आयकर अपीलीय अधिकरण,चण्डीगढ़ न्यायपीठ, चण्डीगढ़

IN THE INCOME TAX APPELLATE TRIBUNAL DIVISION BENCH, 'A' CHANDIGARH

BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT AND SHRI KRINWANT SAHAY, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 390/CHD/2023

निर्धारण वर्ष / Assessment Year: 2015-16

Shri Suresh Kumar, Village – Batholi, Yamuna Nagar.	Vs	The ITO, Ward No. 4, Yamuna Nagar.
स्थायी लेखा सं./PAN NO: BPMPK3081H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

Assessee by : Shri Ajay Jain,CA
Revenue by : Shri Vivek Vardhan, Addl. CIT Sr.DR

Date of Hearing : 03.09.2025
Date of Pronouncement : 20.01.2026

PHYSICAL HEARING

O R D E R

PER RAJ PAL YADAV, VP

The assessee is in appeal before the Tribunal against the order of ld. Commissioner of Income Tax (Appeals) [in short 'the CIT (A)'] dated 12.05.2023 passed for assessment year 2015-16.

2. The assessee has raised five grounds of appeal, however his grievance revolves around two issues, namely;

a) The ld.CIT (Appeals) has erred in upholding the re-opening of assessment u/s 147;

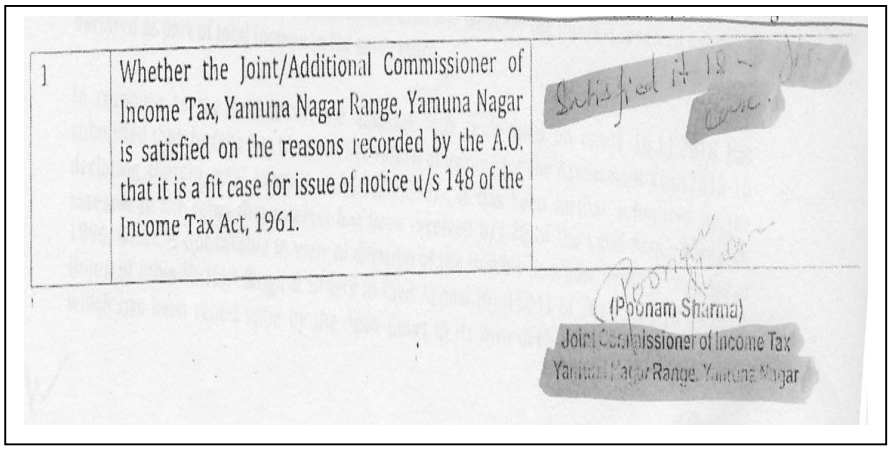
b) The ld.CIT (Appeals) has erred in confirming the addition of Rs.2,06,01,408/-

3. The brief facts of the case, according to the assessment order are that PCIT, Panchkula and JCIT, Yamunanagar had informed the Assessing Officer that land of the assessee was compulsorily acquired under Land Acquisition Act, 1894. The Land Acquisition Collector has passed an award. Dissatisfied with that award, assessee filed a Reference bearing No. 25 dated 16.07.2007 for referring the case to Civil Court for determination of fair compensation qua agricultural land compulsorily acquired by the Land Acquisition Collector. Ultimately fair compensation was determined by the Civil Court and according to the AO, a sum of Rs.2,06,01,408/- has been received as interest and enhanced compensation u/s 28 of the Land Acquisition Act. The AO brought to tax this compensation and therefore, he recorded reasons for re-opening of the assessment. The copy of the reasons is available on page Nos. 4 to 6 of the Paper Book. The AO, thereafter determined the taxable income of the assessee vide assessment

order dated 30.11.2019 passed u/s 143(3) read with Section 147 of the Act. The AO has assessed 50% of alleged interest income received u/s 28 of the Income Tax Act as per Section 56 to (viii) and 57(iv) of the Income Tax Act. He determined the taxable income of the assessee at Rs.1,18,42,346/- which include declared income of the assessee at Rs.15,41,642/-.

