



**CBDT has issued a clarificatory circular for exempting capital gain on acquisition of non-agricultural lands by Govt. Further there are conflicting judgments on taxation of interest on compensation for acquisitions of land. The issues arising out of the same are discussed hereunder.**

**1. Provisions under The Income Tax Act, 1961**

Sec. 10(37) was inserted by Finance (No.2) Act 2004 w. e. f. 1-4-2005 i.e. AY 2005-06 and onwards. The section reads as under-

*In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included—*

*(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 situated 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;*

Sec.2 (14) (iii) reads as under-

*Sec.2- In this Act, unless the context otherwise requires*

*(14) “capital asset” means—*

*(iii) agricultural land in India, not being land situate—*

*(a) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand; or*

*(b) in any area within the distance, measured aerially, —*

*(I) not being more than two kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten thousand but not exceeding one lakh; or*

*(II) not being more than six kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than one lakh but not exceeding ten lakh; or*

*(III) not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten lakh.*

*Explanation—For the purposes of this sub-clause, “population” means the population according to the last preceding census of which the relevant figures have been published before the first day of the previous year*

Circular No. 5, July 15, 2005, 276 ITR (St.) 151, explains the background and intention of the Govt. as follows-

*Providing for exemption on capital gains arising from compulsory acquisition of agricultural land situated within specified urban limits.*

*Section 10 of the Income-tax Act, 1961, relates to incomes which do not form part of total income. In order to provide relief to the farmers, a new clause (37) has been inserted in section 10 providing exemption on capital gains arising to a Hindu undivided family or to an individual from the transfer of agricultural land, being capital asset within the meaning of clause (14) of section 2, by way of compulsory acquisition under any law or under a transfer of such land, the consideration for which is determined or approved by the Central Government or the Reserve Bank of India. Such exemption shall be available where the compensation/enhanced compensation/enhanced consideration or consideration has been received on or after 1st April, 2004, and 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.*

This amendment takes effect from 1st April, 2005 and applies in relation to the assessment year 2005-06 and subsequent years. [Section 5(h) of the Finance (No.2) Act 2004] - Circular No. 5, July 15, 2005, 276 ITR (St.) 151

The exemption was much needed especially on the background of ever expanding residential areas of any town or city encroaching the agricultural land area on one hand and the need to raise infrastructures in view of increasing urban population on the other. This was a result of opening up of the Indian economy in view of globalisation. The agricultural land beyond the specified limits was always exempt from the capital gain.

But, the urban agricultural land was taxable and the compulsory acquisition posed hardship and discrimination for the owners. The wordings of the section are plain, simple and straight. Hence, not much litigation arose in the same, except the issues of whether the land was agricultural or not and interest on enhanced compensation etc.

## **2. The Land Acquisition Act 1894 (LA Act)**

This law, as the year denotes, is quite old and was enacted in the British era. Except this Act, there was no national law on the issue of acquisitions and corresponding compensations. As the need to acquire more and more land for public purpose arose, the hue and cry and heightened public concern on the Land acquisitions increased tremendously. It is an apathy of the Central Govt. to enact laws for modern India which leaves the people of India bleeding over many issues of their livelihood. The British rulers had enacted the law naturally in favour of the establishments. Even after many amendments the law more or less remained the same.

In 1956 the National Highway Act was brought on the statute books. However, it took us 119 years after the Land Acquisition Act and 66 years after the freedom, to enact a comprehensive national law on the subject. In 2013 The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 was enacted. (RFCTLRR Act).

This Act is a comprehensive Act taking care not only of the acquisition and fair compensation but, the most important rehabilitation and resettlement after the acquisitions. The later aspect was always neglected and there was no law to protect the land owners displaced due to acquisitions of their lands.

## **3. Provisions under RFCTLRR Act, 2013**

This Act is a special Act and as per established principles of law, overrides any general law. The Act replaced the Land Acquisition Act, 1894, a nearly 120-year-old law enacted during British rule.

