REPORTABLE

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

Commissioner of Income-tax, Faridabad ... Appellant (s)

Versus

Ghanshyam (HUF) ... Respondent(s)

WITH

Civil Appeal No. 4402 of 2009 - Arising out of S.L.P. (C) No.17644 of 2008
Civil Appeal No. 4403 of 2009 - Arising out of S.L.P. (C) No.17643 of 2008
Civil Appeal No. 4404 of 2009 - Arising out of S.L.P. (C) No.17645 of 2008
Civil Appeal No. 4405 of 2009 - Arising out of S.L.P. (C) No.17642 of 2008
Civil Appeal No. 4406 of 2009 - Arising out of S.L.P. (C) No.17641 of 2008
Civil Appeal No. 4407 of 2009 - Arising out of S.L.P. (C) No.17647 of 2008
Civil Appeal No. 4408 of 2009 - Arising out of S.L.P. (C) No.17646 of 2008
Civil Appeal No. 4409 of 2009 - Arising out of S.L.P. (C) No.8350 of 2009

Civil Appeal No. 4410 of 2009 - Arising out of S.L.P. (C) No.8451 of 2008
Civil Appeal No. 4411 of 2009 - Arising out of S.L.P. (C) No.4832 of 2008
Civil Appeal No. 4412 of 2009 - Arising out of S.L.P. (C) No.4833 of 2008
Civil Appeal No. 4413 of 2009 - Arising out of S.L.P. (C) No.4834 of 2008
Civil Appeal No. 4414 of 2009 - Arising out of S.L.P. (C) No.4835 of 2008
Civil Appeal No. 4415 of 2009 - Arising out of S.L.P. (C) No.20657 of 2008
Civil Appeal No. 4416 of 2009 - Arising out of S.L.P. (C) No.20658 of 2008
Civil Appeal No. 4417 of 2009 - Arising out of S.L.P. (C) No.20659 of 2008

Civil Appeal No. 4418 of 2009 - Arising out of S.L.P. (C) No.7599 of 2009
Civil Appeal No. 4419 of 2009 - Arising out of S.L.P. (C) No.3054 of 2008
Civil Appeal No. 4420 of 2009 - Arising out of S.L.P. (C) No.3717 of 2009
Civil Appeal No. 4422 of 2009 - Arising out of S.L.P. (C) No.4174 of 2009
Civil Appeal No. 4423 of 2009 - Arising out of S.L.P. (C) No.31566 of 2008
Civil Appeal No. 4424 of 2009 - Arising out of S.L.P. (C) No.713 of 2009
Civil Appeal No. 4425 of 2009 - Arising out of S.L.P. (C) No.5300 of 2009
Civil Appeal No. 4426 of 2009 - Arising out of S.L.P. (C) No.6378 of 2009

JUDGMENT

S. H. KAPADIA, J.

1. Delay condoned.

2. Leave granted.

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

FACTS IN THE LEAD MATTER

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

4. Assessee received enhanced compensation on its lands being acquired by Haryana Urban Development Authority (HUDA) as also interest thereon during the previous year relevant to assessment
year 1999-2000.

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

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

enhanced by the Court, is deemed income chargeable under the head "Capital Gains" of the previous year in which the said amount came to be received. The A.O. accordingly brought to tax the amount of enhanced compensation of Rs.87,13,517/- received by the assessee during the previous year relevant to the assessment year 1999-2000. Similarly, interest on enhanced compensation of Rs.1,47,575/- received by the assessee during the previous year was also brought to tax in the year of receipt. The assessee filed appeal against the order of the A.O. in which he reiterated the above contention. Assessee also placed reliance on the judgment of this Court in Commissioner of Income-tax, West Bengal-II

v.

Hindustan Housing and Land Development Trust Ltd. - (1986)161 ITR 524 (SC).

(A) CIT came to the conclusion that since the enhanced compensation received was in dispute in the pending First Appeal, both, the enhanced compensation as well as the interest thereon had not accrued to the assessee during the year of receipt as the entire amount was in dispute in First Appeal and that the assessee had received the said amount only against security furnished to the satisfaction of the executing court. At this stage, it may be mentioned that the amount of enhanced compensation sought to be taxed under Section 45(5) of the 1961 Act was Rs.87,13,517/- whereas the interest on enhanced compensation which was also sought to be taxed was Rs.1,47,575/-.

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

ISSUE

8. The short question to be decided in this batch of civil appeals is : whether ITAT was right in ordering deletion of enhanced compensation and interest thereon from the total income of the assessee on the ground that the said two items, awarded by the Reference Court, was under dispute in First Appeal before the High Court. Analysis of provisions of the 1961 Act

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

"2 - Definitions

In this Act, unless the context otherwise requires,-

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

(i) the sale, exchange or relinquishment of the asset; or

(ii) the extinguishment of any rights therein; or

(iii) the compulsory acquisition thereof under any law; or

(iv) in a case where the asset is converted by the owner thereof into, or is treated by him as, stock-in-trade of a business carried on by him, such conversion or treatment; [or]

(v) any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in Section 53A of the Transfer of Property Act, 1882 (4 of 1882); or

(vi) any transaction (whether by way of becoming a member of, or acquiring shares in, a co-operative society, company or other association of persons or by way of any agreement or any arrangement or in any other manner whatsoever) which has the effect of transferring, or enabling the enjoyment of, any immovable property.
Explanation.-For the purposes of sub-clauses (v) and (vi),
"immovable property" shall have the same meaning as in clause (d) of Section 269UA."

10. We also quote herein below Section 45(1) of the 1961 Act as it stood prior to 1.4.2004 which reads as under: "45 - Capital gains
(1) Any profits or gains arising from the transfer of a capital asset effected in the previous year shall, save as otherwise provided in sections [***] [54, 54B, [***] [54D, [54E, [54EA, 54EB,] 54F [, 54 and 54H]]]]], be chargeable to income-tax under the head "Capital gains", and shall be deemed to be the income of the previous year in which the transfer took place."

11. We also quote herein below Section 45(5) of the 1961 Act as it stood prior to 1.4.2004 which reads as under: " Section 45 (5)- Capital gains Notwithstanding anything contained in sub-section (1), where the capital gain arises from the transfer of a capital asset, being a transfer by way of compulsory acquisition under any law, or a transfer the consideration for which was determined or approved by the Central Government or the Reserve Bank of India, and the compensation or the consideration for such transfer is enhanced or further enhanced by any court, Tribunal or other authority, the capital gain shall be dealt with in the following manner, namely :-

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

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

12. We also quote herein below Section 45(5) of the 1961 Act after 1.4.2004 which reads as under: Section "45(5) - Capital gains Notwithstanding anything contained in sub-section (1), where the capital gain arises from the transfer of a capital asset, being a transfer by way of compulsory acquisition under any law, or a transfer the consideration for which was determined or approved by the Central Government or the Reserve Bank of India, and the compensation or the consideration for such transfer is enhanced or further enhanced by any court, Tribunal or other authority, the capital gain shall be dealt with in the following manner, namely :-

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

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

(c) where in the assessment for any year, the capital gain arising from the transfer of a capital asset is computed by taking the compensation or consideration referred to in clause (a) or, as the case may be, enhanced compensation or consideration referred to in clause (b), and subsequently such compensation or consideration is reduced by any court, Tribunal or other authority, such assessed capital gain of that year shall be recomputed by taking the compensation or consideration as so reduced by such court, Tribunal or other authority to be the full value of the consideration.

