**REPORTABLE**

**IN THE SUPREME COURT OF INDIA**
**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 2416 OF 2010**

**RAJ PAL SINGH** **…..APPELLANT**

**Vs.**

**COMMISSIONER OF INCOME-TAX, HARYANA, ROHTAK** **....RESPONDENT**

**JUDGMENT**

**Dinesh Maheshwari, J.**

**PRELIMINARY AND BRIEF OUTLINE**

1. This appeal takes exception to the judgment and order dated 23.04.2008 passed by the High Court of Punjab and Haryana at Chandigarh[1] in Income Tax Reference No. 53-A of 1991 whereby the High Court, while answering the reference under the then existing Section 256(1) of the Income-tax Act, 1961[2], disapproved the order dated 29.06.1990 passed by the Income Tax Appellate Tribunal, Chandigarh Bench[3] in ITA No. 739/Chandi/89 for the assessment year 1971-1972; and held that the capital gains arising out of land acquisition compensation were chargeable to income-tax under Section 45 of the Act of 1961 for the previous year



1 For short, 'the High Court'.
2 For short, 'the Act of 1961' or 'the Act'.
3 For short, 'ITAT'.

referable to the date of award of compensation i.e., 29.09.1970 and not the date of notification for acquisition.

2. In the present case, the question concerning date of accrual of capital gains arose in the backdrop that though the proceedings for acquisition in question were taken up by way of notification dated 15.05.1968 and award of compensation was made on 29.09.1970 but, as a matter of fact, at the time of issuance of the initial notification for acquisition, the subject land was already in possession of the beneficiary under a lease, though the period of lease had expired on 31.08.1967. In the light of these facts, the ITAT did not approve of charging tax over capital gains with reference to the date of award while observing that the date of notification (i.e., 15.05.1968) would be treated as the date of taking over physical possession and the transaction (leading to capital gains) would be considered as having taken place on that date and not on the date of award (i.e., 29.09.1970). The High Court, however, did not agree with this line of reasoning and held that the amount of compensation was determined only on passing of the award dated 29.09.1970 and, therefore, if any capital gain was chargeable to tax, it would be chargeable for the previous year referable to the date of award.

3. Thus, the root question is as to whether, on the facts and in the circumstances of the present case, the High Court was right in taking the date of award as the date of accrual of capital gains for the purpose of Section 45 of the Act of 1961?

4. Keeping the question aforesaid in view, we may briefly summarise the relevant factual and background aspects of this case while indicating at the outset that the matter relating to the assessment in question, before reaching the High Court in the reference proceedings, had undergone two rounds of proceedings up to the stage of appeal before ITAT.

**THE ASSESSEE; THE SUBJECT LAND; AND THE ACQUISITION**

5. The assessment in question is for the assessment year 1971-1972 in relation to the assessee Amrik Singh HUF[4]. The appellant Raj Pal Singh is son of late Shri Amrik Singh and is Karta of the assessee HUF. As noticed, the dispute essentially concerns the chargeability of tax for capital gains arising out of the award of compensation towards acquisition of land belonging to the assessee-appellant.

6. It is noticed from the material placed on record and the observations in the orders passed in this matter that the subject land, admeasuring 41 kanals and 14 marlas and comprising Khasra Nos. 361 to 369 and 372 to 375 at village Patti Jattan, Tehsil and District Ambala[5], became an evacuee property after its original owner migrated to Pakistan; and the same was, as such, allotted to the said Shri Amrik Singh, who had migrated to India, in lieu of his property left in Pakistan. However, a substantial part of the subject land, except that comprising Khasra Nos. 361 and 364 admeasuring 5 kanals and 7 marlas, had been given by the original owner on a lease for 20 years to a Government College, being S.A. Jain College, Ambala City[6];

4 Hindu Undivided Family.
5 For short, 'the subject land' or 'the land in question'.
6 For short, 'the College'.

and the lease was to expire on 31.08.1967. Later on, the College moved the Government of Haryana for compulsory acquisition of the subject land. While acting on this proposition, a notification under Section 4 of the Land Acquisition Act, 1894[7] was issued by the Government of Haryana on 15.05.1968, seeking to acquire the subject land for public purpose, namely, playground for the College. This was followed by the declaration dated 13.08.1969 under Section 6 of the Act of 1894. Ultimately, after submission of the claim for compensation, the Land Acquisition Collector, Ambala proceeded to make the award on 29.09.1970.

7. The relevant features concerning possession of the land in question and computation of the amount of compensation are duly recorded in the award dated 29.09.1970 and for their relevance, the material parts of the award need to be taken note of.

7.1. As regards possession of the land in question, the learned Collector observed as under:-

> "Possession of land:
>
> The land in question was on lease with the Jain College, managing Society upto 31st August 1967. Thereafter the acquisition proceedings were started and the society was in possession of the same since then. Therefore the land owners are entitled to the interest from the date of notification u/s 4 which was issued on the 15th May, 1968. The interest at the rate of 6% per annum will be paid to the land owners in addition to the compensation and Solatium from 15th May,1968, to date."

7.2. As regards entitlement to compensation, the learned Collector examined the cross-claims made by the land owners and the Managing

7 For short, 'the Act of 1894'.

Society of the College; and found it justified to award compensation to the land owners while observing as under:-

> "Mode of Payment:
>
> The land owners have claimed that the compensation be paid to them whereas the S.A. Jain College, trust and Management Society has applied that the Society be paid 2/3rd of the compensation being the 99 years lease of the land or otherwise as tenant under the East Punjab Urban Rent Restriction Act. The society has neither produced any documentary record nor any to establish the claim. As per application of the Principal S.A. Jain College, Ambala City, this fact as confirmed that the land in question was on the lease with the College upto 31.8.67 only and the college wanted to acquire the same so that its possession remains with the college. In addition to it, Shri Amar Chand President S.A. Jain College, Management Committee stated on oath before the Revenue Assistant Ambala on 21.3.68 that the Management committee was prepared to pay the price of the land fixed by the Collector to the land owners. From the copy of the jamabandi attached with this file, khasra Nos. 361 and 364 measuring 5 kanals and 7 marlas were not on the lease with the college. But the Management is claiming compensation for this land also. In these circumstances, the college management cannot be awarded any amount from the compensation of this land being tenant. I therefore, allow the compensation to the land owners according to their share entered in the jamabandi…."(*sic*)

**First round of assessment proceedings**

By the Income Tax Officer, 'B' Ward, Ambala

8. For the assessment year 1971-1972, the assessee declared its income at Rs. 1,408/- inclusive of Rs. 408/- from the house property and Rs. 1,000/- being the amount of interest earned. While not accepting the income so declared, the Assessing Officer[8], in his assessment order dated 12.02.1982, enhanced the income from house property to Rs. 1,200/- and also enhanced the interest income to Rs. 11,596/- with reference to the interest received under the award in question. However, the AO observed

8 Hereinafter referred to as 'the AO' or 'the ITO'.

that capital gains were not relevant for the year under consideration for the reason that the land in question had been acquired in the earlier years. The relevant part of the assessment order dated 12.02.1982 reads as under:-

> "……..The assessee has shown intt. at Rs. 1000/- only. The assessee's lands were required by Haryana Govt. vide notification date 16.05.68, 11.06.69 and 13.08.69. Since the lands were acquired in the earlier years and the capital gains are not relevant for the year under consideration. However, the assessee received compensation late vide award dated 29.07.70 by land Acquisition Controller, the assessee received interest of Rs.10596/- which the assessee has not shown in the return. As such the intt. Income is taken at 11596 including 1000/- so-moto shown by the assessee…." *(sic)*

Before the Appellate Commissioner

9. Being aggrieved by the order so passed by the Assessing Officer, the assessee preferred an appeal before the Appellate Assistant Commissioner of Income Tax, Ambala[9] in B/Amb/82-83 on the grounds, *inter alia*, that the AO was not justified in enhancing the annual letting value of the house property and was also not justified in including the interest amount of Rs.11,596/- received from Land Acquisition Collector on the compensation paid for acquisition of land for the reason that the said interest amount was required to be treated as part of compensation.

9.1. Though the ground of appeal concerning house property was accepted and the addition made by AO in that regard was deleted but, on examination of the award dated 29.09.1970, the CIT(A) found that the assessee was paid Rs.62,550/- as compensation and Rs.9,532/- as solatium and yet, capital gains on this account were not taxed by the

9 For short, 'the CIT(A)'.

Assessing Officer. Accordingly, a show cause notice dated 18.11.1983 was issued to the assessee as to why capital gains relating to the acquisition of this land be not charged to tax in the assessment year under consideration. The assessee filed a written reply dated 26.12.1983 to this notice and stated, *inter alia*, that in the urgency acquisition under Section 17 of the Act, the transfer takes place immediately after the notification and the owner ceases to be in possession of the land in question.

