JUDGMENT REPORTED

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.

TAX APPEAL NO. 3 OF 2009

The Dy. Commissioner of Income Tax,
Circle-2, Jalgaon,
District : Jalgaon. .. Appellant.

versus

Shri Gopal Ramnarayan Kasat,
Sugoki Service Centre,
Paldhi, Taluka : Dharangaon,
District : Jalgaon. .. Respondent.

.....

Mr. Alok Sharma, Assistant Solicitor General, for the appellant.

Mr. M.K. Kulkarni, Advocate, with Mr. R.R. Chandak, Advocate, for the respondent.

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W I T H

TAX APPEAL NO. 5 OF 2009

Subhash Ramnarayan Kasat,
Age : 55 years,
Prop. Sugoki Service Centre,
Paldhi, Taluka : Dharangaon,
District : Jalgaon. .. Appellant.

versus

1. The Commissioner of Income Tax,
   Nashik.

2. Income Tax Officer,
   Ward 2(2), Jalgaon. .. Respondents.

.....

Mr. M.K. Kulkarni, Advocate, with Mr. R.R. Chandak, Advocate, for the appellant.

Mr. Alok Sharma, Assistant Solicitor General, for the respondents.

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W I T H

TAX APPEAL NO. 6 OF 2009

Subhash Ramnarayan Kasat,
Age : 55 years,
Prop. Sugoki Service Centre,
Paldhi, Taluka : Dharangaon,
District : Jalgaon. .. Appellant.

versus

1. The Commissioner of Income Tax,
   Aurangabad.

2. Dy. Commissioner of Income Tax,
Aurangabad. .. Respondents.

.....

Mr. M.K. Kulkarni, Advocate, with Mr. R.R. Chandak, Advocate, for the appellant.

Mr. Alok Sharma, Assistant Solicitor General, for the respondents.

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W I T H

TAX APPEAL NO. 7 OF 2009

Subhash Ramnarayan Kasat,
Age : 55 years,
Prop. Sugoki Service Centre,
Paldhi, Taluka : Dharangaon,
District : Jalgaon. .. Appellant.

versus

1. The Commissioner of Income Tax,
Nashik.

2. Income Tax Officer,
Ward 2(2),
Jalgaon. .. Respondents.

.....

Mr. M.K. Kulkarni, Advocate, with Mr. R.R. Chandak,
Advocate, for the appellant.

Mr. Alok Sharma, Assistant Solicitor General,
for the respondents.

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W I T H

TAX APPEAL NO. 8 OF 2009

Kiran Ramnarayan Kasat,
since deceased through L.R.,
Smt. Maya Kiran Kasat,
Age : 45 years,
Prop. Sugoki Service Centre,
Paldhi, Taluka : Dharangaon,
District : Jalgaon. .. Appellant.

versus

1. The Commissioner of Income Tax,
   Nashik.

2. Income Tax Officer,
   Ward 2(2), Jalgaon. .. Respondents.

.....

Mr. M.K. Kulkarni, Advocate, with Mr. R.R. Chandak,
Advocate, for the appellant.

Mr. Alok Sharma, Assistant Solicitor General,
for the respondents.

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W I T H

TAX APPEAL NO. 9 OF 2009

Gopal Ramnarayan Kasat,
Age : 52 years,
Prop. Sugoki Service Centre,
Paldhi, Taluka : Dharangaon,
District : Jalgaon. .. Appellant.

versus

1. The Commissioner of Income Tax,
   Aurangabad.

2. Income Tax Officer,
   Ward 2(2), Jalgaon. .. Respondents.

.....

Mr. M.K. Kulkarni, Advocate, with Mr. R.R. Chandak, Advocate, for the appellant.

Mr. Alok Sharma, Assistant Solicitor General, for the respondents.

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W I T H

TAX APPEAL NO. 10 OF 2009

Kiran Ramnarayan Kasat,
since deceased through L.R.,
Smt. Maya Kiran Kasat,
Age : 45 years,
Prop. Sugoki Service Centre,
Paldhi, Taluka : Dharangaon,
District : Jalgaon. .. Appellant.

versus

1. The Commissioner of Income Tax,
   Nashik.

2. Income Tax Officer,
   Ward 2(2), Jalgaon. .. Respondents.

.....

Mr. M.K. Kulkarni, Advocate, with Mr. R.R. Chandak, Advocate, for the appellant.

Mr. Alok Sharma, Assistant Solicitor General, for the respondents.

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W I T H

TAX APPEAL NO. 11 OF 2009

Kiran Ramnarayan Kasat,
since deceased through L.R.,
Smt. Maya Kiran Kasat,
Age : 45 years,
Prop. Sugoki Service Centre,
Paldhi, Taluka : Dharangaon,
District : Jalgaon. .. Appellant.

versus

1. The Commissioner of Income Tax,
   Aurangabad.

2. Income Tax Officer,
   Ward 2(2), Jalgaon. .. Respondents.

.....

Mr. M.K. Kulkarni, Advocate, with Mr. R.R. Chandak, Advocate, for the appellant.

Mr. Alok Sharma, Assistant Solicitor General, for the respondents.

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W I T H

TAX APPEAL NO. 12 OF 2009

Kiran Ramnarayan Kasat,
since deceased through L.R.,
Smt. Maya Kiran Kasat,
Age : 45 years,
Prop. Sugoki Service Centre,
Paldhi, Taluka : Dharangaon,
District : Jalgaon. .. Appellant.

versus

1. The Commissioner of Income Tax,
   Aurangabad.

2. Income Tax Officer,
   Ward 2(2), Jalgaon. .. Respondents.

.....

Mr. M.K. Kulkarni, Advocate, with Mr. R.R. Chandak, Advocate, for the appellant.

Mr. Alok Sharma, Assistant Solicitor General, for the respondents.

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W I T H

TAX APPEAL NO. 13 OF 2009

Gopal Ramnarayan Kasat,
Age : 52 years,
Prop. Sugoki Service Centre,
Paldhi, Taluka : Dharangaon,
District : Jalgaon. .. Appellant.

versus

1. The Commissioner of Income Tax,
   Aurangabad.

2. Income Tax Officer,
   Ward 2(2), Jalgaon. .. Respondents.

.....

Mr. M.K. Kulkarni, Advocate, with Mr. R.R. Chandak, Advocate, for the appellant.

Mr. Alok Sharma, Assistant Solicitor General, for the respondents.

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W I T H

TAX APPEAL NO. 14 OF 2009

Gopal Ramnarayan Kasat,
Age : 52 years,
Prop. Sugoki Service Centre,
Paldhi, Taluka : Dharangaon,
District : Jalgaon. .. Appellant.

versus

1. The Commissioner of Income Tax,
   Aurangabad.

2. Income Tax Officer,
   Ward 2(2), Jalgaon. .. Respondents.

.....

Mr. M.K. Kulkarni, Advocate, with Mr. R.R. Chandak, Advocate, for the appellant.

Mr. Alok Sharma, Assistant Solicitor General, for the respondents.