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

(i) in relation to the amount referred to in clause (b), the cost of
(ii) acquisition and the cost of improvement shall be taken to be nil;
(iii) the provisions of this sub-section shall apply also in a case
(iv) where the transfer took place prior to the 1st day of April, 1988;
(v) where by reason of the death of the person who made the transfer, or for any other reason, the enhanced compensation or consideration is received by any other person, the amount referred to in clause (b) shall be deemed to be the income, chargeable to tax under the head "Capital gains", of such other person."

(emphasis supplied by us)

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

"PROCEDURE FOR ASSESSMENT

155. Other amendments

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

14. The following conditions need to be satisfied for taxing a transaction as capital gains, viz., the subject-matter must be a capital asset, the transaction must fall in the definition of "transfer", there must be profit or loss called "Capital Gains" and that the taxpayer has claimed exemption in whole or in part by complying with legal provisions (Like Section 54F).

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

16. The question which arises for determination is - why was Section 45(5) inserted by the Finance Act, 1987, w.e.f. 1.4.88? Under Section 45(1), profits or gains arising from the transfer of a capital asset effected in the previous year is taken to be the income of the previous year in which the transfer took place and such profits are chargeable to tax under the head "Capital Gains". However, it was noticed that in cases where capital gains accrued or arose by way of compulsory acquisition, the additional compensation stood awarded in several stages by different appellate authorities which necessitated rectification of the original assessment at each stage. To provide for rectification of the assessment of the year in which capital gains was originally assessed, Section 155(7A) was also introduced. However, as stated above, since additional compensation under the Land Acquisition Act, 1894 was awarded in several stages multiple rectifications had to be made to the original assessment which cause great difficulty in carrying out the required rectification and in effecting the recovery of additional demand. It was also noticed that repeated rectifications of assessment on account of enhancement of compensation by different courts often resulted in mistakes in computation of tax. Therefore, with a view to remove these difficulties, the Finance Act 1987 inserted Section 45(5) to provide for taxation of additional compensation in the year of receipt instead of in the year of transfer of the capital asset. Accordingly, additional compensation is treated as "deemed income" in the hands of the recipient even if the actual recipient happens to be a person different from the original transferor by reason of death, etc. For this purpose, the cost of acquisition in the hands of the receiver of the additional compensation is deemed to be nil. However, the compensation awarded in the first instance would continue to be chargeable as income under the head "Capital Gains", in the previous year in which transfer took place. At this stage, it may be noted, that, Section 45(1) stood further amended (w.e.f. 1.4.91) so as to include reference to Section 54H and Section 45(5)(a) which, as stated above, stood amended (w.e.f. 1.4.88).The scope and effect of the above amendments made in Section 45, as also insertion of Section 54H, by Finance Act 1991, has been elaborated in the following portion of the Departmental Circular No.621 dated 19.12.91:

``Streamlining the provisions relating to exemption for roll-over of capital gains-
Capital gains are deemed to be income of the previous year in which the transfer giving rise to the gains takes place except where otherwise provided. According in the case of compulsory acquisition of assets, the capital gains included in the compensation, as originally awarded, is charged to tax in the year in which the transfer by way of compulsory acquisition takes place, but additional compensation is brought to tax only in the year in which it is received. It has been brought to the notice of the Government that in case of compulsory acquisition of assets, at times there is a considerable gap between the

dates of acquisition and payment of compensation. The result is that the existing provisions of capital gains taxation operate harshly inasmuch as the affected persons are unable to avail of the exemption for roll- over of capital gains, within the specified time period through investment in specified assets. Section 45 of the Income-tax Act has, therefore, been amended to provide that capital gains arising from the transfer of the capital asset by way of compulsory acquisition under any law shall be charged to tax in the previous year in which the compensation is first received. This amendment takes effect retrospectively from 1 April, 1988. Further, a new section 54H has been inserted in the Income-tax Act, to provide that in cases where compensation in respect of any asset acquired compulsorily is received after the date of such transfer; the period for investment in specified assets shall be reckoned from the date of receipt of such compensation. However, where the compensation was first received before 1st April, 1991, and the period for making investment in any specified asset has expired before 1st October 1991, such period shall stand extended up to 31st December 1991.
This amendment takes effect from the 1st day of October, 1991."

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

18. Thus, Section 45(5) enacts overriding provisions and takes care of a situation:
--where the capital gains arises from the transfer of a capital asset, being—
--a transfer by way of compulsory acquisition under any law, or
--a transfer the consideration for which was determined or approved by the Central Government or the Reserve Bank of India, and
--the compensation or consideration for such transfer is enhanced or further enhanced by any court, tribunal or other authority. In such a situation, the capital gain so arising is, for and from assessment year 1988-89, to be dealt with as
under:-

(a) the capital gain computed with reference to—

(b) --the compensation awarded in the first instance or, as the case may be
--the consideration determined or approved
in the first instance by the Central Government or the Reserve Bank of India is chargeable as income under the head "Capital gains" of the previous year in which such compensation or part thereof, or such consideration or part thereof, was first received; and

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

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

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

"23 - Matters to be considered in determining compensation

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

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

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

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

fourthly, the damage (if any), sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

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

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

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

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

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

20. We also quote herein below Section 28 of the 1894 Act which reads as under:

"28. Collector may be directed to pay interest on excess compensation. - If the sum which, in the opinion of the court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of [nine per centum] per annum from the date on which he took possession of the land to the date of payment of such excess into Court."

21. We also quote herein below Section 34 of the 1894 which reads as under:
"34. Payment of interest.-When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of nine per centum per annum from the time of so taking possession until it shall have been so paid or deposited.
Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry."

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

23. In addition to the market value of the land, as above provided, the Court shall in every case award a sum of 30% on such market value, in consideration of the compulsory nature of acquisition. This is under Section 23(2) of the 1894 Act. In short, Section 23(2) talks about solatium. Award of solatium is mandatory. Similarly, payment of additional amount under Section 23(1A) is mandatory. The award of interest under Section 28 of the 1894 Act is discretionary. Section 28 applies when the amount originally awarded has been paid or deposited and when the Court awards excess amount. In such cases interest on that excess alone is payable. Section 28 empowers the Court to award interest on the excess amount of compensation awarded by it over the amount awarded by the Collector. The compensation awarded by the Court includes the additional compensation awarded under Section 23(1A) and the solatium under Section 23(2) of the said Act. This award of interest is not mandatory but is left to the discretion of the Court. Section 28 is applicable only in respect of the excess amount, which is determined by the Court after a reference under Section 18 of the 1894 Act. Section 28 does not apply to cases of undue delay in

making award for compensation [See: Ram Chand & others etc v. Union of India & Ors. - 1994(1) SCC 44]. In the case of Shree Vijay Cotton & Oil Mills Ltd. v. State of Gujarat - (1991) 1 SCC 262, this Court has held that interest is different from compensation.

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

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

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

27. In the case of Hindustan Housing (supra) certain lands belonging to the assessee-company, which was in the business of dealing in land and which maintained its account on mercantile system, were first requisitioned and then compulsorily acquired by the State Government. The Land Acquisition Officer awarded Rs.24,97,249/- as compensation. On appeal the Arbitrator made an award at Rs.30,10,873/- with interest at 5% from the date of acquisition. Thereupon, the State preferred an appeal to the High Court. Pending the appeal, the State Government deposited in the Court Rs.7,36,691/- being the additional amount payable under the award and the assessee was permitted to withdraw that additional amount on furnishing a security bond for refunding the amount in the event of the said Appeal being allowed. On receiving the amount, the assessee credited it in its suspense account on the same date. The question was : whether the additional amount of Rs.7,24,914/- could be taxed as the income on the ground that it became payable pursuant to the award of the Arbitrator. The Tribunal held that the amount did not accrue to the assessee as its income and was, therefore, not taxable in the assessment year 1956-57. The financial year in which the additional amount came to be withdrawn ended on 31.3.56. It was held by this Court that although award was made on 29.7.1955, enhancing the amount of compensation payable to the assessee, the entire amount was in dispute in the appeal filed by the State. Therefore, there was no absolute right to receive the amount at that stage. It was held that if the Appeal was to be allowed in its entirety, the right to payment of enhanced compensation would have fallen

altogether. Therefore, according to this Court, the extra amount of compensation of Rs.7,24,914/- was not income arising or accruing to the assessee during the previous year relevant to the assessment year 1956-57.

28. The question is : whether the judgment of this Court in Hindustan Housing (supra) would apply to the present case which arises under the Income-tax Act, 1961? At the outset, it may be noted that the judgment of this Court in Hindustan Housing (supra) was delivered on 29.7.86. It was prior to 1.4.88 when Section 45(5) stood incorporated by Finance Act 1987 w.e.f. 1.4.88. Further, the judgment of this Court in Hindustan Housing (supra) has been given in respect of assessment year 1956-57 under the Income-tax Act, 1922 whereas, in the present case, we are concerned with the 1961 Act which defines the word "transfer" in much wider sense under Section 2(47). Lastly, for the reasons given hereinafter, particularly in the context of introduction of Section 45(5) of the 1961 Act w.e.f.1.4.88 a totally new scheme stood introduced keeping in mind cases of compulsory acquisition under the 1894 Act under which compensation is payable at multiple stages and amounts stand withdrawn by the assessee- claimants and used by the assessee(s) for several years, during which litigation is pending. It is in the context of Section 45(5) that we need to decide the year of taxability. It is significant to note that Section 12B of 1922 Act did not contain specific reference to compulsory acquisition as contained in Section 2(47) of the 1961 Act. Therefore, in our view, the judgment of this Court in Hindustan Housing (supra) is not applicable to the present case.

29. From Section 45 it is clear that capital gains are not income accruing from day to day. It is deemed income which arises at a fixed point of time, viz, date of transfer. Section 45(5), newly inserted by the Finance Act, 1987, w.e.f. 1.4.88 and subsequently amended, retrospectively w.e.f. 1.4.88, by the Finance Act, 1991, enacts overriding provision and takes care of a situation -where the capital gains arise from the transfer of a capital asset, being a transfer by way of compulsory acquisition and the compensation for such transfer stands enhanced in stages by any court, tribunal or authority. In such a situation, the capital gains so arising is, for and from assessment year 1988-89, has to be dealt with as under : -

(i)the capital gains computed with respect to the compensation awarded in the first instance would be chargeable as Income under the head "Capital Gains" of the previous year in which such compensation or part thereof was first received; and

(ii) amount by which compensation or consideration is enhanced or further enhanced by the court, tribunal or authority is to be Deemed Income chargeable under the head "Capital Gains" of the previous year in which such amount is received by the assessee.

30. For the said purpose, the cost of acquisition is to be taken as Nil [See: Explanation (i)]. Also, where the enhanced compensation is received by any person, other than the transferor by reason of the death of the transferor or for any reason, the amount of such additional compensation or additional consideration is to be deemed to be the income of the recipient of the previous year in which such amount is received by him.

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

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

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

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

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

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

35. It was urged on behalf of the assessee that Section 45(5)(b) of the 1961 Act deals only with re-working, its object is not to convert the amount of enhanced compensation into deemed income on receipt. We find no merit in this argument. The scheme of Section 45(5) of the 1961 Act was inserted w.e.f. 1.4.88 as an overriding provision. As stated above, compensation under the L.A. Act, 1894, arises and is payable in multiple stages which does not happen in cases of transfers by sale etc. Hence, the legislature had to step in and say that as and when the assessee-claimant is in receipt of enhanced compensation it shall be treated as "deemed income" and taxed on receipt basis. Our above understanding is supported by insertion of clause (c) in Section 45(5) w.e.f. 1.4.04

and Section 155(16) which refers to a situation of a subsequent reduction by the Court, Tribunal or other authority and recomputation/amendment of the assessment order. Section 45(5) read as a whole (including clause "c") not only deals with re-working as urged on behalf of the assessee but also with the change in the full value of the consideration (computation) and since the enhanced compensation/consideration (including interest under Section 28 of the 1894 Act) becomes payable/paid under 1894 Act at different stages, the receipt of such enhanced compensation/consideration is to be taxed in the year of receipt subject to adjustment, if any, under Section 155(16) of the 1961 Act, later on. Hence, the year in which enhanced compensation is received is the year of taxability. Consequently, even in cases where pending appeal, the Court/Tribunal/Authority before which appeal is pending, permits the claimant to withdraw against security or otherwise the enhanced compensation (which is in dispute), the same is liable to be taxed under Section 45(5) of the 1961 Act. This is the scheme of Section 45(5) and Section 155(16) of the 1961 Act.

We may clarify that even before the insertion of Section 45(5)(c) and Section 155(16) w.e.f. 1.4.04, the receipt of enhanced compensation under Section 45(5)(b) was taxable in the year of receipt which is only reinforced by insertion of clause (c) because the right to receive payment under the 1894 Act is not in doubt. It is important to note that compensation, including enhanced compensation/consideration under the 1894 Act, is based on the full value of property as on date of notification under Section 4 of that Act. When the Court/Tribunal directs payment of enhanced compensation under Section 23(1A), or Section 23(2) or under Section 28 of the 1894 Act it is on the basis that award of Collector or the Court, under reference, has not compensated the owner for the full value of the property as on date of notification.

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

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

Civil Appeal No. of 2009 - Arising out of S.L.P. (C) No.17644 of 2008
Civil Appeal No. of 2009 - Arising out of S.L.P. (C) No.17643 of 2008
Civil Appeal No. of 2009 - Arising out of S.L.P. (C) No.17645 of 2008
Civil Appeal No. of 2009 - Arising out of S.L.P. (C) No.17642 of 2008
Civil Appeal No. of 2009 - Arising out of S.L.P. (C) No.17641 of 2008
Civil Appeal No. of 2009 - Arising out of S.L.P. (C) No.17647 of 2008
Civil Appeal No. of 2009 - Arising out of S.L.P. (C) No.17646 of 2008
Civil Appeal No. of 2009 - Arising out of S.L.P. (C) No.8350 of 2009
Civil Appeal No. of 2009 - Arising out of S.L.P. (C) No.8451 of 2008
Civil Appeal No. of 2009 - Arising out of S.L.P. (C) No.4832 of 2008
Civil Appeal No. of 2009 - Arising out of S.L.P. (C) No.4833 of 2008
Civil Appeal No. of 2009 - Arising out of S.L.P. (C) No.4834 of 2008
Civil Appeal No. of 2009 - Arising out of S.L.P. (C) No.4835 of 2008
Civil Appeal No. of 2009 - Arising out of S.L.P. (C) No.20657 of 2008

Civil Appeal No. of 2009 - Arising out of S.L.P. (C) No.20658 of 2008
Civil Appeal No. of 2009 - Arising out of S.L.P. (C) No.20659 of 2008
Civil Appeal No. of 2009 - Arising out of S.L.P. (C) No.7599 of 2009
Civil Appeal No. of 2009 - Arising out of S.L.P. (C) No.3054 of 2008
Civil Appeal No. of 2009 - Arising out of S.L.P. (C) No.3717 of 2009
Civil Appeal No. of 2009 - Arising out of S.L.P. (C) No.4174 of 2009
Civil Appeal No. of 2009 - Arising out of S.L.P. (C) No.31566 of 2008
Civil Appeal No. of 2009 - Arising out of S.L.P. (C) No.713 of 2009
Civil Appeal No. of 2009 - Arising out of S.L.P. (C) No.5300 of 2009
Civil Appeal No. of 2009 - Arising out of S.L.P. (C) No.6378 of 2009

38. For the reasons given and also subject to what is stated hereinabove in Civil Appeal No of 2009 - Arising out of S.L.P. (C) No.17640 of 2008 - Commissioner of Income Tax, Faridabad v. Ghanshyam (HUF), the civil appeals filed by the Department stand allowed with no order as to costs.

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

.....J.
(AFTAB ALAM)

New Delhi;
July 16, 2009.

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 4399 OF 2009
(Arising out of S.L.P.(C) No.23889 of 2007)

Udaipur Sahkari Upbhokta Thok Bhandar Ltd. ... Appellant (s)

Versus

Commissioner of Income-tax ... Respondent(s)

JUDGMENT

S. H. KAPADIA, J.

1. Leave granted.

2. The short question which arises for consideration in this civil appeal turns on the interpretation of Section 80P(2)(e) of the Income-tax Act, 1961 whose predecessor was Section 14(3)(iv) of the Income-tax Act, 1922.

FACTS

3. The facts giving rise to this civil appeal are few and undisputed and may be briefly stated as follows. Appellant-society is a co-operative society registered under Rajasthan Co-operative Societies Act, 1965. Appellant is running a consumer co-operative store at Udaipur since 1963. It has 30 branches. Appellant is dealing in non-controlled commodities through its branches. In addition, appellant is also doing the work of distribution of controlled commodities such as wheat, sugar, rice and cloth on behalf of the Government under the Public Distribution Scheme (PDS) for which it is getting commission. The distribution of the controlled commodities is regulated by the District Supply Officer (DSO-Authoriesed Officer) under Rajasthan Food grains & Other Essential Articles (Regulation of Distribution) Order, 1976 (for short, "1976 Order"). Appellant claims to be stockist/distributor of controlled commodities. It takes delivery from Food Corporation of India (FCI) and Rajasthan Rajya Upbhokta Sangh as per the directives of the State Government. The price, quantity and the person from whom the delivery is to be taken is fixed by the State Government under the said 1976 Order. After taking the delivery, appellant stores these goods in its godowns, both owned and rented. The storage godowns are open to checking by the concerned officers of the State Government. The stocks stored by the appellant are delivered to the Fair Price Shops (FPS-retailers) as per the directions of the State Government. The quantity, price and the FPS to whom the delivery is to be given is fixed by the State Government. According to the appellant, therefore, the above modus operandi indicates that the State Government exercises total control over the stock of controlled commodities stored in the godowns of the appellant-society. On 28.2.1977 appellant was granted licence for

purchase/sale/storage for sale of good grains under Rajasthan Food grains Dealers Licensing Order, 1964.

4. It exercises the powers conferred by Section 3 of Essential Commodities Act, 1955, the Government of Rajasthan issued the 1976 Order. Following are the relevant provisions, reproduced from the 1976 Order, which read as under:
"Clause 2. Definitions. - In this Order, unless the context otherwise requires :-

(b) "Authorisation" means an authorization issued under clause 3 of this Order;

(c) "Authorised Fair Price Shop Keeper" means a retail dealer in charge of a shop authorized under clause 3 and shall include a person in charge of a shop where food grains and other essential articles are sold and is under the control of the State Government;

(d) "Authorisation Holder" means an authorized wholesaler or an authorized Fair price shopkeeper;

(e) "Authorised Officer" means District Supply Officer for the District Headquarter Municipal area, Executive Officer of Municipal Board for rest municipal area and Vikas Adhikari for rural area and any other officer authorized as such by the State Government;

(f) "Authorised Wholesaler" means a person, a firm, an association of persons or a co-operative society or any other institution authorized appointed as an agent under clause 3 of this Order by the State Government or the Collector.

Clause 3. Issue of Authorisation. -

(1) The Collector or any other officer authorized by the State Government may issue an authorization to any person being an authorized wholesaler/fair price shopkeeper to obtain and supply food grains and other Essential Articles in the area specified therein.

(2) No person other than an authorization holder shall sell any of the food grains or any other essential articles supplied by the Government for distribution under this Order or any other Order.

Clause 20 - Power to issue directions regarding purchase/sale/distribution of food grains and other essential articles. - Every authorisation holder shall comply with all general or special directions given in writing, from time to time by the State Government or the Collector in regard to purchase, sale, storage for sale, distribution and disposal of food grains and other essential articles on permits or ration cards or otherwise and the manner in which the accounts thereof shall be maintained and returns submitted.

4. We also quote herein below the Terms and Conditions annexed to the said 1976 Order which read as under:
"Terms & Conditions - General

Clause (1) No authorization holder shall store Food grains & other essential articles at any place other than those specified in this authorization without prior permission in writing of the Collector.

Clause (2) No authorization holder shall refuse to sell Food grains and other essential articles during business hours on the presentation to him of a valid permit/indent/ration card to the extent of the amount of Food grains or other essential articles due on the permit/indent/ration card.

Clause (3) No authorization holder shall sell Food grains at a price in excess of that fixed by the State Government or the Collector or shall sell any other essential articles at a price in excess of that fixed by the Central Government or the State Government or any authority or Officer of such Government or the manufacturer, as the case maybe, in that behalf.

Clause (5) The authorization holder shall maintain a stock register in Form `C' showing correctly, the daily receipt and sale of the each Food grains and other essential articles. A daily sale register shall also be maintained in Form `D' by the authorized wholesaler and in Form `E' by the authorized fair price shopkeeper. All books of accounts, permits, voucher etc. shall be kept at the business premises specified in the authorization and shall be made available for inspection whenever required.

Clause (6) Every authorization holder shall submit a true monthly stock and sale return in Form `F' to the Collector so as to reach him within five days after the close of the month to which it relates.

Clause (8) The authorization holder shall display the opening balance and prices of each variety of Food grains and other essential articles at a conspicuous place at his business premises in bold letters."

5. On 31.8.1990, appellant filed its returns for assessment year 1989-90 claiming deduction under Section 80P(2)(e) of the 1961 Act on the income of commission received by it from the Government for storage of controlled commodities. On 31.10.1990 appellant filed its returns of income for subsequent assessment years 1990-91, 1991-92, 1992-93, 1993-94, 1994-95, 1995-96 inter alia claiming deduction on the income of commission received by it from the State Government for storage of controlled commodities. Vide Order dated 26.3.92, the A.O. disallowed the claim on the ground that the appellant-society is a wholesaler of food grains and it is not a mere stockist as claimed and consequently it was not entitled to deduction under Section 80P(2)(e) of the 1961 Act. This order was applied for assessment years in question. Aggrieved by the assessment order(s), appellant filed appeals before CIT (A), on 18.4.92. By order dated 28.10.93, CIT(A) held that the appellant was entitled to deduction under Section 80P(2)(e) of the 1961 Act on the income of commission received from the State Government for stocking and storing the above food grains. This decision was affirmed by the Tribunal vide its decision dated 20.10.2000 dismissing the Department's appeal by a common order holding that the appellant was entitled to deduction under the said Section. This view of the Tribunal, however, was overruled by the impugned decision dated 2.11.06 by the Rajasthan High Court which took the view that the appellant-society was storing the said controlled commodities in its godowns as part of its own trading stocks; that the appellant acted as a trader in the essential commodities in question and consequently the appellant was not entitled to deduction under Section 80P(2)(e) of the 1961 Act. Against the impugned decision, appellant has come to this Court by way of petition for special leave.