9.2. The CIT(A), in his order dated 17.05.1984, rejected the submissions made on behalf of the assessee and held that the capital gains on the acquisition of the land amounting to Rs. 23,146/- were required to be added to the income of the previous year relevant to the assessment year under consideration. The CIT(A) ordered such addition while observing and holding as under:-

> "9…. … ITO has not given any reason in the assessment order why the capital gain on the acquisition of the land is not taxable. Moreover, powers conferred on me under the Income-Tax Act does not preclude me from considering this issue at the appellate stage.
>
> 10. There is no doubt that the notifications were published much earlier that the date of award and the possession of land was also taken earlier that the date of award but it does not mean that the capital gain is to be taxed in the earlier years on that basis. When the land is taken possession of by the Government, no compensation has, in fact been determined but it has become only payable. The right of the owner is, therefore, an inchoate right…….. The deeming provisions can have no relevance unless the income is receivable can have it is receivable, then the determination of the question whether it is actually received or is deemed to have been received depends upon the method of accounting. **If the actual amount of compensation has not been fixed by the Land Acquisition Collector, no income could be said to have occurred to the appellant…… Income Tax is not levied on a mere right to receive compensation, there must be something tangible, something in the nature of**

> **debt, something in nature of an obligation to pay an ascertained amount. Till such time, no income can be said to have accrued. On the date when the collector awarded the compensation, it is only that amount which had accrued whether in fact paid or not.** Accordingly, in the present case, even though the possession of land was taken in 1968, no amount can be said to accrued on the date of possession because the compensation at that point of time was not determined at all. This amount of compensation was determined only after the award dated 29.9.70. Therefore, if any income on account of capital gain is chargeable to tax, it will be chargeable on the date of award. It is held accordingly that the capital gain arising out of acquisition of land is chargeable to tax in the previous year, relevant to assessment year under consideration because the date of award i.e. 29.9.70 is within the relevant previous year."
>
> (emphasis in bold supplied)

Before the Income Tax Appellate Tribunal, Chandigarh Bench

10. Against the order so passed by the CIT(A), the assessee-appellant preferred an appeal before the Income Tax Appellate Tribunal, Chandigarh Bench, being ITA No.634/Chandi/84 and argued, *inter alia*, that it had been a matter of urgent acquisition under Section 17 of the Act of 1894 and possession of the land in question was taken on 15.05.1968 when the notification under Section 4 of the said Act of 1894 was issued and hence, the CIT(A) exceeded his jurisdiction in taxing the capital gains for the year under reference on the basis of the date of award made by the Land Acquisition Collector under Section 11 of the Act of 1894. It was also argued that the interest amount could not have been treated separately and was required to be considered as a part of the compensation amount.

11. The appeal so filed, relating to the assessment year 1971-1972, was considered and decided by ITAT by its order dated 19.12.1985. Interestingly, on the same date, i.e., on 19.12.1985, the ITAT also

considered and decided another appeal of the appellant pertaining to the assessment year 1975-1976, being ITA No.635/Chandi/84, wherein too, similar question of capital gains arising out of another award of compensation for acquisition of another parcel of land was involved. Since the said decision pertaining to the assessment year 1975-1976 has formed a part of submissions in the present appeal, we may usefully take note of its relevant features before proceeding further.

11.1. It appears that in the said appeal pertaining to the assessment year 1975-1976, the question of capital gains arose in the backdrop of the facts that another parcel of land of the appellant, in village Rangrnan, Tehsil and District Ambala admeasuring 15 kanals and 10 marlas, was acquired for the purpose of construction of warehouse of Ambala City. The notification under Section 4 of the Act of 1894 for that acquisition was issued on 26.06.1971; possession of the said land was taken on 04.09.1972; and award of compensation was made on 27.06.1974. In the given set of facts and circumstances, the ITAT accepted the contention that the case fell under the urgency provision contained in Section 17 of the Act of 1894 where the assessee was divested of title to the property, that vested in the Government with effect from 04.09.1972, the date of taking possession. Thus, the ITAT held that the capital gains arising from the said acquisition were not assessable for the accounting period relevant for the assessment year 1975-1976. The material part of findings of ITAT in the said order dated

19.12.1985, in ITA No.635/Chandi/84 pertaining to the assessment year 1975-1976, reads as under:-

> "9…The case, therefore, falls under the urgency provision contained in section 17 of the Land Acquisition Act, 1894. The transfer within the meaning of section 2(47) took place on the date the possession of land was taken by the Government. Section 2(47)(i) provides that the transfer in relation to a capital asset includes the extinguishment of any rights therein. Section 17 of the Act provides that after taking possession of the land in urgent cases, such land shall thereupon vest absolutely in the Government free from all encumbrances. The assessee was, therefore, divested of the title to the lands and the lands thereafter vested in the Government w.e.f. 4-9-72 i.e. the date of possession of the lands. In this view of the matter, we are of the opinion that the capital gains arising from the acquisition of the lands in question were not assessable for the accounting period relevant to the assessment year 75-76. The income from capital gains included in the total income by the ITO and confirmed by the AAC and also further enhanced by Rs. 28,379/- therefore, cannot be sustained. The same is deleted."

12. Reverting to the assessment year 1971-1972, it is noticed that in the appeal relating to this case, the ITAT referred to its aforesaid order of the even date pertaining to the assessment year 1975-1976 but found that in the present case, actual date of taking possession by the Government was not forthcoming and hence, proceeded to restore the matter to the file of AO to find out the date when the Government took over possession, while observing that if possession was taken before the award and before 01.04.1970, capital gains were not to be included in the income for the assessment year 1971-1972 but, if possession was taken during the period 01.04.1970 to 31.03.1971, capital gains would be assessable for this assessment year 1971-1972. The material part of the order dated 19.12.1985 in ITA No.634/Chandi/84 pertaining to the present case reads as under:-

> "5. We have carefully considered the rival submission. The first Notification for the acquisition of the lands in 15.5.68 as mentioned in the order of the ITO. The date of award u/s 11 of the Land Acquisition Act is 29.9.70 which is also mentioned in the order of the ITO. The actual date of possession of the lands by the Government is neither mentioned in the order of the ITO nor of the AAC though the learned counsel for the assessee at the time of hearing stated that it was on 15.5.68. The AAC has also stated in para 10 of his order that the notifications were published much earlier than the date of the award and the possession of the land was also taken earlier than the date of award but that did not mean that the capital gains was to be taxed in the earlier years on that basis. He has, however, not specified the actual date of possession of the lands by the Government. The date given by the learned counsel for the assessee also cannot be accepted firstly because no evidence in relation there to has been furnished before us. Secondly the date of notification is 16.5.68 and it was not elaborated as to how the possession of the land could be taken even prior to the date of notification. One thing, however, is certain that the possession of the lands was taken before the award was made u/s 11 of the Land Acquisition Act.
>
> 6. Similar issue came up for consideration before us in the case of the assessee itself for the assessment year 1975-76 and vide our orders of even date in I.T.A. No. 635/Chandi we have held that it was a case which fell u/s 17 of the Act and, therefore, capital gains were assessable on the basis that the transfer took place on the date of possession of lands by the Government. Since the actual date of possession of the land is not available, we are of the opinion that the matter should be restored to the file of the ITO who should find out the actual date of possession of the lands by the Government. In case the possession of the lands was taken by the Government prior to the date of award and before Ist April,1970, the capital gains will not be included in the income for the assessment year 71-72. If the possession of the lands was also taken during the period 1-4-70 to 31-3-71, the capital gains will be assessable for the assessment year 71-72. After finding the actual date of possession by Govt. the ITO, he shall recompute the income on the above basis."

**Supplementary facts concerning enhancement of compensation**

13. Before entering into the orders passed in second round of proceedings after remand by the ITAT, apposite it would be to take note of a set of supplementary facts relating to the enhancement of the amount of compensation. It is noticed that as against the aforesaid award dated

29.09.1970, the appellant took up the proceedings in LA Case Nos. 37 and 38 of 1971 before the Additional District Judge, Ambala who, by the order dated 30.12.1984, allowed a marginal enhancement of the amount of compensation and corresponding solatium and interest. Not satisfied yet, the appellant preferred an appeal, being Regular First Appeal No. 390 of 1975 before the Punjab and Haryana High Court, seeking further enhancement. The High Court allowed this appeal by its judgment dated 25.10.1985 and awarded compensation by applying the rate of Rs. 8/- per sq. yd. against Rs. 3.50 and Rs. 2.50 per sq. yd., as allowed by the Additional District Judge and the Land Acquisition Collector respectively. The High Court also allowed 30% solatium and corresponding interest[10].

**Second Round of Proceedings for assessment**

By the Income Tax Officer, 'C' Ward, Ambala.

14. Having noticed the relevant facts concerning acquisition of the land in question, the award of compensation for such acquisition and enhancement of the amount of compensation as also the first round of proceedings for assessment for the assessment year 1971-1972, we may now take note of the orders passed in the second round of proceedings for this assessment after the matter was remanded by the ITAT.

15. In compliance of the directions of ITAT in the aforesaid order dated 19.12.1985 in ITA No.634/Chandi/84, the AO took up the matter in GIR No. 920A and, on 17.07.1987, served specific question to the assessee-

10 As per the material on record, the High Court allowed interest @12% p.a. on the market value of the land from the date of notification under Section 4 of the Act of 1894 until the date of taking possession; 9% p.a. after the date of possession for one year; and 15% p.a. thereafter.

appellant about the date on which possession of the acquired land was taken by the Government of Haryana. In his reply dated 22.07.1987, the appellant stated such date of possession as 15.05.1968, being the date of notification under Section 4 of the Act of 1894. Though no evidence in this regard was adduced but, the appellant relied upon the decision of Kerala High Court in the case of ***Peter John v. Commissioner of Income-Tax:*** **(1986) 157 ITR 711** to submit that capital gains, if any, arise at the point of time when the land vests in the Government and such a date in the present case was 15.05.1968. Further, by way of communications dated 28.09.1987 and 11.01.1988, the AO asked the assessee-appellant to give the exact date-wise calculation of interest in terms of the aforesaid judgment of High Court dated 25.10.1985 but not much of assistance came up from the appellant in that regard.