4. Appeal to the ld. CIT (Appeals) did not bring any relief to the assessee.

5. The ld. counsel for the assessee, while impugning the orders of Revenue authorities submitted that approval granted by JCIT, Yamuna Nagar u/s 151 of the Income Tax Act is not in consonance to the provisions of the Income Tax Act. He took us copy of this approval available on page 3 of the Paper Book and bring to our notice last paragraph, which reads as under :



1	Whether the Joint/Additional Commissioner of Income Tax, Yamuna Nagar Range, Yamuna Nagar is satisfied on the reasons recorded by the A.O. that it is a fit case for issue of notice u/s 148 of the Income Tax Act, 1961.	Satisfied

(Poonam Sharma)
Joint Commissioner of Income Tax
Yamuna Nagar Range, Yamuna Nagar

5.1 According to the ld. Counsel, the expression used by JCIT as "Satisfied it is fit case" is not an appropriate approval for re-opening of the assessment. Similarly, he submitted that when judgement of the Hon'ble Supreme Court in the case of Shri Ghanshyam, HUF reported in 315 ITR 1 holds the field, then the AO ought to have not relied upon judgement of the Hon'ble Punjab & Haryana High Court in the case of CIT Vs Beer Singh, ITA 209 of 2004 and Shri Manjit Singh, HUF Karta Vs Union of India, CWP No. 15506 of 2013.

6. With regard to first fold of grievance that approval is not appropriate, he relied upon following decisions wherein Hon'ble Courts have held that if expression 'Yes I am satisfied' is being used, then it is not a proper satisfaction :

Sr. No.	Particulars
1	Brief submission
2	Copy of reason recorded and satisfaction for re assessment proceedings U/s 147 of income Tax act
3	CIT Vs Goyanka Lime & Chemicals Ltd MP high Court
4	ITAT Chandigarh bench in case of Shri Tek Chand ITA no 255/2020
5	DY CIT Vs Simlex Concrete Piles (India) Limited Supreme court
6	Telco dadji Dhackjee Vs DCIT ITAT Mumbai
7	Delta Air lines INC Vs ITO

6.1 The copies of above judgements have been placed on the record by the ld. counsel for the assessee.

7. Contrary to the above objection, ld. Sr.DR has filed written submissions and placed on record copies of the judgements in support of his contentions. The submissions made by him read as under :

Sub: Written Submission in the above case-reg.

During the course of hearing in respect of above mentioned appeal, in respect of the issue of validity of approval given by the Approving Authority under section 151 of the Income Tax Act, 1961,1 had relied upon following judgments/decisions. The copies of decision is enclosed.

1. HIGH COURT OF DELHI in the case of Principal Commissioner of Income-tax-6 v. Meenakshi Overseas Pvt. Ltd. [ITA 651/2015] (Copy Enclosed)

"Para 16. the Court finds that they are distinguishable in their application to the facts of the present case. It is not as if the Additional CIT here has merely appended his signature without specifically noting his approval. This is also not a case where a"Yes" rubber stamp has been used as was in the case of Central India Electric Supply Co. (supra). For the purpose of Section 151(1) of the Act, what the Court should be satisfied about is that the Additional CIT has recorded his satisfaction "on the reasons recorded by the Assessing Officer that it is a fit case for the issue of such notice". In the present case, the Court is satisfied that by recording in his own writing the words: "Yes, I am satisfied", the mandate of Section 151(1) of the Act as far as the approval of the Additional CIT was concerned, stood fulfilled. Additionally, by his letter dated 22 March, 2011 the Additional CIT confirmed and reiterated his approval already granted on the Form ITNS-10,"

Thus, in the above case, Honorable Delhi High Court has considered use of phrase 'Yes, I am satisfied as sufficient enough mandate for section 151(2) of the Income tax Act.

II. High Court of DELHI in the case of Experion Developers (P.) Ltd Vs. Assistant Commissioner of Income-tax f20201115 taxmann.com 338 (Delhi)