6. The issue which arises for determination in this civil appeal is: whether, on the facts and the circumstances of this case, "commission" received by the appellant from the State Government was really in the nature of payment for the letting of the godowns maintained by the appellant for storage?

7. At the outset it needs to be noted that appellant has composite business. Appellant is a dealer in non-controlled commodities and it is an Authorisation Holder in respect of controlled commodities under the 1976 Order. It owns godowns and it also hires godowns on rent. It earns commission during the relevant assessment years at the rate of 2.25 per quintal (e.g. for rice). As stated above, under clause 20 of 1976 Order every authorization holder has to comply with general or special directions given in writing, from time to time by the Collector in regard to purchase, sale, storage for sale, distribution and disposal of controlled commodities. At this stage, one important aspect needs to be noted. Appellant earns commission on the principle of "netting". In other words, appeallant sets-off "issue price" against "sale price" and retains commission fixed at Rs.2.25 per quintal. We quote herein below the rate-fixation mechanism indicated by one of the orders issued on 12.3.87 w.e.f.1.5.87 under clause (20) of the 1976 Order:

"S.No./F1:2:1/Rice/Rate/85 Dated 12.5.87

To,

Sub divisional officer/Tehsildar

Sub.: Regarding rate fixation of rice to be distributed
in general areas

As a result of change in the distribution rate and surcharge of rice by the State Government, the new rates for rice is fixed in the following manner. Order to be operative from 1.5.87.

A. if the godown of the Food Corporation and wholesale dealer is in the same city:

	Common	Fine	Superfine
1. Issue rate of food corporation	239.00	251.00	266.00
2. Octroi	0.20	0.20	0.20
	239.20	252.20	266.20
3. Sales tax @ 3%	7.18	7.54	7.99
4. Surcharge on sale tax @20%	1.44	1.50	1.60

5. Amount payable to food corporation [issue price]	247.82	260.24	275.79
6. Commission/transportation of wholesale dealer	2.25	2.25	2.25

7.	For upto 10km from godowns of Food Corporation	1.00	1.00	1.00
	Sale Price charged from FPS	251.07	263.49	279.04
8.	Commission of retail dealer	2.50	2.50	2.50
9.	Transportation of retail dealer	2.00	2.00	2.00
		255.57	267.99	283.54
10.	Equalisation amount	6.43	7.01	6.46
		262.00	275.00	280.00

B. if the godowns of the Food Corporation and the wholesale dealer are in different cities:

		Common	Fine	Superfine
1.	Issue rate of food corporation	239.00	251.00	266.00
2.	Octroi	0.20	0.20	0.20
		239.20	252.20	266.20
3.	Sales tax @ 3%	7.18	7.54	7.99
4.	Surcharge on sale tax @20%	1.44	1.50	1.60
5.	Amount payable to food	247.82	260.24	275.79

corporation

6. Commission of wholesale dealer 2.25 2.25 2.25

250.07 262.49 278.04"

8. The above working indicates that Rs.247.82 (issue price) is treated by the appellant as expense and it is set-off against the sale price of Rs.251.07. In other words, the working indicates cost plus mechanism i.e. Rs.247.82 is the cost plus profit margin which includes Rs.2.25 as commission. Therefore, Rs.2.25 is part of the profit margin. One aspect needs to be highlighted. According to the written submissions, filed by the appellant, it had taken into its books of accounts the consolidated value of the closing stock. This circumstance reinforces the finding of the High Court in its impugned judgment that the appellant was storing the commodities in its godowns as a part of its own trading stock.

9. The question before us is : whether appellant was entitled to claim special deduction under Section 80P(2)(e) of the 1961 Act by claiming that the amount received under the head "commission" is really in the nature of payment for the user of its godowns?

10. To answer the above question, we quote herein below Section 14(3)(iv) of the Income-tax Act, 1922, Section 81(iv) and Section 80P(2)(e) of the 1961 Act which read as under:

"Income-tax Act, 1922 Section 14. Exemption of a general nature

(3) The tax shall not be payable by a co-operative society --

(iv) in respect of any income derived from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities; "Income-tax Act, 1961 Section 81. Income of co-operative societies. - Income- tax shall not be payable by a co-operative society -

(iv) in respect of any income derived from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities;"

"Income-tax Act, 1961

Deduction in respect of income of co-operative societies.-

80P. (1) Where, in the case of an assessee being a co- operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2) in computing the total income of the assessee.

(2) The sums referred to in sub-section (1) shall be the following, namely: -

(e) in respect of any income derived by the co-operative society from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities, the whole of such income;"

11. At the outset it may be noted that Sections 81(iv), followed by Section 14(3)(iv) in the 1922 Act, as amended, was a predecessor to Section 80P(2)(e) of the 1961 Act, and it came for consideration before the Gujarat High Court in the case of Surat Vankar Sahakari Sangh Ltd. v. Commissioner of Income-tax, Gujarat II - (1971) 79 ITR 722 (Guj.), in which it was held:

"This section is obviously enacted with a view to encouraging and promoting growth of co-operative sector in the economic life of the country in pursuance of the declared policy of the Government. There are five different heads of exemption enumerated in the section. Each is a distinct and independent head of exemption. Whenever a question arises whether a particular category of income of a co-operative society is exempt from tax, it will have to be seen whether such income falls within any of the several heads of exemption : if it falls within any one head of exemption, it would be free from tax notwithstanding that the conditions of another head of exemption are not satisfied and such income is, therefore, not free from tax under that head of exemption : vide U. P. Co-operative Bank Ltd. v. Commissioner of Income-tax.- (1966) 61 ITR 563 (All). The ambit and coverage of clause (iv) of section 81 must, therefore, depend on the true interpretation of the language used by the legislature in that clause assisted only by such external aids of construction as are permissible according to well-recognised principles of interpretation.