Sec. 96 of the RFCTLRR Act, inter alia provides that income-tax shall not be levied on any award or agreement made (except those made u/s 46- which specifies the compensation decided by other than RBI and/or Cent. Govt.) under RFCTLRR Act. It reads as under-

**96. Exemption from Income-tax, stamp duty and fees**

*No income tax or stamp duty shall be levied on any award or agreement made under this Act, except u/s 40 and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.*

Thus, the special law on the subject does not make any distinction between the compensation for acquisition of an agricultural land and any other land. All are exempted from income tax, stamp duty and any fees for any copy under that act.

The exemption under this new law brought both agricultural and other land owners at par, as far as income tax was concerned.

**4. Circular no. 36 of 2016**

The issues under Income Tax Act, 1961 arose due to the discrimination under the Income Tax Act whereas under the new RFCTLRR Act which flatly exempts every compensation from income tax without any discrimination.

The issue was conveyed to the authorities under the Income Tax Act. On recognising the discrimination created under the Income Tax Act, 1961, a clarificatory circular no. 36 of 2016, dt.25-10-2016 (F. No. 225/88/2016-ITA.II) is issued. Para 3 of the circular reads as under-

*As no distinction has been made between compensation received for compulsory acquisition of agricultural land and non-agricultural land in the matter of providing exemption from income-tax under the RFCTLARR Act, the exemption provided under section 96 of the RFCTLARR Act is wider in scope than the tax-exemption provided under the existing provisions of Income-tax Act, 1961. This has created uncertainty in the matter of taxability of compensation received on compulsory acquisition of land, especially those relating to acquisition of non-agricultural land. The matter has been examined by the Board and it is hereby clarified that compensation received in respect of award or agreement which has been exempted from levy of income-tax vide section 96 of the RFCTLARR Act shall also not be taxable under the provisions of Income-tax Act, 1961 even if there is no specific provision of exemption for such compensation in the Income-tax Act, 1961.*

Thus, even if there is no specific provision under the Income Tax Act, 1961, the capital gain arising out of compensation under section 96 of the RFCTLARR Act shall be exempt.

## **5. Issues arising after the Circular 36 of 2016**

First issue arises for the applicability. It is obvious that the circular is clarificatory in nature and hence, has to be treated retrospective in effect. This means the exemption is applicable from the date on which the new law RFCTLRR Act became effective i.e. 1-4-2014. We leave this issue in discussion limited to this point only.

Come to returns filed treating the capital gain as taxable and taxes paid on the same. In a live case the return was filed before the issue of circular i.e. before 25-10-2016 for the AY 2016-17. The return was a belated return i.e. filed beyond the due date specified u/s 139(1) but within the time permissible u/s 139(4).

The assessee came to know about the exemption and filed a revised return. The CPC did not process the same. In reply to eNivaran grievance, it replied that,

*“Dear Taxpayer, original return has been filed after the due date u/s 139(1). Hence, revised return is treated as invalid as per the Income Tax Act.”*

Noting this the assessee tried to upload a rectification return. This was blocked by the e-filing portal giving reason,

*“Gross Total Income does not match with original filed.”*

Let us keep the issues arising for denial of the revised return processing and blockage of rectified return aside. But, this is another glaring example of how the system is denying legal rights of an assessee.

It is obvious that, all the assessees, where the capital gain is treated taxable for the compensation received for acquisition of land other than the agricultural lands, are legally eligible to get refund of excess tax paid.

In all such cases it is a need that, the e-filing system has to provide a mechanism, without going to revision or appeal. Nobody can deny that this is possible.

The situation is hit by two basic principles, one - unjust enriching and two- no tax can be collected without the authority of the law. This prohibits the revenue to collect any tax on the exempt income and if collected the same has to be refunded.

## **6. Clarifications issued under the RFCTLRR Act**

To complete the discussion an important and major development under this new act, although incidental, must be discussed.

The RFCTLRR Act came to the statute books in 2013 making it applicable w. e. f. 1-1-2014.

An issue arose about the cases under the National Highway Act 1956. The award is normally so low under that Act that practically every case travels the corridors of various courts agitating the same.

Section 105 of the RFCTLRR Act initially excluded 13 Acts specified in Schedule IV of that act, to which the new act will not apply. The National Highway Act, 1956 was mentioned at Sr. No. 7 of Sch. IV and was excluded.

