

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 4401 OF 2009
(Arising out of S.L.P.(C) No.17640 of 2008)

Commissioner of Income-tax, Faridabad

... Appellant (s)

Versus

Ghanshyam (HUF)

... Respondent(s)

WITH

Civil Appeal No. 4402 of 2009 – Arising out of S.L.P. (C) No.17644 of 2008

Civil Appeal No. 4403 of 2009 – Arising out of S.L.P. (C) No.17643 of 2008

Civil Appeal No. 4404 of 2009 – Arising out of S.L.P. (C) No.17645 of 2008

Civil Appeal No. 4405 of 2009 – Arising out of S.L.P. (C) No.17642 of 2008

Civil Appeal No. 4406 of 2009 – Arising out of S.L.P. (C) No.17641 of 2008

Civil Appeal No. 4407 of 2009 – Arising out of S.L.P. (C) No.17647 of 2008

Civil Appeal No. 4408 of 2009 – Arising out of S.L.P. (C) No.17646 of 2008

Civil Appeal No. 4409 of 2009 – Arising out of S.L.P. (C) No.8350 of 2009

Civil Appeal No. 4410 of 2009 – Arising out of S.L.P. (C) No.8451 of 2008

Civil Appeal No. 4411 of 2009 – Arising out of S.L.P. (C) No.4832 of 2008

Civil Appeal No. 4412 of 2009 – Arising out of S.L.P. (C) No.4833 of 2008

Civil Appeal No. 4413 of 2009 – Arising out of S.L.P. (C) No.4834 of 2008

Civil Appeal No. 4414 of 2009 – Arising out of S.L.P. (C) No.4835 of 2008

Civil Appeal No. 4415 of 2009 – Arising out of S.L.P. (C) No.20657 of 2008

Civil Appeal No. 4416 of 2009 – Arising out of S.L.P. (C) No.20658 of 2008

Civil Appeal No. 4417 of 2009 – Arising out of S.L.P. (C) No.20659 of 2008

Civil Appeal No. 4418 of 2009 – Arising out of S.L.P. (C) No.7599 of 2009

Civil Appeal No. 4419 of 2009 – Arising out of S.L.P. (C) No.3054 of 2008

Civil Appeal No. 4420 of 2009 – Arising out of S.L.P. (C) No.3717 of 2009

Civil Appeal No. 4422 of 2009 – Arising out of S.L.P. (C) No.4174 of 2009

Civil Appeal No. 4423 of 2009 – Arising out of S.L.P. (C) No.31566 of 2008

Civil Appeal No. 4424 of 2009 – Arising out of S.L.P. (C) No.713 of 2009

Civil Appeal No. 4425 of 2009 – Arising out of S.L.P. (C) No.5300 of 2009

Civil Appeal No. 4426 of 2009 – Arising out of S.L.P. (C) No.6378 of 2009

J U D G M E N T

S. H. KAPADIA, J.

1. Delay condoned.
2. Leave granted.
3. The controversy in the present batch of civil appeals pertains to the interpretation of Section 45(5) of the Income-tax Act, 1961, as it stood prior to 1.4.2004.

FACTS IN THE LEAD MATTER

**Civil Appeal No. of 2009 – Arising out of S.L.P. (C)
No.17640 of 2008 – Commissioner of Income Tax, Faridabad
v. Ghanshyam (HUF).**

4. Assessee received enhanced compensation on its lands being acquired by Haryana Urban Development Authority (HUDA) as also

interest thereon during the previous year relevant to assessment year 1999-2000.

5. Assessee filed its return on income for the assessment year 1999-2000 in which he did not offer the amount of enhanced compensation and the interest received thereon during the previous year relevant to the assessment year for taxation, on the plea that the amount of enhanced compensation received had not accrued to the assessee during the year of receipt as the entire amount was in dispute in appeal before the High Court which appeal stood filed by the State against the order of the Reference Court granting enhanced compensation. The amount was received by the assessee in terms of the interim order of the High Court against the assessee's furnishing security to the satisfaction of the executing court. The interest received on enhanced compensation during the previous year was also, according to the assessee, not chargeable to tax on the same plea.

6. The A.O. did not accept the contentions of the assessee on the ground that in terms of Section 45(5) of the Income-tax Act, 1961 ("1961 Act", for short) enacted w.e.f. 1.4.88, the amount by which compensation or consideration stood enhanced or further

enhanced by the Court, is deemed income chargeable under the head “Capital Gains” of the previous year in which the said amount came to be received. The A.O. accordingly brought to tax the amount of enhanced compensation of Rs.87,13,517/- received by the assessee during the previous year relevant to the assessment year 1999-2000. Similarly, interest on enhanced compensation of Rs.1,47,575/- received by the assessee during the previous year was also brought to tax in the year of receipt. The assessee filed appeal against the order of the A.O. in which he reiterated the above contention. Assessee also placed reliance on the judgment of this Court in **Commissioner of Income-tax, West Bengal-II v. Hindustan Housing and Land Development Trust Ltd.** – (1986) 161 ITR 524 (SC). CIT (A) came to the conclusion that since the enhanced compensation received was in dispute in the pending First Appeal, both, the enhanced compensation as well as the interest thereon had not accrued to the assessee during the year of receipt as the entire amount was in dispute in First Appeal and that the assessee had received the said amount only against security furnished to the satisfaction of the executing court. At this stage, it may be mentioned that the amount of enhanced compensation sought to be taxed under Section 45(5) of the 1961

Act was Rs.87,13,517/- whereas the interest on enhanced compensation which was also sought to be taxed was Rs.1,47,575/-.

7. Aggrieved by the decision of the CIT(A), the Department moved Income-tax Appellate Tribunal (ITAT) which following its order upheld the order of the CIT(A) and dismissed the appeal of the Department. Aggrieved by the decision of the Tribunal the matter was carried in appeal to the High Court under Section 260A of the 1961 Act. By the impugned judgment it has been held that the case is squarely covered by the judgment of the Supreme Court in the case of **Hindustan Housing (supra)**. According to the High Court, when the State is in appeal against the order of enhanced compensation and interest thereon the receipt of additional compensation and interest thereon was not taxable as income as the said two items were disputed by the Government in appeal. Consequently, the Department's appeal was dismissed by the High Court, hence this civil appeal is filed by the Department.

ISSUE

8. The short question to be decided in this batch of civil appeals is : whether ITAT was right in ordering deletion of enhanced compensation and interest thereon from the total income of the assessee on the ground that the said two items, awarded by the Reference Court, was under dispute in First Appeal before the High Court.

Analysis of provisions of the 1961 Act

9. We quote hereinbelow Section 2(47) of the 1961 Act which reads as under:

“2 - Definitions

In this Act, unless the context otherwise requires,-

(47) "transfer", in relation to a capital asset, includes,-

- (i) the sale, exchange or relinquishment of the asset; or
- (ii) the extinguishment of any rights therein; or
- (iii) the compulsory acquisition thereof under any law; or
- (iv) in a case where the asset is converted by the owner thereof into, or is treated by him as, stock-in-trade of a business carried on by him, such conversion or treatment; [or]
- (v) any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in Section 53A of the Transfer of Property Act, 1882 (4 of 1882); or
- (vi) any transaction (whether by way of becoming a member of, or acquiring shares in, a co-operative society, company or other association of persons or by way of any agreement or any

arrangement or in any other manner whatsoever) which has the effect of transferring, or enabling the enjoyment of, any immovable property.

Explanation.-For the purposes of sub-clauses (v) and (vi), "immovable property" shall have the same meaning as in clause (d) of Section 269UA."

10. We also quote hereinbelow Section 45(1) of the 1961 Act as it stood prior to 1.4.2004 which reads as under:

"45 - Capital gains

(1) Any profits or gains arising from the transfer of a capital asset effected in the previous year shall, save as otherwise provided in sections [***] [54, 54B, [***] [54D, [54E, [54EA, 54EB,] 54F [, 54G and 54H]]]], be chargeable to income-tax under the head "Capital gains", and shall be deemed to be the income of the previous year in which the transfer took place."

11. We also quote hereinbelow Section 45(5) of the 1961 Act as it stood prior to 1.4.2004 which reads as under:

"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 [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;"

12. We also quote hereinbelow Section 45(5) of the 1961 Act after

1.4.2004 which reads as under:

“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 [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;

(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."

(emphasis supplied by us)

13. We also quote hereinbelow Section 155(16) of the 1961 Act after 1.4.2004 which reads as under:

“PROCEDURE FOR ASSESSMENT

155. Other amendments

(16) Where in the assessment for any year, a capital gain arising 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, is computed by taking the compensation or consideration as referred to in clause (a) or, as the case may be, the compensation or consideration enhanced or further enhanced as referred to in clause (b) of sub-section (5) of Section 45, to be the full value of consideration deemed to be received or accruing as a result of the transfer of the asset and subsequently such compensation or consideration is reduced by any court, Tribunal or other authority, the Assessing Officer shall amend the order of assessment so as to compute the capital gain by taking the compensation or consideration as so reduced by the court, Tribunal or any other authority to be the full value of consideration; and the provisions of Section 154 shall, so far as may be, apply thereto, and the period of four years shall be reckoned from the end of the previous year in which the order reducing the compensation was passed by the court, Tribunal or other authority."

14. The following conditions need to be satisfied for taxing a transaction as capital gains, viz., the subject-matter must be a capital asset, the transaction must fall in the definition of "transfer", there must be profit or loss called "Capital Gains" and

that the taxpayer has claimed exemption in whole or in part by complying with legal provisions (Like Section 54F).

15. Section 45(1) of the 1961 Act speaks about capital gains arising out of “transfer” of a capital asset. The definition of the expression “transfer” is contained in Section 2(47) of the 1961 Act. It has very wide meaning. What is taxable under Section 45(1) of the 1961 Act is “profits and gains arising from a transfer of a capital asset” and the charge of income-tax on the capital gains is a charge on the income of the previous year in which the transfer took place. Capital gain(s) is an artificial income. It is created by the 1961 Act. Profit(s) arising from transfer of capital asset is made chargeable to income-tax under Section 45(1) of the 1961 Act. From the scheme of Section 45, it is clear that capital gains is not an income which accrues from day-to-day during a specific period but it arises at fixed point of time, namely, on the date of the transfer. In short, Section 45 defines capital gains, it makes them chargeable to tax and it allots the appropriate year for such charge. It also enacts a deeming provision. Section 48 lays down mode of computation of capital gains and deductions therefrom.

16. The question which arises for determination is – why was Section 45(5) inserted by the Finance Act, 1987, w.e.f. 1.4.88? Under Section 45(1), profits or gains arising from the transfer of a capital asset effected in the previous year is taken to be the income of the previous year in which the transfer took place and such profits are chargeable to tax under the head “Capital Gains”. However, it was noticed that in cases where capital gains accrued or arose by way of compulsory acquisition, the additional compensation stood awarded in several stages by different appellate authorities which necessitated rectification of the original assessment at each stage. To provide for rectification of the assessment of the year in which capital gains was originally assessed, Section 155(7A) was also introduced. However, as stated above, since additional compensation under the Land Acquisition Act, 1894 was awarded in several stages multiple rectifications had to be made to the original assessment which cause great difficulty in carrying out the required rectification and in effecting the recovery of additional demand. It was also noticed that repeated rectifications of assessment on account of enhancement of compensation by different courts often resulted in mistakes in computation of tax. Therefore, with a view to remove these

difficulties, the Finance Act 1987 inserted Section 45(5) to provide for taxation of additional compensation in the year of receipt instead of in the year of transfer of the capital asset. Accordingly, additional compensation is treated as “deemed income” in the hands of the recipient even if the actual recipient happens to be a person different from the original transferor by reason of death, etc. For this purpose, the cost of acquisition in the hands of the receiver of the additional compensation is deemed to be *nil*. However, the compensation awarded in the first instance would continue to be chargeable as income under the head “Capital Gains”, in the previous year in which transfer took place. At this stage, it may be noted, that, Section 45(1) stood further amended (w.e.f. 1.4.91) so as to include reference to Section 54H and Section 45(5)(a) which, as stated above, stood amended (w.e.f. 1.4.88). The scope and effect of the above amendments made in Section 45, as also insertion of Section 54H, by Finance Act 1991, has been elaborated in the following portion of the Departmental Circular No.621 dated 19.12.91:

“Streamlining the provisions relating to exemption for roll-over of capital gains-

Capital gains are deemed to be income of the previous year in which the transfer giving rise to the

gains takes place except where otherwise provided. According in the case of compulsory acquisition of assets, the capital gains included in the compensation, as originally awarded, is charged to tax in the year in which the transfer by way of compulsory acquisition takes place, but additional compensation is brought to tax only in the year in which it is received.

It has been brought to the notice of the Government that in case of compulsory acquisition of assets, at times there is a considerable gap between the dates of acquisition and payment of compensation. The result is that the existing provisions of capital gains taxation operate harshly inasmuch as the affected persons are unable to avail of the exemption for roll-over of capital gains, within the specified time period through investment in specified assets.

