REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).3738-3739 OF 2023
(Arising out of SLP(C) No(S).10617-10618 OF 2023
@ Diary No(s).7803 of 2018)

M/s.D.N. SINGH ..APPELLANT(S)

VERSUS

COMMISSIONER OF INCOME TAX, CENTRAL, PATNA AND ANOTHER ..RESPONDENT(S)

J U D G M E N T

K.M. JOSEPH, J.

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1. Delay condoned.

2. Leave granted.

A. THE FACTS

3. The appellant-assessee carried on business as carriage contractor for bitumen loaded from oil companies namely HPCL, IOCL and BPCL from Haldia. The goods were to be delivered to various divisions of the Road Construction Department of the Government of Bihar. According to the appellant, it has been in the business for roughly three decades.

4. By the impugned Order dated 05.03.2009 in M.A. 214 of 2002, the High Court has dismissed the Appeal filed by the appellant under Section 260A of the Income-Tax Act, 1961 (hereinafter referred to as, 'the Act', for short). The assessment year involved in the impugned Order is 1996-1997. Appellant filed a Review Petition, i.e., Review Petition No. 102 of 2009. By Order dated 18.12.2017, the Review Petition came to be dismissed.

It is, accordingly, that the present Special Leave Petition has been filed, challenging both the Orders.

5. A scam was reported in the media. The scam consisted of transporters of bitumen, lifted from oil companies, misappropriating the bitumen and not delivering the quantity lifted to the various Divisions of the Road Construction Department of the Government of Bihar. The scam had its repercussion in the assessments under the Act.

6. It all began, as far as the appellant is concerned, in the assessment year 1995-1996. By an Assessment Order dated 27.03.1998 being passed, the Assessing Officer, taking note of the scam, issued Show-Cause Notice dated 23.01.1998, alleging that the appellant had lifted 14507.81 metric tonnes of bitumen but delivered only 10064.1 metric tonnes. This meant that the appellant had not delivered 4443.1 metric tonnes. The appellant produced photocopies of challans to establish that the bitumen had been delivered. Summons was issued by the Assessing Officer to the Executive Engineers and Junior Engineers. It is the case of the appellant that all Junior Engineers, except Shri Madan

Prasad and Ahia Ansari accepted the factum of delivery of bitumen. The Assessing Officer, in fact, noticed that only those Junior Engineers accepted receipt of bitumen, where the Engineer In-charge or the Executive Engineer accepted the delivery. Shri Madan Prasad denied that the signature alleged to be his, was not his signature. The Assessing Officer found that the Junior Engineers denied putting stamp and took the position that if there was stamp, then, it must indicate the name of the section. The Assessing Officer added a sum of Rs.21985700/- being the figure arrived at, by finding that 4443.80 metric tonnes of bitumen had not been delivered. This was done by invoking Section 69A of the Act.

7. Chronologically, this Court notices that for the assessment year 1996-1997, the Assessing Officer passed Order dated 31.03.1999. The appellant, in its Return, disclosed a net profit of Rs.676133/-. On scrutiny, the Assessing Officer, again, noticing the scam and finding that, while 10300.77 metric tonnes had been lifted by the appellant, only 8206.25 metric tonnes had been delivered. Accordingly, it was found that 2094.52

metric tonnes had not been delivered. On the said basis and again invoking Section 69A of the Act, a sum of Rs.10471720.30 was added as income of the appellant.

8. As against the Order dated 27.03.1998 for the Assessment Year 1995-1996, in Appeal, by Order dated 15.09.2000, the Commissioner Appeals found that all Junior Engineers, except two, had accepted delivery. After finding that the addition made by the Assessing Officer in respect of quantity, where Junior Engineers had accepted delivery, was untenable, the Appellate Authority ordered deletion of a sum of Rs.20114659/-. This amount represented the value of 4064.28 metric tonnes. In regard to the disputed quantity, viz., the dispute raised by Shri Madan Prasad and Ahia Ansari, Junior Engineers, the matter was remanded back for affording an opportunity for cross-examination. This Order related to the Assessment Year 1995-1996.

9. Next in chronological order, is the Order dated 18.12.2000 passed by the Appellate Authority in Appeal carried by the appellant against the Order dated 31.03.1999, relating to the Assessment Year 1996-1997. The Appellate Authority referred to the assessment for

the previous year. It found merit in the case of the appellant that except two Junior Engineers, the others had accepted the delivery. The addition of Rs.10471720/- was ordered to be deleted.

10. The Revenue knocked at the doors of the Income-Tax Appellate Tribunal (hereinafter referred to as, 'the ITAT', for short) for both the Assessment Years, viz., 1995-1996 and 1996-1997. In regard to the Order passed by the Appellate Authority for the Assessment Year 1995-1996, another development took place during the pendency of the Appeal before the ITAT. By Application dated 07.02.2001, the Revenue, invoking Section 154 of the Act, sought rectification of the Order dated 15.09.2000. This Application came to be allowed by Order dated 31.05.2001. It is, at once, noticed:

> "It is also seen that although my learned predecessor on page 4 of the appellate order has noted that "the Assistant Commissioner of Income Tax also stated that only those Junior Engineers had accepted that they had received the Bitumen in which cases the Executive Engineer of the division and Engineer in Chief had also shown that Bitumen had been received. But while giving the finding on pages 7 and 8 of 'the appellate order he has missed this fact while presuming that the Junior Engineers had confirmed the receipt of

4064.28 MT of Bitumen out of total short supply of 4443.80 MT of Bitumen as reported by engineer in chief… A careful reading of the relevant para as reproduced above makes it clear that while giving this finding the CIT(A) was under the impression that in respect of total short supply of 4443.01 MT as reported by Engineer in Chief and the Jr. Engineer had accepted the receipt of Bitumen barring two namely -I) Mr. Madan Prasad and II) Mr. Ahiya Ansari during the course of independent enquiries held by the A.O through issue of summons. Thus, I hold that my predecessor has given relief of Rs. 2,01,14,659/- in respect of 40.64.28 MT. Of Bitumen under the wrong presumption of fact that the Jr. Engineers had confirmed the receipt of 4064.98 MT. Of Bitumen in their statements before the A.O. Since in the cases Shri Madan Pd. and Mr. Ahiya Ansari who had denied to have received the Bitumen, my ld. Predecessor had set aside the matter to the file of the A.O. with the direction to re-decide the matter after allowing the appellant an opportunity to cross- examine these two Jr. Engineers and after making further enquiries to establish the genuineness or otherwise of their signatures on the challans, I deem it proper to set aside this addition of Rs.2,01,14,659/- in respect of 4064.98 MT of Bitumen also to the file of the A.O. with the direction that he shall issue summons to the concerned Jr. Engineers who have received 4064.98 MT of Bitumen as per challans furnished by the appellant, record their statements, allow the appellant an opportunity to cross examine them and, if necessary, refer their signatures to the hand writing experts to establish the genuineness of otherwise of such signatures. In view of these directions, in order the substitution of last para on page -7 extending up to 1st as page 8 of CIT(A)

is or which has already been reproduced above by the following para:

I have carefully considered the above submissions in the course of independent enquiries made by the A.O. by issue summons only 2 Jr. Engineers namely, 1. Mr. Madan Prasad, 2. Mr. Ahiya Ansari have been examined in respect of reported short supply of Bitumen of 4443.01 MT. Sri Madan Prasad and Mr. Ahiya Ansari have denied receipt of Bitumen to the extent of 204.45 MT and 174.37 MT, respectively. In respect of remaining quantity of reported short supply of Bitumen i.e. 4064.28 MT. (-) 378.82=4064. 28 MT of Bitumen no independent enquiries have been made by the A.O. barring the report received from Engineer in Chief/Executive Engineer regarding this short supply. On the basis of such report of Engineer in Chief/Executive Engineers alone; the A.O. is not justified in making the addition on account of short supply of 4064.28 MT of Bitumen valued at Rs.2,01,14,659/-, I deem it proper to set aside this addition of Rs.2,01,14,659/- to the file of the A.O. with the direction that he shall issue summons to the concerned Jr. Engineers, who have received 4064.28 MT of Bitumen as per challans furnished by the appellant, record their statement, allow the appellant an opportunity to cross- examine them and, if necessary, refer their signatures to the hand writing experts to establish the genuineness or otherwise of such signatures, after carrying out these directions any addition, if called for shall be made."

11. As noticed, the Revenue had filed an Appeal before the ITAT for the Assessment Year 1995-1996 (ITA 358

Patna/2000). The appellant had filed cross-objection (2/2001) in the said Appeal. The appellant also filed ITA 319 (Patna/2001) before the ITAT. The cross-objection of the appellant purported to support the deletion of the addition of Rs.20114559/-. It also purported to ventilate the objection of the appellant in regard to other matters. The Appeal filed by the appellant was directed against the Order of Rectification passed under Section 154 of the Act. The ITAT dismissed the Appeals filed by the Revenue and the appellant. The cross-objection came to be disposed of. This Order is dated 11.01.2002.

12. For the Assessment Year 1996-1997, the ITAT disposed of the Appeal filed by the Revenue and also the cross-objection filed against the Order dated 18.12.2000. The Appeal filed by the Revenue [ITA 240 (Patna/2001)] was allowed. The Tribunal finds that the appellant had not disputed the lifting of the bitumen. The claim made by the appellant that full supply was made, stood demolished, when photocopies of delivery challans were found to be false and fabricated. The Executive Engineers, it was further found, had

confirmed non-delivery to the tune of 2090.40 metric tonnes. The Commissioner Appeals, it was found, reached a wrong conclusion, as he did not address himself to the explanation offered by the Junior Engineers. It was found that all Executive Engineers of the Consignee Divisions presented a case of non-delivery before the Assessing Officer. Thus, on the same day, i.e., on 11.01.2002, the ITAT allowed the Appeal filed by the Revenue and sustained the Order of the Assessing Officer relating to addition on account of short supply of bitumen for the Assessment Year 1996-1997, whereas, for the Assessment Year 1995-1996, taking note of the Order of the Commissioner Appeals, passed under Section 154 of the Act, by which, the matter stood remitted back, the Appeal of the Revenue and the Appeal of the appellant, challenging the Rectification Order, came to be dismissed.

13. This, in turn, triggered the Appeal, i.e., M.A. 214 of 2002 before the High Court by the appellant under Section 260A of the Act. The High Court, inter alia, refers to the appellant filing Return for the

Assessment Year 1996-1997, disclosing total income of Rs.576133/-.

14. Reference is made to the addition of Rs.1,04,72,720.30 on the basis of short supply of bitumen. After referring to the submissions, the court focussed on the scope of Section 69A of the Act. The High Court found that the word 'owner' has different meaning in different contexts and when a transporter sells the goods and receives money for that not on behalf of the real owner, it became the owner for the purpose of tax. Having lifted bitumen and not supplied to the Road Construction Department to which it was to be supplied, the appellant would be liable to pay tax on the bitumen lifted and not delivered. The High Court distinguished the Judgment in ***Dhirajlal Haridas v. Commissioner of Income Tax (Central), Bombay***[1] by noting that for determining the person liable to pay tax, the test laid down by this Court was to find out the person entitled to that income. The Court also went on to distinguish the judgment in ***Commissioner of***

[1] (1982) 138 ITR 570

Income Tax v. Amrit lal Chunilal[2] It was found that in the said case the assessee therein was not found to be the owner whereas the ITAT found the appellant to be the owner. The High court agreed with the said finding. Thereafter, the High Court went on to deal with the argument that the words 'other valuable articles' in Section 69A could not include 'bitumen'. The argument of the appellant which is noted is that for applying Section 69A bitumen should have some nexus with money, bullion or jewellery. It was found that any article which has value would come under the expression 'valuable article' under Article 69A and the value of such article can be deemed to be the income of the assessee, should the assessee fail to offer any explanation or the explanation offered be unsatisfactory. The argument that Section 69A would not apply as the appellant had offered an explanation was not accepted as it was found that an explanation though offered, being not accepted, would lead to the invocation of Section 69A, if the explanation was not satisfactory. In other words, Section 69A applied.

[2] (1984) 40 CTR Bombay 387.

Lastly, in regard to the argument of the appellant that the cost of the bitumen and not the value thereof was added as income, the High Court finds that the appellant did not have a case that it had sold the bitumen at the price lower than the cost. The appellant was found to be the owner of the bitumen and the addition was sustained. This order was passed on 05.03.2009.

15. Thereupon, the appellant filed Review Petition No. 102 of 2009. The appellant purported to point out that in separate appeals filed for assessment year 1995-96 and 1996-97 on the same set of facts, the ITAT had allowed the appeal of the Revenue for the year 1996-97, but for the assessment year 1995-96, the matter was remanded back. This argument was rejected by the High court in the review on the following reasoning:

> "However, the question would be whether the fact that the appellate tribunal had passed another order correctly or incorrectly, the same may have any effect rendering the judgment of the tribunal passed in present matter to be erroneous despite the same having been upheld in appeal by this Court? Answer has to be in negative. For the assessment year 1995-96, the matter has attained finality as the Division Bench has already accepted the view of the appellate

> tribunal to be correct in M.A. No.214 of 2002. The view of the same Tribunal or the same Bench of the Tribunal was correct or incorrect for a different assessment year was not the subject matter of the appeal. If one of the views of the appellate tribunal is in favour of the assessee that does not mean that the said view would be correct and the view taken in the present case was incorrect. The view formed by the revenue in the present case for the assessment year 1995-96 has been scrutinized not only by the appellate tribunal but also by the Division Bench of this Court and the same has been found to be correct."

