

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

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

ITA Nos. 39, 40 & 41/Del/2021

Asstt. Years: 2010-11, 2011-12 & 2012-13

Land Acquisition Office, Huda Complex, Sector 14, Gurgaon, Haryana - 122001 PAN RTKL00706G	Vs.	DCIT, (TDS) Gurgaon
(Appellant)		(Respondent)

Assessee by:	Shri Jitender Wadhwa, CA
Department by :	Shri N.C. Swain, CIT DR
Date of Hearing	14/02/2022
Date of Pronouncement	22/03/2022

O R D E R

PER ASTHA CHANDRA, JM

These three appeals of the assessee Land Acquisition Office ("LАО") are filed against the order dated 5.11.2015 under section 201(1) and 201(1A) of the Income Tax Act, 1961 (the "Act") for the assessment years 2010-11 and 2011-12 and order dated 23.12.2015 for the assessment year 2012-13 passed by the Commissioner of Income Tax

(Appeals)-2, Gurgaon ² (“**CIT(A)**”). These appeals were heard together and are being disposed of by this common order.

2. It is a case of TDS survey/inspection which was conducted by ACIT, TDS Circle, Gurgaon (“**AO**”) on 19.4.2012 at the office premises of the deductor, LAO. During the course of inspection and subsequent follow up, the Ld. AO found that the deductor LAO had deducted tax at source from the payment of interest to the farmers (land owners) on enhanced compensation in assessment year 2010-11 and 2011-12 at normal rate (which is 10%) whereas deduction should have been made @ 20% as the deductor had not been able to prove that PAN of each deductee was taken at the time of payment. In response to show cause notice, the assessee furnished explanation which was not acceptable to the Ld. AO who observed that the assessee failed to deduct tax at source as per the provisions of section 194A of the Act and raised demand of Rs. 23,99,524/- and Rs. 34,99,95,274/- for the assessment year 2010-11 and 2011-12 respectively under section 201(1) and 201(1A) of the Act.

2.1 During proceedings for assessment year 2012-13 on 17.1.2014 the assessee filed a letter stating that in view of judgment dated 18.7.2013 of the Hon’ble Punjab & Haryana High Court in the case of Jagmal Singh vs. State of Haryana (Civil Revision No. 7740 of 2012) the

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proceedings be dropped as in that case it has been held that no TDS is required to be deducted on the interest payments which fall under section 28 of Land Acquisition Act, 1894 (“**LA Act**”), being a part of compensation only. The Ld. AO replied back to the assessee on 17.2.2014 stating, inter alia, that the decision in the case of Jagmal Singh (supra) is case specific and is not applicable to the assessee and that the assessee having paid interest on compensation/ enhanced compensation was liable to deduct tax at source under section 194A of the Act. Accordingly, on the lines of earlier years, the Ld. AO raised the demand of Rs. 52,18,90,623/- under section 201(1) and 201(1A) of the Act for assessment year 2012-13.

3. Before the Ld. CIT(A), the assessee reiterated its stand and filed an affidavit stating that the entire interest had been paid on enhanced compensation under section 28 of the LA Act and no amount of interest was paid under section 34 of the LA Act and that the interest paid by the assessee has been held to be a part of compensation itself by the Hon’ble Jurisdictional High Court in the case of Jagmal Singh (supra) and by the Hon’ble Supreme Court in the case of CIT, Faridabad vs. Ghanshyam (HUF) (Civil Appeal No. 440 of 2009). It was also stated that additional grounds of appeal were taken before the Ld. CIT(A) vide letter dated 26.09.2014. The Ld. CIT(A) did not give relief to the assessee on the ground that the issue whether the interest received under section 28 of the LA Act is taxable as income under section 56 of the Act or not and whether such payments are liable to TDS provisions are debatable

issues. He further observed that no ground of appeal has been raised by the assessee on these issues in any of the two assessment years 2010-11 and 2011-12.

3.1 In the appellate order for assessment year 2012-13, Ld. CIT(A) reproduced the written submissions dated 30.10.2015 of the assessee in para 3.3 as under:-

“3.3. The AR of the appellant filed written submissions dated 30.10.2015. Relevant part of the written submissions is reproduced as under:-

It is humbly submitted in respect of demand raised for A. Y. 2012-13 on TDS on interest payment made u/s 28 of Land Acquisition Act, 1894 on enhanced compensation by treating it wrongly as interest whereas it is a part of the compensation itself.