15.1. As the appellant was unable to bring forth the requisite information with evidence, the AO also made enquiries from the revenue authorities, particularly regarding the date of taking over possession. In response, the AO received information that the land in question was on lease with the College; and that as per the procedure adopted, the date of taking possession by the Government was 'in consonance' with the date when the award was announced.

15.2. The AO took note of all the facts and features of this case in his re-assessment order dated 25.01.1988 and observed that '*since in the instant case, the award was announced on 29.09.1970, the said date viz*

*29.09.1970 is deemed to be the date of taking possession by the Government'.* In this view of the matter, the AO held that '*taxability of capital gains arose in the previous year relevant to the assessment year under consideration'*.

15.3. It was also suggested by the appellant before the AO that acquisition was of urgent nature, as was the case in relation to the other acquisition relevant for the assessment year 1975-1976. The AO found such a suggestion incorrect because of different purposes of acquisition; and specific date of taking over possession (04.09.1972) having been mentioned in the said case pertaining to the assessment year 1975-1976. The AO also noticed that the appellant failed to place on record the date of publication of notice under Section 9 of the Act of 1894 and observed that there was no reference to urgency acquisition in the present case nor any such mention was found in the award dated 29.09.1970. In the given circumstances, the AO held that the acquisition in question was not a matter of urgency under Section 17 of the Act of 1894 and this acquisition had only been under the *'normal powers'.*

15.4. With the findings aforesaid, the AO proceeded to assess the tax liability of the appellant, on long-term capital gains arising on account of acquisition, on the basis of the amount of compensation allowed in the award dated 29.09.1970 as also the enhanced amount of compensation accruing finally as a result of the aforesaid order dated 30.12.1984 passed by the Additional District Judge and the judgment dated 25.10.1985 passed

by the High Court. As regards interest income, the AO carried out protective assessment on accrual basis @ 12% per annum for the previous year relevant to the assessment year in question i.e., for the period 01.04.1970 to 31.03.1971 while providing that such calculation would be subject to amendment, if necessary.

Before the Commissioner of Income Tax (Appeals), Karnal

16. The aforesaid order of re-assessment dated 25.01.1988 was challenged by the appellant before the CIT(A) in Appeal No. 87/87-88. This appeal was considered and dismissed by the CIT(A) by way of his elaborate order dated 31.03.1989.

16.1. It was argued in the first place before the CIT(A) that the ITAT, by its order dated 19.12.1985, had only restored the issue as regards the date of possession to the file of AO and therefore, the AO was not justified in proceeding as if making a de-novo assessment; and was not justified in bringing the enhanced amount of compensation to tax for which, he should have passed a separate order under Section 155(7A) of the Act of 1961. In regard to this contention, the CIT(A) noted that indisputably, for computation of capital gains, the ITO had the power to take into consideration the enhanced compensation received by the appellant for compulsory acquisition of the land; and when the ITO could have drawn up a separate order under Section 155(7A), he was well within the powers to combine such an order with his order for carrying out the directions of ITAT. The contention on the frame of the order was, therefore, rejected.

16.2. The CIT(A), thereafter, extensively dealt with the facts of the case on the issue as to whether the ITO had correctly held that possession of the appellant's compulsorily acquired land was taken over by the Government during the previous year relevant to the assessment year in question. The CIT(A) held that it had not been a case of compulsory acquisition under Section 17 of the Act 1894; and that awarding of interest from 15.05.1968 was of no effect on the date of accrual of capital gains, particularly when such interest could have been awarded under Section 28 of the Act of 1894. The CIT(A) further observed that the College remained in unauthorized possession of the land in question after the expiry of lease on 31.08.1967 but, it was only on the date of award i.e., 29.09.1970, that the possession legally passed on to the College so as to vest it with the ownership through the Government. The relevant observations and findings of the CIT(A) in the order dated 31.03.1989 could be usefully reproduced as under:-

> "9…It is an admitted fact that the special procedure prescribed u/s 17 of the Land Acquisition Act for exercising of the emergency powers of the Govt. for taking possession of lands to be compulsorily acquired, earlier than the date of award u/s 11 of Land Acquisition Act, was not followed in this case. Neither there is any direction of the Govt. to the Collector to take over possession earlier then the date of award u/s 11 of Land Acquisition Act and nor the possession was so taken by the collector after 15 days of the publication of notice u/s 9(1) of the Land Acquisition Act. These two conditions are absolutely necessary if the possession was to be taken u/s 17 of the Land Acquisition Act. The possession of the lands already with S.A. Jain College Ambala was obviously regularized in the instant case u/s 16 of the Land Acquisition Act which is the general

Section for taking the possession of lands acquired under the Land Acquisition Act. The possession of compulsorily acquired land u/s 16 of the Land Acquisition Act can be taken by the Govt. only after the date of award u/s 11 of the Land Acquisition Act which in the instant case was 29.9.70. **Therefore, it is only on 29.9.70 that the possession legally passed to S.A. Jain College, Ambala so as to vest the ownership in the property in S.A. Jain College City through the Govt. ……** If the possession of the lands had been taken u/s 17 of the Land Acquisition Act, then interest would have been awarded to the appellant only from the date after 15 days of the publication of notice u/s 9(1) of the Land Acquisition Act, whereas in the instant case, the interest has been awarded from the date of notification u/s 4 of the Land Acquisition Act i.e. 15.5.68. This goes to show that the interest was awarded to the appellant from a date prior to the date of award u/s 11 of the Land Acquisition Act which is dated 29.9.70 not because the possession had been taken u/s 17 of the Land Acquisition Act but because of various Court, rulings be holding, as mentioned above, that on equitable interpretation of Sec. 28 of the Land Acquisition Act, interest should be awarded from the date of possession even in cases where the possession had been taken before the date of award u/s 11 of the Land Acquisition Act, even though the possession was unauthorized or taken with or without the consent of the landlord.

10. In view of the above discussion, **it is obvious that the possession of the lands in the instant case legally passed to S.A. Jain College, Ambala City through the Govt. on the date of the award u/s 11 of the Land Acquisition Act and it is only on this date that the ownership in the lands got vested in the Govt…….** As discussed above, the fact that S.A. Jain College, Ambala was already in unauthorized possession of the lands and that interest has been awarded to the appellant from part of the period during which S.A. Jain College, Ambala were in unauthorized possession of the lands, would not effect the above mentioned legal position i.e. that the possession and ownership in the lands got transferred from the landlord to the Government on 29.9.70 i.e. the date of the award u/s 11 of the Land Acquisition Act. Therefore, the capital gain on the compulsory acquisition of these lands is to be taxed in this year and has been rightly so taxed. The order of the learned I.T.O. on this point also is upheld.

11…..Since I have already held that the learned ITO was justified in including the enhanced compensation in the total consideration received by the appellant for acquisition of his lands, for computation of capital gains, I hold that appellant has no case in respect of the interest amount of Rs.27255/-

> as mentioned in ground of Appeal No.5 of the original grounds of appeal. No arguments having been advanced in respect of appeal No. 4,6,7 of the original grounds of appeal, these grounds of appeal are, therefore, rejected as, on the face of it, there is nothing wrong in the order of the learned ITO in this respect.
> In the result, appeal is dismissed."
>
> (emphasis in bold supplied)

Before the Income Tax Appellate Tribunal, Chandigarh Bench

17. Being aggrieved by the order so passed by the CIT(A), the appellant preferred an appeal before the ITAT, being ITA No. 739(Chandi)89, raising essentially three issues for consideration namely, (i) about the date of taking over physical possession of the land in question by the Government; (ii) about the ITO's power to frame the re-assessment instead of re-computing the income in terms of the ITAT's order of remand; and (iii) against the inclusion of enhanced compensation and interest, etc., in the re-assessment by the ITO. This appeal was considered and allowed by the ITAT by way of its order dated 29.06.1990.

17.1. The ITAT took up the first issue concerning the date of taking over physical possession of the land in question and, with reference to the relevant background aspects as noticed hereinabove, observed that though it had earlier directed the ITO to ascertain the actual date of possession but the matter presented a complex scenario, where a clear finding about this date was difficult to emerge. The ITAT observed thus:-

> "12. The direction of the Bench earlier was for determination of actual date of possession. The Ld. ITO in his own way came to the conclusion that the date of award was the date of possession whereas assessee's case depended on the date of notification. Both the dates appear to be misconceived as the actual physical possession of the land was already with the college, under a

> lease, since 1.1.47. Thus as a consequence of the acquisition proceedings only some of symbolic or constructive possession was to be taken as the physical possession was already there. In terms of the order under challenge and so also the assessment order and the position of law also, the ownership exchanges hands from the date of award which in the present case is 29.9.70, but before recording a firm finding in this respect, we have to keep in mind the earlier finding of the Bench dated 19.12.85 wherein it was observed that the actual date of possession be ascertained and capital gains assessed in the year in which the possession was taken. The determination of this aspect is slightly difficult in view of the complex factual position existing on the record. We cannot take 29.9.70 as on the date of doubt (*sic*) the award was given but the possession was already with the college. We also cannot take 15.5.68 because no doubt the notification was there but before that date the college was in possession of land under a lease. Thus clear finding is difficult to emerge."

17.2. Having said that, the ITAT referred to the observations regarding "possession of land", as occurring in the award dated 29.09.1970[11] and observed that as per those observations in the award, possession of the land in question was supposed to have been taken on 15.05.1968. The ITAT further observed that to sort out the controversy, such stipulation in the award was required to be depended upon; and the date of actual physical possession was inferable from the intention of the parties and the language of such stipulation in the award. On this reasoning, the ITAT held that since the actual physical possession exchanged hands on 15.05.1968, the transaction should be considered as having taken place on that date and not on the date of award i.e., 29.09.1970; and hence, capital gains were not to be taxed for the year under consideration. Having reached this conclusion, the ITAT held that the very basis of assessing capital gains having been knocked out, the other issues were rendered redundant. The

11 Reproduced in paragraph 7.1 hereinbefore.

ITAT, accordingly, allowed the appeal with the following observations and findings:-

> "14. According to the stipulation in the award, the possession of land is supposed to have taken place on 15.5.68 as from that date, the assessee was entitled in interest at 6% per annum on the amount of compensation. This is infact the date i.e. 15.5.68, from which date the assessee was supposed to have parted with the ownership of the land in lieu of the compensation. The assessee was to have the compensation and the land was supposed to have parted company. **Thus to sort out the controversy we are required to heavily depend upon this stipulation in the award. The date of actual physical possession is inferable from the intention of parties and the language of the stipulation. The date of dispossession is inferable to be 15.5.68.** The issue is now required to be decided, in the light of the earlier observation of the Bench that since the physical possession(ownership) exchanged hands on 15.5.68, the transaction should be considered as having taken place on the date and not on the date of award on 29.9.70. For coming to this conclusion we are dependent upon the intention of the parties and the mention in the award that the interest became payable to the assessee from that date only and not from any other date. In the light of the above discussion, we are inclined to hold that the capital gains could not be assessed for the year under consideration as the transaction did take place on 15.5.68. The revenue authorities were thus not justified to include the capital gains for the year under consideration and the Ld (CIT(A) was not justified to confirm such action. We vacate the finding of this aspect. The Revenue authorities are at liberty to look into the matter in respect of capital gains taking the date of possession as 15.5.1968. Dispossession or actual date of taking physical possession is to be understood in the context of the facts to the present case as the change of the ownership as the possession was already with the college under the lease.
> 15. Since we have held that capital gains are not to be taxed for the year under consideration, other issues connected with this aspect and raised by the assessee not to be gone into as the very basis has knocked down."
>
> (emphasis in bold supplied)

18. Taking exception against the order so passed in appeal, the revenue made an application before the ITAT seeking reference to the High Court under Section 256(1) of the Act of 1961. The ITAT, in its order

dated 15.07.1991, took note of all the relevant facts; and, after finding it to be a fit case for making reference, drew up the statement of case and referred the matter to the High Court for determination of the following question:-

> "Whether on the facts and in the circumstances of the case, the Tribunal was right in Law in holding that the capital gains are not assessable in the year under consideration as the transaction did take place on the date of notification i.e. 15.05.1968 and not on the date of award on 29.09.1970?"

**The reference proceedings in High Court**

19. The High Court of Punjab and Haryana considered and answered the question aforesaid by its impugned judgment and order dated 23.04.2008 in Income Tax Reference No.53-A of 1991.

19.1. It was argued on behalf of the revenue before the High Court that any profits or gains arising from the transfer of the capital asset effected in the previous year shall be deemed to be income of the previous year in which the transfer took place and thus, would fall within the ambit of Section 45(1) of the Act of 1961; and as such, the date of award 29.09.1970 ought to be considered for the purpose of calculating capital gains and not the date of notification i.e., 15.05.1968. As against these submissions, it was submitted on behalf of the assessee-appellant that the referred question was required to be decided in the light of the observations made by ITAT in its order dated 19.12.1985; and that it had been a matter of urgency acquisition where the possession of land was taken on the date of notification i.e., 15.05.1968 and hence, in view of the provisions

contained in Section 17 of the Act of 1894, the transfer took place on that date (15.05.1968) and not on the date of award (29.09.1970).

19.2. After taking into consideration the rival submissions, the facts of this case and the scheme of the Act of 1894, particularly Sections 16 and 17 thereof, the High Court answered the reference in favour of the revenue while holding that the Collector had not taken possession of the land under Section 17 of the Act of 1894 and that the said provision was not invoked by the State Government. The High Court further held that for the purpose of assessment of capital gains, the date of award (i.e., 29.09.1970) was required to be taken as the date of taking over possession because, on that date, the land in question vested in the Government under Section 16 of the Act of 1894.

19.3. The High Court further examined the ambit and scope of Section 45 of the Act of 1961 and on its conjoint reading with Section 16 of the Act of 1894, came to the conclusion that the transfer of capital asset (the land in question) and its vesting in the Government took place on 29.09.1970, the date of award. The High Court further held that under the Income-tax Act, 1961, an income was chargeable to tax only when it had accrued or was deemed to have accrued in the year of assessment; and in the present case, if any income on account of capital gains was chargeable to tax, it would be chargeable on the date when the Collector determined the compensation because, the income accrued to the appellant only upon such determination. The High Court, therefore, held that the capital gains

arising out of acquisition of land were chargeable to tax in the previous year relevant to assessment year under consideration because the date of award i.e., 29.09.1970 fell within the relevant previous year.

19.4. Accordingly, the High Court disapproved the ITAT's order dated 29.06.1990 and answered the reference in favour of the revenue while holding, *inter alia*, as under:-

> "13…..It is clear from Section 45(1) of the Income Tax Act that the capital gains are chargeable to income-tax arising from the transfer of capital assets effected in the previous year in which the transfer took place. On a conjoint reading of Section 16 of the Land Acquisition Act and Section 45(1) of the Act, it is clear that the transfer of the capital asset (land of the assessee) has to be taken as 29.09.1970 i.e. the date of award on which date the land vested in State.
>
> 14. **Under the Income Tax Act, an income is chargeable to tax only when it accrues or is deemed to accrue or arise in the year of assessment.** The deeming provision can have no relevance unless the income is receivable and if it is receivable, then the determination of the question whether it is actually received or is deemed to have been receive depends upon the method of accounting. **If the actual amount of compensation has not been fixed by the Land Acquisition Collector, no income could be said to have accrued to the appellant. It cannot be contended that the mere claim by the assessee after taking of possession by the Govt. at a particular rate is the compensation. It is the amount actually awarded by the Collector accrues on the date on which the award is passed. Income tax is not levied on a mere right to receive compensation.** There must be something tangible, something in the nature of debt, something in the nature of an obligation to pay an ascertained amount. Till such time no income can be said to have accrued. On the date when the Collector awarded the compensation, it is only that amount which had accrued. This amount of compensation was determined only on passing of the award date 29.09.70. Therefore, if any income on account of capital gain is chargeable to tax, it will be chargeable on the date of award. It is held accordingly that the capital gain arising out of acquisition of land is chargeable to tax in the previous year relevant to assessment year under consideration because the date of award i.e. 29.09.70 is within the relevant previous year."
>
> (emphasis in bold supplied)

20. Being aggrieved by the judgment and order dated 23.4.2008 so passed by the High Court, holding that the capital gains arising out of the acquisition in question were chargeable to tax in the assessment year 1971-1972, the assessee-appellant has preferred this appeal by special leave.

**Rival Submissions**

Appellant

21. Assailing the view taken by the High Court, learned counsel for the appellant has essentially crusaded on two-fold arguments: One, that on the facts and in the circumstances of the present case, where the land in question was already in possession of the beneficiary College, the assessee-appellant was divested of its title and right to this property with issuance of notification under Section 4 of the Act of 1894 when the State took up the acquisition in urgency; and the transfer for the purposes of Section 2(47) of the Act of 1961 was complete on the date of that notification itself i.e., on 15.05.1968 and hence, capital gains arising out of such acquisition and interest accrued could not have been charged to tax with reference to the date of award i.e., 29.09.1970. Secondly, it is not open for the revenue to question the decision of ITAT in the present case pertaining to the assessment year 1971-1972 because, the fact situation of the present case is similar to that of the other case of the appellant in relation to the assessment year 1975-1976, where the same issue was decided by the ITAT in favour of the appellant and the revenue accepted the said decision by not challenging the same any further.

21.1. Elaborating on the first limb of arguments, learned counsel for the appellant has contended that indisputably, the land in question was already in possession of the beneficiary College when the State Government took up the proceedings for its acquisition by issuing notification under Section 4 of the Act of 1894 on 15.05.1968; and the appellant was immediately divested of the rights in the land in question, as amply established by the recital about “possession of land” in the award dated 29.09.1970, where the appellant was allowed interest over the amount of compensation and solatium from 15.05.1968. Therefore, according to the learned counsel, the transfer, for the purposes of Section 2(47) of the Act of 1961, was complete on the date of notification i.e., on 15.05.1968 and capital gains, if any, could have only been charged for the previous year referable to that date of notification and not with reference to the date of award.