16. The court found that there was no patent error. The fact that for the same assessee but for the different assessment year, the same Bench of the ITAT had accepted their plea of short supply of bitumen as it was not within its knowledge as to whether the case travelled in appeal before the High Court or not, whereas the decision rendered by the Tribunal for the assessment year 1995-96 had "travelled upto this Court in M.A. 214 OF 2002". It is against the order dated 05.03.2009 in M.A. 214 of 2002 and the order dated 18.12.2017 in the Review Petition 102 of 2009 that the appellant is before this Court.

B. SUBMISSIONS OF PARTIES

17. The Court heard Shri Ramesh P. Bhat, learned Senior Advocate on behalf of the appellant and Shri N. Venkatraman, learned Additional Solicitor General on behalf of the Revenue.

18. Shri Ramesh P Bhat strenuously urged before us that impugned Orders betray palpable errors. When the error was pointed out in Review though it is taken note of, the High Court has failed to rectify the fallacy. In short, the error on facts is as follows:

> "There are two assessment years involved namely 1995-96 and 1996-97. In the assessment year 1995-96, an addition was made in a sum of Rs.20114659/- towards short delivery of bitumen which the appellant as carrier was obliged to transport and deliver to the Department in Bihar. In the assessment year 1996-97, likewise the appellant was multed with an addition in a sum of Rs.10471720/-."

19. It is pointed out that for the Assessment Year 1995-1996, as noticed earlier, by virtue of the Order of Rectification dated 31.05.2001, on the basis of which, the Appeal filed by the Revenue, was dismissed by the ITAT and Appeal filed by the appellant, against which, Order came to be dismissed, the matter was to

be considered by the Assessing Officer. The same Tribunal, on the same day, i.e., 11.01.2002, on the other hand, allowed the Appeal of the Revenue and set aside the Order dated 18.12.2000, by which, the Commissioner Appeals had ordered the deletion based on the alleged non-delivery of bitumen. In fact, it is pointed out that the High Court notes in the Order dated 05.03.2009, as if the Appeal was filed by the appellant against the Assessment Year 1995-1996. Even when the conflicting views taken by the Tribunal was pointed out in the Review Petition, despite noticing the argument, the High Court has rejected the same without just cause. In the Order, it is pointed out that the Court observed that the matter for the year 1995-1996 had travelled to the Court in M.A. 214 of 2012, when it actually related to 1996-1997. More importantly, the learned Senior Counsel would contend that bitumen cannot be treated as other valuable article within the meaning of Section 69A of the Act. The very company of words, in which the words 'other valuable article' is found, viz., money, bullion and gold, should have persuaded the Court to find the

addition illegal. It was also canvassed before us that the appellant cannot be treated as the owner, as appellant was a carrier. It fulfilled its obligations by lifting the goods in question and delivered the same. In fact, it is the contention of the appellant that the goods had been delivered and there was no misappropriation. There was no complaint by the oil companies from whom, the bitumen had been lifted, about there being short delivery. There was even no complaint from the Consignee Department. The right to cross-examination should have been offered. The burden shifted to the Department to prove its case. The learned Senior Counsel would draw support from the following case law:

i. (1984) Vol 147 ITR 251; ***Addl. Commissioner of Income Tax v. S. Pichaimanickan Chettiar.***

ii. (1993) Vol 199 ITR 370; ***Mohan B. Samtani v. Commissioner of Income-Tax.***

20. The appellant would contend that the finding that the photocopies of the delivery challans were fabricated was a gross error. The appellant has a case

that this is more so as the two Junior Engineers had failed to appear for cross-examination.

21. The appellant also relied upon Judgment of this Court in *Kotak Mahindra Bank Ltd. v. A. Balakrishnan and another*[3]. He further drew our attention to the Judgment of this Court in *Kishinchand Chellaram v. Commissioner of Income Tax, Bombay City II, Bombay*[4].

22. Shri N. Venkatraman, learned Additional Solicitor General countered the submissions and submitted that no case was made out. He would rely upon *Chuharmal (supra)*. The view taken by the High Court represents the correct position in law.

C. ANALYSIS

23. Section 69 deals with unexplained investments. It reads as follows:

> **"69. Unexplained investments Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and**

[3] (2022) 9 SCC 186
[4] (1980) Suppl. SCC 660

> source of the investments or the explanation offered by him is not, in the opinion of the [2] Assessing] Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year."

24. Section 69A came to be inserted by Finance Act, 1964 (Act 5 of 1964) w.e.f. 01.05.1964. It reads as follows:

> "69A. Unexplained money, etc. Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the [4] Assessing] Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year."

25. Section 69B provides for power with the Assessing Officer to deal with investments made by an assessee in bullion, jewellery and other valuable article, when such assets are found to be owned by the assessee and he finds a mismatch between the amount spent for acquiring them or investing in them and the amount

recorded in the Books of Accounts for any source of income and no explanation is offered or the explanation offered is not found satisfactory, the excess amount can be brought to tax. Section 69C, inserted w.e.f. 01.04.1976, deals with unexplained expenditure, being deemed to be the income of the assessee.

26. Section 69 and Section 69A, apart from being close neighbours, do bear resemblance with one another. Section 69 deals with unexplained investment. Section 69A deals with unexplained money, bullion, jewellery or other valuable articles. Section 69A was inserted by Amending Act 5 of 1964 and it came into effect w.e.f. 01.04.1964. Both Sections require that the subject matter of the provisions, viz., investments in the case of Section 69 and money, bullion, jewellery or other valuable articles in the case of Section 69A are not recorded in the Books of Account. That is, in a case where Books of Accounts are maintained. In the case of investments under Section 69, necessarily, the Law-Giver contemplates the Assessing Officer finding that the assessee had made the investments. In the case of Section 69A, the assessee must be found to be the owner

of the money, bullion, jewellery or other valuable articles. In both cases, if the assessee is able to offer an explanation for the nature and the source for the investments and money, bullion, jewellery or other valuable articles, respectively, and it is not found unsatisfactory, there can be no deemed income under either Section.

27. Turning more to Section 69A, it may be broken down into the following essential parts:

a. The assessee must be found to be the owner;

b. He must be the owner of any money, bullion, jewellery or other valuable articles;

c. The said articles must not be recorded in the Books of Account, if any maintained;

d. The assessee is unable to offer an explanation regarding the nature and the source of acquiring the articles in question; or

   The explanation, which is offered, is found to be, in the opinion of the Officer, not satisfactory;

e. If the aforesaid conditions are satisfied, then, the value of the bullion, jewellery or other

valuable article may be deemed as the income of the financial year in which the assessee is found to be the owner;

f. In the case of money, the money can be deemed to be the income of the financial year;

28. Applying the provision to the facts of the case, it is noticed that the points that arise are as follows:

I. The question would arise, as to whether the appellant could be treated as the owner of the bitumen;

II. The further question would arise, as to whether bitumen could be treated as other valuable articles;

III. Thirdly, the question arises, as to how the value of the bitumen is to be ascertained;

IV. Whether the ITAT erred in passing contradictory Orders *qua* the Assessment Years 1995-1996 and 1996-1997, by Orders passed on the same day and whether the facts were the same?

29. As regards the first question, viz., whether the appellant could be treated as the owner of the bitumen

is concerned, it is indisputable that the appellant was engaged as a carrier to deliver the bitumen, after having lifted the same from the Oil Companies to the various Divisions of the Road Construction Department of the Government of Bihar. Before the Court proceeds to deal with this aspect, we may bear in mind, what this Court held in the decision reported in *Chuharmal S/O Takarmal Mohnani v. Commissioner of Income Tax, M.P., Bhopal*[5]. In the said case, the Court was dealing with wrist watches being seized from the assessee during a search conducted by the Customs Authorities from the bedroom of the assessee. The question fell for consideration, as to whether the principles underlying Section 110 of the Evidence Act, 1872, would assist the Revenue to conclude that a person, in possession, could be treated as the owner. This Court held, inter alia, as follows:

> **"6. … In other words, it follows from well settled principle of law that normally, unless contrary is established, title always follows possession. In the facts of this case, indubitably, possession of the wrist-watches was found with the petitioner. The petitioner did not adduce**

[5] (1988) 3 SCC 588

> any evidence, far less discharged the onus of proving that the wrist-watches in question did not belong to the petitioner. Hence, the High Court held, and in our opinion rightly, that the value of the wrist-watches is the income of the assessee."

30. After referring to the Judgment of the High Court of Bombay reported in J.S. Parkar v. V.B. Palekar[6], which dealt with seizure of gold, the Court, held as follows:

> "6. … There a contention was raised that the provision in Section 110 of the Evidence Act where a person was found in possession of anything, the onus of proving that he was not the owner was on the person who affirmed that he was not the owner, was incorrect and inapplicable to taxation proceedings. This contention was rejected. The High Court of Bombay held that what was meant by saying that the Evidence Act did not apply to the proceedings under the Act was that the rigour of the rules of evidence contained in the Evidence Act, was not applicable but that did not mean that the taxing authorities were desirous in invoking the principles of the Act in proceedings before them, they were prevented from doing so. Secondly, all that Section 110 of the Evidence Act does is that it embodies a salutary principle of common law jurisprudence which could be attracted to a set of circumstances that satisfy its condition."

[6] (1974) 94 ITR 616 (Bom HC)

31. The said view has been followed by this Court in *Commissoiner of Income Tax, Salem v. K. Chinnathamban*[7]. Therein the Court inter alia held:

> "8. … The High Court has rightly held that the expression "income" as used in Section 69-A of the Act, has wide meaning which meant anything which came in or resulted in gain."

32. It may be noticed that Section 15 of the Carriage by Road Act, 2007, which repealed the Carriers Act, 1865, provides as follows:

> "15 Right of common carrier in case of consignee's default.
>
> (1) If the consignee fails to take delivery of any consignment of goods within a period of thirty days from the date of notice given by the common carrier, such consignment may be deemed as unclaimed: Provided that in case of perishable consignment, the period of thirty days shall not apply and the consignment shall be deemed unclaimed after a period of twenty-four hours of service of notice or any lesser period as may be mutually agreed to by and between the common carrier and the consignor.
>
> (2) In the case of an unclaimed consignment under sub-section (1), the common carrier may,

[7] (2007) 7 SCC 390

> (a) if such consignment is perishable in nature, have the right to sell the consignment; or
>
> (b) if such consignment is not perishable in nature, cause a notice to be served upon the consignee or upon the consignor if the consignee is not available, requiring him to remove the goods within a period of fifteen days from the date of receipt of the notice and in case of failure to comply with the notice, the common carrier shall have the right to sell such consignment without any further notice to the consignee or the consignor, as the case may be.
>
> (3) The common carrier shall, out of the sale proceeds received under sub-section (2), retain a sum equal to the freight, storage and other charges due including expenses incurred for the sale, and the surplus, if any, from such sale proceeds shall be returned to the consignee or the consignor, as the case may be.
>
> (4) Unless otherwise agreed upon between the common carrier and consignor, the common carrier shall be entitled to detain or dispose off the consignment in part or full to recover his dues in the event of the consignee failing to make payment of the freight and other charges payable to the common carrier at the time of taking delivery."

33. Therefore, under Section 15, if the consignee fails to take delivery of any consignment of goods within thirty days, the consignment is to be treated as

unclaimed. The period of thirty days is declared inapplicable to perishable consignments, in which case, a period of twenty-four hours' notice or any lesser period, as may be agreed between the consignor and the common carrier, suffices. In the case of perishable consignment, following such notice, the consignment can be sold. In a case where the goods are not perishable, if there is failure by the consignee to remove the goods after the receipt of a notice of fifteen days from the carrier, the common carrier is given a right to sell the consignment without further notice. Section 15(3) enables the carrier to retain a sum equal to the freights, storage and other charges, due, including expenses incurred for the sale. The surplus from the sale proceeds is to be returned to the consigner or the consignee. Section 15(4) clothes the carrier with a right to sell in the event of failure by the consignee to make payment of the freight and other charges, at the time of taking delivery.

34. This Court, in this case, is dealing with the assessment years 1996-1997. The law applicable was contained in the Carriers Act, 1865. It is unnecessary

for us to dwell further, as it is not the case of either party that the appellant had become the owner of the bitumen in question in a manner authorised by law. On the other hand, the specific case of the appellant is that the appellant never became the owner and it remained only a carrier. However, as noticed, if it is found that there has been short delivery, this would mean that the appellant continued in possession contrary to the terms of contract of carriage.

35. In *Mohan B. Samtani v. Commissioner of Income-Tax*[8], the appellant, who was found in possession of a package, which, when opened at the airport, contained a bronze idle of Nataraja and its pedestal, was sought to be roped in as owner with the aid of Section 69A of the Act:

> "6. From the facts on record, there cannot be any dispute that the consignor was the State Trading Corporation of Sikkim and the consignee was the Chogyal of Sikkim and the assessee was a representative of the State Trading Corporation of Sikkim. The assessee also claimed that the Chogyal of Sikkim was the owner and, under his verbal instruction conveyed through his A.D.C., he arranged for despatch thereof by signing the papers. In fact, the Chogyal also claimed ownership

[8] 1993 Vol. 199 ITR 370 Calcutta

> of the said packages on the basis of the letter by the Under Secretary of the Chogyal of Sikkim addressed to the Assistant Collector of Customs dated May 30, 1973. The Chogyal was the head of an independent State at the relevant time and it was necessary, if the claim for ownership of the Chogyal is to be disputed, to have the said letter verified by obtaining the original from the customs authorities. Merely because the packages were presented before the customs authority, it does not ipso facto prove the ownership of the assessee of the goods.
>
> 7. In our view, it has not been established or found that the assessee is the owner of the said idol and pedestal. On the contrary, the said letter dated May 30, 1973, addressed to the Assistant Collector of Customs shows that the Chogyal is the owner of the said articles. Under such circumstances, there is no reason to hold the assessee liable and to add Rs. 80,000 being the value of the said articles to his income.

36. The High Court went on to distinguish ***Chuharmal*** (supra) by holding that in the case before the High Court, the assessee had produced the evidence to substantiate that the article found in his possession belonged to the Chogyal of Sikkim.

D. A CARRIER, A BAILEE?

37. **When goods are entrusted to a common carrier, the entrustment would amount to a contract of bailment within the meaning of Section 148 of the Contract Act, 1872 when it is for being carried by road, as in this case. A contract for bailment may not involve any consideration being payable in which case Section 58 of the Contract Act obliges the bailor to repay to the bailee the necessary expenses incurred by him for the purpose of bailment. Possession is central to bailment. [See Pullock and Mulla in the Indian Contract and Specific Relief Act]. Section 151 of the Contract Act declares that 'in all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed.' Can it be said that the standard of care as declared in Section 151 is alone applicable to the common carrier. The subject matter is not *res integra*. In *Patel Roadways Ltd. v.***

Birla Yamaha Ltd.[9], the Court held *inter alia* as follows: -

> "31. Coming to the question of liability of a common carrier for loss of or damage to goods, the position of law has to be taken as fairly well settled that the liability of a carrier in India, as in England, is more extensive and the liability is that of an insurer. The absolute liability of the carrier is subject to two exceptions: an act of God and a special contract which the carrier may choose to enter with the customer."

38. In the same year, and what is more, in the same volume, this Court spoke on the subject in the decision reported in ***Nath Bros. Exim International Ltd. v. Best Roadways Ltd.***[10]. The Court held, *inter alia*, as follows: -

> "14. These provisions, in effect, embody the English common law rule as to the liability of the bailee. Under the English common law rule, the measure of care required of the person to whom the goods were bailed, was the same as a man of ordinary prudence would take of his own goods. In other words, it was a mere matter of negligence on which the liability was founded. If a person was negligent and did not take as much care as he would have taken of his own goods, he would be liable in damages. These principles of the English common law rule were also applied in this country as indicated in

[9] (2000) 4 SCC 91
[10] (2000) 4 SCC 553

the decision of the Privy Council in Irrawaddy Flotilla Co. Ltd. v. Bugwandass in which, it was, inter alia, observed as under:

> "For the present purpose it is not material to inquire how it was that the common law of England came to govern the duties and liabilities of common carriers throughout India. The fact itself is beyond dispute. It is recognised by the Indian Legislature in the Carriers Act, 1865, an Act framed on the lines of the English Carriers Act of 1830."

"15. In the meantime, Parliament intervened and the Carriers Act, 1865 was enacted with the result that the liability of a common carrier came to be considered in the light of the provisions contained in that Act. It is true that Section 158 of the Indian Contract Act speaks of bailment of the goods for being carried on behalf of that bailor, but it is also to be noticed that the bailment spoken of in that section is gratuitous as it is specifically provided "bailment" as set out in Section 148 of the Indian Contract Act may be said to be wide enough so as to cover "entrustment of goods" to a carrier for carriage. But as pointed out above, with the enactment of the Carriers Act, 1865, the extent of liability of the carrier has to be found in that Act."

"25. We have already reproduced the provisions of Section 6, 8 and 9 above. Section 6 enables the common carrier to limit his liability by a special contract. But the special contract will not absolve the carrier if the damage or loss to the goods, entrusted to him, has been caused by his own negligence or criminal act or that of his agents or servants. In that situation, the carrier would be liable for the damage to or loss or non-delivery of goods. In this situation, if a suit is filed for recovery of damages, the burden of proof will not be on

> the owner or the plaintiff to show that the loss or damage was caused owing to the negligence or criminal act of the carrier as provided by Section 9. The carrier can escape his liability only if it is established that the loss or damage was due to an act of God or enemies of the State (or the enemies of King, a phrase used by the Privy Council). The Calcutta decision in British & Foreign Marine Insurance Co. v. India General Navigation and Rly. Co. Ltd., the Assam decision in River steam Navigation Co. Ltd. v. Syam Sunder Tea Co. Ltd., the Rajasthan decision in Vidya Ratan v. Kota Transport Co. Ltd. and the Kerala decision in Kerala Transport Co. v. Kunnath Textiles which have already been referred to above, have considered the effect of special contract within the meaning of Sections 6 and 8 of the Carriers Act, 1865 and in, our opinion, they lay down the correct law."

39. To apply Section 69A of the Act, it is indispensable that the Officer must find that the other valuable article, *inter alia,* is owned by the assessee. A bailee, who is a common carrier, is not an owner of the goods. A bailee who is a common carrier would necessarily be entrusted with the possession of the goods. The purpose of the bailment is the delivery of the goods by the common carrier to the consignee or as per the directions of the consignor. During the subsistence of the contract of carriage of goods, the bailee would not become the owner of the goods. In the

case of an entrustment to the carrier otherwise than under a contract of sale of goods also, the possession of the carrier would not convert it into the owner of the goods.

E. THE CARRIAGE BY ROAD ACT, 2007

40. **Under Section 15 of the Carriage by Road Act, 2007, the carrier can, after issuing notice as provided, when there is a failure by the consignee to take delivery, sell the goods in the case of a sale which is so authorised by a statute. The buyer from the carrier would acquire a good title even as against the consignee. It may be true that as far as the sale proceeds received by the common carrier from the sale, he would be accountable to the consignee as provided in Section 15 of the Act. Likewise, in a case covered under Section 15 (4), the common carrier would have the power to dispose of the consignment for recovery of dues from the consignee. In such cases if the other ingredients of Section 69A are satisfied, there may be no fallacy involved if an assessee is found to be the**

owner of the goods which he disposes of under the authority of law.

F. CRIMINAL BREACH OF TRUST

41. **Section 405 of the Indian Penal Code, 1860 reads as follows:**

> **"405. Criminal Breach of Trust**
>
> **Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".**

Illustration (f) under Section 405 is apposite and it reads as follows: -

> **"Illustration f. A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed a criminal breach of trust."**

G. THE SALE OF GOODS ACT, 1930

42. **Section 39 of the Sale of Goods Act, 1930, *inter alia*, contemplates delivery pursuant to a contract of sale by the seller to the carrier as prima facie to be deemed to be the delivery of the goods to the buyer. It becomes the responsibility of the buyer of a carrier to fulfil its contractual obligations and deliver the goods to the consignee or as per its instructions. Section 27 of the Sale of Goods Act deals with sale by a person who is not the owner. It reads as follows: -**

> **"27. Sale by person not the owner. —**
>
> **Subject to the provisions of this Act and of any other law for the time being in force, where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell:**
>
> **Provided that, where a mercantile agent is, with the consent of the owner, in possession of the goods or of a document of title to the goods, any sale made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the buyer acts in good faith and has not at the time of the**

contract of sale notice that the seller has not authority to sell."

43. **Sale by a carrier does not pass title except when it is immunised by the conduct of the owner of the good which would in turn estop the owner from impugning the title of the buyer. Under Section 15 of the Carriage by Road Act, 2007, a sale by a carrier is permitted and it can convey good title to the buyer.**

H. IS A THIEF AN OWNER? OWNERSHIP BEING ILLEGAL.

44. **Can a thief be treated as the owner of the goods? In this regard, this Court notices the following discussion in the commentary on Sampath Iyengar's, Law of Income Tax.**

> **"12. Sine qua non is "ownership".- The words "is found to be the owner" appearing in this section clearly show that the mere fact that, on a search, certain articles are found in the possession of a person cannot be said to attract the provisions of this section unless it is established that the person in whose possession articles were found is the owner thereof. An assessee is to be the owner before anything in his possession can be deemed to be his income. It cannot be said in the case of stolen property that the thief is the owner thereof. Section 69A was enacted to treat the value of certain items as income by a deeming provision but facts must be found to bring a case within that deeming provision. In the case**

> of a deeming provision the court has to assume an unreal state of things to be real."

45. In ***Commissioner of Income Tax v. K.I. Pavunny***[11], a Division Bench was dealing with the case where excise authorities found articles covered by Section 69A in a box. The assessee sought to attribute ownership to another person with whom he was on inimical terms. The High Court of Kerala found that the assessee did not discharge his onus to establish that the articles belonged to someone else. What is of interest to this Court is the following discussion:

> "13. …But for the prohibitory law, any article being a property can be owned by a person. Simply because the law prohibits retention of a property that does not mean that such property is without ownership. Even contraband or prohibited articles can be owned and possessed unlawfully. It is entirely a different thing that the law may not permit the owner of given articles to retain possession of them or the articles may be liable under law to be confiscated."

46. Appellant places reliance on judgment in ***Addl. Commissioner of Income Tax vs. S. Pichaimanickan Chettiar*** reported in 1984 (147) ITR 251. In the said

[11] (1998) 232 ITR 837

case, it is noted that Section 69A of the Act was invoked after finding the assessee and one Ameen were found to be in possession of gold at railway station and were convicted under Section 135(b)(ii) of the Customs Act. The Court held against the revenue after holding as follows:

> **"In this case, the assessee has been convicted only as a carrier by the Chief Presidency Magistrate and not as the owner of the gold. The Chief Presidency Magistrate has specifically observed that the actual owners of the goods or financial magnates are underground. Therefore, merely on the basis of s. 110 of the Evidence Act, the value of the gold cannot be taken to be his income. Merely because the assessee has kept silent and has not disclosed the name of the owners of the gold, he cannot be assessed under s. 69A of the I.T. Act. Liability to be taxed under s. 69A can arise only if he is shown to be the owner of the goods."**

47. Both views can be reconciled. No doubt, it may be true that a person may own, contraband or prohibited articles and still be within the embrace of Section 69A. In other words, the illegality of the ownership may not ill square with the requirement of Section 69A that the assessing officer must find the assessee to be the owner of the article. However, that is not to say that without finding ownership or when it is

obvious that someone else is the owner, a person found in possession, which is illegal, can be found to be the owner under Section 69A. The question would arise pointedly, as to, when a common carrier refuses to deliver the consignment and continues to possess it contrary to contract and law and converts it into his use and presumably sells the same, as to whether he could be found to be the owner of the goods. Would he be any different from a person who commits theft and sells it claiming to be the owner. Can a thief become the owner? It would be straining the law beyond justification if the Court were to recognise a thief as the owner of the property within the meaning of Section 69A. Recognising a thief as the owner of the property would also mean that the owner of the property would cease to be recognised as the owner, which would indeed be the most startling result. While possession of a person may in appropriate cases, when there is no explanation forthcoming about the source and quality of his possession, justify an assessing officer finding him to be the owner, when the facts are known that the carrier is not the owner and somebody else is the owner,

then to describe him as the owner may produce results which are most illegal apart from being unjust.

I. THE CIRCULAR DATED 07.07.1964

48. **In this regard, the following are the contents of the Circular issued by the Board, dated 7th July 1964, namely, Circular No. 20 of 1964. It reads as follows:**

> **"86. This provision is complementary to the provisions in Section 69 which enables the assessment of the value of investments which have not been recorded in the books of account of the assessee and the source of which has not been explained by him satisfactorily.**
>
> **87. It has to be carefully noted that the conditions precedent to the application of the provisions of Section 69A are that (i) the money, bullion, jewellery or other valuable articles in question are not recorded in the books of account, if any, maintained by the assessee concerned for any source of income; and (ii) that the assessee either offers no explanation as to the nature and source of acquisition thereof or the explanation offered by him is, in the opinion of the Income-tax Officer (now Assessing Officer), not satisfactory. In coming to the conclusions that the explanation offered by the assessee in support of his case is not satisfactory, all the facts, circumstances and the evidence in the case have to be considered very carefully, and for this purpose, the assessee should be given due opportunity to adduce evidence in support of his explanations.**

88. In this connection, the following statement made by the Minister of Finance in the Lok Sabha on 18th April, 1964 in reply to some criticism that the provisions of this section might result in hardship to persons whose ornaments or jewellery were given to them by their forefathers, have to be borne in mind:

"Often times, people convert their black money into gold. They make gold jewellery or gold vessels and then say it is heirloom. This is the common way of bringing unaccounted money into something which is reputable and can be cashed….. Any way this (Section 69A) is not intended to hurt the middle class persons. Generally, it will be used in dealing with cases of persons who pay wealth-tax, who probably have declared Rs.25,000 as jewels, and we could ask them 'How did you get more jewels?'…. I can promise that this department shall not go and hurt any lower middle class man at all in this way, because we will get what is our due in other ways. They are not paying the taxes at all….. we will give them notice….. we shall bring them on the tax rolls. But big assesses as are contemplated in this provision cannot be allowed to escape."

J. THE DEPARTMENTAL INSTRUCTIONS DATED 11.05.1994

49. This Court notices Departmental Instruction No. 1916 dated 11th May, 1994.

"2. Departmental instructions. – Instruction read as under:

"Seizure of Jewellery and Ornaments in Course of Search Operations- Guidelines for.- Instances of seizure of jewellery of small quantity in course of operations under section 132 have come to the notice to the Board. The

question of a common approach to situations where search parties come across items of jewellery, has been examined by the Board and following guidelines are issued for strict compliance:-

(i) In the case of a wealth-tax assessee, gold jewellery and ornaments found in excess of the gross weight declared in the wealth-tax return only need be seized.
(ii) In the case of a person not assessed to wealth-tax, gold jewellery and ornaments to the extent of 500 gms. Per married lady, 250 gms. Per unmarried lady and 100 gms. Per male member of the family, need not be seized.
(iii) The authorised officer may, having regard to the status of the family and the custom and practices of the community to which the family belongs and other circumstances of the case, decide to exclude a larger quantity of jewellery and ornaments from seizure. This should be reported to the Director of Income-tax/Commissioner authorising the search at the time of furnishing the search report.

In all cases, a detailed inventory of the jewellery and ornaments found must be prepared to be used for assessment purposes."

K. R. B. JODHA MAL DISTINGUISHED BY HIGH COURT

50. **The High Court has distinguished the judgment of this Court in *R.B. Jodha Mal Kuthiala Vs. Commissioner of Income Tax, Punjab, Jammu and Kashmir, Himachal Pradesh and Patiala*[12]. In the said case, the appellant**

[12] **(1971) 3 SCC 369**

claimed losses for three assessment years. The losses were claimed on account of interest payable to the bank. The appellant assessee had availed the loan in connection with his business which was being conducted in erstwhile Pakistan. With the creation of Pakistan, the hotel which was a part of the appellant's business came to be declared as evacuee property and vested in the custodian in Pakistan. The claim of the appellant assessee in the said case was resisted by the Assessing Officer on the basis of that no income or loss from that hotel could be considered as the property stood vested with the custodian. In other words, since the appellant was resting his claim made under Section 9 of the Income Tax act, 1922 (which corresponds to Section 22 of the Act) as the appellant was not the owner, no relief could be granted to the appellant. The contention of the appellant was that the property vested in the custodian wholly for the purpose of administration and the assessee continued to an owner. This Court, inter alia, held as under:

> "9. The question is who is the "owner" referred to in this section? Is it the person in whom the property vests or is it he who is

entitled to some beneficial interest in the property? It must be remembered that Section 9 brings to tax the income from property and not the interest of a person in the property. A property cannot be owned by two persons, each one having independent and exclusive right over it. Hence for the purpose of Section 9, the owner must be that person who can exercise the rights of the owner, not on behalf of the owner but in his own right.

10. For a minute, let us look at things from the practical point of view. If the thousands of evacuees who left practically all their properties as well as businesses in Pakistan had been considered as the owners of those properties and businesses as long as the "Ordinance" was in force then those unfortunate persons would have had to pay income tax on the basis of the annual letting value of their properties and on the income, gains and profits of the businesses left by them in Pakistan though they did not get a paisa out of those properties and businesses. Fortunately no one in the past interpreted the law in the manner Mr Mahajan wants us to interpret. It is true that equitable considerations are irrelevant in interpreting tax laws. But those laws, like all other laws have to be interpreted reasonably and in consonance with justice.

14. For determining the person liable to pay tax, the test laid down by the court was to find out the person entitled to that income. An attempt was made by Mr Mahajan to distinguish this case on the ground that under the corresponding English statute the liability to tax in respect of income from property is not laid on the owner of the property. It is true that Section 82 of the

English Income Tax Act, 1952, is worded differently. But the principles underlying the two statutes are identical. This is clear from the various provisions in that Act.

17. Those observations have to be understood in the context in which they were made. Therein, Their Lordships were considering whether the right of an evacuee in respect of the property left by him in the country from which he migrated was property right for the purpose of Article 19(1)(*f*) of the Constitution. No one denies that an evacuee from Pakistan has a residual right in the property that he left in Pakistan. But the real question is, can that right be considered as ownership within the meaning of Section 9 of the Act. As mentioned earlier that section seeks to bring to tax income of the property in the hands of the owner. Hence the focus of that section is on the receipt of the income. The word "owner" has different meanings in different contexts. Under certain circumstances a lessee may be considered as the owner of the property leased to him. In *Stroud's Judicial Dictionary* (3rd Edn.), various meanings of the word "owner" are given. It is not necessary for our present purpose to examine what the word "owner" means in different contexts. The meaning that we give to the word "owner" in Section 9 must not be such as to make that provision capable of being made an instrument of oppression. It must be in consonance with the principles underlying the Act.

18. Mr Mahajan next invited our attention to the observations in *Pollock on Jurisprudence* (6th Edn. 1929) pp. 178-80: "Ownership may be described as the entirety

> of the powers of use and disposal allowed by law .... The owner of a thing is not necessarily the person who at a given time has the whole power of use and disposal; very often there is no such person. We must look for the person having the residue of all such power when we have accounted for every detached and limited portion of it; and he will be the owner even if the immediate power of control and use is elsewhere".
>
> [Emphasis supplied]

51. This Court formed the view that since Section 9 of the Income Tax Act, 1922 required that in order that a person be assessed to tax in the form of income from house property, he should be the owner and as the custodian in Pakistan was the owner, the High Court was right in the view it took.

52. In *Late Nawab Sir Mir Osman Ali Khan v. Commissioner of Wealth Tax, Hyderabad*[13]; the matter arose under the Wealth Tax Act, 1957. Section 2(m) of the said Act defined net wealth as being predicated with reference to assets "belonging to" the assessee. The assessee in the said case had sold out the property without executing the sale deed. The possession was

[13] 1986 (supp.) SCC 700

handed over to the buyer after receiving full consideration. The Court notices the following statement:

> "11. The material expression with which we are concerned in this appeal is 'belonging to the assessee on the valuation date'. Did the assets in the circumstances mentioned hereinbefore namely, the properties in respect of which registered sale deeds had not been executed but consideration for sale of which had been received and possession in respect of which had been handed over to the purchasers belonged to the assessee for the purpose of inclusion in his net wealth? Section 53-A of the Transfer of Property Act gives the party in possession in those circumstances the right to retain possession. Where a contract has been executed in terms mentioned hereinbefore and full consideration has been paid by the purchasers to the vendor and where the purchasers have been put in the possession by the vendor, the vendees have right to retain that possession and resist suit for specific performance. The purchasers can also enforce suit for specific performance for execution of formal registered deed if the vendor was unwilling to do so. But in the eye of law, the purchasers cannot and are not treated as legal owners of the property in question. It is not necessary, in our opinion, for the purpose of this case to be tied down with the controversy whether in India there is any concept of legal ownership apart from equitable ownership or not or whether under Sections 9 and 10 of the Indian Income Tax Act, 1922 and Sections 22 to 24 of the Indian income Tax Act, 1961, where 'owner' is spoken in respect of the house properties, the legal owner is meant and not the equitable or beneficial owner. Salmond *On Jurisprudence,* 12th edn., discusses the different ingredients of 'ownership' from pages 246 to 264. 'Ownership',

> according to Salmond, denotes the relation between a person and an object forming the subject-matter of his ownership. It consists of a complex of rights, all of which are rights *in rem*, being good against all the world and not merely against specific persons. Firstly, Salmond says, the owner will have a right to possess the thing which he owns. He may not necessarily have possession. Secondly, the owner normally has the right to use and enjoy the thing owned: the right to manage it, i.e., the right to decide how it shall be used; and the right to the income from it. Thirdly, the owner has the right to consume, destroy or alienate the thing. Fourthly, ownership has the characteristic of being indeterminate in duration. The position of an owner differs from that of a non-owner in possession in that the latter's interest is subject to be determined at some future time. Fifthly, ownership has a residuary character. Salmond also notes the distinction between legal and equitable ownership. Legal ownership is that which has its origin in the rules of the common law, while equitable ownership is that which proceeds from rules of equity different from the common law. The courts of common law in England refused to recognise equitable ownership and denied the equitable owner as an owner at all."

53. The Court further took the view that it was not concerned with the expression 'owner' but it was dealing with the issue as to whether the assets belonged to the assessee anymore. It was found that "mere possession or joint possession unaccompanied by the right of possession or ownership of property would not bring the property within the definition of net

wealth for it would not be an asset belonging to "the assessee". The decisions under the Income Tax Act were distinguished. In regard to R.B. Jodha Mal (supra), this Court finds the following discussion:

> "17. This Court had occasion to discuss Section 9 of the Income Tax Act, 1922 and the meaning of the expression "owner" in the case of R.B. Jodha Mal Kuthiala v. CIT [(1971) 3 SCC 369 : AIR 1972 SC 126 : (1971) 82 ITR 570] . There it was held that for the purpose of Section 9 of the Indian Income Tax Act, 1922, the owner must be the person who can exercise the rights of the owner, not on behalf of the owner but in his own right. An assessee whose property remained vested in the Custodian of Evacuee Property was not the owner of the property. This again as observed dealt with the expression of Section 9 of the Indian Income Tax Act, 1922. At p. 575 (SCC p. 373, para 11) of the report certain observations were relied upon in order to stress the point that these observations were in consonance with the observations of the Gujarat High Court which we shall presently note. We are, however, not concerned in this controversy at the present moment. It has to be borne in mind that in interpreting the liability for wealth tax normally the equitable considerations are irrelevant. But it is well to remember that in the scheme of the administration of justice, tax law like any other laws will have to be interpreted reasonably and whenever possible in consonance with equity and justice. Therefore, specially in view of the fact that the expression used by the

> legislature has deliberately and significantly not used the expression "assets owned by the assessee" but assets "belonging to the assessee", in our opinion, is an aspect which has to be borne in mind."

The question was, therefore, answered in favour of the revenue and it was found that the asset continued to belong to the assessee for the purpose of Wealth Tax.

54. In *Commissioner of Income Tax, Bombay & Ors. v. Podar Cement Pvt. Ltd. & Ors*.[14], a Bench of three learned Judges had occasion to revisit the issue in the following set of facts. The matter arose by way of reference under Section 257 of the Act to the Supreme Court in view of the conflicting judgment of the High Courts. The assessee in one of the cases claimed that the rental income was assessable as income from other sources in as much as the assessee company was not the legal owner of the flats. This was for the reason that the title of the property had not been conveyed to the cooperative society which was formed by the purchaser of the flats. In one of the appeals, the assessee

[14] (1997) 5 SCC 482

claimed that the income must be assessed under Section 22. The claim was rejected on the ground that assessee was only a lessee and had only tenancy rights. The common question which arose in all the cases was the scope of Section 22 of the Act *vis-a-vis* Section 56 of the Act. Section 22 of the Act brings to tax income from house property and the section expressly declares that the assessee must be the owner of the building or lands. Section 27 purports to define the expression owner of house property, *inter alia,* for the purpose of Sections 22 to 26. It includes a person who is allowed to take or retain possession of any building or part thereof, in part performance of a contract of the nature referred to in Section 53(A)of the Transfer of Property Act. The Court distinguished Jodha Mal (supra). This Court further referred to in great detail the judgment of the Patna High Court in *Additional Commissioner of Income Tax, Bihar v. M/s. Sahay Properties and Investment Co.(P) Ltd.*[15]. Since this Court has approved the reasoning adopted by the Patna

[15] 1983 (144) ITR 357

High Court, it is deemed appropriate to refer to the same:

> **"32. The learned Judges observed at page 361:**
>
> **"The emphasis, therefore, in this statutory provision is that the tax under the section is in respect of ownership. But this matter is not as simple as it looks. This leaves us to a more vexed question as to what is ownership. Should the assessment be made at the hands of the person who has the bare husk of the legal title or at the hands of the person who has the rights of an owner of a property in a practical sense? Enjoyment as an owner only in a practical sense can be attributed to the term 'owner' in the context of this section — a person who can exercise the rights of the owner and is entitled to the income from the property for his own benefit. It is well settled, and learned counsel for either side were not at loggerheads, that the section cannot be so construed as to make it an instrument of oppression, to use the language of Hegde, J., in the case of *Jodha Mal* [(1971) 3 SCC 369 : (1971) 82 ITR 570] .**
>
> **We are very much alive to the legal position that it is true that there is no equity about a tax, there is no presumption as to a tax. Nothing is to be read in — nothing is to be implied. We can look only fairly at the language used. Nonetheless, the tax laws have to be interpreted reasonably and in consonance with justice. This is well settled by numerous decisions of the Supreme Court itself.**
>
> **We have, therefore, to judge and interpret the language of Section 22 of the Act in the context of that particular section, and that context we shall come back to hereinafter at a more appropriate place.**
>
> **In the meantime, it would not be irrelevant to go into the concept of 'ownership'. What**

is ownership after all? Read from the Roman law up to the English law at the present stage, medieval stage having been interspersed with different formulae, the position that now juristically emerges is this. The full rights of an owner as now recognised are:

'(*a*) The power of enjoyment (e.g., the determination of the use to which the res is to be put, the power to deal with produce as he pleases, the power to destroy);

(*b*) possession which includes the right to exclude others;

(*c*) power to alienate inter vivos, or to charge as security;

(*d*) power to leave the res by will.'