It is humbly submitted as under:-

1. *The appellant is Land Acquisition Office (LAO) and is governed by provisions of Land Acquisition Act.*
2. *The LAO acquire land under compulsory acquisition for public purposes as per the directions of Haryana Urban Development Authority (HUDA).*
3. *The LAO acquires agriculture land in various parts of the Gurgoan for public purpose like water treatment, roads, plants etc.*
4. *The farmers were awarded compensation as per the provisions, rules and regulations of the HUDA Act.*
5. *Being aggrieved by the amount of compensation, the farmers went to court for getting the enhance compensation.*

6. *On enhancement of compensation the farmers got interest also as per the provisions of Section 28 of the Land Acquisition Act.*
7. *This interest has been held to be a part of compensation itself by Hon'ble jurisdiction Punjab & Haryana High Court in the case of Jagmal Singh & other Vs State of Haryana. Date of decision 18th July, 2013 and by the Hon'ble Supreme Court in CIT Vs Ghanshyam 2009 (8) SCC 412 And it has been held that interest under section 28 of the Act is an accretion to the value and hence it is a part of enhance compensation.*
8. *Therefore provisions of section 194LA is applicable to us on which tax cannot be deducted in respect of compensation/ enhance compensation payable on account of compulsory acquisition of agriculture land (whether land is situated in urban area or rural area) - Mysore Urban Development Authority Vs ITO (2008) 175 Taxman 307 (kar).*
9. *The provisions of section 194A is not applicable to us because it is not interest but a part of compensation itself as this amount has been paid as per the provisions of section 28 of the Land Acquisition Act.*
10. *As per the landmark judgment of the Hon'ble Supreme Court in case of Commr. Of I.T. Faridabad Vs Ghanshyam (HUF) on the 16th July 2009, it has been held that "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 need to be kept in mind in deciding this matter i.e. Interest under section 28 is a part of the amount of compensation whereas interest under section 34 is only for delay in making payment after*

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.”

11. *As per the judgment of Hon' ble Punjab & Haryana High court in case of Jagmal Singh & Others Vs State of Haryana & Others, on 18th July 2013, it has been held that “it is clear from the observations of the Supreme Court that interest under sec 28, unlike under Section 34 of the 1894 Act, is an accretion in value and regarded as part of the compensation itself which is not the case of interest under section 34. With a clear statement of Law obtaining through the Supreme Court I would have no difficulty in saying that any part of component of compensation that goes towards the discharge of liability under Sec 28 must be taken as part of the compensation to which Section 194LA shall apply and that compensation being the value of agriculture land, then the exclusion as provided under the Section shall also be attracted. In this case compensation assessed and the interest calculated are for acquiring agriculture land and the amount deposited represented the liability under Section 28. I have no doubt in my mind that there was no requirement for collecting TDS for this amount.*
12. *When the provisions of section 194A of the Income Tax Act is not applicable on the transaction on payments made under section 28 of the Land Acquisition Act, 1894, the question of obtaining PAN number from agriculturists does not arise at all.*

Therefore in the light of above mention provisions and facts, demand of Rs. 52,18,90,623/- for F.Y. 2012-13 is liable to be deleted.”

However, the Ld. CIT(A) dismissed the appeals of the assessee following his order for the preceding two years.

4. Aggrieved, the assessee is before us.
5. At the very outset, the Ld. AR drew our attention to the additional common grounds taken by the assessee before the Tribunal for all the three assessment years which are as below.
- “2. On the facts and circumstances of the case, the Ld. Assessing Officer was not justified on facts and in law in raising a demand ignoring the proposition laid down in the case of the Hon’ble Apex Court subsequent to the decision passed by the Hon’ble Jurisdictional High Court in the case of Manjeet Singh (HUF) which had dealt with the decisions of the Hon’ble Apex Court in Ghanshyam, HUF (2009) 182 Taxman 368. Therefore, in view of the same, the proposition laid down in Ghanshyam, HUF remains and which having been laid down by the Hon’ble Apex Court is the law of the land and has to be followed by all lower authorities. Accordingly, the interest received by the appellant during the impugned year on the compulsory acquisition of its land under section 28 of the Land Acquisition Act, is in the nature of compensation and not interest which is taxable under the head income from other sources under section 56 of the Act.*
- 3. On the facts and circumstances of the case, the Ld. Assessing Officer was not justified in making addition as the order passed is against the well settled law laid down*

by the Hon'ble Supreme Court in the case of CIT v. Ghanshyam (HUF) (2009) 182 Taxman 368, wherein it was held that interest under section 28 of the Act of 1894 is part of the amount of compensation whereas interest under section 34 thereof 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.

4. On the facts and circumstances of the case, the Ld. Principal Commissioner of Income Tax was not justified in passing the order on facts and in law in view of the latest decision of the Hon'ble Supreme Court in the case of CIT v. Chet Ram (HUF) dated 12.09.2017 in Civil Appeal No. 13053/2017 wherein also the Hon'ble Supreme Court has again reiterated the proposition laid down in the case of Ghanshyam (HUF), which has been further reiterated in the case of Union of India v. Hari Singh & others in Civil Appeal No. 1504 of 2017 dated 15.09.2017 wherein it was held that the interest received by the assessee during the impugned year on the compulsory acquisition of its land under section 28 of the Land Acquisition Act, is in the nature of compensation and not interest which is taxable under the head income from other sources under section 5b of the Act as held by the authorities below. The compensation being exempt under section 10(37) of the Act is not disputed.
5. On the facts and circumstances of the case, the Ld. Assessing Officer was not justified in raising the demand as Interest earned under section 28 of Land Acquisition Act, 1894, which was on enhanced compensation, was treated as an accretion to the value and therefore, was part of the

enhanced compensation or consideration. Therefore, interest on enhanced compensation under section 28 of Land Acquisition Act, 1894, being an integral part of consideration was exempt from capital gains tax under section 10(37) as held by the jurisdictional ITAT, Chandigarh in the case of Satbir 85 Ors. v. ITO - Date of Judgment: 09.07.2018 (ITAT Chandigarh).