21.1.1. Taking this line of argument further, learned counsel has referred to the Full Bench decision of Kerala High Court in the case of ***Peter John*** (supra) to submit that in land acquisition proceedings, the owner of property is entitled to compensation on the day on which he is dispossessed; and that such right does not await quantification of compensation by the Land Acquisition Officer or the Court. On application of these principles to the case at hand, according to the learned counsel, the date of award i.e., 29.09.1970 for quantification of compensation has no relevance for the purpose of assessing capital gains; and the only relevant date is

15.05.1968, when the appellant was legally dispossessed of the land in question and its rights therein stood extinguished.

21.1.2. Learned counsel for the appellant has further contended, with reference to the decision of this Court in the case of ***Rama Bai v. Commissioner of Income-Tax, Andhra Pradesh*****: (1990) 181 ITR 400,** that the interest income in cases of land acquisition accrues from year to year and is taxable in the respective year of its accrual; and, in the present case, since the possession was taken on 15.05.1968, capital gains and interest accrued were taxable only in the assessment year 1969-1970 and not in the assessment year 1971-1972.

21.2. In the second limb of submissions, learned counsel for the appellant has referred to the order dated 19.12.1985, as passed by the ITAT in ITA No. 635/CHD/84 for the assessment year 1975-1976 (Annexure P-5) and has submitted that in the similar facts and circumstances, pertaining to the acquisition of another land of the appellant, the ITAT specifically decided that capital gains were not relatable to the date of award but were relatable to the date of dispossession; and the revenue indeed accepted the said decision by not challenging it any further. While strongly relying upon the decision of this Court in ***Berger Paints India Ltd. v. Commissioner of Income-Tax:*** **(2004) 266 ITR 99**, the learned counsel has contended that where the order passed in favour of the very same assessee and against the revenue in a similar matter has attained finality, the revenue cannot seek re-opening of the issue in relation to the other case without a just

cause. Thus, according to the learned counsel, the view as taken in relation to the similar case for the assessment year 1975-1976 squarely covers the present case and the revenue cannot take a different stand in relation to the assessment year 1971-1972.

21.3. Learned counsel for the appellant has also contended that the interest income and solatium accrued on 15.05.1968 as per the award itself and hence, the income to be taxed pertains to the financial year 1968-1969, relevant to the assessment year 1969-1970 and the same cannot be taxed in the assessment year 1971-1972. Therefore, according to the learned counsel, the ITAT had rightly taken the view against taxability of the income pertaining to the acquisition in question in the assessment year 1971-1972 and the High Court has committed manifest error in upturning the view of ITAT.

Respondent

22. *Per contra,* learned counsel for the revenue has supported the order passed by the High Court, essentially with the submissions that in the present case, transfer of capital asset i.e., the land of assessee, took place only on the date of award falling within the previous year relevant for the assessment year 1971-1972.

22.1. Learned counsel for the revenue has referred to the definitions of “capital asset” and “transfer” in the Act of 1961 and has contended that though possession of the subject land was with the College in the year 1968 and continued as such but, no gain on account of transfer of land

accrued to the assessee on the date of notification i.e., 15.05.1968 because, at the relevant point of time, compensation had not been determined; and the same was determined only in the award dated 29.09.1970. Therefore, according to the learned counsel, capital gains chargeable to income-tax accrued only on the date of award and, in this position, the date of notification i.e., 15.05.1968 is not relevant for the purpose of taxing the capital gains.

22.2. Learned counsel for the revenue has further elaborated on the submissions that the acquisition in question had not been under the urgency provisions contained in Section 17 of the Act of 1894 because thereunder, the Government was to issue directions to the Collector to take possession after the expiry of fifteen days from the date of publication of notice under Section 9(1) but, no such direction was issued by the Government in the present case. According to the learned counsel, the only applicable provision for taking possession in the present case had been Section 16 of the Act of 1894 whereunder, possession could be taken by Collector after making the award under Section 11 and only thereupon the land under acquisition vests in the Government, free from all encumbrances. The learned counsel would maintain that on the facts of the present case, the possession legally passed on to the College through the Government only on 29.09.1970 i.e., the date of award; and this date of award shall alone be relevant for chargeability of tax against capital gains of the assessee with transfer of capital asset. In support of his contentions, the

learned counsel has referred to and relied upon various decisions including those in ***Joginder Singh and Ors. v. State of Punjab and Anr.*****: AIR 1985 SC 382** and ***Bombay Burmah Trading Corporation Ltd. v. Commissioner of Income-Tax*****: (1988) 169 ITR 148.**

22.3. Learned counsel for revenue has also submitted that reliance by the appellant on the case of ***Berger Paints*** (supra) is entirely misplaced because the said case relates to business expenditure under Section 34B of the Act of 1961 and has no relevance to the present case.

**Points for determination**

23. We have heard learned counsel for the parties at length and have scanned through the material on record. Having regard to the submissions made and the contents of judgment/orders under consideration, the following principal points arise for determination in this appeal: -

1. As to whether, on the facts and in the circumstances of the present case, transfer of the capital asset (land in question), resulting in capital gains for the purposes of Section 45 of the Act of 1961, was complete on 15.05.1968, the date of notification for acquisition under Section 4 of the Act of 1894; and hence, capital gains arising out of such acquisition and interest accrued could not have been charged to tax with reference to the date of award i.e., 29.09.1970?

2. As to whether the fact situation of the present case is similar to that of the other case of the appellant in relation to the assessment year 1975-1976 where the same issue relating to the date of accrual of capital gains was decided by the ITAT in favour of the appellant with reference to the date of taking possession by the Government; and having not challenged the same, it is not open for the revenue to question the similar decision of ITAT in the present case pertaining to the assessment year 1971-1972?

24. For appropriate dealing with the controversy at hand, we may take note of the relevant statutory provisions in the Income-tax Act, 1961, as applicable to the assessment year 1971-1972, as also in the Land Acquisition Act, 1894, as existing at the relevant time.

Statutory Provisions

25. In the Income-tax Act, 1961, the heads of income for the purpose of computation of total income are defined in Section 14 that carries, *inter alia,* the heading "E. Capital gains". Part-E of Chapter IV carries the provisions relating to Capital gains arising from the transfer of a capital asset. For the purpose of present appeal, the provision relating to chargeability of capital gains to tax as contained in Section 45 and the definition of the expression "transfer" as occurring in clause (47) of Section 2 of the Act of 1961 are relevant and these provisions, as applicable to the assessment year 1971-1972 had been as follows.[12]:-

12 In the re-assessment order dated 25.01.1988, the AO had included the amount of enhanced compensation for computing the quantum of capital gains and this inclusion was questioned before the CIT(A) but, it was held that as regards enhanced compensation, the AO could have passed the

> **"Section 45. Capital gains**.-Any profits or gains arising from the transfer of a capital asset effected in the previous year shall, save as otherwise provided in sections 53, 54 and 54B 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."
>
> **"Section 2(47)** "transfer", in relation to a capital asset, includes the sale, exchange or relinquishment of the asset or the extinguishment of any rights therein or the compulsory acquisition thereof under any law;"

26. For an overview of the processes envisaged by the Land Acquisition Act, 1894 to bring about lawful acquisition of land, we may put a glance over the principal parts of relevant provisions therein, as existing at the relevant point of time.

26.1. The process of acquisition, as contained in Part II of the Act of 1894 could be reasonably taken into comprehension by reference to Sections 4, 5A, 6, 9, 11 and 16 therein, respectively occurring under the headings 'Preliminary Investigation', 'Objections', 'Declaration of Intended Acquisition', 'Enquiry into Measurements, Value and Claims, and Award by

---

order by virtue of his powers under sub-section (7A) of Section 155 of the Act of 1961. Though, this aspect is not directly involved in the present appeal but, for the sake of reference, we may indicate that Section 155 of the Act deals with the power of amendments of assessment; and sub-section (7A) thereto was inserted by Finance Act, 1978 with retrospective effect from 01.04.1974 and was omitted by Act No. 4 of 1988 with effect from 01.04.1992. This sub-section (7A) of Section 155, as existing at the relevant time of passing the order by the AO, had been as under:-

> "(7A) Where in the assessment for any year, the 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 under section 48 and the compensation for such acquisition or the consideration for such transfer is enhanced or further enhanced by any court, tribunal or other authority, the computation or, as the case may be, computations made earlier shall be deemed to have been wrongly made and the Assessing Officer shall, notwithstanding anything contained in this Act, recompute in accordance with section 48 the capital gain arising from such transfer by taking the compensation or the consideration as enhanced or further enhanced, as the case may be, to be the full value of the consideration received or accruing as a result of such transfer and shall make the necessary amendment; and the provisions of section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the end of the previous year in which the additional compensation or consideration was received by the assessee."

the Collector' and 'Taking Possession'. These provisions or relevant parts thereof, as applicable to the acquisition in question, had been as under:-

> "**4. Publication of preliminary notification and powers of officers thereupon.-** (1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose a notification to that effect shall be published in the Official Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.
>
> (2) Thereupon it shall be lawful for any officer, either, generally or specially authorised by such Government in this behalf, and for his servants and workmen, -
>
> to enter upon and survey and take levels of any land in such locality;
>
> to dig or bore into the sub-soil;
>
> to do all other acts necessary to ascertain whether the land is adapted for such purpose;
>
> to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;
>
> to mark such levels, boundaries and line by placing marks and cutting trenches; and,
>
> where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle:
>
> Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so."

