

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA No. 5391/Del/2017
(Assessment Year: 2014-15)

Ram Kishan, C/o. Jain Khandewal & Co., 510, New Delhi House, 27, Barakhamba Road, New Delhi PAN: AHAPC1442P	Vs.	ITO, Ward-60(5), New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri Ved Jain, CA
Revenue by:	Shri Ramesh Kumar, Sr. DR
Date of Hearing	25/11/2020
Date of pronouncement	02/12/2020

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order of the ld CIT(A)-37, New Delhi dated 26.07.2017 for the Assessment Year 2014-15.
2. The assessee has raised the following grounds of appeal:-
 - “1. On the facts and circumstances of the case, the order passed by the learned CIT(A) is bad both in the eyes of law and on facts.
 2. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of Rs. 1,21,03,610/- made by the ld AO on account of interest of enhanced compensation.
 3. On the facts and circumstances of the case the ld learned CIT(A) has erred both on facts and in law in confirming the addition, rejecting the contention of the assessee that the amount of Rs. 24207223/- having been received u/s 28 of the Land Acquisition Act, the same is not taxable as not being in the nature of interest as held by the Hon’ble Supreme Court in the case of Ghanshyam HUF 315 ITR 1.
 4. The addition has been confirmed by the ld CIT(A) misinterpreting the various judicial pronouncements given by various High Courts.”

3. The only issue in this appeal is whether interest received on enhanced compensation of Rs 24,207,223 received by the assessee u/s 28 of the land acquisition act is chargeable to tax or not.
4. The assessee is an individual. He filed his return of income declaring income of ₹ 405,850 on 9 June 2014. During the year Under consideration the assessee has declared income from house property and income from other sources. The return of income was selected for scrutiny because of the high ratio of refund to tax deduction at source. The assessee was owning agricultural land in his ancestral village at Chilla Saroda Bangar. The above land was Under cultivation till the time of its compulsory acquisition by the Delhi development authority and the assessee has received compensation of ₹ 29,568,978 on compulsory acquisition of this land for development of Delhi from land acquisition Commissioner, Delhi. The assessee has produced the documents of gram panchayat given by the Block development Officer in the above-mentioned village and also produce the Khatauani unty of the above land. The assessee has also attached with the return of income the tax deduction at source certificate issued by the land acquisition collector New Delhi according to which tax of ₹ 2,469,136/- has been deducted u/s 194LA of the act. The learned assessing officer examined the same and issued an enquiry letter u/s 133 (6) of the act to the land acquisition collector to verify the above certificate and also to furnish the bifurcation of the compensation and interest on it. The land acquisition Commissioner as per letter dated 8 December 2016 has informed the learned assessing officer according to which the total enhanced comment compensation was ₹ 29,568,978 out of which original compensation was ₹ 5,361,755 and interest was ₹ 24,207,223. The assessee claimed the interest received of ₹ 24,207,223 as exempt u/s 10 (37) of the act. The assessee claimed above exemption on the basis of the decision of the honourable Supreme Court in case of CIT versus Ghanshyam (HUF) 315 ITR 1 .
5. The learned assessing officer held that there is a change in the provisions of the income tax act with effect from 1/4/ 2010 as per finance act 2009 and accordingly in terms of provisions of Section 145A the interest received on compensation or on enhanced compensation is taxable as income from other sources. Therefore according to the learned assessing officer the same

is taxable in the year of receipt. The learned assessing officer further relied upon the decision of the honourable Punjab and Haryana High Court in the case of the CIT versus Bir Singh HUF as per order dated 27/10/2010 in ITA number 209 of 2004. Therefore he held that the interest received on announced compensation of ₹ 24,207,223 is income of the assessee in the current year taxable under the head income from other sources. He further allowed the deduction at the rate of 50% applying the provisions of Section 57 (iv) of the act. Accordingly he taxed the total amount of interest of ₹ 1,21,03,610. Accordingly the income of the assessee was assessed at ₹ 1,25,72,140/- against the returned income of Rs. 4055850.

6. Aggrieved by the order of the AO assessee preferred an appeal before the learned Commissioner of income tax (appeals) – 37, New Delhi. She passed an order on 26th of July 2017 confirming the order of the learned assessing officer. Therefore assessee is aggrieved with the above order and has preferred this appeal before us.
7. Both the parties were heard on this matter and the relevant paper books and the judicial precedents cited before us were considered.
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.

9. In the result appeal of the assessee is allowed.

Order pronounced in the open court on 02/12/2020.

-Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 02/12/2020
A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi