



2025:KER:31055

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE EASWARAN S.

FRIDAY, THE 11TH DAY OF APRIL 2025/21ST CHAITHRA, 1947

I.T.A.NO.32 OF 2023

AGAINST THE JUDGMENT DATED 30.03.2023 IN I.T.A.NO.614/COCH/2022
OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, COCHIN

APPELLANT(S)/APPELLANT/ASSESSEE:

SHRI. ANVAR ALI POOLAKKODAN
AGED 49 YEARS
POOLAKKODAN HOUSE, RANDATHANI P.O,
MALAPPURAM DISTRICT, PIN - 676510

BY ADV.SRI.ANIL D. NAIR (SR.)
BY ADV.SRI.AADITYA NAIR
BY ADV.SMT.TELMA RAJU

RESPONDENT(S)/RESPONDENT/REVENUE:

THE INCOME TAX OFFICER
WARD-1, & TPS, TIRUR, PIN - 676101

BY SRI.P.G.JAYASHANKAR, STANDING COUNSEL, INCOME TAX
DEPARTMENT
BY ADV.SRI.KEERTHIVAS GIRI

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON
07.04.2025 ALONG WITH I.T.A.NO.60/2024, THE COURT ON
11.04.2025 DELIVERED THE FOLLOWING:



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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE EASWARAN S.

FRIDAY, THE 11TH DAY OF APRIL 2025/21ST CHAITHRA, 1947

I.T.A.NO.60 OF 2024

AGAINST THE ORDER DATED 19.04.2024 IN I.T.A.NO.1006/COCH/2022
OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH
ORDER DATED 26.10.022 OF CIT(A), KOZHIKODE 10011/2018-19

APPELLANT(S)/APPELLANT/APPELLANT/ASSESSEE:

ABDUL AZEEZ POOLAKKODAN
POOLAKKODAN HOUSE, RANDATHANI P.O. MALAPPURAM,
PIN - 676510

BY ADV.SRI.ANIL D. NAIR, (SR.)
BY ADV.SRI.ADITYA UNNIKRIISHNAN
BY ADV.SMT.BINISHA BABY
BY ADV.SMT.SARITHA K.S.

RESPONDENT(S)/RESPONDENT/RESPONDENT/REVENUE:

THE INCOME TAX OFFICER,
WARD-1, THARIF BAZAR, OPP. TOWN HALL. TIRUR,
PIN - 676101

BY SRI.P.G.JAYASHANKAR, STANDING COUNSEL, INCOME TAX
DEPARTMENT
BY ADV.SRI.KEERTHIVAS GIRI

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON
07.04.2025 ALONG WITH I.T.A.NO.32/2023, THE COURT ON
11.04.2025 DELIVERED THE FOLLOWING:



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"C.R."

J U D G M E N T

Dr. A.K. Jayasankaran Nambiar, J.

As these two Income Tax Appeals involve a common issue with regard to the head of income under which interest amounts, paid on the delayed payment of compensation or enhanced compensation for compulsory acquisition of agricultural land, is to be classified, they are taken up together for consideration and disposed by this common judgment.

2. I.T.A.No.32 of 2023 is preferred against the order dated 30.03.2023 of the Income Tax Appellate Tribunal that remands the issue of taxability of such interest to the Assessing Officer with a direction that while the interest amounts received @ 9% p.a will qualify for exclusion from total income under Section 10 (37) of the Income Tax Act [hereinafter referred to as the "I.T. Act"], the interest amounts received @ 15% p.a will be assessable as 'Income from other sources' under Section 56 (2)(viii) of the I.T. Act.

3. I.T.A.No.60 of 2024 is preferred against the order dated 19.04.2024 of the Income Tax Appellate Tribunal that dismissed an appeal preferred by the appellant against an order of the Assessing



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Officer under Section 154 of the I.T. Act whereby he had dismissed a rectification application filed by the assessee and held that the interest received by the assessee on the enhanced compensation for the agricultural land acquired from him would be taxable under the head 'Income from other sources' under Section 56 (2)(viii) of the I.T. Act.