> "**5A. Hearing of Objections.-** (1) Any person interested in any land which has been notified under section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a company may, within thirty days after the issue of the notification, object to the acquisition of the land or of any land in the locality, as the case may be.
>
> (2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard either in person or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified under Section 4, sub-section (1), or make different reports in respect of different parcels of such land to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government.

The decision of the appropriate Government on the objections shall be final.

(3) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act."

**"6. Declaration that land is required for a public purpose.-** (1) Subject to the provisions of Part VII of this Act, when the appropriate Government is satisfied after considering the report, if any, made under section 5A, sub-section (2), that any particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under Section 4, sub-section (1), irrespective of whether one report or different reports has or have been made (wherever required) under section 5-A, sub-section (2).

*** *** ***

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a company, as the case may be; and, after making such declaration the appropriate Government, may acquire the land in manner hereinafter appearing."

**"9. Notice to persons interested.-** (1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made under Section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorised to receive service on their behalf, within the revenue district in which the land is situate.

*** *** ***"

**"11. Enquiry and award by Collector.-** On the day so fixed, or any other day to which the enquiry has been adjourned, the

Collector shall proceed to enquire into the objections (if any), which any person interested has stated pursuant to a notice given under Section 9 to the measurements made under Section 8, and into the value of the land and at the date of the publication of the notification under Section 4, sub-section (1), and into the respective interests of the persons claiming the compensation, and shall make an award under his hand of--

(i) the true area of the land;

(ii) the compensation which in his opinion should be allowed for the land; and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him."

"**16. Power to take possession**.- When the Collector has made an award under Section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances."

26.2. A different process was, however, envisaged by Section 17 of the Act of 1894 for taking possession in cases of urgency even before making of award but upon the directions of the appropriate Government. The relevant part of that provision had been as under:-

**"17. Special powers in cases of urgency.-** (1) In cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in Section 9, sub-section (1), take possession of any waste or arable land needed for public purposes or for a company. Such land shall thereupon vest absolutely in the Government free from all encumbrances.

*** *** ***"[13]

13 We have not extracted the other sub-sections of Section 17 of the Act of 1894, for being not relevant in the present case but, for completing the reference to the broad features of process contemplated by Section 17, we may also indicate that sub-section (4) thereof, as existing at the relevant time had been as under: –

"(4) In the case of any land to which in the opinion of the appropriate Government, the provisions of sub-section (1) or sub-section (2) are applicable, the appropriate Government may direct that the provisions of Section 5A shall not apply, and, if it does so direct, a declaration may be made under Section 6 in respect of the land at any time after the publication of the notification under Section 4, sub-section (1)."

26.3. One peripheral aspect relating to the treatment of interest on enhanced compensation has also occurred in the present case for which, the CIT(A) in his order dated 31.03.1989, has referred to Section 28 of the Act of 1894. This provision, as existing at the relevant time, had been 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 six 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."[14]

27. Having regard to the relevant provisions of the Act of 1961 whereby and whereunder, "capital gains" essentially relate to the transfer of capital asset by the assessee; and the background aspects of the present case, where the capital asset of the assessee-appellant (land in question) was in possession of the beneficiary College even after expiry of the lease on 31.08.1967, it shall also be apposite to take note of a few provisions of the Transfer of Property Act, 1882[15] concerning the general connotation of "transfer of property" as also those relating to the transaction of lease of immovable property.

27.1. In Section 5, occurring in Chapter II of the Act of 1882, the phrase "transfer of property" is defined as under:-

---

14 Note: We may again observe that the extractions in paragraph 25 are of the provisions of the Act of 1961 as applicable for the assessment year 1971-1972. Similarly, the extractions in paragraphs 26.1, 26.2 and 26.3 are of the provisions of the Act of 1894 as applicable in the year 1968 when the notification under Section 4 pertaining to the subject land was issued.

15 For short, 'the Act of 1882'

> "**5. "Transfer of property" defined.-** In the following sections "transfer of property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, or to himself and one or more other living persons; and "to transfer property" is to perform such act.
>
> In this section "living person" includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals."

27.2. The rights and liabilities of lessor and lessee of immovable property are delineated in Section 108 of the Act of 1882 and its clause (q) postulates an implied obligation of the lessee to put the lessor into possession of the property on determination of the lease in the following words:-

> "**108. Rights and liabilities of lessor and lessee. –** In the absence of a contract or local usage to the contrary, the lessor and the lessee of immovable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased:-
>
> *** *** ***
>
> (q) on the determination of the lease, the lessee is bound to put the lessor into possession of the property."

27.2.1. Determination of lease by efflux of time is envisaged in clause (a) of Section 111 of the Act of 1882 as follows:

> "**111. Determination of lease.-** A lease of immovable property determines-
>
> (a) by efflux of the time limited thereby;
>
> *** *** ***"

27.2.2. One of the features of the transaction of lease, in the case where lessee remains in possession after determination thereof and the lessor assents to his possession, is dealt with by Section 116 of the Act of 1882 that reads as under:-

> "**116. Effect of holding over.-** If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section 106."

**Point No. 1.**

28. As noticed, the first point for determination revolves around the basic questions as to when did the transfer of the land in question, by way of compulsory acquisition, take place and when did the capital gains accrue to the assessee-appellant? The assessee maintains that this transfer, leading to capital gains, took place on the very date of preliminary notification (15.05.1968) because, possession of the land in question was already with the beneficiary College. The revenue, however, asserts that such transfer reached its completion, resulting in capital gains, only on the date of award (29.09.1970).

29. For effectual determination of the questions involved, we may take into comprehension the basic features of the head of income described as "capital gains".

29.1. As noticed, capital gains are those profits or gains which arise out of the transfer of capital asset. The expression "capital asset" is defined in Section 2(14) of the Act of 1961. In the present case, much dilation on this definition is not required because the subject land had indisputably been a "capital asset" of the assessee-appellant. We may, however, observe that such definition of 'capital asset' is of wide amplitude, taking in its fold the

property of any kind held by an assessee, except what has been expressively excluded therein, like stock-in-trade, consumables stores, personal effects, etc.

29.2. The expression “transfer” in relation to a capital asset has been defined in Section 2(47) of the Act of 1961. The said definition has also been of substantially wide amplitude so as to include sale, exchange or relinquishment of a capital asset; or extinguishment of any rights therein; or compulsory acquisition thereof. It is also noteworthy that as per the fundamentals in the Act of 1882, “transfer of property” means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, or to himself and one or more other living persons.

29.3. Thus, the contents of the then existing Section 45 of the Act of 1961 read with the relevant definitions would make it clear that such profits or gains are chargeable to income-tax as “capital gains” that arise out of the transfer of a capital asset by any of the recognized modes, including sale, exchange, relinquishment and even compulsory acquisition; and, by fiction, it has been provided that such profits or gains shall be deemed to be the income of the previous year in which transfer took place. Differently put, capital gains of an assessee, arising from transfer of capital asset, are chargeable to tax as income of the previous year in which transfer had taken place.

30. Applying the aforesaid concepts of “transfer” and “transfer of property” to the facts of the present case, it could be readily found that when the subject land has been compulsorily acquired, its transfer from the assessee-appellant to the Government is directly covered by Section 2(47) of the Act of 1961.

30.1. Thus, the basic elements for chargeability of the gains, arising from compulsory acquisition of the subject land, to income-tax under the head “capital gains”, do exist in the present case. However, the gains so arising would be deemed to be the income of the previous year in which transfer took place.

31. Entering into the enquiry as to when had the transfer, of subject land from the assessee-appellant to the Government, taken place, we need to take into account the principles governing completion of transfer of land from the owner to the Government in the matters of compulsory acquisition. Ordinarily, in such matters of compulsory acquisition, there is a structured process prescribed by law, which is required to be complied with for a lawful acquisition and which has the legal effect of transfer of ownership of the property in question to the acquiring body, usually the appropriate Government. The controversy in the present matter has its genesis in the compulsory acquisition of the land of assessee-appellant under the Act of 1894 and hence, pertinent it would be to look at the processes contemplated by the said enactment.

31.1. A brief overview of the scheme of the Act of 1894, as existing at the relevant point of time, makes it clear that publication of preliminary notification under Section 4 by itself did not vest the property in the Government; it only informed about the intention of the Government to acquire the land for a public purpose. After this notification, in the ordinary course, under Section 5A, the Land Acquisition Collector was required to examine the objection, if any, to the proposed acquisition; and after examining his report, if so made, the Government was to issue declaration under Section 6, signifying its satisfaction that the land was indeed required for public purpose. These steps were to be followed by notice under Section 9, stating that the Government intended to take possession of the land and inviting claims for compensation. Thereafter, the Collector was to make his award under Section 11. As noticed hereinbefore, as per Section 16 of the Act of 1894, the Land Acquisition Collector, after making the award, could have taken possession of the land under acquisition and thereupon, the land vested in the Government free from all encumbrances.