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W I T H

TAX APPEAL NO. 15 OF 2009

Gopal Ramnarayan Kasat,
Prop. Sugoki Service Centre,
Paldhi, Taluka : Dharangaon,
District : Jalgaon. .. Appellant.

versus

1. The Commissioner of Income Tax,
   Nashik.

2. Income Tax Officer,
   Ward 2(2), Jalgaon. .. Respondents.

.....

Mr. M.K. Kulkarni, Advocate, with Mr. R.R. Chandak, Advocate, for the appellant.

Mr. Alok Sharma, Assistant Solicitor General, for the respondents.

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W I T H

TAX APPEAL NO. 16 OF 2009

Gopal Ramnarayan Kasat,
Age : 52 years,
Prop. Sugoki Service Centre,
Paldhi, Taluka : Dharangaon,
District : Jalgaon. .. Appellant.

versus

1. The Commissioner of Income Tax,
   Aurangabad.

2. Income Tax Officer,
   Ward 2(2), Jalgaon. .. Respondents.

.....

Mr. M.K. Kulkarni, Advocate, with Mr. R.R. Chandak, Advocate, for the appellant.

Mr. Alok Sharma, Assistant Solicitor General, for the respondents.

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W I T H

TAX APPEAL NO. 17 OF 2009

Gopal Ramnarayan Kasat,
Age : 52 years,
Prop. Sugoki Service Centre,
Paldhi, Taluka : Dharangaon,
District : Jalgaon. .. Appellant.

versus

1. The Commissioner of Income Tax,
   Aurangabad.

2. Income Tax Officer,
   Ward 2(2), Jalgaon. .. Respondents.

.....

Mr. M.K. Kulkarni, Advocate, with Mr. R.R. Chandak, Advocate, for the appellant.

Mr. Alok Sharma, Assistant Solicitor General, for the respondents.

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W I T H

TAX APPEAL NO. 18 OF 2009

Subhash Ramnarayan Kasat,
Age : 55 years,
Prop. Sugoki Service Centre,
Paldhi, Taluka : Dharangaon,
District : Jalgaon. .. Appellant.

versus

1. The Commissioner of Income Tax,
   Aurangabad.

2. Income Tax Officer,
   Ward 2(2), Jalgaon. .. Respondents.

.....

Mr. M.K. Kulkarni, Advocate, with Mr. R.R. Chandak, Advocate, for the appellant.

Mr. Alok Sharma, Assistant Solicitor General, for the respondents.

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W I T H

TAX APPEAL NO. 19 OF 2009

Gopal Ramnarayan Kasat,
Age : 52 years,
Prop. Sugoki Service Centre,
Paldhi, Taluka : Dharangaon,
District : Jalgaon. .. Appellant.

versus

1. The Commissioner of Income Tax,
   Aurangabad.

2. Income Tax Officer,
   Ward 2(2), Jalgaon. .. Respondents.

.....

Mr. M.K. Kulkarni, Advocate, with Mr. R.R. Chandak, Advocate, for the appellant.

Mr. Alok Sharma, Assistant Solicitor General, for the respondents.

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W I T H

TAX APPEAL NO. 20 OF 2009

The Commissioner of Income Tax-II,
Nasik, District : Nasik. .. Appellant.

versus

Shri Gopal Ramnarayan Kasat,
Sugoki Service Centre,
Paldhi, Taluka : Dharangaon,
District : Jalgaon. .. Respondent.

.....

Mr. Alok Sharma, Assistant Solicitor General,
for the appellant.

Mr. M.K. Kulkarni, Advocate, with Mr. R.R. Chandak,
Advocate, for the respondent.

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W I T H

TAX APPEAL NO. 21 OF 2009

The Commissioner of Income Tax-II,
Nasik, District : Nasik. .. Appellant.

versus

Shri Gopal Ramnarayan Kasat,
Sugoki Service Centre,
Paldhi, Taluka : Dharangaon,
District : Jalgaon. .. Respondent.

.....

Mr. Alok Sharma, Assistant Solicitor General,
for the appellant.

Mr. M.K. Kulkarni, Advocate, with Mr. R.R. Chandak,
Advocate, for the respondent.

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W I T H

TAX APPEAL NO. 22 OF 2009

The Commissioner of Income Tax-II,
Kendriya Rajaswa Bhavan,
Gadkari Chowk, Old Agra Road,
Nashik - 422 002. .. Appellant.

versus

Shri Narayan Ramdayal Lathi (HUF),
11-A, "Godai",
Khandesh Mill Colony, Jalgaon. .. Respondent.

.....

Mr. Alok Sharma, Assistant Solicitor General,
for the appellant.

Mr. A.B. Kale, Advocate, for the respondent.

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W I T H

TAX APPEAL NO. 23 OF 2009

The Commissioner of Income Tax-II,
Kendriya Rajaswa Bhavan,
Gadkari Chowk, Old Agra Road,
Nashik - 422 002. .. Appellant.

versus

Shri Narayan Ramdayal Lathi (HUF),
11-A, "Godai",
Khandesh Mill Colony,
Jalgaon. .. Respondent.

.....

Mr. Alok Sharma, Assistant Solicitor General,
for the appellant.

Mr. A.B. Kale, Advocate, for the respondent.

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W I T H

TAX APPEAL NO. 24 OF 2009

The Commissioner of Income Tax-II,
Kendriya Rajaswa Bhavan,
Gadkari Chowk, Old Agra Road,
Nashik - 422 002. .. Appellant.

versus

Shri Narayan Ramdayal Lathi (HUF),
11-A, "Godai",
Khandesh Mill Colony, Jalgaon. .. Respondent.

.....

Mr. Alok Sharma, Assistant Solicitor General,
for the appellant.

Mr. A.B. Kale, Advocate, for the respondent.

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W I T H

TAX APPEAL NO. 25 OF 2009

The Commissioner of Income Tax-II,
Kendriya Rajaswa Bhavan,
Gadkari Chowk, Old Agra Road,
Nashik - 422 002. .. Appellant.

versus

Shri Narayan Ramdayal Lathi (HUF),
11-A, "Godai",
Khandesh Mill Colony, Jalgaon. .. Respondent.

.....

Mr. Alok Sharma, Assistant Solicitor General,
for the appellant.

Mr. A.B. Kale, Advocate, for the respondent.

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W I T H

TAX APPEAL NO. 26 OF 2009

Narayan Ramdayal Lathi (HUF),
11-A, "Godai",
Khandesh Mill Colony,
Jalgaon,
Taluka & District : Jalgaon,
PAN : AACHN2382Q. .. Appellant.

versus

1. The Commissioner of Income Tax-II,
   Nashik.

2. Asst. Commissioner of Income Tax,
   Circle-1, Jalgaon. .. Respondents.

.....

Mr. A.B. Kale, Advocate, for the appellant.

Mr. Alok Sharma, Assistant Solicitor General,
for the respondents.