One of the most important of these powers is the right to exclude others. The property right is essentially a guarantee of the exclusion of other persons from the use or handling of the thing…. But every owner does not possess all the rights set out above — a particular owner's powers may be restricted by law or by an agreement he has made with another.' (Refer to G.W. Paton on *Jurisprudence*, 4th Edn., pp. 517-18.)

While dealing with the concept of possession and enumerating the illustrative cases and rules in this respect, Paton says at p. 577 in clause (*x*):

'To acquire possession of a thing it is necessary to exercise such physical control over the thing as the thing is capable of, and to evince an intention to exclude others:….'

Reference in this connection has been made to the case of *Tubantia*: *Young* v. *Hichens* and of *Pierson* v. *Post* [(1805) 3 Caines 175 (Supreme Court of New York)] .

It would thus be seen that where the possession of a property is acquired, with a right to exercise such necessary control over the property acquired which it is capable of,

it is the intention to exclude others which evinces an element of ownership.

To the same effect and with a more vigorous impact is the subject dealt with by *Dias on Jurisprudence*, (4th Edn., at p. 400):

'The position, therefore, seems to be that the idea of ownership of land is essentially one of the 'better right' to be in possession and to obtain it, whereas with chattels the concept is a more absolute one. Actual possession implies a right to retain it until the contrary is proved, and to that extent a possessor is presumed to be owner.'

"Again, at p. 404, the learned author says:

'Special attention should also be drawn to the distinction between "legal" ownership recognised at common law and "equitable" ownership recognised at equity. This occurs principally when there is a trust, which is purely the result of the peculiar historical development of English law. A trust implies the existence of two kinds of concurrent ownerships, that of the trustee at law and that of the beneficiary at equity.'

We are not concerned in this case with any case of trust either under the equitable principles or under the law as engrafted in the Indian Trusts Act. Because, the 'beneficiary might himself be a trustee of his interest for a third person, in which case his equitable ownership is as devoid of advantage to him as the legal ownership is to the trustee. So, when described in terms of ownership, the distinction between legal and equitable ownership lies in the historical factors that govern their creation and function; in terms of advantage, the distinction is between the bare right, whether legal or equitable, and the beneficial right' (vide pp. 404-405 of *Dias on Jurisprudence*, 4th Edn.).

We, therefore, need not go into the questions involving trusts where a person holds the property and receives the income in trust for others who are the legal beneficiaries. The crux of the matter is as to whether, as already stated above, the actual possession in a given particular case gives a right to retain such a possession until the contrary is proved and so long as that is not done, to that extent a possessor is presumed to be the owner.

Incidentally, although the Supreme Court in the case of *Jodha Mal* [(1971) 3 SCC 369 : (1971) 82 ITR 570] merely mentioned that *Stroud's Judicial Dictionary* had given several definitions and illustrations of ownership, it refrained from going into the details on account of the practical approach that was made in that case, to which we shall hereinafter refer and dilate upon. We think it worthwhile, the matter having been canvassed at length at the Bar, to give a full illustration of the definitions of 'ownership' as Stroud puts it. One such definition is that the 'owner' or 'proprietor' of a property is the person in whom (with his or her assent) it is for the time being beneficially vested, and who has the occupation, or control, or usufruct, of it, e.g., a lessee is, during the term, the owner of the property demised. Yet another definition that has been given by Stroud is that:

'"Owner" applies to every person in possession or receipt either of the whole, or of any part, of the rents or profits of any land or tenement; or in the occupation of such land or tenement, other than as a tenant from year to year or for any less term or as a tenant at will.' (*Stroud's Judicial Dictionary*, 3rd Edn., Vol. 3, p. 2060)

Thus the juristic principle from the viewpoint of each one is to determine the true

connotation of the term 'owner' within the meaning of Section 22 of the Act in its practical sense, leaving the husk of the legal title beyond the domain of ownership for the purpose of this statutory provision. The reason is obvious. After all, who is to be taxed or assessed to be taxed more accurately — a person in receipt of money having actual control over the property with no person having better right to defeat his claim of possession or a person in legal parlance who may remain a remainder man, say, at the end or extinction of the period of occupation after, again say, a thousand years? The answer to this question in favour of the assessee would not merely be doing palpable injustice but would cause absurd inconvenience and would make the legislature to be dubbed as being a party to a nonsensical legislation. One cannot reasonably and logically visualise as to when a person in actual physical control of the property realising the entire income and usufructs of the property for his own use and not for the use of any other person, having the absolute power of disposal of the income so received, should be held not liable to tax merely because a vestige of legal ownership or a husk of title in the long run may yet clothe another person with the power of a residual ownership when such contingency arises which is not a case even here. A plain reading of clause 4 of the agreement, as extracted above, clearly goes to show that the physical possession of the properties has passed on or is deemed to have passed on to the assessee to have and to hold for ever and absolutely with the power to use the same in whatsoever manner it thinks best and the assessee shall derive all income and benefits together with full power of disposal of the properties as well as the income thereof. Can it then be said that the recipient of the income being the assessee only having an absolute and exclusive control over the

property without any let or hindrance on the part of the so-called vendor which, indeed, under law it was not entitled to do, as we shall presently show, shall be immune from the taxing provision in Section 22 of the Act? The answer in our view is clearly in the negative. The reason is simple. The consideration money has been paid in full. The assessee has been put in exclusive and absolute possession of the property. It has been empowered to deal with the income as it likes. It has been empowered to dispose of and even to alienate the property. Reference to Section 54 or, for that matter, Section 55 of the Transfer of Property Act by the Tribunal merely emphasises the fact that the legal title does not pass unless there is a deed of conveyance duly registered. The agreement is in writing and the value of the property is admittedly worth more than hundred rupees. Section 54 of the Transfer of Property Act would, therefore, exclude the conferment of absolute title by transfer to the assessee. That, however, would not take away the right of the assessee to remain in possession of the property, to realise and receive the rents and profits therefrom and to appropriate the entire income for its own use. The so-called vendor is not permitted in law to dispossess or to question the title of the assessee (the so-called vendee). It was for this very practical purpose that the doctrine of the equity of part performance was introduced in the Transfer of Property Act, 1882, by inserting Section 53-A therein. The section specifically allows the doctrine of part performance to be applied to the agreements which, though required to be registered, are not registered and to transfers not completed in the manner prescribed therefor by any law. The section is, therefore, applicable to cases where the transfer is not completed in a manner required by law unless such a non-compliance with the procedure results in the

transfer being void. There is, however, a distinction between an agreement void as such and an agreement void in the absence of something which the vendor could do and had expressly or impliedly contracted to do, and where a vendor agrees to sell his share of property, including *sir* land, there is an implied term in the contract that he will apply for sanction to the revenue authorities necessary for such transfers and the court will direct him to do so. It cannot be said that such an agreement is void because no sanction has been obtained. In the instant case, having reference to clause 5 of the agreement it would be seen that the option was given to the assessee to demand at its pleasure a conveyance duly registered being executed in its favour by the Sahay family (the vendor) and to get its name mutated in the official records. The assessee has not exercised its option for reasons best known to it — presumably to have a double weapon in its hands to be used as and when circumstances so demanded. Can it yet be said that for the default on the part of the assessee itself it would be entitled to say that it is not the owner of the property for all practical purposes, receiving the rent all the time, appropriating the usufructs for its own purposes all the time and having no interference at the instance of the vendor? Can that be a practical and logical approach to the true construction and purport of the substance and spirit of Section 22 of the Act? The answer, in our view, is clearly in the negative and against the assessee. Having taken all the advantages and still taking all the advantages under the contract without any hindrance or obstruction on the part of anyone including the vendor which the vendor could not do in view of Section 53-A of the Transfer of Property Act, the assessee cannot now turn back and say that because of its default in having a deed registered at its sweet will it

> was not an owner within the meaning of Section 22 of the Act. It may bear repetition to say that it was on account of these facts that juristic principles have now emerged saying that one of the most important of the powers of ownership is the right to exclude others from possession and the property right is essentially a guarantee of the exclusion of other persons from the use or handling of the thing. In that sense, therefore, the assessee itself became the owner of the property in question. In our view, any decision to the contrary would not be in consonance with the juristic principle either at common law or in equity. In either case, it would not be subservient to the intent and purpose of Section 22 of the Act, with regard to which, as we have already stated, we can fairly look at the language used and the tax laws have to be interpreted reasonably and in consonance with justice. So far we have dealt with the case in this respect on juristic principles as if it were a matter of first impression. We have, therefore, now to refer to the case-law on the subject."
>
> (Emphasis supplied)

Further, it is found that the Court also noticed the memorandum explaining provisions in Finance Bill 1987 concerning Section 27 and found that the amendment was intended to supply an obvious omission or clear up the doubts surrounding the word owner in Section 22 of the Act. The Court answered the reference in favour of the Revenue by holding that "in the context of Section 22 of the Act having regard to the ground realities and

to the object of the Act, namely, to tax the income of the "owner as a person who is entitled to receive income from the property in his own right."

55. In *Mysore Minerals Ltd. M.G. Road, Bangalore v. Commissioners of Income Tax, Karnataka, Bangalore*[16] the assessee company though allotted houses by delivery of possession by the Housing Board, an actual deed of conveyance had not been executed in its favour. The houses so allotted were for the use of its staff. Assessee claimed depreciation under Section 32 of the Act. Section 32 of the Act also contemplates ownership of the asset as a condition for claiming the benefit of depreciation. The Court, inter alia, held as follows:

> "4. Section 32 of the Income Tax Act confers a benefit on the assessee. The provision should be so interpreted and the words used therein should be assigned such meaning as would enable the assessee to secure the benefit intended to be given by the legislature to the assessee. It is also well settled that where there are two possible interpretations of a taxing provision the one which is favourable to the assessee should be preferred.

[16] (1999) 7 SCC 106

5. What is ownership? The terms "own", "ownership", "owned" are generic and relative terms. They have a wide and also a narrow connotation. The meaning would depend on the context in which the terms are used. *Black's Law Dictionary* (6th Edn.) defines "owner" as under:

"*Owner*.—The person in whom is vested the ownership, dominion, or title of property; proprietor. He who has dominion of a thing, real or personal, corporeal or incorporeal, which he has a right to enjoy and do with as he pleases, even to spoil or destroy it, as far as the law permits, unless he be prevented by some agreement or covenant which restrains his right.

The term is, however, a *nomen generalissimum*, and its meaning is to be gathered from the connection in which it is used, and from the subject-matter to which it is applied. The primary meaning of the word as applied to land is one who owns the fee and who has the right to dispose of the property, but the term also includes one having a possessory right to land or the person occupying or cultivating it.

The term 'owner' is used to indicate a person in whom one or more interests are vested for his own benefit."

6. In the same dictionary, the term "ownership" has been defined to mean, inter alia, as—

"Collection of rights to use and enjoy property, including right to transmit it to others. … The right of one or more persons to possess or use a thing to the exclusion of others. The right by which a thing belongs to someone in particular, to the exclusion of all other persons. The exclusive right of

possession, enjoyment, and disposal; involving as an essential attribute the right to control, handle, and dispose."

7. *Dias on Jurisprudence* (4th Edn., at p. 400) states:

"The position, therefore, seems to be that the idea of ownership of land is essentially one of the 'better right' to be in possession and to obtain it, whereas with chattels the concept is a more absolute one. Actual possession implies a right to retain it until the contrary is proved, and to that extent a possessor is presumed to be owner."

8. *Stroud's Judicial Dictionary* gives several definitions and illustrations of ownership. One such definition is that the "owner" or "proprietor" of a property is the person in whom (with his or her assent) it is for the time being beneficially vested, and who has the occupation, or control, or usufruct, of it; e.g., a lessee is, during the term, the owner of the property demised. Yet another definition that has been given by Stroud is:

" 'owner' applies 'to every person in possession or receipt either of the whole, or of any part, of the rents or profits of any land or tenement; or in the occupation of such land or tenement, other than as a tenant from year to year or for any less term or as a tenant at will'."