31.2. A deviation from the process above-noted and a somewhat different process was permissible in Section 17 of the Act of 1894 whereunder, in cases of urgency and if the Government had so directed, the Collector could have taken possession of any waste or arable land after fifteen days from the publication of the notice mentioned in Section 9(1), even though the award had not been made; and thereupon, the land was to vest in the Government free from all encumbrances.

31.3. In the case of ***Special Land Acquisition Officer, Bombay and Ors. v. Godrej and Boyce*****: (1988) 1 SCC 50,** while dealing with the power of the Government to withdraw from the acquisition under Section 48 of the Act of 1894, this Court exposited on the gamut of the ordinary process of taking possession of the land under acquisition and legal requirements as also implications thereof, in the following words:-

> "5……**Under the scheme of the Act, neither the notification under Section 4 nor the declaration under Section 6 nor the notice under Section 9 is sufficient to divest the original owner of, or other person interested in, the land of his rights therein**. **Section 16 makes it clear beyond doubt that the title to the land vests in the government only when possession is taken by the government. Till that point of time, the land continues to be with the original owner** and he is also free (except where there is specific legislation to the contrary) to deal with the land just as he likes, although it may be that on account of the pendency of proceedings for acquisition intending purchasers may be chary of coming near the land. **So long as possession is not taken over, the mere fact of a notification under Section 4 or declaration under Section 6 having been made does not divest the owner of his rights in respect of the land** or relieve him of the duty to take care of the land and protect it against encroachments. Again, such a notification does not either confer on the State Government any right to interfere with the ownership or other rights in the land or impose on it any duty to remove encroachments therefrom or in any other way safeguard the interests of the original owner of the land. It is in view of this position, that the owner's interests remain unaffected until possession is taken, that Section 48 gives a liberty to the State Government to withdraw from the acquisition at any stage before possession is taken……."
>
> (emphasis in bold supplied)

31.4. In the case of ***Fruit & Vegetable Merchants Union v. Delhi Improvement Trust:*** **AIR 1957 SC 344,** this Court expounded on variegated features of the term "vesting" as follows:-

> "As will presently appear, the term "vesting" has a variety of meaning which has to be gathered from the context in which It has been used. It may mean full ownership, or only possession for a

> particular purpose, or clothing the authority with power to deal with the property as the agent of another person or authority……. That the word "vest" is a word of variable import is shown by provisions of Indian statutes also. For example, S. 56 of the Provincial Insolvency Act (5 of 1920) empowers the Court at the time of the making of the order of adjudication or thereafter to appoint a receiver for the property of the insolvent and further provides that "such property shall thereupon vest in such receiver." The property vests in the receiver for the purpose of administering the estate of the insolvent for the payment of his debts after realising his assets. The property of the insolvent vests in the receiver not for all purposes but only for the purpose of the Insolvency Act and the receiver has no interest of his own in the property. **On the other hand, Ss. 16 and 17 of the Land Acquisition Act (Act 1 of 1894), provide that the property so acquired, upon the happening of certain events, shall "vest absolutely in the Government free from all encumbrances". In the cases contemplated by Ss. 16 and 17 the property acquired becomes the property of Government without any conditions or limitations either as to title or possessions. The legislature has made it clear that the vesting of the property is not for any limited purpose or limited duration.** It would thus appear that the word "vest" has not got a fixed connotation, meaning in all cases that the property is owned by the person or the authority in whom it vests. It may vest in title, or it may vest in possession, or it may vest in a limited sense, as indicated in the context in which it may have been used in a particular piece of legislation…..”
>
> (emphasis in bold supplied)

31.5. The expositions aforesaid leave nothing for debate that in the matter of compulsory acquisition of land under the Act of 1894 for public purpose, the property was to vest absolutely in the Government (thereby divesting the owner of all his rights therein) only after taking of possession in either of the methods i.e., after making of award, as provided in Section 16; or earlier than making of award, as provided in Section 17. In other words, the owner was divested of the property and same vested in the Government in absolute terms only if, and after, the possession was taken by either of the processes envisaged in Sections 16 and 17. However, so long as possession was not taken, the mere fact of issuance of notification under

Section 4 of the Act of 1894 or declaration under Section 6 thereof, did not divest the owner of his right in respect of the property in question.

32. Having thus taken note of the general principles governing "capital gains" and "transfer of capital asset in compulsory acquisition", we may now examine as to when capital gains accrue on transfer of a capital asset in compulsory acquisition.

32.1. The features above-noticed, relating to completion of transfer by way of compulsory acquisition under the Act of 1894 upon taking of possession by the Government; and such event of taking possession being the relevant happening for the purpose of Section 45 of the Act of 1961, were duly applied by the Courts in various decisions related with taxing of capital gains. As an example, we may usefully refer to a decision of Karnataka High Court in the case of ***Buddaiah v. Commissioner of Income-Tax, Karnataka-2:*** **(1985) 155 ITR 277** wherein, the High Court referred to the aforesaid decision of this Court in ***Fruit & Vegetable Merchants Union*** and held that since title of land passes to the Government on possession being taken by the Deputy Commissioner under Section 16 of the Act of 1894, such date of taking possession becomes relevant for the purposes of Section 45 of the Act of 1961. The High Court said (at p. 281 of ITR),-

> "The assessee's contention, therefore, is contrary to the provisions of s. 16 of the Land Acquisition Act. Since the title of the owner of the lands acquired under the Land Acquisition Act passes to the Government on possession being taken by the Deputy Commissioner under s. 16 of the Act, **the date of taking possession becomes relevant for purposes of s. 45 of the I.T. Act, so far as transfer of title is concerned**."

(emphasis in bold supplied)

33. However, the propositions aforesaid do not directly apply to a case where, for any reason, possession of the land had already been taken by the Government or delivered by the owner before completion of process envisaged by Section 16 or Section 17 of the Act of 1894. In such a case, the question, obviously, would be as to when has capital gain accrued? And this is the core of the present matter.

33.1. Taking up the core question, as to when capital gains would accrue in a case of compulsory acquisition of land where possession had already been taken before reaching of the relevant stage for taking over possession in the structured process contemplated by the statute, we may usefully refer to the decision of Andhra Pradesh High Court in the case of ***S. Appala Narasamma v. Commissioner of Income-Tax:*** **(1987) 168 ITR 17**. Therein, the land of the assessee was acquired for the Town Planning Trust but, during the course of land acquisition proceedings, possession of the land was delivered voluntarily by the assessee to the Town Planning Trust on 25.03.1970. The award of compensation was made on 22.03.1971. In the assessment proceedings, the question arose, as to in which year did the capital gain arise? Thus, similar question was involved therein, i.e., as to whether the land must be deemed to have vested in the State on the date when the possession was taken with the consent of the landlord or on the date of award? The Tribunal took the view that the land vested in the Government on the date of making of the award and this

conclusion was affirmed by the High Court. While dealing with the principles relating to vesting of title and examining the fact situation where possession was taken before making of award, the High Court held that vesting of title to the land was a matter of law and not a matter of inference; and in the given situation, the moment the award was made, possession from that moment onwards should be related to the award; and on that date, the land vested in the Government. The High Court said (at pp. 20 and 21 of ITR),-

> "**Vesting of title to the land is a matter of law, not a matter of inference.** This is a case of transfer of property by operation of law and the relevant statute clearly provides the situations in which the land vests, viz., section 16, section 17(1) and section 17(2). According to these provisions, the taking of possession per se does not bring about vesting; the taking of possession must be consequent upon passing of an award (section 16) or an order contemplated by section 17(1), or in a situation contemplated by section 17(2). The Act does not provide for taking of possession before the passing of the award, except in situations contemplated by section 17 (1) and (2). The question is what is the reasonable view to take in such a situation? Should we relate back the award to the date of taking possession or should we relate the possession already taken to the date of the award? We think it more reasonable, and consistent with the provisions of the Act, to adopt the latter view. **Since possession taken before the award continues to be with the Government, we must say that the moment the award is passed, possession from that moment onwards should be related to the award. It is on that date that the land vests in the Government.**"
>
> (emphasis in bold supplied)

33.1.1. While affirming that in the given set of facts, the liability to tax for capital gains arose on the date of award, the High Court referred to various decisions on relating back, of the possession previously taken, to the date envisaged by the Act of 1894; and took guidance, *inter alia*, from the following enunciation by this Court in the case of ***Lt. Governor of Himachal Pradesh v. Avinash Sharma:*** **(1971) 1 SCR 413:-**

> "In the present case a notification under s. 17 (1) and (4) was issued by the State Government and possession which had previously been taken must, from the date of expiry of fifteen days from the publication of the notice under s. 9(1), be deemed to be the possession of the Government. We are unable to agree that where the Government has obtained possession illegally or under some unlawful transaction and a notification under s. 17(1) is issued the land does not vest in the Government free from all encumbrances. **We are of the view that when a notification under s. 17(1) is issued, on the expiration of fifteen days from the publication of the notice mentioned in s. 9(1), the possession previously obtained will be deemed to be the possession of the Government under s. 17(1) of the Act and the land will vest in the Government** free from all encumbrances."
>
> (emphasis in bold supplied)

33.2. The said decision in ***S. Appala Narasamma*** was followed by the same High Court in the case of ***Commissioner of Income-Tax v. Pandari Laxmaiah:*** **(1997) 223 ITR 671** where, possession of the subject land was taken on 03.08.1977 whereas the preliminary notification for acquisition was published on 01.09.1977 while notice under Section 9(1) was issued on 20.05.1980 and award was passed on 25.03.1981. The High Court held that the relevant date for vesting of the land in the Government would be the date of making the award.