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W I T H

TAX APPEAL NO. 27 OF 2009

Narayan Ramdayal Lathi (HUF),
11-A, "Godai", Khandesh Mill Colony,
Jalgaon, Taluka & District : Jalgaon,
PAN : AACHN2382Q. .. Appellant.

versus

1. The Commissioner of Income Tax-II,
   Nashik.

2. Asst. Commissioner of Income Tax,
   Circle-1, Jalgaon. .. Respondents.

.....

Mr. A.B. Kale, Advocate, for the appellant.

Mr. Alok Sharma, Assistant Solicitor General,
for the respondents.

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CORAM : B.R. GAVAI &
N.D. DESHPANDE, JJ.

Date of reserving the judgment : 7th October 2009

Date of pronouncing the judgment : 5th November 2009

JUDGMENT (Per B.R. Gavai, J.) :

1. Tax Appeal Nos. 5/2009 to 19/2009, 26/2009 and 27/2009 are filed by the original assesses and the Tax Appeal Nos. 3/2009 and 20/2009 to 25/2009 are filed by the Revenue.

2. All these appeals are arising out of identical facts and since the issues involved in all these appeals are identical, we have heard all these appeals together and they are being decided by this common judgment and order.

3. The appellant - assesses, namely, Gopal Ramnarayan Kasat, Subhash Ramnarayan Kasat and Kiran Ramnarayan Kasat are real brothers. The said assesses and one Narayan Ramdayal Lathi, who is Advocate by profession, had purchased certain agricultural lands during the period 1992 to 1998. The said lands were acquired immediately thereafter by the State Government. The assesses received compensation / enhanced compensation towards the acquisition of the said lands during the assessment years 2000-2001, 2001-2002 and 2002-2003. The assesses had filed their returns for the said assessment years. Noticing that the assesses, apart from their regular business / professional activities, had jointly purchased agricultural lands involving 13 transactions and out of said 13 transactions, nine lands bearing Gut Nos. 700, 717, 845, 69, 700, 19/1/A, 1218/1/2, 29 and 30, were under consideration for acquisition at the time of purchase of land and subsequent to purchase, within a short span of time, the said lands were acquired and that they had received compensation, as well as, enhanced compensation under the Land Acquisition Act, 1894, the assessment was re-opened under Section 147 of the Income Tax Act, 1961 (For short, hereinafter referred to as "the

said Act") after issuing a notice under Section 148 to the assesses.

4. In response to the notice issued under Section 148, replies were filed by the assesses. The Assessing Officer also collected information from the Land Acquisition Officer, Jalgaon, regarding original, as well as, enhanced compensation received by the assesses on account of acquisition of the lands in question. After considering the reply on behalf of the assesses and the material on record, the Assessing Officer came to the conclusion that the assesses were indulging in the land transactions which were demarcated to be acquired by the Government. The Assessing Officer came to the conclusion that the material placed on record clearly indicated that the assesses did not have any intention to hold the lands and to cultivate it. The Assessing Officer, therefore, came to the conclusion that the surplus received by the assesses, in respect of lands purchased by assesses and acquired by the State, is liable to be taxed as a business income, terming the said transaction as "adventure in the nature of trade", as defined under the provisions of Section 2(13) of the said Act. The Income Tax Officer, Jalgaon, has given detailed reasons for arriving at the said findings. The Assessing Officer has also held that the interest received, during the years under consideration, on enhanced compensation, was liable to be treated as a business income and, therefore, liable to be taxed, as such, within the meaning of Section 28 of the said Act.

5. Being aggrieved thereby, the assesses preferred appeals before the Commissioner of Income Tax (Appeals).

6. The learned Commissioner of Income Tax (Appeals), upheld

the order of the Assessing Officer, in so far as finding that the compensation received from the Special Land Acquisition Officer, on account of acquisition of lands, was liable to tax. However, the Commissioner of Income Tax (Appeals), directed deletion of the enhanced compensation and the interest component, in view of pendency of the issue regarding enhanced compensation before the High Court.

7. Being aggrieved by the orders passed by the Commissioner of Income Tax (Appeals), both, the assesses so also the Revenue, filed further appeals before the Income Tax Appellate Tribunal. The appeals filed by the assesses were rejected. In so far as the appeals filed by the Revenue are concerned, they were partly allowed. It was held that the enhanced compensation was liable to be taxed. In so far as the finding of the Commissioner of Income Tax (Appeals), regarding interest on enhanced compensation being not liable to be taxed, the Tribunal held that the interest was to be assessed on accrual basis from year to year. The Tribunal upheld the view of the Commissioner of Income Tax (Appeals), to the extent, that the interest was liable to be taxed only on reaching its finality. The Tribunal also upheld that the interest has to be assessed under the head "income from other sources". Being aggrieved by this order, both the assesses, so also, the Revenue have preferred the present appeals.

8. We have heard Mr. M.K. Kulkarni and Mr. A.B. Kale, learned Counsel appearing on behalf of the respective appellants / respondents viz. assesses, and Mr. Alok Sharma, learned Assistant Solicitor General, appearing for the respective appellants / respondents viz. Revenue, at length.

9. Mr. M.K. Kulkarni, learned Counsel, leading the arguments on behalf of the assesses, submits that in view of Section 2, Sub-Section 14(iii), Clauses "a" and "b" of the said Act, since the lands in question were agricultural lands, which were excluded from the definition of "capital asset", were outside the purview of "capital gains" under Section 45 of the said Act and, as such, the compensation on account of acquisition of the said lands could not have been taxed as a business income taking recourse to Section 2(13) of the said Act, treating the said transaction to be "adventure in the nature of trade". He further submits that, in any event, the transactions in question could not have been termed as "adventure in the nature of trade". He submits that the assesses were not involved in any business of dealing in lands. It is submitted that it was not the usual trade or business of the assesses. It is submitted that the finding of the Assessing Officers, that the assesses were engaged in "the adventure in the nature of trade" to earn business income, was based on conjunctures and surmises and without there being any basis to substantiate the said finding.

10. Mr. M.K. Kulkarni, learned Counsel appearing for the assesses, in support of his submissions, relies on the judgment of the Apex Court, in the case of **Saroj Kumar Mazumdar Vs. Commissioner of Income Tax ((1959) 37 ITR 242 (SC)).** He also relies on the judgment of Delhi High Court, in the case of **Commissioner of Income Vs. Padma Bhandari ((1985) 153 ITR 69 (Del.))**, so also, judgment of Andhra Pradesh High Court, in the case of **Ch. Atchaiah Vs. Commissioner of Income Tax ((1985) 156 ITR 78 (AP))** and judgment of Punjab and Haryana High Court, in the case of **Commissioner of Income Tax Vs. Paragaon Utility Financiers (P) Ltd. ((1985) 152 ITR 7 (P&H).**

11. It is further submission of Mr. M.K. Kulkarni, learned Counsel appearing on behalf of the assesses, that since the returns were filed before the due date, for the assessment years 2000-2001 and 2001-2002, a mandatory notice under Section 143(2)(i) was required to be sent, within a period of 12 months from the end of the month in which the return is furnished. He submits that no notice was furnished within a period of 12 months from the end of the month in which the return was filed. He, therefore, submits that the re-assessment proceedings cannot be initiated under Section 147 by issuing notice under Section 148 of the said Act. In support of this submission, he relies on the judgment of Division Bench of this court, in the case of **Commissioner of Walth Tax Vs. HUF of H.H. Late J.M. Scindia ((2008) 174 TAXMAN 1 (Bom.))**

12. The next submission of Mr. M.K. Kulkarni, learned Counsel appearing on behalf of assesses, is that the provisions of Section 234B of the said Act applies to situation where there is default in the payment of advance tax. He submits that the said provision only applies when assessee is liable to pay advance tax in that year and if he has failed to do so. In the submission of the learned Counsel, firstly no tax was payable on the compensation so received and secondly, since the assesses could not estimate as to how much compensation was to be received by them, they could not have paid the advance tax. In support of his submission, in this respect, he relies on the judgment of Delhi High Court in the case of **Commissioner of Income Tax Vs. Anand Prakash ((2009) 316 ITR 141 (Delhi)).**

13. Mr. A.B. Kale, learned Counsel appearing for the assesse, namely, Narayan Ramdayal Lalthi, submits that the notices were issued to the assessee under Section 148 of the said Act after their returns for the relevant years were accepted and, as such, it was beyond the scope of Section 147 of the said Act. He submits that the grounds, which are available for invoking jurisdiction under Section 147, were not available with the authority and, as such, the proceedings under Section 147 of the said Act were vitiated. Relying on the judgment of Division Bench of this court, in the case of **Gopal C. Sharma Vs. Commissioner of Income Tax ((1994) 209 ITR 946 (Bom))**, he submits that the lands, which are already subject matter of the land acquisition proceedings, could not be treated as stock in trade in the hands of an assessee and, as such, profit from sale of such land is not a business and "adventure in the nature of trade". He also relies on the order passed by the Division Bench of this court, in the case of Commissioner of Income Tax Vs. Abdul Mannan Shah Mohammed ((2001) 248 ITR 614 (Bom.)), in support of the proposition, that the amount of interest which is received on enhanced compensation could not be taxed when an award granting enhanced compensation was challenged by the State Government by way of appeal.

14. Mr. Alok Sharma, learned Assistant Solicitor General, appearing on behalf of Revenue, submits that the question whether transaction is "an adventure in the nature of trade", is essentially a question of fact. He submits that the interference by this court would be permissible only to find out as to whether there was an evidence before the Tribunal to justify the finding of fact. He submits that if there is evidence, no question of law arises and only in the event, if it is found that the Tribunal came to conclusion of fact on no evidence, or any

inferences which are entirely unreasonable, then only an interference by this court would be permissible. He relies on judgment of Full Bench of this court, in the case of **Rajputana Textile (Agencies) Ltd. Vs. Commissioner of Income Tax, Bombay City (A.I.R. 1954 Bombay 58).** He submits that even a solitary transaction is sufficient to hold that such a transaction is "adventure in the nature of trade", if the facts of the case so warrant arriving at such a conclusion. In support of this proposition, he relies on the judgment of the Apex Court, in the case of **Dalmia Cement Limited Vs. The Commissioner of Income Tax, New Delhi ((1976) 4 Supreme Court Cases 614).** He submits that in arriving at such a finding, intention of the assessee is relevant. He also relies on the judgment of Division Bench of this court, in the case of **Gurdial Narain Das & Company Vs. Commissioner of Income Tax ((1963) 50 ITR 633 (Bom)).**

15. In view of rival submissions, following questions arise for our determination :

> **(1)** As to whether the assesses were liable to be assessed for the profits earned by them on account of the compensation received by them for acquisition of agricultural lands by terming the same to be "adventure in the nature of trade", as defined under Section 2(13) of the said Act ?
>
> **(2)** As to whether the assessment proceedings could be re-opened under Section 147 of the said Act by issuing a notice under Section 148 of the said Act, if no

notice is issued to the assessee within a period of 12 months from the end of the month in which the return is filed, in view of provisions of Section 143(2) of the said Act ?

(3) As to whether an interest, as provided under Section 234B of the said Act, was liable to be levied in the facts of the present case ?

(4) As to whether the interest is liable to be taxed only on reaching its finality ? and

(5) As to whether the interest on enhanced compensation is to be assessed under "the income from other sources" when such enhanced compensation has been taxed as business income under Section 28 of the Income Tax Act, 1961 ?

QUESTION NO. 1 :

16. For deciding the first question, it will be necessary to refer to some observations of the Apex Court in the case of in the case of **G. Venkataswami Naidu & Company Vs. Commissioner of Income Tax ((1959) 35 ITR 594 (SC)),** which reads thus :

> " There is no doubt that the jurisdiction conferred on the High Court by S. 66(1) is limited to entertaining references involving questions of law. If the point raised on reference relates to the construction of a document of title or to the interpretation of the relevant provisions of the statute, it is a pure question of law;

and, in dealing with it, though the High Court may have due regard for the view taken by the Tribunal, its decision would not be fettered by the said view. It is free to adopt such construction of the document or the statute as appears to it reasonable. In some cases, the point sought to be raised on reference may turn out to be a pure question of fact; and if that be so, the finding of fact recorded by the Tribunal must be regarded as conclusive in proceedings under S. 66(1). If, however, such a finding of fact is based on an inference drawn from primary evidentiary facts proved in the case, its correctness or validity is open to challenge in reference proceedings within row limits. The assessee or the Revenue can contend that the inference has been drawn on considering inadmissible evidence or after excluding admissible and relevant evidence; and, if the High Court is satisfied that the inference is the result of improper admission or exclusion of evidence, it would be justified in examining the correctness of the conclusion. It may also be open to the party to challenge a conclusion of fact drawn by the Tribunal on the ground that it is not supported by any legal evidence; or that the impugned conclusion drawn from the relevant facts is not rationally possible; and if such a plea is established, the Court may consider whether the conclusion in question is not perverse and should not, therefore, be set aside. It is within these narrow limits that the conclusions of fact recorded by the Tribunal can be challenged under S. 66(1). Such conclusions can never be challenged on the ground that they are based on misappreciation of evidence. There is yet a third class of cases in which the assessee or the Revenue may seek to challenge the correctness of the conclusion reached by the Tribunal on the ground that it is a conclusion on a question of mixed law and fact. Such a conclusion is no doubt based upon the primary evidentiary facts, but its ultimate form is determined by the application of relevant legal principles. The need to apply the relevant legal principles tends to confer upon the final conclusion its character of a legal conclusion and that is why it is regarded as a conclusion on a question of mixed law and fact. In dealing with findings on questions of mixed law

> and fact the High Court would no doubt have to accept the findings of the Tribunal on the primary questions of fact; but it is open to the High Court to examine whether the Tribunal had applied the relevant legal principles correctly or not; and in that sense, the scope of enquiry and the extent of the jurisdiction of the High Court in dealing with such points is the same as in dealing with pure points of law. "