"42. Further, it is the case of the petitioner that there was no independent application of mind by the sanctioning authorities for according approval. Whilst it is the settled position in law that the sanctioning authority is required to apply his mind and the grant of approval must not be made in a mechanical manner, however, as noted by the Division Bench of the Calcutta High Court in Prem Chand Shaw (Jaiswal) v. Asstt. CIT [2016] 67 taxmann.com 339/238 Taxman 423/383 ITR 597, the mere fact that the sanctioning authority did not record his satisfaction in so many words would

not render invalid the sanction granted under section 151(2) when the reasons on the basis on the basis of which sanction was sought could not be assailed and even an appellate authority is not required to give reasons when it agrees with the finding unless statute or rules so requires. The decision in United Electrical Co. Pvt. Ltd. (supra), as relied upon by the petitioner is distinguishable from the present case, as in the said case, there was no material on record to provide foundation for Assessing Officer's reasons to believe. Therefore, it was held that the recording of the satisfaction by the AO was unjustified and without independent application of mind. However, there is no requirement to provide elaborate reasoning to arrive at a finding of approval when the Principal Commissioner is satisfied with the reasons recorded by the AO. Similarly, in Virbhadra Singh v. Deputy Commissioner Circle Shimla [2017] 88 taxmann.com 888 (HP) where the competent authority was in agreement with the reasons assigned by the Assessing Officer, so placed before him, which came to be considered and sanction accorded with proper application of mind, by recording "I am satisfied that it is a fit case for issuance of notice u/s 148", the issuance of notice under section 147/148 was held to be valid. 43. Therefore, it is clear that necessary sanction for issuance of notice under section 148, as required under section 151 had been obtained"

III. HIGH COURT OF DELHI in the case of Principal Commissioner of Income-tax-7 v. Pioneer Town Planners (P.) Ltd. [2024] 160 taxmann.com 652 (Delhi) (Copy Enclosed)

In this case, observation of Hon'ble Delhi High Court in Para 22 of the order again confirms the ration laid down in the case of Principal Commissioner of Income-tax-6 v. Meenakshi overseas Pvt Ltd. [ITA 651/2015].

In the other word Hon'ble High Court recognized that, the use of phrase "Yes I am satisfied " will fulfill the mandate of the section 151 of the IT act. The said Para 22 of the order is reproduced as under :-

> *"22. So far as the decision relied upon the Revenue in the case of Meenakshi Overseas Pvt. Ltd. is concerned, the same was a case where the satisfaction was specifically appended in the proforma in terms of the phrase- "Yes, I am satisfied". Moreover, paragraph 16 of the said decision distinguishes the approval granted using the expression "Yes" by citing Central India Electric Supply, which has already been discussed above. The decision in the case of Experion Developers P. Ltd. would also not come to the rescue of the Revenue as the same does not deal*
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> *with the expression used in the instant appeal at the time of granting of approval."*

IV. IT AT DELHI BENCH in the case of Karishna Devi V.ITO, ward-38(3) [ITA NO.6356/DEL/20191 (Copy Enclosed)

Vide aforesaid decision, the Hon'ble IT AT Delhi had occasion to discuss the requirement of Sec 151(2) of the l.T. Act from the point of view of remark of the approving authority while granting approval. Hon'ble IT AT decided the similar issue in favour of the Revenue after taking cognizance of decisions of Hon'ble High Court dealing with this issue as under:

Para 36.

> *"Further, it is the case of the Ld.AR that there was no independent application of mind by the sanctioning authorities for according approval. Whilst it is the settled*

position in law that the sanctioning authority is required to apply his mind and the grant of approval must not be made in a mechanical manner, however, as noted by the Division Bench of the Hon'ble Calcutta High Court in Prem Chand Shaw (Jaiswal) vs. ACIT 383 ITR 597, the mere fact that the sanctioning authority did not record his satisfaction in so many words would not render invalid the sanction granted under section 151(2) when the reasons on the basis on the basis of which sanction was sought could not be assailed and even an appellate authority is not required to give reasons when it agrees with the finding unless statute or rules so requires."

Para 40.

"Similar view has been expressed by the Hon'ble High Court of Delhi in the case Experion Developers Pvt. Ltd. Vs. ACIT 115 Taxman 338."

V. Further Hon'ble Patna High Court in Venky Steel (P.) Ltd. Vs. Commissioner of Income Tax [167 taxmann.com 601 (Copy enclosed)

The SLP filed by the assesse against this order has also been dismissed by Hon'ble Supreme Court of India. (Copy enclosed).