Section 45 of the Income-tax Act has, therefore, been amended to provide that capital gains arising from the transfer of the capital asset by way of compulsory acquisition under any law shall be charged to tax in the previous year in which the compensation is first received.

This amendment takes effect retrospectively from 1st April, 1988.

Further, a new section 54H has been inserted in the Income-tax Act, to provide that in cases where compensation in respect of any asset acquired compulsorily is received after the date of such transfer, the period for investment in specified assets shall be reckoned from the date of receipt of such compensation. However, where the compensation was first received before 1st April, 1991, and the period for making investment in any specified asset has expired before 1st October, 1991, such period shall stand extended up to 31st December, 1991.

This amendment takes effect from the 1st day of October, 1991.”

17. The important point to be noted is that in the case of compulsory acquisition of an asset, the capital gains in the compensation, as originally awarded, is charged to tax in the year in which the transfer by way of compulsory acquisition takes place, but additional compensation is brought to tax only in the year in which it is received.

18. Thus, Section 45(5) enacts overriding provisions and takes care of a situation :

--where the capital gains 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 consideration for such transfer is enhanced or further enhanced by any court, tribunal or other authority.

In such a situation, the capital gain so arising is, for and from assessment year 1988-89, to be dealt with as under:-

(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

is chargeable as 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 is to be deemed to be the income chargeable under the head "Capital gains" of the previous year in which such amount is received by the assessee.

Analysis of the provisions of L.A. Act, 1894

19. At the outset we quote hereinbelow Sections 23(1), 23(1A) and 23(2) of the 1894 Act which read as under:

"23 - Matters to be considered in determining compensation

(1) In determining the amount of compensation to be awarded for land acquired under this Act, the court shall take into consideration--

first, the market-value of the land at the date of the publication of the notification under section 4, sub-section (1);

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly, the damage (if any), sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

fourthly, the damage (if any), sustained by the person interested, at the time of the Collector's taking possession of the land, by

reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land.

(1A) In addition to the market value of the land above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market-value for the period commencing on and from the date of the publication of the notification under section 4, sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

Explanation.-In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any court shall be excluded.

(2) In addition to the market-value of the land as above provided, the court shall in every case award a sum of thirty per centum on such market-value, in consideration of the compulsory nature of the acquisition."

20. We also quote hereinbelow Section 28 of the 1894 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."

21. We also quote hereinbelow Section 34 of the 1894 which reads as under:

“34. Payment of interest.-

When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of nine per centum per annum from the time of so taking possession until it shall have been so paid or deposited.

Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry.”

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 Basavanneewa 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.

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

26. The question before this Court is : whether additional amount under Section 23(1A), solatium under Section 23(2), interest paid on excess compensation under Section 28 and interest under Section 34 of the 1894 Act, could be treated as part of the compensation under Section 45(5) of the 1961 Act?

27. In the case of **Hindustan Housing (supra)** certain lands belonging to the assessee-company, which was in the business of

dealing in land and which maintained its account on mercantile system, were first requisitioned and then compulsorily acquired by the State Government. The Land Acquisition Officer awarded Rs.24,97,249/- as compensation. On appeal the Arbitrator made an award at Rs.30,10,873/- with interest at 5% from the date of acquisition. Thereupon, the State preferred an appeal to the High Court. Pending the appeal, the State Government deposited in the Court Rs.7,36,691/- being the additional amount payable under the award and the assessee was permitted to withdraw that additional amount on furnishing a security bond for refunding the amount in the event of the said Appeal being allowed. On receiving the amount, the assessee credited it in its suspense account on the same date. The question was : whether the additional amount of Rs.7,24,914/- could be taxed as the income on the ground that it became payable pursuant to the award of the Arbitrator. The Tribunal held that the amount did not accrue to the assessee as its income and was, therefore, not taxable in the assessment year 1956-57. The financial year in which the additional amount came to be withdrawn ended on 31.3.56. It was held by this Court that although award was made on 29.7.1955, enhancing the amount of compensation payable to the assessee, the entire amount was in

dispute in the appeal filed by the State. Therefore, there was no absolute right to receive the amount at that stage. It was held that if the Appeal was to be allowed in its entirety, the right to payment of enhanced compensation would have fallen altogether. Therefore, according to this Court, the extra amount of compensation of Rs.7,24,914/- was not income arising or accruing to the assessee during the previous year relevant to the assessment year 1956-57.