However, Sec. 105(3) states that Central Govt. shall by notification within 1 year from the date of commencement of this Act, direct that any of the provisions of the new act relating to determination of compensation in accordance with the First Schedule of the new act and resettlement as specified in Sch. II and III being beneficial to affected families shall apply.

The Act became applicable w.e.f. 1-1-2014 and before 31-12-2014 the notifications had to be issued to set right the anomalies created due to the Fourth schedule. This was done through various ordinances and ultimately an order is issued u/s 113(1) of the RFCTLRR Act 2013.

Ministry of Rural Development of the Central Govt. has issued the order dt. 28-8-2015 in exercise of powers under section 113(1) of the new act and published in The Gazette of India, Regd. No. D.L. 33004/99, Extraordinary Part-II-Section3-Subsection-(ii) No. 1834, order no. S.O. 2368(E) dt. 28-8-2015.

Relevant para provides that –

*“The provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to all cases of land acquisition under the enactments specified in Fourth Schedule to the said Act.”*

The order dt. 28-8-2015 has cleared the clouds and has made the new act applicable to all the cases under all the laws mentioned in Schedule IV of that act including the National Highway Act, 1956. This means for all the pending cases which are decided or are going to be decided will also get the benefit of compensation at the rates specified in the new RFCTLRR Act. The order has in effect nullified the Schedule IV of the said act, making all the compensations for acquisition of land subject to the new law.

Consequently, this also means that the exemption given by circular no. 36 of 2016 to the capital gain on compensation for acquisition of non-agricultural lands under all those Acts is also extended without any ambiguity, subject to fulfilment of conditions.

However, the order is not applicable to the cases in which compensation has reached finality on or before 31-12-2014.

In many cases these orders are not brought to the notice of the various revenue and appellate authorities and income tax is collected illegally when the income itself is fully exempt.

## **7. Taxability of Interest on compensation**

### **7.1 Background**

Government on the one hand extends exemptions especially for the cause of a national interest. A look to the list of such exemptions conveys the same explicitly. But, at the same time the revenue tries to snatch a share from the exemptions given to the citizens.

The capital incentive (popularly known as subsidy) given to promote industrial growth in rural and industrially backward areas, is a glaring example. The incentive received is a Capital Receipt and was rightly exempt from income tax. The issue was settled with an Apex Court judgment (P.J. Chemicals, 210 ITR 830). But, the revenue twisted it, first by a provision to reduce the same from the cost of the assets, and consequently by inserting the provisions to make it completely taxable.

Similar turns are taking place in the story of compensations given to the citizens for acquiring their land by Govt. for various purposes.

Sec. 10(37) as seen in the foregoing discussion, clearly exempts the compensation from income tax. Section 96 of RFCTLRR Act 2013 specifically provides to exempt the compensation from Income Tax Act, 1961. This Act is now applicable to all the Acts mentioned in its Fourth Schedule. (Annexed at the end of this article for ready reference.)

However, there are various amendments inserted in the Income Tax Act, 1961 which make some portion of the compensation taxable. The present author personally feels that the revenue is slowly moving to take its bites from the compensation given to the citizens.

### **7.2 The settled position**

Two issues were debated-

- i) the year of taxability of compensation especially when the same is received in multiple stages due to the disputes in rate of compensation enhanced/reduced by various authorities; and
- ii) taxability of two types of interests received and what is included in the term compensation for the purpose of capital gain.

Hon. Supreme Court has decided both the issues as follows-

In Rama Bai vs CIT, (1990) 181 ITR 400 (SC), dt. 8/11/1989, case of AY 1967-68-69, it is held that -

*arrears of interest computed on delayed or enhanced compensation shall be taxable on accrual basis.*

This settled the issue of year of taxability of interest.