17. The said position of law has been reiterated by the Apex Court in the case of **Saroj Kumar Mazumdar Vs. Commissioner of Income Tax ((1959) 37 ITR 242 (SC))** and in the case of **Janki Ram Bahadur Ram Vs. Commissioner of Income Tax ((1965) 57 ITR 21 (SC)).**

18. After considering all the leading judgments on the point, the Apex Court in the case of **G. Venkataswami Naidu & Company Vs. Commissioner of Income Tax (supra)** has summarized thus :

> " What then are the relevant facts in the present case ? The property purchased and resold is land and it must be conceded in favour of the appellant that land is generally the subject matter of investment. It is contended by Mr. Viswanatha Sastri that the four purchases made by the appellant represent nothing more than an investment and if by resale some profit was realised that cannot impress the transaction with the character of an adventure in the nature of trade. The appellant, however, is a firm and it was not a part of its ordinary business to make investment in lands. Besides, when the first purchase was made it is difficult to treat it as a matter of investment. The property was a small piece of 280 1/4 cents and it could yield no return whatever to the purchaser. It is clear that this purchase was the first step taken by the appellant in execution of a well-considered plan to acquire open plots near the mills and the whole basis for the plan was to sell the said lands to the mills at a profit. Just as the conduct of

the purchaser subsequent to the purchase of a commodity in improving or converting it so as to make it more readily resaleable is a relevant factor in determining the character of the transaction, so would his conduct prior to the purchase be relevant if it shows a design and a purpose. As and when plots adjoining the mills were available for sale, the appellant carried out his plan and consolidated his holding of the said plots. The appellant is the managing agent of the Janardana Mills and probably it was first thought that purchasing the plots in its own name and selling them to the mills may invite criticism and so the first purchase was made by the appellant in the name of its benamidar V.G. Raja. Apparently, the appellant changed its mind and took the subsequent sale deeds in its own name. The conduct of the appellant in regard to these plots subsequent to their purchase clearly shows that it was not interested in obtaining any return from them. No doubt the appellant sought to explain its purpose on the ground that it wanted to build tenements for the employees of the mills; but it had taken no steps in that behalf for the whole of the period during which the plots remained in its possession. Besides, it would not be easy to assume in the case of a firm like the appellant that the acquisition of the open plots could involve any pride of possession to the purchaser. It is really not one transaction of purchase and resale. It is a series of four transactions undertaken by the appellant in pursuance of a scheme and it was after the appellant had consolidated its holding that at a convenient time it sold the lands to the Janardana Mills in two lots. When the Tribunal found that, as the managing agent of the mills, the appellant was in a position to influence the mills to purchase its properties its view cannot be challenged as unreasonable. If the property had been purchased by the appellant as a matter of investment it would have tried either to cultivate the land, or to build on it; but the appellant did neither and just allowed the property to remain unutilised except for the net rent of Rs. 80 per annum which it received from the house on one of the plots. The reason given by the appellant for the purchase of the properties by the mills has been rejected

> by the Tribunal; and so when the mills purchased the properties it is not shown that the sale was occasioned by any special necessity at the time. In the circumstances of the case, the Tribunal was obviously right in inferring that the appellant knew that it would be able to sell the lands to the mills whenever it thought it profitable so to do. Thus, the appellant purchased the four plots during two years with the sole intention to sell them to the mills at a profit and this intention raises a strong presumption in favour of the view taken by the Tribunal. In regard to the other relevant facts and circumstances in the case, none of them offsets or rebuts the presumption arising from the initial intention; on the other hand, most of them corroborate the said presumption. We must, therefore, hold that the High Court was right in taking the view that, on the facts and circumstances proved in this case, the transaction in question is an adventure in the nature of trade.
>
> The result is the appeal fails and must be dismissed with costs. "

19. In view of the observations of the Apex Court, an interference by this court, against the findings affirmed by the Tribunal, would be permissible, if the inference drawn by the Tribunal has been drawn on considering inadmissible evidence or after excluding admissible and relevant evidence. It can also be seen that, only if this court is satisfied that the inference is result of improper admission or exclusion of evidence, that this court would be justified in examining correctness of the conclusion. The another ground, that would be available to challenge conclusion of fact drawn by the Tribunal, would be that the conclusion is not supported by any legal evidence or that the conclusion drawn from the relevant facts is not rationally possible and if such a plea is established, this court would be permitted to examine as to whether the findings recorded are perverse or not. The court would also be permitted

to examine whether the Tribunal had applied legal principles correctly or not. In the case of **G. Venkataswami Naidu & Company Vs. Commissioner of Income Tax (supra),** it was sought to be contended on behalf of the appellant that the purchases made by the appellant were nothing more than an investment and that if by resale some property was realized, that cannot impress the transaction with the character of an adventure in the nature of trade. The court found that to make investment in lands was not an ordinary business of the said firm. The court found that the purchase, in question, was the first step taken by the appellant in execution of a well-considered plan to acquire open plots near the mills. The Apex Court, from the conduct of the appellant, found that the plots, in question, were purchased by the appellant with the sole intention to sell them to the mills at a profit.

20. In this background, let us examine the observations of the Tribunal while affirming the findings of the Assessing Officer and the Commissioner of Income Tax (Appeals), that the transactions, which are subject matter of the proceedings, amounted to "adventure in the nature of trade". The Tribunal has found thus :

> "21. We have also examined the meaning of the term "adventure in the nature of trade" mentioned in Section 2(13) of the Act. It has now been defined in the Income Tax Act. As far as the dictionary meaning of the word "adventure" is concerned, it implies a pecuniary risk, a venture, a commercial enterprise. The work "venture" in its turn is defined as a commercial activity in which there is a risk of loss as well as a chance of gain. During the course of hearing before us, this question has also been cropped up whether the impugned activity had fallen under the terminology "trade". A "trade" in the context of the definition of the

expression "business" is a wider concept and once this term is associated with the term "adventure" the scope has further enlarged. The adventure in the nature of trade is allowed to transaction that constitutes a trade or business but may not be a business itself. We are saying so because the business has characterized by some of the essential ventures such as respective transactions, holding of stock-in-trade, dealing with the customers and implied intention between the parties etc. But, contrary to this even an isolated transaction can satisfy the description of an adventure in the nature of trade. For an adventure, it is not necessary that there should be a series of transactions i.e. both of purchase and of sales. To our humble understanding based upon the above discussion, a single transaction of purchase and sale may be outside the assessee's line of business, can constitute an adventure in the nature of trade. Therefore, neither respective nor continuity of similar transaction is necessary to constitute a transaction as an adventure in the nature of trade. Once there is a continuity of transaction then it is nothing but carrying on a business and in such situation, the question of adventure in the nature of trade can hardly arise. To supplement as also to further elaborate this discussion, it can be added that the word "adventure" may be in the realms of travel, voyage, hunting, etc. but it is attached with other words i.e. adventure in the nature of trade, then the motive of adventure is attached with the motive of trade. In the face of its own evidence a case has to be decided but the motive can never be irrelevant to be inferred by surrounding circumstances and the intention behind the said activity. The motive of the seller, his intention behind sale, his overall activity of accomplish, the desired goal are all in conjunction with the conduct of the assessee so as to establish that the adventure as taken by him was within the sphere of trade activity. Though these facts can also not be ruled out that not one of the consideration mentioned in the foregoing paragraphs by itself really is a conclusive criteria, hence the decision in each case must rest on the totality of the facts and the combined effect of all the circumstances. Our endeavor in deciding these appeals was in this

direction only.