> *"Section 151, read with section 148, of the Income-tax Act, 1961 - Income escaping assessment - Sanction for issue of notice (Condition precedent) - Assessment year 2013-14 - Assessing Officer recorded reasons believing that income had escaped assessment - Commissioner recorded his satisfaction regarding reasons recorded by Assessing Office - Thereafter, reopening notice was issued - Assessee contended that approval was not recorded as per section 151 - It was noted that revenue had filed supplementary counter affidavit which spoke of approval of issue of reopening notice for relevant assessment year by Principal Commissioner and indicated reasons for belief entertained by Assessing Officer - Whether section 151 requires Principal Commissioner to be satisfied of reasons recorded by Assessing Officer that it was a fit case for issuance of such notice where notice was issued beyond expiry of 4 years - Held, yes - Whether thus, there was no requirement for Commissioner to record his own reasons and it would suffice that he recorded satisfaction regarding reasons recorded by Assessing Officer - Held, yes - Whether, therefore, impugned reopening notice issued against assessee was valid - Held, yes [Paras 11 and 13] [In favour of revenue]"*

4.3 As argued during the course of hearing it is evident from the Page No. 3 of paper book filed by the assessee that the satisfaction has been recorded by approving authority i.e. Joint Commissioner of Income Tax by making following noting/remarks in the prescribed pro-forma.

> ***"Satisfied it is a fit case"***

The above noting as been made by the approving authority on the basis of reasons recorded by the Assessing Officer. In view of ratio laid down in above mentioned decisions, the approval given by Joint Commissioner of Income Tax under section 151(2) of this Act is in accordance of provisions of the I.T. Act. and the issue raised by assessee is found to be decided in favor of revenue by the aforesaid decisions."

8. We have duly considered the rival contentions and gone through the record carefully. We find that assessee is relying upon the judgement of Hon'ble Madhya Pradesh High Court rendered in the case of S.Goyanka Lime & Chemicals Ltd. ITA 82 [2015] 56 taxmann.com 390/231 wherein it has been held that if expression "Yes I am satisfied" is being used, then it is to be construed as no application of mind by the competent authority while granting approval. However, in subsequent decisions, Hon'ble Delhi High Court has considered these aspects and elaborately held that it is not such a vital defect on the basis of which, re-opening could be quashed. It is an aspect wherein competent authority has exhibited its mind in a little bit different manner. The ld. DR has made reference to a large number of subsequent decisions which are of 2021, 2022 etc. Therefore, we do not find any force in the submission of ld. counsel for the assessee that approval is defective. We decide this first limb of objection against the assessee.

9. As far as information possessed by the AO vis-à-vis formation of belief that income has escaped assessment is concerned, we find that AO himself observed in the assessment order as well as in the

reasons that assessee has received interest and enhanced compensation u/s 28 of the Income Tax Act. The Hon'ble Supreme Court in the case of Shri Ghanshyam, HUF reported in 315 ITR page 1 has considered this aspect and held that interest received u/s 28 is not assessable as 'income from other sources', rather it is akin to the compensation received by the assessee. It is accretion in the value of the land of an assessee which was compulsorily acquired. In an identical case, circumstances, we have dealt with judgement of Hon'ble Supreme Court elaborately (ITA No. 1236/CHD/2016 – Shri Paras and Shubham Chaudhary). Our finding wherein we have taken note of the discussion made by Hon'ble Supreme Court elaborately reads as under :

> *"9. We have duly considered the rival contentions and gone through the record carefully. In the case of CIT Faridabad Vs Ghanshyam, HUF, Hon'ble Supreme Court has construed the meaning and interpreted Section 28 of Land Acquisition Act as well as Section 45(5) of the Income Tax Act and propounded that as per Section 28 of Land Acquisition Act, the interest is part of enhanced value of the land, hence to be treated at par with the compensation/enhanced compensation. We take note of Section 28 of the Land Acquisition Act which reads 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."*

9.1 The Hon'ble Supreme Court while discussing the Scheme of compensation under the Land Acquisition Act, 1894 has explained the meaning of this clause and we deem it appropriate to take note of the finding of the Hon'ble Supreme Court from paragraph No. 22 to 25, which reads as under :