The second issue arose from the fact that LA Act 1894 provided two types of interest, hence, what constitutes compensation to be taxed under Capital gain. In Ghanshyam (HUF) (315 ITR 1), dt. 16/07/2009, case of AY 1999-2000, it is settled by Hon. Supreme Court that-

*24. To sum up, interest is different from compensation. However, interest paid on the excess amount under s. 28 of the 1894 Act depends upon a claim by the person whose land is acquired whereas interest under s. 34 is for delay in making payment. This vital difference needs to be kept in mind in deciding this matter. Interest under s. 28 is part of the amount of compensation whereas interest under s. 34 is only for delay in making payment after the compensation amount is determined. Interest under s. 28 is a part of enhanced value of the land which is not the case in the matter of payment of interest under s. 34.*

Thus, it is settled that the interest u/s 28 of the LA Act is part of the compensation and is accordingly chargeable to tax under the head of capital gain and interest u/s 34 is only for delay and is accordingly not chargeable under the head of capital gain.

### **7.3 The amendments by Finance (No.2) Act of 2009**

However, year of taxability due the changes in compensation by various authorities in litigation under the LA Act posed a problem and the assessments had to be rectified year after year at every enhancement. Amendments were carried out to mitigate the hardships posed and Finance (No. 2) Act, 2009 (33 of 2009), s. 26(b) (w.e.f. 1-4-2010) inserted sec. 145B, amended 145A and inserted clause (viii) in section 56(2) and 145B and amended 145A. 56(2) (viii) reads as -

*(viii) income by way of interest received on compensation or on enhanced compensation referred to in sub-section (1) of section 145B.*

The underlined words were substituted for "clause (b) of section 145A", by the Finance (No. 2) Act, 2019 (23 of 2019), s. 21(ii) (w. r. e. f. 1-4-2017) consequent to simultaneous insertion of Sec. 145B in the statute to specify the year of taxability of the interest.

CBDT issued Circular No. 5 of 2010, dt.03/06/2010 to clarify the amendments as under-

***"46. Rationalizing the provisions of taxation of interest received on delayed compensation or on enhanced compensation.***

***46.1*** *The existing provisions of Income Tax Act provide that income chargeable under the head "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. Further, the Hon'ble Supreme Court in the case of Rama Bai vs. CIT (181 ITR 400) 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.*

**46.2** *With a view to mitigate the hardship, section 145A is amended to provide that the interest received by an assessee on compensation or enhanced compensation shall be deemed to be his income for the year in which it was received, irrespective of the method of accounting followed by the assessee.*

**46.3** *Further, clause (viii) is inserted in the sub-section (2) of the section 56 so as to provide that income by way of 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.*

At the time of issue of the circular both the judgments of Hon. Supreme Court had been delivered and it cannot be said that the CBDT was oblivion of the same. Hence, it has to be assumed that the cognizance is taken while issuing the circular. The circular mentions about the Rama Bai's case only and there is no mention of Ghanshyam's case. Obviously the position settled of interpretation of the word "compensation" is not disturbed by any amendment or the circular. Hence, it is obvious that the position of interpretation settled by both the above decisions of Hon. Supreme Court has remained settled even after insertion of cl. (viii) in Sec. 56(2). There is no amendment in the LA Act w.r.t. both the interests in question. Not only this but the new RFCTLR Act 2013 contains similar sections 72 and 80 respectively for sec. 28 and 34 of the LA Act 1894.

Various High Courts and Tribunals and lower authorities have, and rightly so, followed Hon. Apex court's verdict in Ghanshyam's case.

#### **7.4 Dispute due to contrary judgment of Hon. P & H High court**

The twist came by the decisions of Hon. Punjab & Haryana High Court – first in case of Manjet Singh (HUF) Karta Manjeet Singh vs. UOI, (2016) 237 TAXMAN 0116 (P&H), dt.14/01/2014, AY 2010-11; and in Mahender Pal Narang (423 ITR 13), dt.19/02/2020, AY 2007-08 and 2008-09, where the interest income is decided to be taxable u/s 56(2)(viii). Further the SLP against Mahender Pal Narang's judgment is dismissed by Hon. Supreme Court without any speaking order.

Surprisingly the ratio and case of Ghanshyam (HUF) was brought to the notice of the Hon. P & H High Court but even then the same was not followed.