19. It is well settled that there cannot be two owners of the property simultaneously and in the same sense of the term. The intention of the legislature in enacting Section 32 of the Act would be best fulfilled by allowing deduction in respect of depreciation to the person in whom for the time being vests the dominion over the building and who is entitled

to use it in his own right and is using the same for the purposes of his business or profession. Assigning any different meaning would not subserve the legislative intent. To take the case at hand it is the appellant assessee who having paid part of the price, has been placed in possession of the houses as an owner and is using the buildings for the purpose of its business in its own right. Still the assessee has been denied the benefit of Section 32. On the other hand, the Housing Board would be denied the benefit of Section 32 because in spite of its being the legal owner it was not using the building for its business or profession. We do not think such a benefit-to-none situation could have been intended by the legislature. The finding of fact arrived at in the case at hand is that though a document of title was not executed by the Housing Board in favour of the assessee, but the houses were allotted to the assessee by the Housing Board, part-payment received and possession delivered so as to confer dominion over the property on the assessee whereafter the assessee had in its own right allotted the quarters to the staff and they were being actually used by the staff of the assessee. It is common knowledge, under the various schemes floated by bodies like Housing Boards, houses are constructed on a large scale and allotted on part-payment to those who have booked them. Possession is also delivered to the allottee so as to enable enjoyment of the property. Execution of document transferring title necessarily follows if the schedule of payment is observed by the allottee. If only the allottee may default the property may revert back to the Board. That is a matter only

> between the Housing Board and the allottee. No third person intervenes. The part-payments made by the allottee are with the intention of acquiring title. The delivery of possession by the Housing Board to the allottee is also a step towards conferring ownership. Documentation is delayed only with the idea of compelling the allottee to observe the schedule of payment."
>
> (Emphasis supplied)

56. Lastly, there is the judgment of this Court in *Industrial Credit and Development Syndicate Ltd. v. Commissioner of Income Tax, Mysore & Anr*.[17]. The assessee was engaged in the business of hire purchase, leasing and real estate etc. As part of its business, it leased out vehicles to its customers, and thereafter, had no physical connection with the vehicles. What is more, the lessees were registered as the owners of the vehicles in the Certificate of Registration under the Motor Vehicles Act. The claim of depreciation made under Section 32 of the Act was rejected on the basis that the assessee was not the owner of the vehicles. The Court found from the lease agreement that it was agreed that the assessee was to

[17] (2013) 3 SCC 541

be the exclusive owner of the vehicle at all points of time. The argument of the Revenue that the name of the lessee was entered in the Certificate of Registration under Motor Vehicle Act, and therefore, it must be treated as the owner under Section 2(30) was rejected. It was further found that if the lessee was in fact the owner, he would have claimed depreciation, which was not done. It was also found that the entire lease rent was assessed as business income in the hands of the assessee. The Court went on to hold that in the facts it was the appellant-assessee which could be treated as the owner of the vehicles entitling it to claim the benefit of depreciation under Section 32.

57. This Court is called upon to decide the ambit of the word 'owner' in section 69A in the facts before us. This Court agrees with the High Court that the concept of 'owner' cannot be divorced from the context in which the expression is employed. In the case of ***Jodha Mal*** (supra), the property undoubtedly stood vested as evacuee property with the custodian in Pakistan. The assessee wanted to claim the benefit of the losses it had made at a time when he had ceased to be the owner.

This Court bore in mind the effect of the Act under which the custodian in Pakistan became the owner. The claim of the assessee in the said case was that the custodian was owner only for the purpose of administration and that the assessee still continued to be the owner in the sense that he had the ultimate right to the property. This Court took a practical view as well noticing that thousands of evacuees who had left all the properties in Pakistan would be visited with tax even though they had left Pakistan and they did not get a paisa out of those properties and businesses. It was found that for the purpose of Section 9, the owner must be that person who can exercise the rights of the owner, not on behalf of the owner, but in his own right. The Court also accepted that an evacuee from Pakistan had a residual right in the property. It was in this context that the Court considered as to whether that residual right can be considered as ownership for the purposes of Section 9 of the earlier Act. It was still further in the said context that the Court held that the focus of the Section is on the receipt of the income and that the

word owner had different meanings in different contexts.

58. When it came to the *Podar Cement Pvt. Ltd.*(supra), this Court took into consideration the ground reality in the context of Section 22 of the Act and approved of taxing the income of a person who is entitled to receive income from the property in his own right under Section 22. We have elaborately referred to the judgment of the Patna High Court in the Sahay Properties case. The full rights of an owner as set out therein may again be reiterated as:

(1) The power of enjoyment which includes the power to destroy.

(2) The right to possession which includes the right to exclude others.

(3) The power to alienate *inter vivos* or to charge as security.

(4) The power to bequeath the property.

59. This Court may at this juncture observe that a carrier has none of these rights or powers. It may be true that in order to be an owner, all the rights and powers of an owner need not be present at the same

point of time in the same person. It may be true that ownership may be associated with a better right to be in possession and actual possession in a given case may be harmonised with ownership. Being in possession with a right to be possession may lead to a presumption that the possessor is the owner, unless it be that there are indications to the contrary. The beneficial vesting may in the context clothe the person with title as the owner. Another concept which emerges is a person in receipt of money having actual control over the property with no person having a better right to defeat his claim of possession may open the doors to a finding that he is the owner within the meaning of Section 69A. A person in actual physical control of the property and realising the entire income for his own use may indicate the presence of ownership. The absence of the conveyance needed to complete the transfer may not detract from a person being found to be the owner. The soul of the reasoning appears to be the entitlement to receive the income from the property 'in his right'.

60. Let us apply these tests and ascertain whether the appellant can be treated as the owner in any sense of

the expression. Appellant as a carrier was entrusted with the goods. The possession of the appellant began as a bailee. The Court proceeds further on the basis that instead of delivering the goods, the appellant did not deliver the goods to the concerned divisions of the department in the State of Bihar. Ownership of the goods in question by no stretch of imagination stood vested at any point of time in the appellant. Property would pass from the consignor to the consignee on the basis of the principles which are declared in the Sale of Goods Act. It is inconceivable that any of those provisions would countenance passing of property in the goods to the appellant who was a mere carrier of the goods. Section 406 of the IPC makes it an offence for a person entrusted with property which includes goods entrusted to a carrier being misappropriated or dishonestly being converted to the use of the carrier. A specific illustration under Section 406 makes it abundantly clear that any such act by a carrier attracts the offence under Section 406. The Court in other words would have to allow the commission of an offence by the appellant in the process of finding that

the appellant is the owner of the goods. In other words, proceeding on the basis that there was short delivery of the goods by the appellant, inevitably, the Court must find that the act was not a mere omission or a mistake but a deliberate act by a carrier involving it in the commission of an offence under Section 406. In other words, the Court must necessarily find that the appellant continued to possess the bitumen and misappropriated and it is in this state that assessing officer would have to find that the appellant by the deliberate act of short delivering the goods and continuing with the possession of the goods not only contrary to the contract but also to the law of the land, both in the Carriers Act 1865 and breaking the penal law as well, the appellant must be treated as the owner.

61. There is no equity about a tax. Equally, a person cannot be taxed based on intendment. Unlike the possession of a person who for all intents and purposes, and in his own right, earns income from house property, lawfully otherwise, and falls short of ownership only for want of a formal conveyance as

required under Section 54 of Transfer of Property Act, a carrier who clings on to possession not only without having a shadow of a right, but what is more, both contrary to the contract as also the law cannot be found to be the owner. The possession of the carrier who deliberately refuses to act under the contract but contrary to it, is not only wrongful, but more importantly, makes it a case where the possession itself is without any right with the carrier to justify his possession. Recognising any right with the carrier in law would involve negation of the right of the actual owner which if the property in the goods under the contract has passed on to the consignee is the consignee and if not the consignor. This Court has already found that the appellant is bereft of any of the rights or powers associated with ownership of property. The only aspect was the alleged possession of the goods which is clearly wrongful when it continued with the appellant contrary to the terms of the contract and the law.

62. The Court is conscious of the fact that income derived from an illegal business can be legitimately

brought to tax [See AIR 1980 SC 1271]. However, that is a far cry from justifying invocation of Section 69A of the Act as it is indispensable to invoke the said provision that the assessing officer must find that the articles in question was under the ownership of the assessee in the financial year. This is apart from other requirements being met.

63. This Court may approach the issue from another angle. Section 69A was inserted in 1964 to get at income which was sought to be screened from tax by purchasing valuable articles such as bullion and gold and jewellery besides keeping it in the form of money also. The object of such assessee would also be achieved by becoming the owners of other valuable articles. In this case, is it a case where the appellant was attempting to conceal taxable income by illegally possessing the bitumen? Proceeding further and assuming again that the assessee possessed the bitumen albeit illegally and proceeded to dispose of the same. The rationale of the Revenue involves ownership of the bitumen being ascribed to the appellant based on possession of the bitumen contrary to the contract of carriage and with

the intention to misappropriate the same, which further involves the sale of the bitumen for which there is no material as such. But this Court proceeds on the basis that such a sale also took place. What is however important is, the requirement in Section 69A that the assessing officer must find that the assessee is the owner of the bitumen. This Court is unable to agree that in the facts it could be found that the appellant could be found to the owner. It is further found that the appellant could not be said to be in possession in his own right, accepting the case of the Revenue that there was short delivery. This Court finds that the appellant did not possess the power of alienation. Quite clearly, if the case of short delivery is accepted, the consignee if property had passed to it had every right over the bitumen and proceeding on the basis that the assessing officer's reasoning is correct, the department definitely had a case that it had not received the bitumen in question. The right over the bitumen as an owner at no point of time could have been claimed by the appellant. The possession of the appellant at best is a shade better than that of a

thief as the possession had its origin under a contract of bailment. This is also not a case where any case is set up of the carrier exercising rights available in law entitling it possess goods as of right or pass on title to another under law as permitted. Hence, this Court would hold that the Assessing Officer acted illegally in holding that one appellant was the 'owner' and on the said basis made the addition.

L. "OTHER VALUABLE ARTICLE"

64. It is a case of the appellant that applying the Principle of *Ejusdem Generis*, bitumen would stand out as a strange bed fellow in the company of its immediate predecessor words, viz., money, bullion and jewellery. In other words, it is the case of the appellant that bitumen is a clear misfit and it could not have been the legislative intention to treat bitumen as other valuable article. Our attention is drawn to the Circular No. 20D dated 07.07.1964 issued by Central Board of Direct Taxes, which has been adverted to. {see paragraph 48}

65. In ***Bhagwandas Narayandas v. Commissioner of Income Tax, Ahmedabad and others***[18], the question, which, inter alia, fell for consideration before a learned Single Judge of High Court of Gujarat, was, whether fixed deposit receipts and title deeds of immovable property were 'valuable things or articles', which required a show-cause notice under Rule 112A of the Income-Tax Rules, 1962. Section 132 if the Act also employs the expression 'other valuable articles'. The Court, *inter alia*, held as follows:

> "18. On close consideration of the scheme of sub-section (5) of section 132, we find that the above referred contention of Shri Bhatt is not acceptable. As already pointed out by us in the foregoing discussion, it is evident from the scheme of sub-section (5) of section 132 that the "assets", which are seized during the course of an authorised search under section 132, are expected to be retained only for the purpose of satisfying the tax liability of an assessee as ascertained from his undisclosed income. Therefore, by using the words "valuable article or thing", what the legislature has intended to imply is that the assets covered by these words should be such as could be converted into cash so that the tax liability of the assessee concerned, as revealed from his undisclosed income, could be duly satisfied. In other words,

[18] 1973 Vol. 98 ITR 194

the thing or article which can be retained under sub-section (5) of section 132 should be the one which is carrying its own intrinsic value in terms of money. Therefore, the question is whether the fixed deposit receipts and documents of title relating to an immovable property are the things or articles which can be evaluated in terms of money. Obviously, a document of title relating to an immovable property or even a fixed deposit receipt issued by a bank in favour of a particular person are merely the documents of title which, though possessing much evidentiary value, do not passes any intrinsic market value. They do supply evidence of assets which by themselves are valuable but they being mere documents of title, they can neither be negotiated nor be transferred for a valuable consideration. Under the circumstances, we are of the opinion that documents of title, which have no greater value than an evidentiary one, and which do not carry any saleable interest, are not the "valuable things or articles" contemplated either by subsection (5) of section 132 of the Act or by rule 112A of the Rules. There is nothing in the record to show that the fixed deposit receipts, which are seized in this case, carry any inherent market value with them. They are merely the documents evidencing the debt due to the assessee. Similarly, the documents of title relating to an immovable property also contain no more value than an evidentiary one. Thus, since none of those documents has got any intrinsic value in terms of money, we are of the opinion that they are not covered by sub-section (5) of section 132 of the Act or rule 112A of the Rules."

(Emphasis supplied)

66. Unlike a document of title or a fixed deposit receipt, which cannot, by itself, be disposed of or alienated, bitumen would be goods, which can be transferred. It would have a value in the market depending upon its quality. In ***Commissioner of Income Tax v. M.K. Gabrial Babu and others***[19], the High Court of Kerala was dealing with the question, as to whether immovable property would be covered within the expression 'other value article or thing' within the meaning of Section 132(1) of the Act. The Court held:

> "4. … A word in a statue is quite often judged by the company its keeps. The preceding words of Section 132(1), cannot be ignored or overlooked. Money, bullion, jewellery, which precede "other valuable article or thing" forge a genus and, consequently, the words "other valuable article or thing" assume a constricted meaning and interpretation in that context. The general principles of interpretation of a restricted meaning being given to certain words, whether it be by applying the principles of ejusdem generis or otherwise restricting it, had been followed by judicial decisions covering much area and many topics. They are not necessarily confined to Income Tax legislation. Those connected with the terms under the Income Tax enactment have been referred to by the learned judge in support of his conclusion.