4. The assessees in both the appeals had received compensation as fixed by the Land Acquisition Officer [LAO] for the agricultural lands acquired from them by the State. Immediately thereafter, they had approached the Reference court under the Land Acquisition Act, 1894 [hereinafter referred to as the "LAA"] seeking enhancement of the compensation awarded to them by the LAO. The Reference Court granted them enhanced compensation and also directed interest to be paid on the enhanced compensation in accordance with Section 28 of the LAA. While the assessees returned the income received by way of enhanced compensation and interest as income under the head of 'Capital Gains', they also claimed the benefit of Section 10 (37) whereby the said income would stand excluded from the total income for the purposes of assessment under the I.T. Act. In the orders of the Appellate Tribunal impugned in these appeals, the Tribunal has taken the stand that while the compensation and enhanced compensation amounts received by the assessees would merit classification as 'Capital Gains' for the purposes of assessment under the I.T. Act, the interest amounts paid to the assessees for the delayed payment of compensation or enhanced compensation would



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merit classification only as 'Income from other sources' and therefore would not get the benefit of Section 10 (37) of the I.T. Act. In fact, the impugned order in I.T.A.No.32 of 2023 makes a distinction between interest received @ 9% and interest received @ 15% and states that while the former would be classifiable as 'Capital Gains' and obtain the benefit under Section 10 (37) of the I.T. Act, the latter would not. The impugned order in I.T.A.No.60 of 2024 however takes the view that, after the amendment of Section 56 (2) of the I.T. Act w.e.f 01.04.2010, all interest amounts received for delayed payment of compensation under the LAA will merit classification only as 'Income from other sources' and hence the said amounts will not get the benefit of Section 10 (37) of the I.T. Act.

5. In the appeals before us, the appellants raise the following substantial questions of law:

- i. In the facts and circumstances of the case, ought not the Tribunal have allowed the claim of exemption on entire additional compensation received as the original compensation received was found to be entitled for exemption under Section 10(37) of the Act.
- ii. In the facts and circumstances of the case, ought not the Tribunal have allowed the entire additional compensation received by the appellant including 9% interest received and 15% interest received and one received under Section 28 of the Land Acquisition Act, more so in view of certificate issued by the learned Tahsildar.
- iii. In the facts and circumstances of the case, ought not the Tribunal have allowed the application filed under Section 154 of the Act more so, when the several High Court have taken a view in consonance with the Application filed by the Appellant.

6. We have heard the learned senior counsel Sri. Anil D. Nair, assisted by Adv.Sri.Aaditya Nair for the appellants in these



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appeals and Sri.P.G.Jayashankar, the learned Standing Counsel for the Income Tax Department.

7. On a consideration of the rival submissions and after perusing the precedents relied upon by the learned counsel, we feel that a discussion of the issue must be preceded by an examination of the relevant statutory provisions under the I.T. Act.

"Section 2(28 A):

Definitions.

2. In this Act, unless the context otherwise requires,—

(28A) "interest" means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) and includes any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised;

Section 10(37):

Incomes not included in total income.—

10. 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 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;



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Section 45(5):

45. Capital gains.

(5) Notwithstanding anything contained in sub-section (1), where the capital gain arises from the transfer of a capital asset, being a transfer by way of compulsory acquisition under any law, or a transfer the consideration for which was determined or approved by the Central Government or the Reserve Bank of India, and the compensation or the consideration for such transfer is enhanced or further enhanced by any court, Tribunal or other authority, the capital gain shall be dealt with in the following manner, namely:—

(a) the capital gain computed with reference to the compensation awarded in the first instance or, as the case may be, the consideration determined or approved in the first instance by the Central Government or the Reserve Bank of India shall be chargeable as 2[income under the head “Capital gains” of the previous year in which such compensation or part thereof, or such consideration or part thereof, was first received]; and

(b) the amount by which the compensation or consideration is enhanced or further enhanced by the court, Tribunal or other authority shall be deemed to be income chargeable under the head “Capital gains” of the previous year in which such amount is received by the assessee:

[**Provided** that any amount of compensation received in pursuance of an interim order of a court, Tribunal or other authority shall be deemed to be income chargeable under the head “Capital gains” of the previous year in which the final order of such court, Tribunal or other authority is made;]

(c) 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) or, as the case may be, enhanced compensation or consideration referred to in clause (b), and subsequently such compensation or consideration is reduced by any court, Tribunal or other authority, 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.

Explanation.—For the purposes of this sub-section,—

(i) in relation to the amount referred to in clause (b), the cost of acquisition and the cost of improvement shall be taken to be nil;

(ii) the provisions of this sub-section shall apply also in a case where the transfer took place prior to the 1st day of April, 1988;

(iii) where by reason of the death of the person who made the transfer, or for any other reason, the enhanced compensation or consideration is received by any other person, the amount referred to in clause (b) shall be deemed to be the income, chargeable to tax under the head “Capital gains”, of such other person.

