be taxable and if original compensation is exempt u/s 10(37) on

account of compulsorily acquisition of agriculture Land then the same will also be exempt because this interest has been awarded by the Apex court under the provision of section 28 of the Compulsorily Land acquisition act, 1894, a certificate issued by the Land Acquisition Officer about the nature of this interest has also submitted before the Ld. CIT(A), NFAC. Hence, this order of assessment passed by the Ld. CIT(A), NFAC, u/s 250 of the Income Tax Act, 1961 against the assessee should be null and void as per the law. The Id AR further placing reliance on the order of the ITAT Delhi Bench in the case of Chander Kalan Vs. NEAC in ITA No. 1619/Del/2017 for AY 2018-19 submitted that the interest awarded to the land owner/ assessee on enhanced compensation by the Hon'ble Supreme Court under compulsory acquisition of his agricultural land as per section 28 of the Land Acquisition Act is only an assertion of the value of land and not in the nature of interest, therefore, same is liable to be treated as per provision of section 45(5)v) read with section 10(7) of the Income Tax Act, 1961 (for short the Act).

4. Replying to the above, the Id. Sr. DR, placing reliance on the judgement of the Hon'ble High Court of Punjab & Haryana, dated 19.02.2020, in CWP No.17971 of 2019 in the case Mahender Pal Narang vs. CBDT, contended that the interest received on compensation or enhanced compensation is to be treated as 'Income from other sources' and not under the head 'Capital gains.' However, he did not controvert that the impugned amount is interest received by the assessee on enhanced compensation.

5. Placing rejoinder to the above, the Id. AR drew our attention to the order of the ITAT Delhi Bench 'F' in the case of Ram Kishan Kishan vs. ITO, dated 02.12.2020 in ITA No.5391/Del/2017 for AY 2014-15, especially to para 8 and 9 and submitted that the ITAT Delhi Bench, after considering the judgement of Hon'ble Supreme Court in the case of CIT vs. Ghanshyam (HUF), (2009) 8 Supreme Court Cases 412 and by relying on the judgements available at that time including the

judgement of the Hon'ble Punjab & Haryana High Court in the case of Mahender Pal Narang (supra) decided that the interest received by the assessee u/s 28 of the Land Acquisition Act is not taxable. Therefore, the grievance of the assessee may kindly be allowed. The Id. Counsel of the assessee has also relied on the following judgements:-

- (i) CIT v. Ghanshyam (HUF) [(2009) 8 SCC 412];
- (ii) CIT, Rajkot v. Govindbhai Mamiya [(2014) 16 SCC 449];
- (iii) Movaliya Bhikhubhai Balabhai v. Income Tax Officer, Surat [(2016) 70 taxmann.com 45 (Gujarat)];
- (iv) Union of India & Ors. V. Hari Singh & Ors. [ Civil Appeal No. 15041 of 2017];
- (v) Baldev Singh vs. ITO [2019] 104 taxmann.com 99 (Delhi - Trib); &
- (vi) Mahender Pal Narang v. Central Board of Direct Taxes, New Delhi [(2020) 120 taxmann.com 400 (Punjab & Haryana)]

6. On careful consideration of the above submissions, I am of the considered view that the identical issue was placed for adjudication before the ITAT Delhi 'F' Bench in the case of Ram Kishan vs. ITO, wherein, after considering all the relevant judgements, the issue was decided as follows:-

*"8. On careful consideration of the issue before us we find That The finance (number 2) act, 2009 with effect from 1 April 2010 in the income tax act has introduced the provisions of Section 145A (b) which defines the year of taxability as the year of receipt, irrespective of the method of accounting followed by the assessee with respect to the enhanced compensation and interest on compensation. The provisions of Section 56 (2) also defines head of income as income from other sources for such income. Section 57 (iv) allows deduction of 50% of such income without any proof of such expenditure. The provisions of the sections were introduced to remove an anomaly. At that time the existing provisions of the income tax provided that the income chargeable Under that profits and gains of business or profession or income from other sources shall be computed in accordance with either cash or Mercantile system of accounting regularly employed by the assessee. The honourable Supreme*