Turning first to the language of section 81(iv), it exempts a co- operative society from tax in respect of income derived from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities. Two possible constructions of this provision were suggested before us in the course of the argument, one by the assessee and the other by the revenue. The construction put forward by the assessee was that the

words "letting of godowns and warehouses for storage", "processing" and "facilitating the marketing of commodities" constituted different alternatives and income derived from three different sources was, therefore, sought to be exempted under section 81(iv), namely, (1) income derived from the letting of godowns and warehouses for storage; (2) income derived from processing; and (3) income derived from facilitating the marketing of commodities. The revenue on the other hand urged that income which was sought to be exempted was only income derived from the letting of godowns or warehouses if they were let for any of the three purposes, namely, storage, processing or facilitating the marketing of commodities. The words "storage, processing or facilitating the marketing of commodities", according to the revenue, were governed by the preposition "for" and they denoted the purposes for which godowns or warehouses should be let in order that the income derived from such letting should be exempt from tax. Now, on the plain grammatical construction of the language used by the legislature, it appears that the construction suggested on behalf of the revenue is more commendable than that canvassed on behalf of the assessee. As we read the words of the clause, it is apparent that there is no break in the continuity of idea after the word "storage"; the idea flows on into the words "processing or facilitating the marketing of commodities". As a matter of fact, if we read the clause as a whole, there is no doubt that the words "storage, processing or facilitating the marketing commodities" constitute one single composite clause governed by the preposition "for" signifying that the letting of godowns or warehouses contemplated by the section is letting for any of the three purposes, namely, storage, processing or facilitating the marketing of commodities. If the intention of the legislature was that "letting of godowns or warehouses for storage", "processing" and "facilitating the marketing of commodities" should be

read distinctively as constituting different alternative sources of income, the legislature would have, according to the dictates of plain grammar, used the words "income derived from letting of godowns or warehouses for storage or from processing or from facilitating the marketing of commodities." The introduction of the words "or from" before "processing" and "facilitating the marketing of commodities" would have brought about the disjunctive effect so as to relate the three alternatives to the words "income derived from." But the legislature instead used words which clearly go of to suggest that the words "storage, processing or facilitating the marketing of commodities" are merely purposes for which godowns or warehouses should be let to attract the exemption under section 81(iv). The presence of the definite article "the" before letting and its absence before the words "processing" and "facilitating the marketing of commodities" considerably reinforces this conclusion. It is again difficult to see why the legislature should have indiscriminately mixed up in section 81(iv) widely different sources of income such as "letting of godowns or warehouses for storage, processing and facilitating the marketing of commodities". The conclusion appears to be clear on a plain natural construction of the language used in section 81(iv) that what is exempted under that section is income derived from the letting of godowns or warehouse provided the letting is for any of the three purposes, namely, "storage", "processing" or "facilitating the marketing of commodities".

12. On interpretation of Section 14(3)(iv) of the 1922 Act it was held by the High Court:

"There is also one other circumstance which is, in our opinion, quite decisive of the question. Section 81(iv), as we have already pointed out above, is in identical terms as section 14(3) and section 14(3) was originally introduced in the Income-tax Act, 1922, by section 10 of the Finance Act, 1955. Section 14(3) when originally introduced was, however, in a different form and it read as follows :

"14. (3) The tax shall not be payable by a co-operative society, including a co-operative society carrying on the business of banking -

(i) in respect of profits and gains of business carried on by it;...
(iii) in respect of any income derived from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities;..."

Clause (i) of this unamended section exempted from tax profits and gains of business carried on by a co-operative society. If, therefore, a co- operative society carried on the activity of processing, profits and gains arising from such activity would be exempt under clause (i). If that be so, why was it necessary to enact in clause (iii) that income derived from processing shall be exempt from tax ? If the construction contended for on behalf of the assessee were correct, the word "processing" in clause (iii) would be rendered totally superfluous for income derived from processing would be covered by clause (i). The only way in which full meaning and effect can be given to the word "processing" in clause (iii) is by reading that clause in the manner suggested on behalf of the revenue, namely, that the words "storage", "processing" and "facilitating the marketing of commodities" denoted different alternative purposes of letting of godowns or warehouses. We are, therefore, of the view that on a proper interpretation of section 14(3) (iv) and section 81(iv), separate exemption is not granted in respect of income from the letting of godowns or warehouses for storage, income from processing and income from facilitating the marketing of commodities. But the exemption is available only in respect of income derived from letting of godowns or warehouses where the purpose of letting is storage, processing or facilitating the marketing of commodities."

13. We approve the reasoning given by the High Court on interpretation of Section 81(iv) and Section 14(3)(iv) of the 1922 Act. On reading the above judgment it becomes clear that under Section 80P(2)(e) of the 1961 Act, an assessee is entitled to claim special deduction from its gross total income to arrive at total taxable income. It is a special deduction which is provided for in that Section. It is not a charging section. The burden is on the assessee to establish that the income comes within the four corners of Section 80P(2)(e) of the 1961 Act. The burden is on the assessee to establish that exemption is available in respect of income derived from the letting of godowns or warehouses, only where the purpose of letting is storage, processing or facilitating the marketing of commodities. If the godown is let out (including user) for any purpose besides storing, processing or facilitating the marketing of commodities, then, the assessee is not entitled to such exemption. [See: Law and Practice of Income-tax by Kanga & Palkhivala, Eighth Edition, page 995]

14. Coming to the case law on the distinction between contract of sale and contract of agency, we may state that there is no straight- jacket formula. However, some important circumstances do bring out the effect of the transaction. In the case of Ramchandra Rathore and Bros. v. Commissioner of Sales Tax, Madhya Pradesh, Nagur - (1957) 8 STC 845 (MP), the terms of the agreement between the assessee, a dealer in bidis, and his agent who was required to sell the goods, under the agreement, at prices fixed by the assessee, indicated that the assessee would not be responsible for any shortage in transit and that the assessee would not be liable to receive any unsold stock if the agreement stood terminated. The accounts of the assessee-dealer also indicated that when despatches were made, the price was debited to the agent and credited to him when the money was received.These circumstances were taken into account by the High Court in judging the real effect of the transactions. Accordingly, it was held that the impugned transaction was a "sale" liable to sales tax under Section 2(g) of C.P. and Berar Sales Tax

Act, 1947. In the case of Udupi Taluk Agricultural Produce Co-operative Marketing Society Ltd. v. Commissioner of Income-tax - (1987) 166 ITR 365(Kar.), the assessee, a co-operative society, claimed exemption under Section 80P(2)(e) of the 1961 Act in respect of its income derived by way of commission from Karnataka Food and Civil Supplies Corporation for procurement of paddy and rice and reimbursement of transport charges. Following the judgment of the Gujarat High Court in Surat Vankar Sahakari Sangh Ltd. (supra), the Karnataka High Court held that under Section 80P(2)(e) of the 1961 Act, exemption is available in respect of income derived only from letting out of godowns or warehouses. The income derived by the co-operative society for the purpose of exemption under clause (e) must be relatable to the letting out or the use of its godowns for any of the three purposes mentioned in clause (e). Any income derived by the society unconnected with such letting or use of the godowns would not fall under clause (e). In the case of M/s. Vishnu Agencies (Pvt.) Ltd. etc. v. Commercial Tax Officer and others - AIR 1978 SC 449, a seven-judge Bench of this Court held that transaction between the rice-millers on one hand and the wholesalers on the other hand constituted "sales" within the meaning of Bengal Finance (Sales Tax) Act, 1941 and sales tax was leviable on the turnover. In that case Vishnu Agencies was a licensed stockist of cement who was permitted to stock cement in its godown, to be supplied to persons in whose favour allotment orders are issued, at the price stipulated and in accordance with the conditions of permit issued by the authorities concerned. In that case Vishnu Agencies supplied cement to various allottees from time to time in pursuance of the allotment orders issued by Appropriate Authorities and in accordance with the terms of the licence obtained by it for dealing in cement. It was assessed to sales tax by CTO in respect of the said transactions. The main contention of Vishnu Agencies was the measures adopted to control the supply of cement left no option to parties to bargain; that, the transaction in question constituted a "compulsory sale"; that, by virtue of the provisions of the Cement Control Act and Cement Licensing Order no volition or bargaining power was left to the assessee and since there was no element of mutual consent between the stockist and the allottee, the transaction was not a "sale" within the meaning of the Sales Tax Act. This argument was rejected by this Court observing that the limitations placed on the normal rights of the dealer and consumers to supply and obtain the goods by the Cement Control Order do not militate against the position that eventually, the parties must be deemed to have completed the transactions under an agreement by which one party bound itself to supply the stated quantity of goods to the other at a price not higher than the notified price and the other party consented to accept the goods on the terms and conditions mentioned in the order of allotment issued in its favour by the competent authority. It was held that offer and acceptance need not always be in an elementary form, nor does the Law of Contract or Sale of Goods Act require that the consent to a contract must be express. It is commonplace that offers and acceptance can be spelt out from the conduct of the parties. This is because law does not require offer and acceptance to conform to any set pattern or formula.