## **7.5 Decisions after Hon. P & H High Court**

After Hon. P & H High Court's judgments, there are catena of judgments and orders where the principle settled in the case of Ghanshyam (HUF) is followed even though Hon. P & H high court's judgments were brought to the notice by the Dept.

Hon. Gujarat High Court Movaliya Bhikhubhai Balabhai v. ITO (TDS) (383 ITR 343), dt.31/03/2016 held that the interest income is exempt after the insertion of cl. (viii) in Sec. 56(2). This was brought to the notice of Hon. P & H High court in the case of Mahender Pal Narang.

The issue involves as to whether in respect of interest income u/s 28 of the LA Act 1894, Sec. 56(2)(viii) overrides Sec. 10(37)? The answer is no as the income travels u/s 56 only if it is not to be excluded from total income and not covered under any other heads of income.

Hon. Supreme Court has made distinction between interest u/s 28 and Sec. 34 of the LA Act, 1894. From the reported facts in the case before Hon. P & H High court, it is clear that the land is acquired under the LA Act, 1894, and the assessee had stated that the interest is u/s 28 of that Act. This fact is nowhere disputed by the Dept. also.

The interest u/s 28 of the LA Act is part of the compensation only and exempt being part of accretion to the value of the land acquired. Thus it forms part of the compensation and is taxable u/s 45 and not u/s 56.

Hon. Supreme Court has itself reiterated the principles pronounced in case of Ghanshyam (HUF) in its later decision in case of

CIT vs. Govindbhai Mamaiya, (2014) 367 ITR 0498 (SC), dt. 04/09/2014

CIT vs. Chet Ram, (2018) 400 ITR 0023 (SC), dt. 12/09/2017

UOI & Ors vs. Hari Singh and Ors., (2018) 302 CTR 0458 (SC), dt. 15/09/2017.

In the following cases the judgments of Hon. P & H High court are considered but are not followed with detailed discussions and the principles set by Hon. Apex Court in Ghanshyam (HUF) are followed –

Dnyanoba Shajirao Jadhav vs. ITO, (2018) 169 ITD 0291 (Pune), 29/01/2019 [ P & H not referred]

Sh. Satbir & Ors vs. ITO, ITA Nos.1413 to 1431/CHD/2016, and 77 to 82/CHD/2017, A.Y.: 2007-08 to 2009-10, dt. 09/07/2018

Sh. Varinder Singh vs. ACIT, ITA No.399/CHD/2016, AY 2011-12, dt. 13/12/2018

BALDEV SINGH vs. ITO, (2019) 176 ITD 0001 (Delhi-Trib), AY 2011-12, dt.08/03/2019

ITO vs. Sh. Dhanender Kumar HUF, ITA No.1591/Chd/2018, AY 2010-11, dt. 30/09/2019

Ram Kishan vs ITO, ITA No. 5391/Del/2017, AY 2014-15, dt. 02/12/2020.

Rupesh Rashmikant Shah vs UOI & Ors. (2019) 417 ITR 0169 (Bom), AY 2016-17, dt.08/08/2019.

## **7.6 Interest on compensation - Conclusion**

The case before Hon. Bombay High court (417 ITR 0169) was of a motor accident claim and it has followed the principles set by Hon. Supreme Court in Ghanshyam (HUF) case, and after analysing the case has held that,

*“49. We may apply these conclusions to the relevant provisions contained in the Income Tax Act. Section 56 pertains to income from other sources. Sub-section (1) of section 56 provides that income of every kind which is not to be excluded from the total income under the Act shall be chargeable to income tax under the head of income from other sources, if it is not chargeable to income tax under any of the heads specified in section 14, items (A) to (E). Section 56(1) of the Act thus, makes a residuary provision for charging income of every kind, not falling under items (A) to (E) of section 14, to be charged as income from other sources. Sub-section (2) of section 56 provides that in particular and without prejudice to the generality of the provisions of sub-section (1), the incomes contained in the following clauses shall be chargeable to income tax under the head income from other sources. Clause (viii) inserted by the Finance Act, 2009 w. e. f. 1.4.2010 sub-section (2) of section 56 pertains to income by way of interest received on compensation or enhanced compensation referred to in clause (b) of section 145A.*