[19] (1991) 188 ITR 464 Kerala

> We concur with that view. It is unnecessary, therefore, to supplement it by adventitious decisions available from other jurisdictions as well. We affirm the judgment of the learned Single Judge (M.K. Gabriel Babu v. Asst. Director of I.T. (Investigation) [(1990) 186 ITR 435 (Ker.).]"

67. In contrast to the view taken in the impugned order before us, in *Dhanush General Stores v. Commissioner of Income Tax*[20], the Court, inter alia, on facts, held as follows:

> "13. If there is undisclosed investment in bullion, jewellery or other valuable articles, which are not fully disclosed in the books of account the case would fall under the ambit of s. 69B of the Act, 1961. In the case on hand, there was excess stock, which can be held as unexplained investment, not investment in bullion, jewellery or other valuable articles. In the entire survey, it was not found that any bullion, jewellery or other valuable articles has been found. The Kirana articles cannot be held as other valuable articles.
> 14. "Valuable article" means an article which is valuable and having a high price, not other ordinary articles, as in the instant case.
> 15. The surrendered income ought to have been treated as deemed income under the provisions of s.69 of the Act, 1961, however, on the wrong provision applied in the assessment order though the effect is one and the same the surrendered income

[20] (2011) 339 ITR 651 Chhattisgarh

> cannot be held that it was not an income under the provisions of s.69 of the Act, 1961. As such, the substantial question of law, i.e., (i) and (iii) are answered accordingly."
>
> (Emphasis supplied)

68. The word 'valuable' has been defined in Black's Law Dictionary as follows: -

> "Valuable adjective. Worth a good price; having financial or market value."

69. The word 'valuable' has been defined in the Concise Oxford Dictionary as follows: -

> The word 'valuable' has been defined as again an adjective. "worth a great deal of money. Very useful or important."

70. The word 'money' has been described in Black's Law Dictionary as follows: -

> "money. 1. The medium of exchange authorized or adopted by a government as part of its currency; esp. domestic currency <coins and currency are money>.2. Assets that can be easily converted to cash <demand deposits are money>. 3. Capital that is invested or traded as a commodity <the money market>. 4. Funds; sums of money <investment moneys>. – Also spelled (in sense4) monies. See Medium of Exchange; Legal Tender."

71. **The word 'article' has been defined in Black's Law Dictionary as "Generally, a particular item or thing <article of clothing>.**

72. **The Word 'bullion' has been defined in the Concise Oxford Dictionary as 'gold or silver in bulk before coining, or valued by weight'**

M. PRINCIPLE OF EJUSDEM GENERIS; NOSCITUR A SOCIIS

73. **Section 69A provides for unexplained 'money, bullion, jewellery'. It is thereafter followed by the words 'or other valuable articles'. Does this mean that the words 'other valuable articles' must be read *ejusdem generis*? The principle applies when the following conditions are present [Principles of Statutory Interpretation by Justice G P Singh, 14th Edition]:**

> **"(1) the statue contains an enumeration of specific words; (2) the subjects of enumeration constitutes a class or category; (3) that class or category is not exhausted by the enumeration; (4) the general terms follow the enumeration; and (5) there is no indication of a different legislative intent". If the subjects of enumeration belong to a broad based genus as also to a narrower genus, there is no**

> principle that the general words should be confined to the narrower genus."

74. In the context of Explanation 3(b) to Section 32(1) of the Act, this Court in ***Commissioner of Income Tax, Kolkata v. SMIFS Securities Limited***[21], held as follows:

> "8. We quote hereinbelow Explanation 3 to Section 32(1) of the Act:
>
> "*Explanation 3*.—For the purposes of this sub-section, the expressions 'assets' and 'block of assets' shall mean—
>
> (*a*) tangible assets, being buildings, machinery, plant or furniture;
>
> (*b*) intangible assets, being know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature."
>
> Explanation 3 states that the expression "asset" shall mean an intangible asset, being know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature. A reading of the words "any other business or commercial rights of similar nature" in clause (*b*) of Explanation 3 indicates that goodwill would fall under the expression "any other business or commercial right of a similar nature". The principle of ejusdem generis would strictly apply while interpreting the said expression which finds place in Explanation 3(*b*).

[21] (2012) 13 SCC 488

> 9. In the circumstances, we are of the view that "goodwill" is an asset under Explanation 3(*b*) to Section 32(1) of the Act."

75. In ***Rohit Pulp and Paper Mills Limited v. Collector of Central Excise, Baroda***[22], the Court was dealing with an exception clause in an exemption notification and considered the applicability of the Principle of *Noscitur a Sociis*, to the facts:

> "12. The principle of statutory interpretation by which a generic word receives a limited interpretation by reason of its context is well established. In the context with which we are concerned, we can legitimately draw upon the "*noscitur a sociis*" principle. This expression simply means that "the meaning of a word is to be judged by the company it keeps." Gajendragadkar, J. explained the scope of the rule in *State of Bombay* v. *Hosptial Mazdoor Sabha* [(1960) 2 SCR 866 : AIR 1960 SC 610 : (1960) 1 LLJ 251] in the following words: (SCR pp. 873-74)
>
> > "This rule, according to Maxwell, means that, when two or more words which are susceptible of analogous meaning are coupled together they are understood to be used in their cognate sense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general. The same rule is thus interpreted in "*Words and Phrases*" (Vol. XIV, p. 207): "Associated words take their meaning from one another under the doctrine of *noscitur a sociis*,

[22] (1990) 3 SCC 447

> the philosophy of which is that the meaning of a doubtful word may be ascertained by reference to the meaning of words associated with it; such doctrine is broader than the maxim *ejusdem generis*". In fact the latter maxim "is only an illustration or specific application of the broader maxim *noscitur a sociis*". The argument is that certain essential features of attributes are invariably associated with the words "business and trade" as understood in the popular and conventional sense, and it is the colour of these attributes which is taken by the other words used in the definition though their normal import may be much wider. We are not impressed by this argument. It must be borne in mind that *noscitur a sociis* is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider. It is only where the intention of the legislature in associating wider words with words of narrower significance is doubtful, or otherwise not clear that the present rule of construction can be usefully applied. It can also be applied where the meaning of the words of wider import is doubtful; but, where the object of the legislature in using wider words is clear and free of ambiguity, the rule of construction in question cannot be pressed into service."

This principle has been applied in a number of contexts in judicial decisions where the court is clear in its mind that the larger meaning of the word in question could not have been intended in the context in which it has been used. The cases are too numerous to need discussion here. It should be sufficient to refer to one of them by way of illustration.

In *Rainbow Steels Ltd.* v. *CST* [(1981) 2 SCC 141 : 1981 SCC (Tax) 90] this Court had to understand the meaning of the word 'old' in the context of an entry in a taxing traffic which read thus:

> **"Old, discarded, unserviceable or obsolete machinery, stores or vehicles including waste products....."**

Though the tariff item started with the use of the wide word 'old', the court came to the conclusion that "in order to fall within the expression 'old machinery' occurring in the entry, the machinery must be old machinery in the sense that it has become non-functional or non-usable". In other words, not the mere age of the machinery, which would be relevant in the wider sense, but the condition of the machinery analogous to that indicated by the words following it, was considered relevant for the purposes of the statute."

76. **About *Noscitur a Sociis and how it compares with ejusdem generis, the following statement in G.P. Singh (supra) on Statutory Interpretation* is apposite:**

> **"It is a rule wider than the rule of *ejusdem generis;* rather the latter rule is only an application of the former."**

N. WHETHER BITUMEN IS 'OTHER VALUABLE ARTICLE'

77. **This Court has referred to the Principles of *Ejusdem Generis* and *Noscitur a Sociis*, which undoubtedly are rules of construction the latter being**

described as having treacherous underpinnings and the former requiring the existence of a genus which is not exhausted by the categories catalogued in the statute. This Court has also referred to the definition of the words, money, bullion valuable and article. The Court approves the view taken by the High Court of Gujarat in ***Bhagwandas Narayandas*** (supra) that a document of title to immovable property or a fixed deposit receipt would not qualify as other valuable article. The reasons which have been given appear to us to be sound. A document of title or a fixed deposit receipt would not be 'articles' which can be bought and sold in a market. An article, would also not encompass an item of immovable property. This Court can safely conclude that an article must be movable property. One strong indication that the Principle of *Ejusdem Generis* may not apply is a decision of this Court in ***Chuharmal*** (supra), where the articles involved were watches. Watches by no stretch of imagination can be brought in on the basis of *ejusdem generis*. They do not belong to the so-called genus of money or bullion or jewellery. The hallmark of a watch in the context of the expression

'other valuable article' would be that it is marketable and it has value. When it comes to value, it is noticed that in the definition of the word 'valuable' in Black's Law Dictionary, it is defined as 'worth a good price; having a financial or market value'. The word 'valuable' has been defined again as an adjective and as meaning worth a great deal of money in the Concise Oxford Dictionary. Valuable, therefore, cannot be understood as anything which has any value. The intention of the law-giver in introducing Section 69A was to get at income which has not been reflected in the books of account but found to belong to the assessee. Not only it must belong to the assessee, but it must be other valuable articles. Let us consider a few examples. Let us take the case of an assessee who is found to be the owner of 50 mobile phones each having a market value of Rs.2 lakhs each. The value of such articles each having a price of Rs.2 lakhs would amount to a sum of Rs.1 crore. Let us take another example where the assessee is found to be the owner of 25 highly expensive cameras. Could it be said that despite having a good price or worth a great deal of money, they would

stand excluded from the purview of Section 69A. On the other hand, let us take an example where a person is found to be in possession of 500 tender coconuts. They would have a value and even be marketable but it may be wholly inapposite to describe the 500 tender coconuts as valuable articles. It goes both to the marketability, as also the fact that it may not be described as worth a 'good' price. Each case must be decided with reference to the facts to find out that while articles or movables worth a great deal of money or worth a good price are comprehended articles which may not command any such price must stand excluded from the ambit of the words 'other valuable articles'. The concept of 'other valuable articles' may evolve with the arrival in the market of articles, which can be treated as other valuable articles on satisfying the other tests.

78. Bitumen is defined in the Concise Oxford English Dictionary as 'a black viscous mixture of hydrocarbons obtained naturally or as a residue from petroleum distillation, used for road surfacing and roofing'. Bitumen appears to be a residual product in the

petroleum refineries and it is usually used in road construction which is also probabalised by the fact that the appellant was to deliver the bitumen to the Road Construction Department of the State. Bitumen is sold in bulk ordinarily. In the Assessment Order, the Officer has proceeded to take Rs. 4999.58 per metric ton as taken in the AG Report on bitumen scam. Thus, it is that the cost of bitumen for 2094.52 metric ton has been arrived at as Rs. 1,04,71,720.30. This would mean that for a kilogram of bitumen, the price would be only Rs.5 in 1995-1996 (F.Y).

79. Bitumen may be found in small quantities or large quantities. If the 'article' is to be found 'valuable', then in small quantity it must not just have some value but it must be 'worth a good price' {See Black's Law Dictionary (supra)} or 'worth a great deal of money' {See Concise Oxford Dictionary (supra)} and not that it has 'value'. Section 69A would then stand attracted. But if to treat it as 'valuable article', it requires ownership in large quantity, in the sense that by multiplying the value in large quantity, a 'good price' or 'great deal of money' is arrived at then it would

not be valuable article. Thus, this Court would conclude that 'bitumen' as such cannot be treated as a 'valuable article'. In view of these findings, this Court need not pronounce on points III and IV. The appeals are allowed. The impugned judgment will stand set aside and though on different grounds, the order by the Commissioner Appeals deleting the addition made on the aforesaid basis will stand restored.

.....J.
[K.M. JOSEPH]

NEW DELHI;
DATED: MAY 16, 2023.

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3738-3739 OF 2023
(Arising out of SLP(C)No. 10617-10618 OF 2023)
@ Diary No. 7803 of 2018

M/S. D.N. SINGH Appellant(s)

VERSUS

COMMISSIONER OF INCOME TAX,
CENTRAL, PATNA & ANR. Respondent(s)

J U D G M E N T

Hrishikesh Roy, J.

1. I have perused the erudite opinion of my esteemed brother Justice KM Joseph. I am in accord with his judgment that for the purposes of Section 69A of the Income Tax Act, 1961- the deeming effect of the provision will only apply, if the assessee is the owner of the impugned goods and secondly, for any article to be considered as '*valuable article*' under Section 69A, it must be intrinsically

costly, and it will not be regarded as valuable if huge mass of a non precious and common place article is taken into account, for imputing high value. I wish to add the following reasoning to justify my opinion.

2. Two principal questions arise in this matter. Firstly, whether the assessee herein can be regarded as an 'owner' for the concerned goods, and, secondly, whether '*bitumen*' can be covered within the category of '*other valuable article*', alongside *money, bullion and jewellery,* as mentioned in Section 69A of the Income Tax Act, 1961.