Section 56(1), (2) (viii):

Income from other sources.—

56. (1) Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income-tax under the head “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.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head “Income from other sources”, namely:—



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

Section 57 (iv):

Deductions

57. The income chargeable under the head "Income from other sources" shall be computed after making the following deductions, namely:-

(iv) in the case of income of the nature referred to in clause (viii) of sub-section (2) of section 56, a deduction of a sum equal to fifty per cent of such income and no deduction shall be allowed under any other clause of this section.

Section 145:

Method of accounting

145. (1) Income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" shall, subject to the provisions of sub-section (2), be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee.

(2) The Central Government may notify in the Official Gazette from time to time income computation and disclosure standards to be followed by any class of assessee or in respect of any class of income.

(3) Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub-section (1) has not been regularly followed by the assessee, or income has not been computed in accordance with the standards notified under sub-section (2), the Assessing Officer may make an assessment in the manner provided in section 144.

Section 145B:

Taxability of certain income.

145B. (1) Notwithstanding anything to the contrary contained in section 145, the interest received by an assessee on any compensation or on enhanced compensation, as the case may be, shall be deemed to be the income of the previous year in which it is received.

(2) Any claim for escalation of price in a contract or export incentives shall be deemed to be the income of the previous year in which reasonable certainty of its realisation is achieved.

(3) The income referred to in sub-clause (xviii) of clause (24) of section 2 shall be deemed to be the income of the previous year in which it is received, if not charged to income-tax in any earlier previous year."

8. On a conjoint reading of the above statutory provisions, it is clear that amounts received by an assessee as compensation or enhanced compensation for compulsory acquisition of his landed property would be treated as income under the head of 'Capital Gains'



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for the purposes of the I.T. Act. If the said compensation amounts are received in relation to agricultural property, then by virtue of the provisions of Section 10 (37) of the I.T. Act, the amounts would stand excluded from the total income of the assessee for the purposes of the I.T. Act. As for the interest amounts received by an assessee in terms of Section 28 or Section 34 of the LAA, it is debatable as to whether the said interest would qualify as interest for the purposes of the I.T. Act as well going by the definition of the term under Section 2 (28A) of the I.T. Act. This is because there are conflicting precedents on the issue as to whether the interest paid to an assessee for delayed payment of compensation for compulsory acquisition of his land partakes the character of the compensation itself or merely that of an interest payment **[[Dr. Sham Lal Narula v. Commissioner of Income-Tax, Punjab, Jammu and Kashmir, Himachal Pradesh and Patiala - [(1964) 53 ITR 151]; Puneet Singh v. Commissioner of Income-Tax - [(2019) 415 ITR 215 (P&H)]; Mahender Pal Narang v. Central Board of Direct Taxes and Others - [(2020) 423 ITR 13 (P&H)]; Mahender Pal Narang v. Central Board of Direct Taxes and Others - [(2024) 462 ITR 498 (SC)]; T.N.K. Govindaraju Chetty v. Commissioner of Income-Tax, Madras - [(1967) 66 ITR 465]; Bikram Singh and Others v. Land Acquisition Collector and Others - [(1997) 10 SCC 243]; Commissioner of Income Tax, Faridabad v. Ghanshyam (HUF) - [(2009) 8 SCC 412]; Commissioner of Income-Tax, Faridabad v. Chet Ram (HUF)] - [(2018) 15 SCC 270]; Commissioner of**



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Income Tax, Rajkot v. Govindbhai Mamaiya - [(2014) 16 SCC 449]; Principal Commissioner of Income Tax 10 v. Inderjit Singh Sodhi (HUF) - [MANU/DE/2633/2024]; Manjet Singh (HUF) v. Union of India and Ors. - [MANU/PH/3409/2014] & Manjet Singh (HUF) Karta Manjeet Singh v. Union of India and Ors. - [[MANU/SCOR/55128/2014]].

9. Going by the nature of the payment of interest under the LAA, we are inclined to hold that the payment of interest on delayed payment of compensation to an assessee, be it under Section 28 or Section 34 of the LAA, would partake the character of the principal compensation itself since it is essentially paid to compensate the assessee for the loss he suffered on account of not having the use of the principal compensation amount at the time when it fell due. We cannot lose sight of the fact that compensation amounts paid to a person towards compulsory acquisition of his property traces its roots to the constitutional obligation to pay such compensation under Article 300A of the Constitution. Recent judicial pronouncements have also recognised the right to property as a human right. In **Dharnidhar Mishra (D) & Anr. v. State of Bihar & Ors. [(2024) 10 SCC 605]** the court pointed out that although the right to property ceased to be a fundamental right by the Constitution (44th Amendment) Act, 1978, it continues to be a human right in a welfare state, and a constitutional right under Article 300A of the Constitution. Accordingly, the State cannot dispossess a citizen of his property except in accordance with