28. The question is : whether the judgment of this Court in **Hindustan Housing (supra)** would apply to the present case which arises under the Income-tax Act, 1961? At the outset, it may be noted that the judgment of this Court in **Hindustan Housing (supra)** was delivered on 29.7.86. It was prior to 1.4.88 when Section 45(5) stood incorporated by Finance Act 1987 w.e.f. 1.4.88. Further, the judgment of this Court in **Hindustan Housing (supra)** has been given in respect of assessment year 1956-57 under the Income-tax Act, 1922 whereas, in the present case, we are concerned with the 1961 Act which defines the word “transfer” in much wider sense under Section 2(47). Lastly, for the reasons given hereinafter, particularly in the context of introduction of Section 45(5) of the 1961 Act w.e.f.1.4.88 a totally new scheme

stood introduced keeping in mind cases of compulsory acquisition under the 1894 Act under which compensation is payable at multiple stages and amounts stand withdrawn by the assessee-claimants and used by the assessee(s) for several years, during which litigation is pending. It is in the context of Section 45(5) that we need to decide the year of taxability. It is significant to note that Section 12B of 1922 Act did not contain specific reference to compulsory acquisition as contained in Section 2(47) of the 1961 Act. Therefore, in our view, the judgment of this Court in **Hindustan Housing (supra)** is not applicable to the present case.

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 –

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.

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-à-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.

37. Subject to what is stated hereinabove, we allow the civil appeal of the Department with no order as to cost. - -

Civil Appeal No. of 2009 – Arising out of S.L.P. (C) No.17644 of 2008
Civil Appeal No. of 2009 – Arising out of S.L.P. (C) No.17643 of 2008
Civil Appeal No. of 2009 – Arising out of S.L.P. (C) No.17645 of 2008
Civil Appeal No. of 2009 – Arising out of S.L.P. (C) No.17642 of 2008
Civil Appeal No. of 2009 – Arising out of S.L.P. (C) No.17641 of 2008
Civil Appeal No. of 2009 – Arising out of S.L.P. (C) No.17647 of 2008
Civil Appeal No. of 2009 – Arising out of S.L.P. (C) No.17646 of 2008
Civil Appeal No. of 2009 – Arising out of S.L.P. (C) No.8350 of 2009

Civil Appeal No. of 2009 – Arising out of S.L.P. (C) No.8451 of 2008
Civil Appeal No. of 2009 – Arising out of S.L.P. (C) No.4832 of 2008
Civil Appeal No. of 2009 – Arising out of S.L.P. (C) No.4833 of 2008
Civil Appeal No. of 2009 – Arising out of S.L.P. (C) No.4834 of 2008
Civil Appeal No. of 2009 – Arising out of S.L.P. (C) No.4835 of 2008
Civil Appeal No. of 2009 – Arising out of S.L.P. (C) No.20657 of 2008
Civil Appeal No. of 2009 – Arising out of S.L.P. (C) No.20658 of 2008
Civil Appeal No. of 2009 – Arising out of S.L.P. (C) No.20659 of 2008

Civil Appeal No. of 2009 – Arising out of S.L.P. (C) No.7599 of 2009

Civil Appeal No. of 2009 – Arising out of S.L.P. (C) No.3054 of 2008
Civil Appeal No. of 2009 – Arising out of S.L.P. (C) No.3717 of 2009
Civil Appeal No. of 2009 – Arising out of S.L.P. (C) No.4174 of 2009
Civil Appeal No. of 2009 – Arising out of S.L.P. (C) No.31566 of 2008
Civil Appeal No. of 2009 – Arising out of S.L.P. (C) No.713 of 2009
Civil Appeal No. of 2009 – Arising out of S.L.P. (C) No.5300 of 2009
Civil Appeal No. of 2009 – Arising out of S.L.P. (C) No.6378 of 2009

38. For the reasons given and also subject to what is stated hereinabove in Civil Appeal No. of 2009 – Arising out of S.L.P.

(C) No.17640 of 2008 – Commissioner of Income Tax, Faridabad v. Ghanshyam (HUF), the civil appeals filed by the Department stand allowed with no order as to costs.

.....**J.**
(S.H. Kapadia)

.....**J.**
(AFTAB ALAM)

New Delhi;
July 16, 2009.