22. In nutshell, on the basis of the detailed discussion made hereinabove, the conclusion can be drawn that the entire activity of this appellant was within the domain the adventure in nature of trade. We are aware that by profession, Karta an Advocate, but he has also entered into an activity which can be held to be incident to the business activity. His act prior to the acquisition was definitely assailed with the profit motive. He was aware at the time of purchase that the land in question was within the acquisition proceedings, hence it cannot be held as an investment for a long period. The land in question could never be a prior of possession since it was about to be acquired by the Government. The land in question was not going to be held, least to say, for a long time but even for some time because the acquisition proceedings were in succession. Even it cannot be said to be a purchase for aesthetic possession. What is important for our consideration, it is distinctive character, total effect of the intention of this appellant at the time of purchase, all the relevant factors as also surrounding circumstances so as to finally determine the true character of the transaction. We have also seen from the above precedent which have been either applied or been distinctive on facts while discussion ante, that this appellant has not shown any other intention at the time of acquisition of land other than the intention of earning profit by way of compensation. Before we part with, we may like to add that one cannot remain untouched by the ploght of the farmers. Their agricultural lands are generally being purchased by interested persons immediately before the question of land at through away prices with their motive to encash heavy returns in the shape of huge amount of compensation. What the farmers get out of such deal is merely peanuts on sale of their precious land under threat or fear and apprehension of acquisition by the Government for a consideration at a nominal price being sale in stress while the astute purchaser notching rich fruits happened to be the expert of this trade. We acknowledge that we are not acting as a

> moral police being our job is confined within four corners of the Income Tax Act. Neither we are making any allegation to any one we have any authority to stop this malpractice being very much prevalent whether in the country the acquisition of lands takes place but simply out of compassion we have placed our sentiments, though definitely not swayed by the emotions in arriving at this unbiased decision. To conclude, we draw the result that it was nothing but an adventure in the nature of trade, hence right taxed in the hands of the assessee. Ground nos.1 and 2 of the concise grounds or the ground no.1 and its sub-grounds as per the original grounds of appeal are hereby dismissed. "

21. We find that the findings recorded by the Tribunal are recorded on the basis of the relevant material, attending circumstances and the correct legal position. We find that the facts in the present case are somewhat similar to the facts which fell for consideration before the Apex Court in the case of **G. Venkataswami Naidu & Company Vs. Commissioner of Income Tax (supra).** From the material placed on record, on the basis of which the three authorities have concurrently held that the transactions were "adventure in the nature of trade", it can clearly be inferred that the assesses herein were involved in series of transactions of purchasing lands which were notified or likely to be notified for acquisition by the Government. It is to be noted that the transactions were not only pertaining to the Jalgaon District but also Aurangabad District, at a far away distance from the place of residence of the assesses. We do not find any perversity in the finding of fact recorded by the Assessing Officer and confirmed by the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal, that the transactions were "adventure in the nature of trade".

22. Now, let us deal with the contention of the assesses, that in view of provisions of Section 2, Sub-Section 14(iii), Clauses "a" and "b" of the said Act, the agricultural lands were excluded from the definition of "capital asset" and, as such, no tax was payable on the compensation received on account of the acquisition of the said lands. From the material on record, it is manifest that the lands purchased by the assesses were not purchased with an intention to hold it as a "capital asset" but were purchased with the knowledge that the said lands are being acquired with the sole intention of earning huge profit on account of their acquisition. If the lands were not purchased with the intention of holding them as "capital asset" and only with an intention of earning huge profits on the said purchases, we do not find any infirmity with the finding of the Tribunal, that the reliance placed on the provisions of Section 2(14)(iii)(a) and (b) is of no assistance to the assesses. If the lands, in question, were not purchased for the purpose of agriculture, with an intention to hold them as a "capital asset", we do not find any merit in the contention of the assesses, that the said agricultural lands were excluded from the definition of "capital asset" and, as such, the income from the sale thereof not liable to be taxed. In the result, we reject the contention of the assesses in this respect.

QUESTION NO.2 :

23. It is the contention of the assesses, that since no notice was issued to them under Section 143(2)(i) of the said Act, within a period of 12 months from the end of the month in which the return is filed, re-assessment could not be made under Section 147 by issuing a notice under Section 148. A reliance is placed in this respect, on the judgment of Division Bench of this court, in the case of **Commissioner of Wealth**

Tax Vs. HUF of H.H. Late J.M. Scindia (supra).

24. In the case before the Division Bench, the question was as to whether Section 16 of the Wealth Tax Act, 1957 (hereinafter referred to as "Wealth Tax Act") were applicable to reassessment under Section 17 and that the requirement of giving notice under the proviso to section 16(2) is a mandatory requirement and, consequently, notice has to be issued before the time prescribed by the proviso to section 16(2) expires. The Division Bench of this court has observed thus :

> "**4.** The question that we are called upon to answer is whether the view taken by the Tribunal flows from the provisions of section 17 read with sections 14 to 16 of the Wealth Tax Act. The relevant provisions, as they then stood, read as under :-
>
> > "17. Wealth excaping assessment - (1) If the Assessing Officer has reason to believe that the net wealth chargeable to tax in respect of which any person is assessable under this Act has escaped assessment for any assessment year (whether by reason of under assessment or assessment at too low a rate or otherwise), he may, subject to the other provisions of this section and section 17A, serve on such person a notice requiring him to furnish within such period, not being less than thirty days, as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner setting forth the net wealth in respect of which such person is assessable as on the valuation date mentioned in the notice, along with such other particulars as may be required by the notice, and may proceed to assess or reassess such net wealth and also any other net wealth chargeable to tax in respect of which such person is assessable, which has escaped assessment and

> which comes to his notice subsequently in the course of the proceedings under this section for the assessment year concerned (hereafter in this section referred to as the relevant assessment year) and the proviswions of this Act shall, so far as may be apply as if the return were a return required to be furnished under section 14 :
>
> **Provided** that where an assessment under sub-section (3) of section 16 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any net wealth chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 14 or section 15 or in response to a notice issued under sub-section (4) of section 16 or this section or to disclose fully and truly all material facts necessary for his assessment for that assessment year. "

5. The crucial words are "and the provisions of this Act shall so far as may be apply as if the return were a return required to be furnished under section 14". Would these words "as far as may be" mean thereby that section 17 is the assessing section and for that purpose the provisions of sections 14 to 16 to the extent they are applicable only would apply. In other words, does section 17 confer power on the Assessing Officer in case where section 17 is invoked to independently make an order of assessment in a case where a return is filed under section 14 after notice and after the period of twelve months have expired from the date of filing the return. Section 16(2) reads as under :-