> *"22. Section 23(1A) was introduced in the 1894 Act to mitigate the hardship caused to the owner of the land who is deprived of its enjoyment by taking possession from him and using it for public purpose, because of considerable delay in making the award and offering payment thereof [See : Assistant Commissioner, Gadag Sub-Division, Gadag v. Mathapathi Basavannewwa and others - AIR 1995 SC 2492]. To obviate such hardship, Section 23(1A) was introduced and the Legislature envisaged that the owner is entitled to 12% per annum additional amount on the market value for a period commencing on or from the date of publication of the notification under Section 4(1) of the 1894 Act upto the date of the award of the Collector or the date of taking possession of the land, whichever is earlier. The additional amount payable under Section 23(1A) of the 1894 Act is neither interest nor solatium. It is an additional compensation designed to compensate the owner of the land, for the rise in price during the pendency of the land acquisition proceedings. It is a measure to offset the effect of inflation and the continuous rise in the value of properties. [See: State of Tamil Nadu and others etc. v. L. Krishnan and others etc. - AIR 1996 SC 497]. Therefore, the amount payable under Section 23(1A) of the 1894 Act is an additional compensation in respect to the acquisition and has to be reckoned as part of the market value of the land. Sub-section (1A) of Section 23 was introduced by Land Acquisition (Amendment) Act, 1984. It provides that in every case the Court shall award an amount as additional compensation at the rate of 12% per annum on the market value of the land for the period commencing on and from the date of publication of the notification under Section 4(1) to the date of the award of the Collector or to the date of taking possession of the land, whichever is earlier. In other words sub- section (1A) of Section 23 provides for additional compensation. The said sub-section takes care of increase in the value at the rate of 12% per annum.*
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> *23. In addition to the market value of the land, as above provided, the Court shall in every case award a sum of 30% on such market value, in consideration of the compulsory nature of acquisition. This is under Section 23(2) of the 1894 Act. In short, Section 23(2) talks about solatium. Award of solatium is mandatory. Similarly, payment of additional amount under Section 23(1A) is mandatory. The award of interest under Section 28 of the 1894 Act is discretionary. Section 28 applies when the amount originally awarded has been paid or deposited and when the Court awards excess amount. In such cases interest on that excess alone is payable. Section 28 empowers the Court to award interest on the excess amount of compensation awarded by it over the amount awarded by the Collector. The*

compensation awarded by the Court includes the additional compensation awarded under Section 23(1A) and the solatium under Section 23(2) of the said Act. This award of interest is not mandatory but is left to the discretion of the Court. Section 28 is applicable only in respect of the excess amount, which is determined by the Court after a reference under Section 18 of the 1894 Act. Section 28 does not apply to cases of undue delay in making award for compensation [See: Ram Chand & others etc v. Union of India & Ors. - 1994(1) SCC 44]. In the case of Shree Vijay Cotton & Oil Mills Ltd. v. State of Gujarat - (1991) 1 SCC 262, this Court has held that interest is different from compensation.

24. 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 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.

25. It is clear from reading of Sections 23(1A), 23(2) as also Section 28 of the 1894 Act that additional benefits are available on the market value of the acquired lands under Section 23(1A) and 23(2) whereas Section 28 is available in respect of the entire compensation. It was held by the Constitution Bench of the Supreme Court in Sunder v. Union of India - (2001) 7 SCC 211, that "indeed the language of Section 28 does not even remotely refer to market value alone and in terms it talks of compensation or the sum equivalent thereto. Thus, interest awardable under Section 28, would include within its ambit both the market value and the statutory solatium. It would be thus evident that even the provisions of Section 28 authorise the grant of interest on solatium as well." Thus solatium means an integral part of compensation, interest would be payable on it. Section 34 postulates award of interest at 9% per annum from the date of taking possession only until it is paid or deposited. It is a mandatory provision. Basically Section 34 provides for payment of interest for delayed payment. Taxability of additional compensation and interest under Section 45(5) of the 1961 Act in the context of the provisions of L.A. Act, 1894"

10. Let us take into consideration the facts of the assessee's case. When the ld. Land Acquisition Collector announced the Award, bearing No. 12 dated 10.12.2002, he determined the market value @ Rs.6 lacs per acre and granted 30% solatium for compulsory acquisition of the land. This Rs.6 lacs has been enhanced by the Addl. District Judge on a reference u/s 18 of the Land Acquisition Act at Rs.440/- per sq.yd. and there are roughly 4850 sq.yard of land in an acre. If this rate is applied on the area, then