15. As can be seen from the discussion hereinabove, two points arise for determination, namely, whether appellant acted as an agent of the Government in the subject transaction and the real nature of payment received by the said Society under the Head "commission". Both the points stand covered by the judgment of the Supreme Court in A. Venkata Subbarao, etc. v. The State of Andhra Pradesh, etc. - AIR 1965 SC 1773. In that case, appellants were owners of rice mills in the Districts of West Godavari, East Godavari and Krishna. Appellant was in the business of purchasing paddy from producers, milling their purchase in their mills and selling the rice so milled to wholesale dealers in rice. This was prior to 1946-47 when severe restrictions were imposed in the State of Madras on the trade in food grains in order to maintain their supplies and ensure proper and equitable distribution of food grains to the community. Accordingly, in 1946,

pursuant to the power vested in the State Government under Essential Supplies (Temporary Powers) Act, 1946, two Orders came to be issued, namely, Foodgrains procurement Order, 1946 and Foodgrains Licensing Order, 1946 which prohibited all trades in foodgrains including rice except by those who held licences and subject only to the terms and conditions of the licence. A. Venkata Subbarao was one such licensee who was authorized to deal in rice under the Licensing Order, 1946.It may be mentioned that the prices at which paddy could be procured as well as the prices at which the rice could be sold by the licensed dealers, were fixed by Orders, notifications issued under the Essential Supplies Act. While A. Venkata Subbarao (appellant) was carrying on his business subject to the provisions of the above two Orders, the prices at which he could sell rice which he milled out of the paddy procured by him stood enhanced on three different occasions - July 1947, December 1947 and November 1948, and on each occasion he was directed to submit a statement indicating the stock of paddy and rice held by him on the day just prior to the date on which the increased prices came into effect and on that basis the Government directed A. Venkata Subbarao to pay a "surcharge" on the amount representing the increase on the stock held by him. This levy of "surcharge" became the point of challenge in the suit filed by A. Venkata Subbarao in the trial court. The principal point in controversy between the parties related to the precise legal relationship between the procuring agent and the Government. It was found by the Supreme Court that the procuring agent had to buy the grain from the producers with their own money. The grain purchased was transported to the godowns at their cost and stored by them at their own risk. The rent of the godown(s) was also paid by the procuring agent. If there was any depreciation in the quality or there was any shortfall owing to driage, action of rodents, insects, moisture, theft, etc. the loss would of the procuring agent. It was also further found by the Court that the procuring agent could pledge his goods to raise loans from banks and lastly the procuring agent had a right to sell the grain to the person authorized by and at the price not exceeding the price fixed under the notification and Orders issued from time to time. In other words, sales at free-market rate were prohibited. On the basis of the aforestated circumstances, this Court held that the property in the goods purchased by the procuring agents vested in them However, it was urged on behalf of the State that the purchase and sale of commodities by the procuring agent/dealer was on behalf of the Government. In this connection, reliance was placed on the agreement, executed by the procuring agent, in which he undertook to purchase paddy from the areas allotted by the Government; he undertook to store the paddy or rice in a proper godown for which he was responsible for the safe custody of the grain and that the procuring agent further undertook to sell the stock of rice to persons nominated by the Government. On these considerations it was urged on behalf of the Government that A. Venkata Subbarao was an "agent" of the Government to buy paddy, to store the grain purchased on behalf of the Government in secure godowns and to sell the goods purchased on behalf of the Government to such persons nominated by the Government. It was, therefore, submitted that A. Venkata Subbarao was an "agent" who on one hand indemnified the Government from any loss in the business of agency of purchase and storage and sale on behalf of the Government and on the other hand he was bound to make over to the Government such profits that he might obtain out of the business of the agency. It was the further case of the Government that the difference between the procurement price and the price which was fixed for sale constituted "commission" or "remuneration" which would belong to the agent. In other words, two questions arose for determination before this Court, namely, the precise legal relationship between the procuring agent/dealer on one hand and the Government on the other hand as also real nature of payment received by A. Venkata Subbarao. It is interesting to note one more argument advanced on behalf of the Government. It was urged that the margin between the procurement price and the price at which the rice could be sold constituted

"remuneration". This argument found favour with the High Court. However, it was rejected by this Court and while doing so this Court observed as follows:

"29. Before proceeding further, it is necessary to clarify two matters. First, though Mr. Agarwala referred to the margin between the procurement price and the price at which the procured paddy or rice could be sold as "remuneration", a contention which found favour with the High Court, we do not find it possible to accept the submission. There was a similar margin between the price at which a wholesaler could buy rice and that at which he could sell and similarly, it was the case of the retail dealer, but it is hardly possible to call these as "remuneration". This margin or difference in the purchase and sale price was necessary in order to induce any one to engage in this business and was of the essence of a control over procurement and distribution which utilised normal trade channels. It would, therefore, be a misnomer to call it "remuneration" or "commission" allowed to an agent and so really no argument can be built on it in favour of the relationship being that of principal and agent."

(emphasis supplied)

16. Coming to the question of agency, this Court in the case of A. Venkata Subbarao (supra) held that the Government can derive no advantage from the works of "Procurement agent" mentioned in the Procuring Order, 1946 whether from the agreement executed by such procuring agent. This Court specifically vide paras 32 to 35 dismissed the argument advanced on behalf of the Government that A. Venkata Subbarao (appellant) had acted as an "agent" on behalf of the Government. We quote herein below paras 32 to 35 which read as under:

"32. No doubt, the description in the Procurement Order and the agreement as "agent" is of some value, but is not decisive and one has to gather the real relationship by reference to the entire facts and circumstances. To start with, it is clear that as the purchases were made by the procuring agents out of their own funds, stored at their own cost, the risk of any deterioration, driage or shortfall fell on them, they were the full owners of the paddy procured and they pledged the goods for raising funds. This aspect of their full ownership of the grain purchased is highlighted by the fact that they entered into agreements with the Government itself to sell the rice with them to District Supply Officers at the controlled market prices. Any contention that the procuring agents were not full owners of paddy or rice procured by them must manifestly fail as being inconsistent with the basis upon which this agreement by them to sell Government was entered into. If further confirmation were needed it is provided by the fact that on the sales by procuring agents to Government under their Supply agreement sales-tax was payable which on the terms of the Madras General Sales Tax Act in force at the relevant time would not have been payable if the paddy and rice were that of Government and which they were holding merely as commission agents on behalf of the Government.

33. Next, it may be pointed out that these plaintiffs held licences under the Licensing Order under the Madras Foodgrains Control Order, 1947 in order that they might deal in the rice in their possession. In the licence which was granted to the plaintiffs which was in statutory form the food grains in their possession were referred to as their stocks. It may be pointed out that the form of the licence granted to procuring agents, wholesalers and retailers was the same.