*Court in case of Rama Bai versus CIT 181 ITR 400 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 that hardship provisions of Section 145A were amended to provide that the interest received by an assessee on compensation or enhanced compensation shall be deemed to be income for the year in which it was received, irrespective of the method of accounting followed by the assessee. Further amendment u/s 56 was also made to provide that such income shall be taxable as income from other sources in the year in which it is received. However such amendment was not in respect to the decision of the honourable Supreme Court in case of Ghanshyam HUF 315 ITR 1. Despite the above changes made u/s 14 5A and u/s 56 (2) with effect from 1 June 2010, so as to tax the interest on compensation or enhanced compensation as income from other sources u/s 56 in the year of receipts, the judicial precedents held that the interest awarded to landowners u/s 28 of the land acquisition act, 1894 on enhanced compensation is still a part of compensation and is a capital receipt taxable Under the head capital gains. Such is the judicial precedent of the honourable Himachal Pradesh High Court in case of CIT versus Joginder Singh 217 taxmann 208 and honourable Gujarat High Court in case of Movaliya BhikhaBhai Balabhai 70 taxmann.com 45 [388 ITR 343] . Further we are also mindful of the fact that the honourable Punjab and Haryana High Court in the case of Mahenderpal Narang versus CBDT CWP 17971 of 2019 dated 19/2/2020 as well as in case of Puneet Singh V CIT 110 taxmann.com 16 and Manjeet Singh HUF V Union of India 1 37 taxman 116 has decided in favour of revenue. It is a settled law that Statute must be interpreted according to the intention of the legislature and the court should act upon the true intent of the legislation while applying the law and its interpretation. If a statutory provision is open to more than one meaning, the Court has to choose the interpretation which represents the intention of the legislature. In the present case the Department circular number 5/2010 dated 3/6 / 2010 clearly demonstrates the intention of the legislature. Accordingly we hold that interest on u/s 28 of the land acquisition act, 1894 being part of the compensation shall be treated as a tax free in the case of an individual and HUF u/s 10 (37) if transfer is of an agricultural land. In view of above facts and judicial precedence we hold that the interest received by the assessee u/s 28 of the land acquisition act of ₹ 24,207,223 is not taxable. Accordingly ground number 2 & 3 of the appeal of the assessee are allowed.”*

7. In view of the above, I clearly note that the coordinate Bench of the Tribunal categorically held that after judgement of the Hon'ble Supreme Court in the case of Ram Bai (supra), the undue hardship to the taxpayer was mitigated and the provisions of section 145A of the Act was amended to provide that the interest received by an assessee on compensation or enhanced compensation shall be deemed to be income for the year in which it was received, irrespective of the method of accounting followed by the assessee. It was further held that Statute must be interpreted according to the intention of the legislature and the court should act upon the true intent of the legislation while applying the law and its interpretation. It was also held that Department circular number 5/2010 dated 3/6/2010 clearly demonstrates the intention of the legislature and, therefore, after taking into consideration judgement of the Hon'ble Supreme Court in the case of Ghanshyam HUF (supra) and all subsequent judgements on the issue including the judgement of the Hon'ble Punjab & Haryana High Court in the case of Mahender Pal Narang (supra), it was held that the interest received by the assessee on enhanced compensation u/s 28 of the Land Acquisition Act being part of the enhanced compensation shall be treated as tax free in the case of an individual u/s 10(37) of the Act, if the transfer is of agricultural land.

8. In view of the above order of the coordinate Bench of the ITAT, Delhi, when we evaluate the grievance of the assessee, then, it is amply clear that in the present case also the Id.CIT(A) upheld the assessment order wherein following the judgements of the Hon'ble Punjab & Haryana High Court in the case of Mahender Pal Narang (supra), the addition made by the AO was confirmed. I also note that the AO did not allow benefit of the section 10(37) of the Act to the assessee, however, he allowed 50% of deduction on total interest received, u/s 28 of enhanced compensation by following the provisions of section 57(iv) of the Act and treated the remaining 50% as 'Income from other sources.'

9. The Id. Counsel of the assessee has also drawn my attention to the Circular No.36 of 2016 issued by the Ministry of Finance, Department of Revenue, Central Board of Direct Taxes dated 25.10.2016 wherein, at para 3, it was clarified that the compensation received in respect of an award or agreement which has been exempt from levy of income-tax, vide section 96 of RFCTLAAR Act shall also not be taxable under the provisions of the Income-tax Act, 1961 even if there is no specific provision for exemption for such compensation in the Income-tax Act. The Id. Counsel submitted that the land of the assessee was acquired under the old Land Acquisition Act, but, the intention of the legislature is also clear as per the said Circular wherein the compensation received by the assessee u/s 96 of the RFCTLAAR Act has to be held as exempt from levy of income-tax. Therefore, the grievance of the assessee may kindly be allowed. The Id. Sr. DR simply stated that the land of the assessee had been acquired long back under the old Land Acquisition Act, therefore, the CBDT Circular regarding acquisition of land under section 96 of the new Land Acquisition Act is not applicable to the present case. On these submissions, I am of the considered view that the Board Circular is not directly applicable to the present case of the assessee as, in the present case, the land was acquired under the old Land Acquisition Act, 1896, but, the intention of the legislature can be gathered therefrom that the Revenue does not want to tax the amount of enhanced compensation or interest thereon.

10. Therefore, in view of the foregoing, I am inclined to hold that the Id.CIT(A) was not correct in upholding the assessment order wherein the AO has granted part relief to the assessee u/s 57(iv) of the Act and not applying the provisions of section 10(37) of the Act on the interest received by the assessee on enhanced compensation. Therefore, the orders of the authorities below are set aside being not sustainable and not in accordance with the provisions of the Act. Therefore, the grounds of appeal of the assessee are allowed and the

AO is directed to allow deduction u/s 10(37) of the Act to the assessee on the entire amount of interest received on enhanced compensation u/s 28 of the Act.

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

Order pronounced in the open court on 07/07/2023.

**-Sd/-**  
**(C. M. GARG)**  
**JUDICIAL MEMBER**

Dated: 07/07/2023  
A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR  
ITAT, New Delhi