District Court granted compensation @ Rs.21,34,000/- per acre, plus statutory benefits i.e. Solatium, Interest etc. as against Rs.6 lacs granted by the Land Acquisition Collector. In order to compensate the assessee, interest u/s 28 has also been granted which provides that Land Acquisition Collector would pay interest on such excess compensation @ 9% per annum from the date it took possession of the land to the date of payment of such excess, thus on the difference of Rs.21,40,000/- minus (-) Rs.6 lacs, interest was required to be calculated @ 9% from the date of possession till the payment. The Hon'ble Supreme Court construed this interest u/s 28 of the Land Acquisition Act considered towards insufficiency of compensation in comparison of value of land. This interest u/s 28 is not for delay in making payment, rather to compensate a land owner qua lower compensation granted by the Land Acquisition Collector. Thus, the alleged interest u/s 28 granted to the assessee deserves to be treated as compensation and not simpliciter interest as construed by the Income Tax Department u/s 2(28A) of the Income Tax Act.

10.1 There is no dispute with regard to the fact that this amount is taxable in the year of receipt as contemplated in Section 45(5). This has also been decided by the Hon'ble Supreme Court in the case of Shri Ghanshyam, HUF in paragraph No. 29 to 36. Such finding of the Hon'ble Supreme Court read as under :

> *"29. From Section 45 it is clear that capital gains are not income accruing from day to day. It is deemed income which arises at a fixed point of time, viz, date of transfer. Section 45(5), newly inserted by the Finance Act, 1987, w.e.f. 1.4.88 and subsequently amended, retrospectively w.e.f. 1.4.88, by the Finance Act, 1991, enacts overriding provision and takes care of a situation -*
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> *where the capital gains arise from the transfer of a capital asset, being a transfer by way of compulsory acquisition and the compensation for such transfer stands enhanced in stages by any court, tribunal or authority. In such a situation, the capital gains so arising is, for and from assessment year 1988-89, has to be dealt with as under : -*
>
> *(i) the capital gains computed with respect to the compensation awarded in the first instance would be chargeable as Income under the head "Capital Gains" of the previous year in which such compensation or part thereof was first received; and*
>
> *(ii) amount by which compensation or consideration is enhanced or further enhanced by the court, tribunal or authority is to be Deemed Income chargeable under the head "Capital Gains" of the previous year in which such amount is received by the assessee.*
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> *30. For the said purpose, the cost of acquisition is to be taken as Nil [See: Explanation (i)]. Also, where the enhanced compensation is received by any person, other than the transferor by reason of the death of the transferor or for any reason, the amount of such additional compensation or additional consideration is to be deemed*

to be the income of the recipient of the previous year in which such amount is received by him.

31. Two aspects need to be highlighted. Firstly, Section 45(5) of the 1961 Act deals with transfer(s) by way of compulsory acquisition and not by way of transfers by way of sales etc. covered by Section 45(1) of the 1961 Act. Secondly, Section 45(5) of the 1961 Act talks about enhanced compensation or consideration which in terms of L.A. Act 1894 results in payment of additional compensation.

32. The issue to be decided before us - what is the meaning of the words "enhanced compensation/consideration" in Section 45(5)(b) of the 1961 Act? Will it cover "interest"? These questions also bring in the concept of the year of taxability.

33. It is to answer the above questions that we have analysed the provisions of Sections 23, 23(1A), 23(2), 28 and 34 of the 1894 Act. As discussed hereinabove, Section 23(1A) provides for additional amount. It takes care of increase in the value at the rate of 12 % per annum. Similarly, under Section 23(2) of the 1894 Act there is a provision for solatium which also represents part of enhanced compensation. Similarly, Section 28 empowers the court in its discretion to award interest on the excess amount of compensation over and above what is awarded by the Collector. It includes additional amount under Section 23(1A) and solatium under Section 23(2) of the said Act. Section 28 of the 1894 Act applies only in respect of the excess amount determined by the court after reference under Section 18 of the 1894 Act. It depends upon the claim, unlike interest under Section 34 which depends on undue delay in making the award. It is true that "interest" is not compensation. It is equally true that Section 45(5) of the 1961 Act refers to compensation. But as discussed hereinabove, we have to go by the provisions of the 1894 Act which awards "interest" both as an accretion in the value of the lands acquired and interest for undue delay. Interest under Section 28 unlike interest under Section 34 is an accretion to the value, hence it is a part of enhanced compensation or consideration which is not the case with interest under Section 34 of the 1894 Act. So also additional amount under Section 23(1A) and solatium under Section 23(2) of the 1961 Act forms part of enhanced compensation under Section 45(5)(b) of the 1961 Act. In fact, what we have stated hereinabove is reinforced by the newly inserted clause (c) in Section 45(5) by the Finance Act, 2003 w.e.f.1.4.2004. This newly added clause envisages a situation where in the assessment for any year,-

-the capital gain arising from the transfer of a capital asset is computed by taking the-

-compensation or consideration referred to in clause (a) of section 45(5) or, as the case may be,

-enhanced compensation or consideration referred to in clause (b) of section 45(5), and subsequently such compensation or consideration is reduced by any court, Tribunal or other authority.