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the procedure established by law. The court went on to observe that the obligation to pay compensation, though not expressly included in Article 300A, can be inferred from that Article since the court has recognized the right to property as a basic human right. That apart, recently in **Kolkata Municipal Corporation & Anr. v. Bimal Kumar Shah & Ors. - [(2024) 10 SCC 533]** the court, while rejecting the contention of the Corporation that it had effectively acquired the property of a citizen, drew a distinction between a statutory provision that confers a power of acquisition to the Corporation and other provisions that dealt with the procedure to be followed in the exercise of that power. The court found that Article 300A of the Constitution, that prohibited the deprivation of property of a citizen save as authorized by law, conferred on a citizen seven sub-rights viz. (i) the right to a notice of the proposed acquisition, (ii) the right to be heard on the objections if any to such proposal (iii) the right to a reasoned decision thereon (iv) the right to insist that the acquisition could only be for a public purpose (v) the right to restitution or fair compensation (vi) the right to an efficient and expeditious process and (vii) the right to a conclusion of the proceedings. In essence, the court saw the concepts of substantive and procedural due process as integral aspects of the phrase 'authority of law' in Article 300A of the Constitution. The developed jurisprudence on property rights therefore unambiguously points to the necessity of treating interest payments for delayed payment of principal compensation amounts for compulsory acquisition of property, as an accretion to the compensation amount itself. For a



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citizen whose property has been compulsorily acquired by the State, the right to receive the compensation in full accrues from the date of his dispossession and any statutory interest paid to him for delayed payment of the principal compensation amounts partakes the character of the compensation itself. This is irrespective of whether the interest that is paid is under Section 28 or Section 34 of the LAA because the interest payments under both of the said provisions are premised on the same rationale [See: The constitution bench decision in **Sundar v. Union of India - (2001) 7 SCC 211**].

10. In the light of the discussion above, we hold that interest amounts received by an assessee in respect of delayed payment of compensation under the LAA will be treated as accruals to the principal compensation amount and be classified as “Capital Gains” for the purposes of the I.T. Act. Consequently, the interest amounts will also get the benefit of Section 10 (37) of the I.T. Act if the land compulsorily acquired is agricultural land. Further, since the interest amounts so received are not in the nature of interest as defined under Section 2 (28A), the provisions of Section 56 of the I.T. Act will not be attracted in such cases. While the provisions of Section 56 (2)(viii) deal with interest on compensation or enhanced compensation, the said reference to compensation or enhanced compensation need not be seen as made in connection with compulsory acquisition of property. The applicability of Section 56 (2)(viii) will depend upon whether or not, in the particular factual situation, the interest amount can be



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treated as different in nature from the principal compensation amount.

The upshot of the above discussions is that these appeals are allowed by answering the questions of law raised therein in favour of the assessee and against the revenue.

**Sd/-
DR. A.K.JAYASANKARAN NAMBIAR
JUDGE**

**Sd/-
EASWARAN S.
JUDGE**

prp/



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APPENDIX OF I.T.A.NO.32/2023

PETITIONER'S ANNEXURES:

ANNEXURE A	TRUE COPY OF THE ASSESSMENT ORDER DATED. 22.5.2019 FOR THE YEAR 2015-16 ISSUED TO THE APPELLANT
ANNEXURE B	TRUE COPY OF THE ORDER OF THE NATIONAL FACELESS APPEAL CENTRE FOR THE YEAR 2015-16 DATED 22.3.2022 ISSUED TO THE APPELLANT.
ANNEXURE C	CERTIFIED COPY OF THE ORDER OF THE INCOME TAX APPELLATE TRIBUNAL DATED 30.3.2023 FOR THE YEAR 2015-16 ISSUED TO THE APPELLANT.



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APPENDIX OF I.T.A.NO.60/2024

PETITIONER'S ANNEXURES:

ANNEXURE A	TRUE COPY OF ASSESSMENT ORDER DATED 22.12.2017
ANNEXURE B	TRUE COPY OF THE RECTIFICATION APPLICATION FILED BY THE APPELLANT ON 15.2.2018
ANNEXURE C	TRUE COPY OF ORDER DATED 4.4.2018
ANNEXURE D	TRUE COPY OF THE ORDER DATED 26.10.2022
ANNEXURE E	CERTIFIED COPY OF ORDER DATED 19.4.2024

RESPONDENT'S ANNEXURES: NIL.

//TRUE COPY//

P.S. TO JUDGE