*50. Before proceeding to analyse clause (b) of section 145A, we may note that section 56 of the Act per se does not make a particular receipt chargeable to tax if it otherwise does not happen to be income. This section merely provides for taxing an income not falling under the other heads as income from other sources. Sub-section (2) of section 56 when it lists various incomes, which would be treated as income from other sources, merely amplifies this purpose. Therefore, clause (viii) of sub-section (2) of section 56 by itself would not make the receipt of interest on compensation chargeable to tax as income from other sources, if such receipt is not income.”*

Hon. ITAT, Delhi bench in Ram Sharan’s case (ITA No. 5391/Del/2017) has analysed the issue in depth and has observed in para 8 that,

*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 land owners 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 137 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 Rs. 24,207,223 is not taxable.*

Hon. Supreme Court has in the case of CIT vs Vegetable Products Ltd., (1973) 88 ITR 0192 (SC) while interpreting a penal provision has observed that -

*“...the duty of the Court is to read the section, understand its language and give effect to the same. If the language is plain, the fact that the consequence of giving effect to it may lead to some absurd result is not a factor to be taken into account in interpreting a provision. It is for the legislature to step in and remove the absurdity. On the other hand, if two reasonable constructions of a taxing provision are possible, that construction which favours the assessee must be adopted. This is a well-accepted rule of construction recognised by this Court in several of its decisions.”*

Very important observations of Hon. Apex Court in the case of Ghanshyam (HUF) were -

*“35. 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 the date of notification under Section 4 of that Act. When the court/tribunal directs payment of enhanced compensation under Section 23(1-A), or Section 23(2) or under Section 28 of the 1894 Act, it is on the basis that award of the Collector or the court, under reference, has not compensated the owner for the full value of the property as on date of notification.”*

This is very important as it decides the taxability of the amount but unfortunately not discussed in the case before Hon. P & H High court (423 ITR 13). Further Hon. P & H High Court has stated in para 10 that –

*10. In view of the amendments, the decision of Apex Court in Ghanshyam's case (supra) does not come to the rescue of the petitioner to claim that interest received under Section 28 of the 1894 Act is to be treated as compensation and to be dealt with under "Capital gains". The fact that there is no amendment carried out under Section 10(37) of the 1961 Act will not change the position. Section 10 deals with deductions and sub-section (37) thereof deals with capital gains arising from transfer of agricultural land, it nowhere provides as to what is to be included under the head "Capital gains". The argument raised is not well founded.*

With due respect, it must be stated that the observation is wrong, as the case before Hon. Supreme Court was with that specific question. Not only this but the Hon. Apex court has discussed the issue with threadbare analysis leaving no point undiscussed. The question before Hon. Supreme Court was very specific as follows-

*32. The issue to be decided before us - what is the meaning of the words "enhanced compensation/consideration" in s. 45(5)(b) of the 1961 Act? Will it cover "interest"?*

Hence, the observations of Hon. P & H High Court as underlined above with due respect are not correct.

Under these facts about the laws regarding acquisition of land and its compensation, the interest received u/s 28 of LA Act 1894 is a part of compensation.

## Annexure

### Schedule IV to the RFCTLRR Act 2013

The Fourth Schedule- (See Section 106)

List of Enactments Regulating Land Acquisition and Rehabilitation and Resettlement

1. The Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958).
2. The Atomic Energy Act, 1962 (33 of 1962).
3. The Damodar Valley Corporation Act, 1948 (14 of 1948).
4. The Indian Tramways Act, 1886 (11 of 1886).
5. The Land Acquisition (Mines) Act, 1885 (18 of 1885).
6. The Metro Railways (Construction of Works) Act, 1978 (33 of 1978).
7. The National Highways Act, 1956 (48 of 1956).
8. The Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962).
9. The Requisitioning and Acquisition of Immovable Property Act, 1952 (30 of 1952).
10. The Resettlement of Displaced Persons (Land Acquisition) Act, 1948 (60 of 1948).
11. The Coal Bearing Areas Acquisition and Development Act, 1957 (20 of 1957).
12. The Electricity Act, 2003 (36 of 2003).
13. The Railways Act, 1989 (24 of 1989).