34. In such a situation, such assessed capital gain of that year shall be recomputed by taking the compensation or consideration as so reduced by such court, Tribunal or other authority to be the full value of the consideration. For giving effect to such recomputation, the provisions of the newly inserted (w.e.f. 1.4.2004) section 155(16) by the Finance Act, 2003 (32 of 2003), have been enacted.

35. It was urged on behalf of the assessee that Section 45(5)(b) of the 1961 Act deals only with re-working, its object is not to convert the amount of enhanced compensation into deemed income on receipt. We find no merit in this argument. The scheme of Section 45(5) of the 1961 Act was inserted w.e.f. 1.4.88 as an overriding provision. As stated above, compensation under the L.A. Act, 1894, arises and is payable in multiple stages which does not happen in cases of transfers by sale etc. Hence, the legislature had to step in and say that as and when the assessee-claimant is in receipt of enhanced compensation it shall be treated as "deemed income" and taxed on receipt basis. Our above understanding is supported by insertion of clause (c) in Section 45(5) w.e.f. 1.4.04 and Section 155(16) which refers to a situation of a subsequent reduction by the Court, Tribunal or other authority and recomputation/amendment of the assessment order. Section 45(5) read as a whole (including clause "c") not only deals with re-working as urged on behalf of the assessee but also with the change in the full value of the consideration (computation) and since the enhanced compensation/consideration (including interest under Section 28 of the 1894 Act) becomes payable/paid under 1894 Act at different stages, the receipt of such enhanced compensation/consideration is to be taxed in the year of receipt subject to adjustment, if any, under Section 155(16) of the 1961 Act, later on. Hence, the year in which enhanced compensation is received is the year of taxability. Consequently, even in cases where pending appeal, the Court/Tribunal/Authority before which appeal is pending, permits the claimant to withdraw against security or otherwise the enhanced compensation (which is in dispute), the same is liable to be taxed under Section 45(5) of the 1961 Act. This is the scheme of Section 45(5) and Section 155(16) of the 1961 Act. We may clarify that even before the insertion of Section 45(5)(c) and Section 155(16) w.e.f. 1.4.04, the receipt of enhanced compensation under Section 45(5)(b) was taxable in the year of receipt which is only reinforced by insertion of clause (c) because the right to receive payment under the 1894 Act is not in doubt. It is important to note that compensation, including enhanced compensation/consideration under the 1894 Act, is based on the full value of property as on date of notification under Section 4 of that Act. When the Court/Tribunal directs payment of enhanced compensation under Section 23(1A), or Section 23(2) or

under Section 28 of the 1894 Act it is on the basis that award of Collector or the Court, under reference, has not compensated the owner for the full value of the property as on date of notification.

36. Having settled the controversy going on for last two decades, we are of the view that in this batch of cases which relate back to assessment years 1991-92 and 1992-93, possibly the proceedings under the L.A. Act 1894 would have ended. In number of cases we find that proceedings under the 1894 Act have been concluded and taxes have been paid. Therefore, by this judgment we have settled the law but we direct that since matters are decade old and since we are not aware of what has happened in Land Acquisition Act proceedings in pending appeals, the recomputation on the basis of our judgment herein, particularly in the context of type of interest under Section 28 vis-`-vis interest under Section 34, additional compensation under Section 23(1A) and solatium under Section 23(2) of the 1894 Act, would be extremely difficult after all these years, will not be done."

10.2 The Income Tax Department has also not disputed this aspect because AO is also taxing this amount on receipt basis, otherwise land of the assessee was acquired long back and the Additional District Judge has decided the issue on 28.02.2006.