> " Where a return has been made under section 14 or section 15, or in response to a notice under clause (i) of sub-section (4) of this section, the Assessing Officer shall, if he considers it necessary or expedient to ensure that the assessee

> has not understated the net wealth or has not underpaid the tax in any manner, serve on the assessee a notice requiring him, on a date to be specified therein, either to attend at the office of the Assessing Officer or to produce, or cause to be produced there, any evidence on which the assessee may rely in support of the return :
>
> **Provided** that no notice under this sub-section shall be served on the assessee after the expiry of twelve months from the end of the month in which the return is furnished. "

25. However, it is to be noted that Section 148 of the said Act, which is pari materia with the provisions that fell for consideration before the Division Bench, has been amended by the Finance Act, 2006, with retrospective effect from 1st October 1991, thereby introducing proviso to the said Section. The amended Section 148 reads as under :

> **" Issue of notice where income has escaped assessment**
>
> **148 (1)** Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period, as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139 :
>
> **Provided** that in a case -
>
> (a) where a return has been furnished during the

period commending on the 1st day of October 1991 and ending on the 30th day of September 2005 in response to a notice served under this section, and

(b) subsequently a notice has been served under sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to sub-section (2) of section 143, as it stood immediately before the amendment of said sub-section by the Finance Act, 2002 (20 of 2002) but before the expiry of the time limit for making the assessment, re-assessment or recomputation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice :

Provided further that in a case -

(a) where a return has been furnished during the period commencing on the 1st day of October 1991 and ending on the 30th day of September, 2005, in response to a notice served under this section, and

(b) subsequently a notice has been served under clause (ii) of sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to clause (ii) of sub-section (2) of section 143, but before the expiry of the time limit for making the assessment, reassessment or recomputation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice.

Explanation - For the removal of doubts, it is hereby declared that nothing contained in the first proviso or the second proviso shall apply to any return which has been furnished on or after the 1st day of October, 2005 in response to a notice served under this section.

(2) The Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so."

It would thus be clear that the provision of law, which fell for

consideration of the Division Bench, though was pari materia with the provisions of Section 148 of the Income Tax Act, 1961, prior to its amendment, the statutory provisions have been amended by the Finance Act, 2006, with retrospective effect from 1st October 1991, and all such notices which have been served under Sub-Section 2 of Section 143, after expiry of 12 months, have been saved. It is thus clear that on the basis of law, as it stands, the notices under Sub-Section 2 of Section 143, concerning a return furnished during the period commencing from 1st day of October 1991 and ending on 30th day of September 2005, have been saved provided such a notice is issued before the expiry of time limit for making the assessment, reassessment or recomputation as specified in sub-section (2) of section 153. It is not the case of assesses, that the notice issued is after the expiry of the time limit provided in Sub-Section 2 of Section 153. We accordingly reject the contention of the assesses, in this regard, also.

QUESTION NO.3 :

26. In support of the proposition, that interest under Section 234B is not taxable in the facts of the present case, the learned Counsel appearing for the assesses has relied on the judgment of Delhi High Court, in the case of **Commissioner of Income Tax Vs. Anand Prakash (cited supra),** to contend that since the assessee had not withheld any money belonging to the Government and the interest payable on account of enhanced compensation was unknown to the assessee on the date of completion of assessment, therefore, the assessee could not have included the interest received on enhanced compensation in the assessment year while estimating his income for the purposes of calculation of advance tax for the relevant years.

27. The scope of Section 234B and Section 234C of the Income Tax Act, 1961, came up for consideration before the Division Bench of this court, in the case of **Commissioner of Income Tax Vs. Kotak Mahindra Finance Ltd. ((2004) 265 ITR 119 (Bom)).** It would be relevant to refer to paragraph 7 of the said judgment, which reads thus :

> " Section 234B and Section 234C fall under Chapter XVII of the IT Act which deals with collection and recovery. Chapter XVII-F deals with interest chargeable in certain cases. Section 234B along with Section 234A and Section 234C were inserted by Direct Tax Laws (Amendment) Act, 1987 w.e.f. 1st April 1989. It is well settled that interest under Section 234B is compensatory in character. It is not penal in nature. So also, interest under Section 234C is compensatory in character. It is for this reason that Section 234B does not envisage grant of hearing in so far as levy of interest is concerned. The levy is automatic on it being proved that the assessee has committed a default as governed by Section 234B. This reasoning also applies to levy of interest under Section 234C. Therefore, the question of equity, rules of natural justice and justification for not making payment do not arise for determination in cases where interest is leviable under Section 234B and Section 234C. In this case, we are concerned with assessment year 1989-90. Section 234B makes provision for charging of interest for non-payment or short payment of advance tax. The provision is compensatory in nature. It has no element of penalty in it. "

The second question which was formulated by the Division Bench is thus :

> " Whether, on facts and circumstances of this case and in law, the Tribunal erred in the holding that interest

under Section 234B and Section 234C was not leviable in case income was subjected to tax under Section 115J as it stood at the relevant time ?"

The finding given by the Division Bench to the said question is thus :

" We find merit in the contentions advanced on behalf of the Department on question No.2. According to the assessee, assessment under Section 115J of the IT Act is on a deemed income and, consequently, provisions of Section 234B and Section 234C will not apply. We do not find any merit in this argument of the assessee. Section 207 of the IT Act falls under Chapter XVII-C which deals with advance payment of tax. It states that tax shall be payable in advance during any financial year in respect of total income of the assessee which would be chargeable to tax for the assessment year immediately following the financial year. That, such income shall be referred to as current income. The basic burden of the assessee's argument is that companies falling under Section 115J of the IT Act are assessed on the basis of deemed income which is computed as per Sch. VI of the Companies Act. That, such companies have to compare that total income computed under the normal provisions of the IT Act with the book profits computed under Chapter VI of the Companies Act. That, the accounts of the company under Sch. VI cannot be prepared before the end of the previous year whereas, Section 207 of the IT Act provides for estimation of the "current income" at the end of the previous year. That, Section 207 contemplates estimation of current income by the end of the financial year and on that estimation the assessee is required to pay advance tax. According to the assessee, therefore, interest cannot be levied on account of short payment of advance tax in cases of companies falling under Section 115J. We do not find any merit in this argument. The difficulty faced by the assessee in the matter of computation cannot defeat the liability for payment of advance tax. Under Section 207 of the IT