34. Learned Counsel urged that even assuming that the property in the goods purchased passed to the procuring agents that would not by itself negative the relationship of principal and agent. For this purpose reliance was placed on Article 76 of Bow stead on Agency which runs :

"Where an agent, by contracting personally, renders himself personally liable for the price of goods bought on behalf of his principal, the property in the goods, as between the principal and agent, vests in the agent, and does not pass to the principal until he pays for the goods, or the agent intends that it shall pass."

He also referred us to certain decisions of the Madras and Punjab High Courts in which the principle laid down in this passage had been applied. We do not consider it necessary to examine this question in its fullness because we are satisfied that the procuring agent, when he bought the goods, was purchasing it for himself and not on behalf of the Government. The acceptance of the argument addressed on this aspect would mean that if the procurement agent so desired he might contract in the name of the principal, namely, the Government and thus establish privity between the Government and the purchaser and make the Government liable to pay for the price of the goods at which he had purchased. This situation would, in our opinion, be unthinkable on the scheme of the Procurement Orders and generally of the Food Control Orders under which the procurement and distribution of food grains was placed under statutory control. What the Government desired and what was implemented by these several orders was merely the regulation and control of the trade in food grains by rendering every activity connected with it subject to licensing and to the directions to be issued in pursuance thereof and not directly to engage in the trade in food grains.

35. The respondent can derive no advantage from the obligation on the part of the procuring agents to store the paddy or rice properly - a stipulation on which Mr. Agarwala laid considerable stress - and this for two reasons : (1) The purpose of the clause was to ensure that there was no loss of food grains which were then a scarce commodity. That this is so would be apparent from the terms of section 3(2)(d) of the Essential Supplies Act which was effectuated by clause 9 of the licence granted under the Madras Foodgrains Control Order, 1947 which applied to all dealers in food grains, be they procuring agents (who also, as stated earlier, had to obtain and obtained these licences), wholesalers or retailers. This clause reads :

"9. The licensee shall comply with any directions that may be given to him by the Government or by the officer issuing this licence in regard to the purchase sale or storage for sale of any of the food grains mentioned in paragraph (1)....."

The second reason is that the agreement executed by the procuring agents in which this clause as regards storage in proper godowns and undertaking responsibility for the safe-custody of the grain occurs, is one which was a form intended for execution not merely by procuring agents but also authorized wholesale distributors i.e., those who purchased their requirements from procuring agents; admittedly the authorised wholesale dealers were not "agents" and the fact that this condition was insisted on even in their case is clear proof that it has no relevance to the question now under discussion. If therefore, appears to us that the expression "agent" was used in the Intensive Procurement Order as well as in the agreements merely as a convenient expression to designate this class of dealers."

17. Applying the judgment of this Court in the case of A. Venkata Subbarao (supra) we hold that the High Court was right in coming to the conclusion that the assessee was storing the commodities in question in its godowns as part of its own trading stock, hence it was not entitled to claim deduction for such margin under Section 80P(2)(e) of the 1961 Act.

18. Before concluding, we may refer to the judgment of this Court in the case of Commissioner of Income-tax, Madras v. South Arcot District Co-operative Marketing Society Ltd. - (1989) 176 ITR 117 (SC). This judgment is heavily relied upon by the counsel appearing on behalf of the appellant. In that case the facts were as follows. Assessee was a co-operative society under Madras Co- operative Societies Act. In the previous year ending June 30, 1960, the Society entered into an agreement with the Government of Madras under which it agreed to hold ammonium sulphate stock of the Government of Madras and it agreed to store the stock on behalf of the Government of Madras and to maintain a true and full account for the stocks received and returned every month for a commission of Rs.5 per ton on the quantity of fertilizer issued by the assessee from the stock. The assessee received Rs.31,316 on this account. The said sum of Rs.31,316 was originally included in its turnover, in the case of assessment proceedings, the assessee claimed exemption under Section 14(3)(iv) of the Income-tax Act,1922. The ITO held that the assessee was not entitled to exemption on the ground that the said amount of Rs.31,316 had been received for services rendered. The assessee appealed to CIT(A) who agreed with the ITO stating that the said amount received was for services rendered and as such the assessee was not entitled to exemption. Before the Tribunal the assessee contended that the receipt was for letting out its godown for storage, and, therefore, the said receipts came directly under Section 14(3)(iv) of the 1922 Act. The Revenue contended that the receipts from letting of godowns, etc, to members alone were exempt and the receipts in the present case being on a commercial basis will not fall within the scope of the exemption. The Tribunal, however, held that the assessee was entitled to exemption under Section 14(3)(iv) by observing that the agreement with the Government of Madras clearly indicated that the receipts were for letting of the godowns. The Tribunal further observed that some service element was there which constituted part of the receipts but it was an insignificant part of the whole amount of Rs.31,316 Hence, the Society was entitled to exemption. The Madras High Court analysed the agreement between the parties and came to the conclusion that the assessee was a stock-holder who had agreed to hold ammonium sulphate stock of the Government of Madras and safely store the same on their behalf and to issue the same on certain terms and conditions. Under the Agreement, the fertilizers bags had to be stocked in a manner as directed by the officers of the Government. The stocking and storage of the bags had to be done in the manner indicated by the Government. The assessee had to maintain particulars of fertilizers received, released and held in stock. The assessee had to engage at its own cost, godown- keepers and clerks to properly and efficiently carry on its duties under the agreement. The assessee was to get a commission of Rs.5 per ton of the quantity of fertilizers issued from the stocks on the instructions of the Government. On the analysis of the agreement, the High Court came to the conclusion that the assessee was a mere stock-holder and that the sum of Rs.5 per ton shown as commission from the Government was only for letting of godowns and though some services provided to were incidental to such storage, the service element and payment thereof constituted an insignificant portion of the amount received. In the circumstances, the High Court upheld the view of the Tribunal that the receipt of Rs.31,316 was exempt under Section 14(3)(iv) of the 1922 Act. This view was upheld by this Court.

19. In our view the judgment of this Court in South Arcot (supra) has no application to the facts of the present case. Firstly, in every case of this nature one has to examine the contract between the parties. One has also to examine the conduct of the parties. In the case before us we are concerned with Rajasthan Food grains & Other Essential Articles (Regulation of Distribution) Order, 1976. In the present case we are concerned with statutory or compulsory sales. Each contract has to be interpreted on its own terms. In the case of South Arcot (supra) statutory or compulsory sale was not in issue. Secondly, in the case before us we have a situation in which there are two sales. The first sale is between the Government (through FCI) and the appellant-society, and the second sale is between the appellant-society and Fair Price Shop. The former is the condition precedent to the latter. That situation was not there in the case of South Arcot (supra). Thirdly, in the case before us issue price is set-off against the sale price which clearly indicates that the netting/difference between the two prices constituted receipt on a commercial basis or net profit. Lastly netting/difference also indicated that the appellant had treated the stock as its own trading stock as correctly held by the impugned judgment. Therefore, in our view the judgment of this Court in the case of South Arcot (supra) will not apply to the facts of the present case and consequently the appellant is not entitled to exemption/special deduction under Section 80P(2)(e) of the 1961 Act.

20. For the aforestated reasons, we find no infirmity in the impugned judgment, and, accordingly we hereby dismiss the civil appeal of the appellant-assessee with no order as to costs.

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

.....J.
(Aftab Alam)

New Delhi;
July 16, 2009.