6. *That having regard to the facts and circumstances of the case, the Ld. CIT(A) has erred in law and on facts as he did not consider the AR letter as a grounds of appeal merely on the basis that in the original grounds of appeal, no specific ground seeking leave for filing additional ground was taken by the appellant.*
7. *That having regard to the facts and circumstances of the case, the Ld. CIT(A) has erred in law and on facts in framing the appeal order without giving an adequate opportunity of being heard and by making incorrect observations and by not observing the principles of natural justice.”*

5.1 The Ld. AR submitted that the other grounds would become infructuous once the additional grounds are decided in favour of the assessee. He requested for admission of the additional grounds which was objected to by the Ld. DR.

6. We have gone through the contents of the additional grounds filed by the assessee in the Tribunal. We are of the view that the additional grounds involve legal issues and therefore, we have admitted them following the judgment of the Hon'ble Supreme Court in National

Thermal Power Co. Limited¹⁰ vs. CIT 228 ITR 383 (SC) wherein the Hon'ble Supreme Court observed that the Tribunal should not be prevented from considering questions of law arising in assessment proceedings although not raised earlier.

7. We have heard the Ld. Representatives of the parties and carefully considered their arguments. We have also perused the material on record. The assessee is Land Acquisition Office and is governed by the provisions of Land Acquisition Act, 1984. The LAO acquired land from the land owners under compulsory acquisition for public purposes as per the directions of Haryana Urban Development Authority (HUDA). The land owners got enhanced compensation which was awarded by the court on which they received interest.

7.1 The issue for consideration is whether the impugned interest received by the land owners on enhanced compensation is 'income from other sources' under section 56 of the Act attracting the TDS provision enshrined under section 194A of the Act. In the assessment proceedings for the assessment year 2012-13 the assessee submitted before the Ld. AO that no TDS is required to be deducted on the interest payments which fall under section 28 of the LA Act relying on the decision of the Hon'ble Jurisdictional High Court in the case of Jagmal Singh (supra) and during appellate proceedings filed an affidavit that interest on enhanced compensation was paid to the

recipient land owners under section 28 of the LA Act and submitted that the provision of section 194A do not apply for the reason that interest under section 28 is a part of the amount of compensation itself. It was pointed out that there is vital difference between interest awarded under section 28 and interest paid under section 34 of the LA Act. Interest under section 28, unlike under section 34 is an accretion in value and regarded as part of the compensation itself which is not the case of interest under section 34 of the LA Act. Interest under section 34 is for delay in making payment after the amount is determined. In the additional grounds taken before us also it has been urged that interest under section 28 of LA Act is in the nature of compensation and not interest which is taxable as income from other sources under section 56 of the Act. Following the judgment of Hon'ble Punjab & Haryana High Court in Jagmal Singh (supra) and the judgment of the Hon'ble Supreme Court in Ghanshyam (HUF) (supra) we hold that the interest received by the land owners on enhanced compensation awarded by the court is not in the nature of income from other sources under section 56 of the Act. Consequently, the TDS provisions of section 194A will not be attracted.

7.2 It has also been urged in the additional grounds that interest on enhanced compensation under section 28 of LA Act, being an integral part of consideration is exempt from capital gains tax under section 10(37) of the Act. We agree. Agricultural land situate in any area referred to in item (a) or item (b) of section 2(14)(iii) of the Act do not fall within

the ambit of agricultural land and thus constitute 'capital asset' under section 2(14) of the Act. Compulsory acquisition of capital asset under any law is 'transfer' under section 2(47)(iii) of the Act. Accordingly, any profit or gain arising from transfer of such a capital asset is exigible to capital gains tax under section 45 of the Act in the previous year in which the transfer took place. However, capital gains arising from transfer of agricultural land situate in any area referred to in item (a) or item (b) of section 2(14)(iii) by way of compulsory acquisition under any law is exempt from tax under section 10(37) of the Act. Accordingly, any income by way of capital gains engrained in the receipt of compensation and/ or enhanced compensation is exempt in the hands of the recipient land owners. This is obvious from the reading of the provisions of section 10(37) of the Act.

8. In the light of the legal provisions set out above and following the judgment of the Hon'ble Supreme Court in Ghanshyam (HUF) (supra), we hold that interest received by the land owners on enhanced compensation awarded to them by the court under section 28 of the LA Act is not in the nature of income from other sources in the hands of the recipient land owners under section 56 of the Act and therefore, the LAO was not under any legal obligation to comply with the TDS provisions of section 194A of the Act. Accordingly, we allow the grounds raised by the assessee by way of additional grounds taken before the Tribunal. The assessee succeeds. The original grounds become infructuous.

9. In the result, all the three appeals of the assessee are allowed.

Order pronounced in the open court on 22nd March, 2022.

sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

Dated: 22/03/2022

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Copy forwarded to-

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

ASSISTANT REGISTRAR
ITAT, New Delhi