3. In the general scheme of the Income Tax Act, 1961, direct taxation, except in areas such as e-commerce, is inextricably connected to the ownership and not just possession of the underlying asset, creating income. Section 22 of the Act, which provides for taxation of income from house property provides that the assessee must be the owner of such property generating

income. Section 45 provides for income tax on capital gains to be imputed on owners of capital assets who transfer such assets and those who convert them for lawful gains. Likewise, section 69A provides as a rule of evidence that for the deeming effect to apply- the assessee must be the owner of money, bullion, jewellery and other valuable articles on which he is unable to proffer a satisfactory explanation. Section 69B provides that in cases of understated investments the assessee should be the owner of money, bullion, jewellery and other valuable article(s). Hence, determining ownership of impugned goods is an important factor to impute tax liability. Someone having mere possession and without legal ownership or title over the goods, will not be covered within the ambit of Section 69A. An assessee may nevertheless be also regarded as deemed owner if possession is imputed on the assessee and no other person having a better claim is contesting the assessee's claim. In the present case, the assessee was certainly not the owner of the

bitumen - but was the carrier who was supplying goods from the consignor- oil marketing companies to the consignee- Road Construction Department. Notably, due to short delivery of goods, the possession of the assessee was unlawful. The inevitable conclusion therefore is that the assessee is not the owner, for the purposes of Section 69A.

4. To address the second question on whether bitumen is a valuable article under Section 69A, we must understand what sort of article is bitumen. Commonly, bitumen is described as a sticky, black, highly viscous, liquid or a semi-solid form of petroleum and a crude oil by-product, which is also known as asphalt. When crude oil is subjected to refining- by fractional distillation, i.e. before it is converted into industrially viable finished petroleum products, midway, several useful articles are obtained. In the process of distillation of crude oil in the fractionating column- top distillates like liquified petroleum

gas(LPG), middle distillates like- kerosene, diesel, jet fuel and paraffin are obtained and in the lower column, distillates like lubricants and greases, are collected. At the residual level at the bottom of the column, bitumen and asphalt are the offshoot of the distillation process. Bitumen, the highly viscous complex of hydrocarbons is mostly used for road surfacing, roofing and for water and alkaline resistant painting. The question is whether this residual offshoot from crude oil refining, can be categorised as a valuable article, in the context of Section 69A of the Income Tax Act keeping in mind that the section, specifically lists three items i.e. money, jewellery and bullion. To provide more clarity it is relevant to quote the section in full. It reads as follows:

> "69A. Unexplained money, etc. Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source

> of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year."

5. The Patna High Court in the order challenged before us- held that under Section 69A *"any article which has value will come under the expression "valuable article" as mentioned in Section 69A of the Act…"*[1] According to the Division Bench, for purposes of Section 69A, it will not be relevant whether the article in question is generally considered to be of high value and is a precious item. It possibly could be a common place and ordinary article but all that will be relevant is that the considered item has some value. The article can be a run-of-the-mill item or it can be

[1] **DN Singh Vs. Commissioner of Income Tax & Anr. (2010) 324 ITR 304**

a high priced one. According to the High Court the nature of the article is immaterial so long as it is of some value which may be accounted only by volume. In this case, the addition to assessee's income related to Rs. 1.05 crores worth of bitumen. In particular, the impugned judgement also noted that in Section 69A the word 'valuable article' is a '*separate item*' from bullion, money and jewellery and concluded that it may include any article of value.

6. At this juncture, it is also relevant to consider, the decision of the Chhattisgarh High Court in *Dhanush vs. CIT*[2] under a related anti-avoidance provision, i.e. Section 69B of the Act. However, before adverting to the decision, it is pertinent to note that on the question of interpretation of the phrase 'other valuable article' in Section 69A, the findings, will also be applicable to Section 69B. Although Section 69A deals with

[2] **Dhanush General Stores vs. Commissioner of Income Tax (2011) 339 ITR 651**

unexplained ownership of valuable articles, and the provision in Section 69B covers cases of understatement of expenditure incurred on acquisition of valuable articles, both provisions deal with the ownership of valuable articles. Section 69B, inserted by virtue of the Finance Act, 1965 (10 of 1965), reads as follows:

> "69B. Amount of investments, etc., not fully disclosed in books of account. Where in any financial year the assessee has made investments or is found to be the owner of any bullion, jewellery or other valuable article, and the Assessing Officer finds that the amount expended on making such investments or in acquiring such bullion, jewellery or other valuable article exceeds the amount recorded in this behalf in the books of account maintained by the assessee for any source of income, and the assessee offers no explanation about such excess amount or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the excess amount may be deemed to be the income of the assessee for such financial year."

7. Now returning to the facts of *Dhanush* (supra), the learned Division Bench, in contrast, held that the stock in *kirana* store is not a valuable article

for the purposes of Section 69B. The Court noted that *kirana* store items are not valuable articles having a high price and are rather in the nature of *ordinary articles*. In that case the excess stock worked out to around Rs. 87,000/-.

8. Between the two contrary opinions, on the applicability of Section 69A/69B as mentioned above, on the nature of the article for the purpose of tax liability, I feel that the Chhattisgarh High Court in *Dhanush* (supra) propagates the correct view. I do not see any basis to give a wide interpretation to Section 69A and include within its ambit, *any and every article of value*. Notably, it can be seen that- articles of value- are a genus of which valuable articles are a species i.e. a subset of high priced items. To put it differently, an article having value, may not be a valuable article. As for instance, a bag of cement, a sack of rice or a diamond stone will certainly have some value. But only the diamond stone can be regarded as a high cost valuable

item. To categorise all sundry items as valuable articles will mean an interpretation which will be foreign to the purpose of the law and the intention of the legislature in so far as Section 69A is concerned.

9. At this point, it may also be useful to refer to the Circular No. 20 of 1964- Dated 7.7.1964. In this Circular the then Minister of Finance, while defending the insertion of Section 69A- stated that the 1964 Amendment is enacted not to subject lower middle-class people to taxation by taxing gold or jewellery inherited from forefathers, but provision is mandated for '*big assessees*' who convert their black money and unaccounted wealth into gold jewellery and gold vessels and claim it to be heirloom. This makes it clear that the legislature never intended that any and every article of value should be brought within the ambit of Section 69A. It is only the high priced precious items- that command a premium price and are often used by high wealth individuals to park

their unaccounted income- by converting it into gold and bullion - that the Section 69A was inserted to address and to make such articles taxable under the Income Tax Act. Therefore, the intent of the legislature, through the Amendment – was to subject articles like gold, jewellery and other valuable items, to income tax, where such articles are typically owned with the intention of avoiding income tax.

10. Conversely, if all sundry articles of nominal value are bracketed in the category of valuable article, it will lead to an absurdity and will also be inconsistent with the legislative intent. Focusing on the high total value of an article, ignoring its lowly per unit price would mean including low-cost ordinary articles also in the valuable category, under Section 69A. This would defy the legislature's logic. In this context, when the principle of *Ejusdem Generis* is applied, the preceding words in Section 69A such as money, bullion, jewellery would suggest that the phrase

'other valuable article' which follows those words, would justify inclusion of only high value goods. Any other way of reading the phrase 'other valuable article' or 'valuable article' by ignoring the kind of specific goods mentioned in the preceding part of Section 69A, would be incorrect and would do violence to the plain language of the provision and will travel beyond the legislative intent.

11. Additionally, the maxim '*noscitur a sociis*' i.e. (a word is known by its associates) would also support the above view that the other valuable articles should be items in the nature of silver bars, or jewellery or money i.e. only high priced item. It is given, that no law could possibly provide for an exhaustive list of all valuable items that may facilitate high income assessees to adjust their income. Only an indicative list of valuable articles can practically be mentioned in the Section. But to include bitumen- the residual offshoot material during processing of

crude oil, excluding its valuable constituents like petrol, diesel, LPG, aviation fuel etc., within the expression 'other valuable article' in Section 69A, would in my opinion, result in absurdities, that we need to eschew. The common place items from *kirana* store and bitumen are intrinsically dissimilar to the high value items in Section 69A and through an interpretive exercise, we should not categorise them with items such as gold bars and jewellery.

12. At this stage it may also be beneficial to advert to the principle- *"absoluta sententia expositore non indiget"* i.e. (a simple proposition needs no expositor). The maxim provides that if the language employed by the legislature provides for adequate comprehensibility, then nothing additional is required. In *New Shorrock Spinning and Manufacturing Co. Ltd. vs. N.V. Raval*[3] the Division Bench of the Bombay High Court, dealt with the construction of sub-section (10) of

[3] **New Shorrock Spinning and Manufacturing Co. Ltd. vs. N.V. Raval (1959) 37 ITR 41**

section 35 of the Income Tax Act, 1922, introduced by Amendment through the Finance Act, 1956. In this regard the Court held that-

> *"One safe and infallible principle which is of guidance in these matters is to read the words through and see if the rule is clearly stated. If the language employed gives the rule in words of sufficient clarity and precision, no more requires to be done."*

13. Furthermore, the principle that a fiscal statute should be strictly construed is, well settled.[4] The classical words of Justice Rowlatt in the 1920s case of *Cape Brandy Syndicate*[5] would be of valuable assistance here. Justice Rowlatt while interpreting the phrase- *'pre-war trade years'* in context of the British Finance Act,1915-16, observed as follows:

> *"…….…in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used……"*

[4] **See CIT vs. Kasturi 237 ITR 24 (SC)**
[5] **Capy Brandy Syndicate vs. Inland Revenue (1921) 1 KB 64**

14. The above opinion of Justice Rowlatt was approvingly cited by former Chief Justice Koka Subba Rao, writing for a three judge bench of this Court in the case of *Banarsi Debi vs. ITO.*[6] The principle that provisions and exemptions under taxation statutes are to be strictly interpreted in accordance with legislative intent was also upheld by one of us recently in 2022, in *Augustan Textile Colours*.[7]

15. Following the aforesaid discussion, it must be said that for purposes of interpreting Section 69A of the Income Tax, Act 1961- the ordinary and literal meaning should be opted as the words in the statute are clear and unambiguous. The provision does not need any addition or subtraction and stands on its own legs. The phrase 'valuable article' would simply mean an item 'worth a great deal of money'. It cannot mean, as is said in the impugned order, to include '*any*

[6] Banarsi Debi vs. ITO (1964) 7 SCR 539- See paragraph 6.
[7] Augustan Textile Colours Ltd. vs. Director of Industries & Anr. (Civil Appeal No. 2830/2022) per Justice Hrishikesh Roy. See paragraphs 13 & 14

article of value'. Therefore, in the context of Section 69A, unexplained valuable article has to be high priced item which are procured to hide income, to avoid tax liability. To adopt a wide interpretation for the phrase- 'valuable article' and thereby include within its scope *any sundry article of whatever value,* is found to be unjustified. It needs to be also reiterated that, ordinarily, fiscal laws including taxation statutes, are to be strictly interpreted and tax must not be imposed through analogy, inference or by extension of phrases used by the legislature.

16. For purpose of Section 69A of Income Tax Act, it is therefore declared that- an 'article' shall be considered 'valuable' if the concerned article is a high-priced article commanding a premium price. As a corollary, an ordinary 'article' cannot be bracketed in the same category as the other high-priced articles like bullion, gold, jewellery mentioned in Section 69A by attributing high value to the run-of-the-mill article, only on the

strength of its bulk quantity. To put it in another way, it is not the ownership of huge volume of some low cost ordinary article but the precious gold and the like, that would attract the implication of deemed income under Section 69A.

17. Earlier, it is the high value, less bulky items which were owned discreetly, that aided the assessee in avoiding tax. The 1964 Amendment was primarily enacted to address mischief of this nature. The wisdom of the legislature as reflected in the Amendment – was to subject to income tax, articles like gold, jewellery and other valuable items- typically owned with the intention of avoiding income tax-by translating income into buying and then hiding such precious high value items. Premium price cannot be attributed to an otherwise ordinary and common place article like bitumen only on the basis of huge mass of bitumen. It would be an incorrect way to categorize bitumen as a 'valuable

article', under Section 69A of the Income Tax, Act.

18. While doing the above analysis, the 1976 song *"The First Hello, The Last Goodbye"* written & sung by the British singer Roger Whittaker is buzzing in my mind. The singer here goes lyrical while crooning about things of great value and aptly sings *"…gold would not be precious if we all had gold to spare….."*. Taking a cue from the song's lyrics, it can be appropriately said that the legislature while introducing section 69A to the Income Tax, Act, 1961 by the Finance Act, 1964, was concerned only with such precious and aspirational articles like bullion and jewellery which are capable of being repositories of hidden earnings but were not really concerned about common place stuff like "bitumen", which would not attract a second glance, on any road surface of our country.

19. In conclusion, it is held that bitumen is not a valuable article in the context of Section 69A

and the assessee here was not the owner of the concerned bitumen for the purpose of section 69A of the Income Tax Act,1961. With the additional reasoning in the preceding paragraphs, I concur with the judgment delivered by my brother Justice K.M. Joseph.

……J.
[HRISHIKESH ROY]

NEW DELHI
MAY 16, 2023