Act, advance tax is payable during any financial year in respect of the "current income". The words "current income" are very crucial. The words "current income" refer to computation of total income under the provisions of the IT Act including Section 115J. Under Section 207 of the IT Act, the words "total income" have been equated to the expression "current income". The matter can be looked at from another angle. The interest which is leviable under Section 234B and Section 234C is compensatory in nature. It has no element of penalty in it. Therefore, it is clear that if there is non-payment or short payment of tax on the current income, then the assessee has to pay interest as the income has accrued to the assessee for the previous year. In our opinion, merely because the curtain raises in the cases of companies falling under Section 115J after 31st March, is no ground for the assessee - company not to pay interest under Section 234B and Section 234C. Under Section 115J, every assessee - company had to compute total income under the Act and, thereafter, compare such total income with the book profits and if the total income computed under the Act was less than 30 percent of the book profits than the total income shall be deemed to be 30 percent of the book profits. It is not in dispute that every such company has to prepare its P&L a/c under Sch. VI of the Companies Act after the end of the accounting year/previous year but, once it is found that the total income computed under the Act is less than 30 percent of the book profits and consequent upon which there is non-payment or short payment of advance tax then, provisions of Sections 234B and 234C are automatically attracted. In this case, previous year ended on 31st March, 1989, and the accounts were finalised on 22nd June, 1989. However, the company came under Section 115J of the IT Act and it was found that the tax liability under Section 115J was Rs. 26,45,004 against which the advance tax paid was only Rs. 15 lakhs and, consequently, there was short payment of advance tax. Hence, interest under Section 234B and Section 234C was leviable. Our view is supported by the judgment of the Gauhati High Court in the case of Assam Bengal

> Carriers Ltd. (supra) and also by the judgment of the Madhya Pradesh High Court in the case of Itarsi Oils & Flours (P) Ltd. (supra). Consequently, we respectfully disagree with the judgment of the Karnataka High Court in the case of Kwality Biscuits Ltd. (supra). "

28. It can thus be clearly seen that the Division Bench has held that the difficulty faced by the assessee in the matter of computation cannot defeat the liability for payment of advance tax. It has been held that under Section 207 of the Income Tax Act, 1961, advance tax is payable during any financial year in respect of the "current income". In the said case, the court has clearly negated the contention of the assessee, that merely because the curtain raises in the cases of companies falling under Section 115J after 31st March, cannot be a ground for the assessee - company not to pay interest under Section 234B and Section 234C. Since we have already upheld that the profit earned by the assessee on receipt of the compensation is an income chargeable to income tax under the head "profit from business", holding the transaction to be "adventure in the nature of trade", in view of the judgment of the Division Bench, cited supra, mere difficulty faced by the assessee in the matter of computation cannot defeat the liability for payment of advance tax. In view of the judgment of Division Bench of this court, we are unable to agree with the view taken by the Division Bench of Delhi High Court, in the case of **Commissioner of Income Tax Vs. Anand Prakash (supra).** We accordingly reject the contention of the assesses, in that regard, also.

QUESTION NO. 4 :

29. The Income Tax Appellate Tribunal, in the appeals filed by the Revenue, has held that the question of assessment of the interest on accrual basis would not arise unless it is finally determined. It has also

been held that it would not accrue and not liable to tax unless it attains finality.

30. The Apex Court in the case of **Commissioner of Income Tax Vs. Ghanshyam (HUF) ((2009) 26 DTR (SC) 129)** has observed thus :

> " It was urged on behalf of the assessee that Section 45(5)(b) of the 1961 Act deals only with reworking, 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. 1st April, 1988 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 any 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 cl. (c) in Section 45(5) w.e.f. 1st April 2004 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 cl. (c)] not only deals with reworking 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. 1st April 2004, the receipt of enhanced compensation under Section 45(5)(b) was taxable in the year of receipt which is only reinforced by insertion of cl. (c) because the right to receive payment under the 1894 Act is not in doubt. It is important to note that comjpensation, 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. "

In the aforesaid judgment, the Apex Court has also held that the 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. However, in the present case, we are not concerned with the interest under Section 34 of the Land Acquisition Act. We are only concerned with the interest under Section 28 which is payable on excess amount of compensation over and above what is awarded by the Collector. The Apex Court has held that the enhanced compensation, including interest under Section 28, becomes payable 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. It has further been held that 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, the same is liable to be taxed under Section 45(5) of the said Act. The Apex Court has further held that when the assessee claimant is in receipt of enhanced compensation, it shall be treated as "deemed income" and taxed on receipt basis.

31. We, therefore, find that the finding of the Income Tax Appellate Tribunal, that the question of assessment of interest on accrual basis would not arise unless it is finally determined, is not correct. We, therefore, find that the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal have erred in holding that the interest is not liable to be taxed until it reaches finality. It appears that the judgment and order passed by the Income Tax Appellate Tribunal is dated 22nd August 2008, whereas the judgment of the Apex Court in the case of **Commissioner of Income Tax Vs. Ghanshyam (HUF) (supra),** is delivered on 16th July 2009. It is, thus, clear that the decision of the Tribunal is prior to the decision of the Apex Court.

QUESTION NO. 5 :

32. The Income Tax Appellate Tribunal has held that the interest has to be assessed under the head "income from other sources" since it cannot be brought under any other specified heads of income. However, as already discussed herein above, the Apex Court has held that the enhanced compensation, including the interest under Section 28 of the Land Acquisition Act, 1894, has to be treated "deemed income" as and when the assessee, claimant, is in receipt of enhanced compensation and further held that the interest under Section 28 is also a component of the enhanced compensation and since we have already held that the

compensation received on account of acquisition of the lands, in question, was a business income taxable under Section 28 of the Income Tax Act, 1961, we find that the Income Tax Appellate Tribunal has erred in treating the interest as "income from other sources".

33. We accordingly answer the issues as under :-

(1) We uphold the concurrent finding of the authorities, that the transactions, in question, were "adventure in the nature of trade" and as such, chargeable to income tax under the head "profits and gains of business or profession".

(2) Since in view of amendment to Section 148 by the Finance Act, 2006, the notices issued to the assesses under Sub-Section 2 of Section 143 of the Income Tax Act, 1961, after the expiry of 12 months, specified in the proviso to Sub-Section 2 of Section 143, where returns have been furnished during the period commencing from 1st day of October 1991 and ending on 30th September 2005, have been saved, no error could be found in the opening of the re-assessment proceedings under Section 147 of the Income Tax Act.

(3) The interest, as provided under Section 234B of the Income Tax Act, is liable to be charged.

(4) The interest which forms component of the compensation, as held by the Apex Court, in the case of **Commissioner of Income Tax Vs. Ghanshyam (HUF) (supra)**, has to be taxed in the year of receipt.

(5) The interest, which has been held to be a component of the

compensation, is chargeable to income tax under the head "profit and gains of business or profession".

34. Appeals filed by the Assessees are, therefore, dismissed and the appeals filed by the Revenue are allowed in the aforesaid terms.

(N.D. DESHPANDE) JUDGE

(B.R. GAVAI) JUDGE

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Date : 5th November 2009

35. At this stage, Mr. M.K. Kulkarni, learned Counsel appearing on behalf of the assesses, prays for stay to the effect and operation of the judgment passed by this court, for a period of eight weeks from today.

36. However, since no stay was operating during the pendency of the present appeals, we are not inclined to grant the said prayer and the said prayer is rejected.

(N.D. DESHPANDE) JUDGE

(B.R. GAVAI) JUDGE

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