10.3 The third fold of grievance is whether assessee is entitled for exemption u/s 10(37) of the Income Tax Act or not. We deem it appropriate to take note of Section 10(37) of the Act which reads as under :

"10[37) in the case of an assessee, being an individual or a Hindu undivided family, any income chargeable under the head "Capital gains" arising from the transfer of agricultural land, where—

(i)such land is situate in any area referred to in item (a) or item (b) of sub-clause (iii) of clause (14) of section 2;

(ii)such land, during the period of two years immediately preceding the date of transfer, was being used for agricultural purposes by such Hindu undivided family or individual or a parent of his;

(iii)such transfer is by way of compulsory acquisition under any law, or a transfer the consideration for which is determined or approved by the Central Government or the Reserve Bank of India;

(iv)such income has arisen from the compensation or consideration for such transfer received by such assessee on or after the 1st day of April, 2004.

Explanation.—For the purposes of this clause, the expression "compensation or consideration" includes the compensation or consideration enhanced or further enhanced by any court, Tribunal or other authority;

11. It was contended before us that Section 2(14) provides the definition of Capital Asset. It excluded agriculture land where agriculture activities

are being carried out. But if the agriculture land falls within the ambit of 8 Kms. of the Municipal Limit, as provided in the definition, then it would not be excluded from the ambit of Capital Asset and on transfer of such a capital asset, capital gain would be taxable in the hands of the assessee. The land of the assessee falls within the ambit of 8 Kms., therefore, on compulsory acquisition of this land, capital gain will be taxable upon the assessee. However, the compensation has been received by the assessee after incorporation of Section 10(37) of the Act, hence, assessee is entitled for the benefit of this Section and the alleged interest received by him u/s 28 of the Land Acquisition Act, 1894, which are treated at par with the enhanced compensation, is not to be charged for compensation. It will fall within the ambit of exemption provided u/s 10(37).

10. In the light of above, let us consider the facts of the present case. The scheme of Land Acquisition Act, 1894 would exhibit that land is to be acquired compulsorily for public purpose, namely, industrial/residential developments. The ld. Land Acquisition Collector would issue a Notification u/s 4 of the Land Acquisition Act exhibiting the details of proposed land which is to be acquired by him. Thereafter, he would invite objections of the land owners, if any, qua such proposed land for acquisition. Such objections are to be filed u/s 5 and 5A of the Land Acquisition Act. These objections are to be disposed of by the Collector and he will determine the details of acquired land u/s 6. Thereafter, he will announce an award as per Section 9 of the Land Acquisition Act. The compensation awarded by him can be disputed by a land owner by filing a Reference u/s 18 of the Land Acquisition Act and such Reference would be transmitted for adjudication to an

Additional District Judge designated for this purpose. In this case, a reference to the Civil Court was made in 2007 as Reference No.25 of 2007 as noticed by the AO in the assessment order. It means the land would have been acquired prior to that. The AO has categorically observed that enhanced compensation and interest thereon has been received u/s 28 of the Land Acquisition Act. These situations have been dealt with by us in the case of Shri Paras and Shubham Chaudhary (supra) wherein on the strength of Hon'ble Supreme Court decision, this Tribunal has held that interest received u/s 28 of the Land Acquisition Act is not an income assessable as 'income from other sources', rather it is a compensation granted for compulsory acquisition of land. The Hon'ble Supreme Court has held that only interest u/s 34 of the Land Acquisition Act would be taxable. In other words, the interest received by the assessee is not for delayed payment of compensation, rather this is accretion in the value of land. Therefore, we are of the view that there is no information with the AO which could authorize him to form a belief that income has escaped income. He has misread the judgement of Hon'ble Supreme Court in the case of Shri Ghanshyam, HUF and

unnecessarily reopened the assessment. Accordingly, we quash the re-opening of assessment.

11. Since we have quashed the re-opening of assessment on merit in the absence of any tangible information possessed by the AO exhibiting escapement of income, therefore, we do not deem it necessary to deal with the issue on merit, which otherwise covered by our above observation. Accordingly, we allow the appeal of the assessee.

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

Order pronounced on 20th January, 2026.

Sd/-	Sd/-
(KRINWANT SAHAY)	**(RAJPAL YADAV)**
ACCOUNTANT MEMBER	**VICE PRESIDENT**

"Poonam"

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

सहायक पंजीकार/ Assistant Registrar