34. Before dilating on the principles aforesaid, we may refer to the decisions cited by the learned counsel for the parties but, while pointing out at once that the said decisions are not of direct application to the present case for, they essentially relate to the right to receive compensation and not about the date of vesting of the land, with which we are concerned in the present matter.

34.1. Learned counsel for the appellant has laid emphasis on the decision of the Full Bench of Kerala High Court in the case of ***Peter John*** (supra). In that case, the High Court essentially dealt with the questions as to when, in the matters of acquisition of land, the right to receive compensation arises and as to when interest accrues, as would be evident from the question of law referred, which had been as under (at p.713 of ITR) :-

> " Whether, on the facts and in the circumstances of the case, as per the ratio of the Supreme Court decisions in *Shamlal Narula v. CIT* [1964] 53 ITR 151 (SC) and *Ramanathan Chettiar v. CIT* [1967] 63 ITR 458 (SC), the land acquisition interest of Rs. 80,253 included by the Income Tax Officer under section 5(1)(b) of the Income-tax Act, 1961, in the total income for 1968-69 assessment, accrued *de die in diem* from the date of taking possession of the lands during the years 1961 and 1962 up to March 31, 1968, inclusive and, therefore, only Rs. 12,626 which accrued *de die in diem* during the concerned previous year of 366 calendar dates from April 1, 1967, to March 31, 1968, inclusive should have been included in the total income for 1968-69 assessment and the balance interest of Rs. 67,627 should be similarly included on accrual basis under section 5(1)(b) of the I.T. Act, 1961, in the income for the six assessment years from 1962-63 to 1967-68 inclusive, as had already been done by the Income Tax Officer by his orders dated June 6, 1972, for the 1967-68 and 1969-70 assessments? "

34.1.1. In relation to the question as to when does the compensation accrue or when it is deemed to accrue, the High Court referred to the enunciation by this Court in the case of ***Joginder Singh*** (supra) and held that such right arises immediately on dispossession and does not await quantification of compensation. The High Court said (at p.716 of ITR), –

> “When does the compensation accrue or when is it deemed to accrue? It is well settled that the owner of the property is entitled to compensation from the date on which he is dispossessed of the property on acquisition. This is because what the Land Acquisition Officer does is to offer to purchase the property for the market value and when in the process he takes possession of the property at whatever stage it might be, the owner of the property is deprived of the income and enjoyment of the property from that

> time. Whether the offer in regard to the quantum of compensation is accepted by the land owner straightaway or finally settled by the court is a different question touching on the quantum of compensation, not of the right to receive compensation. We are here on the question as to from which date the land owner is entitled to receive it. There could be absolutely no doubt that both statutorily and in equity, the land owner has a right to receive compensation on the day on which he is dispossessed of the property. That right arises immediately on dispossession and does not await quantification of the compensation by the Land Acquisition Officer or by the court….."

34.1.2. Further, in relation to the question as to when does the right to receive interest accrue or when it is deemed to accrue, the High Court again referred to the enunciation in ***Joginder Singh*** (supra) and held that it would not be at a point of time other than the date when the right to receive compensation accrues. The High Court again said (at pp.717-718 and 722 of ITR), –

> "Now, the question is, when does the right to receive interest accrue or is deemed to accrue; could it be at a point of time other than the date on which the right to receive compensation accrues? It could not be, as we have already noticed that the right to receive compensation accrues on dispossession of the land owner from the property on acquisition. He has a right in praesenti to receive compensation, though it might actually be quantified or paid at a later stage. If the entire compensation or true compensation as the Supreme Court would have it in *Joginder Singh*'s case, AIR 1985 SC 382: [1985] 1 SCWR 110, to which the land owner was entitled, on a correct evaluation on the basis of the standards and guidance under sections 23 and 24, was paid the moment he was dispossessed of the property, no question of right to interest would survive. It is only where the compensation payable is not paid on the date when it was actually due, in order to compensate the loss arising out of the deprival of the use of the amount, that interest is paid till the date of actual payment. That the right to receive interest arises on the date of dispossession on which date the land owner is entitled to receive compensation, admits of no doubt….
>
> *** *** ***
>
> In the light of the foregoing discussions, our conclusion is that interest on compensation awarded with respect to the land acquired under the Land Acquisition Act runs from day to day,

> accruing from the date on which the Government took possession of the land, that being the date on which the land owner's right to receive the entire compensation arises, though determined and paid later…."

34.1.3. The principles aforesaid, that the right to receive compensation comes into being the moment Government takes possession of the property acquired; and the right to receive interest also accrues at the point of time when the right to receive compensation accrues and runs day to day, do not correspondingly result in completion of transfer of the property under acquisition and accrual of such a gain that may classify as "capital gain". As noticed, in the matters of compulsory acquisition, accrual of capital gain depends upon completion of transfer of property from the owner to the Government and not upon accrual of right to receive compensation. Therefore, reference to the decision in ***Peter John*** (supra) is entirely inapt in the present case.

34.2. In the case of ***Rama Bai*** (supra), this Court dealt with a batch of appeals and references essentially involving the question regarding the point of time at which the interest payable under Sections 28 and 34 of the Act of 1894 accrues or arises, where such interest is paid on enhanced compensation awarded on a reference under Section 18 or on further appeal to the High Court and/or the Supreme Court. This Court found that the issue stood concluded by the decision in ***Commissioner of Income-Tax v. Govindrajulu Chetty (T.N.K.):*** **[1987] 165 ITR 231;** and it was held that the interest cannot be taken to have accrued on the date of the order granting enhanced compensation but has to be taken as having accrued

year after year from the date of delivery of possession. This Court said as under:-

> "……we are of the opinion that the appeals before us (Civil Appeal No. 810 of 1974 and Civil Appeal No. 3027 of 1988) have to be allowed and the references made under section 257 (Tax reference Cases Nos. 3 of 1976 and 1 to 3 of 1978) have to be answered by saying that the question of accrual of interest will have to be determined in accordance with the above decision of this court. The effect of the decision, we may clarify, is that the interest cannot be taken to have accrued on the date of the order of the court granting enhanced compensation but has to be taken as having accrued year after year from the date of delivery of possession of the lands till the date of such order."

34.2.1. Obviously, the decision in ***Rama Bai*** (supra), does not relate to the questions at hand as regards completion of transfer so as to result in capital gains. In fact, the principles aforesaid are relevant only to the second part of the re-assessment order dated 25.01.1988, whereby, as regards interest income, the AO carried out protective assessment on accrual basis at the rate of 12% per annum for the previous year relevant to the assessment year in question i.e., for the period 01.04.1970 to 31.03.1971.

34.3. Again, the decision of this Court cited by learned counsel for the revenue in the case of ***Joginder Singh*** (supra), which was followed by the Kerala High Court in ***Peter John*** (supra), relates to the right to receive compensation and the right to receive interest. In that case, the question was about the date from which interest had to be granted and arose in the circumstances that though the High Court enhanced the amount of compensation for acquisition and awarded 6% per annum as the rate of interest on the amount of compensation determined by the Land Acquisition Officer and the District Judge but, restricted such rate of interest on the

amount of compensation enhanced by it at 4% per annum from the date of possession and 6% per annum from the date of its judgement. In that context, this Court held that the High Court erred in restricting the rate of interest on the enhanced amount of compensation because owner of the land was entitled to be paid the true value of land on the date of taking over of possession; and merely because the amount was determined later did not mean that the right to amount came into existence at a later date. This Court also observed that when the High Court held that the rate of interest at 6% per annum was applicable from the date of possession in relation to the component of compensation determined by the District Judge, there was no reason why the same rate should not be applied from the date of taking over possession in relation to the component of enhancement effected by the High Court. For the reasons already discussed, this judgement also does not directly relate with the question of completion of transfer for accrual of capital gain.

34.4. The case of ***Bombay Burmah Trading Corpn. Ltd***. (supra), is also inapplicable to the present case because therein, the questions basically related to the amount of damages received by the assessee due to the loss suffered during World War II. The observations therein, again, do not have bearing on the question as to when the transfer of land, in the matter of compulsory acquisition, be treated as complete so as to result in capital gains.

35. Therefore, the aforesaid decisions cited by the learned counsel for parties, even if of guidance on the question relating to the right to receive compensation, do not directly assist us in determination of the core question involved in this matter because, income-tax on capital gains is not levied on the mere right to receive compensation. For chargeability of income-tax, the income ought to have either arrived or accrued. In the matter of acquisition of land under the Act of 1894, taking over of possession before arrival of relevant stage for such taking over may give rise to a potential right in the owner of the property to make a claim for compensation but, looking to the scheme of enactment, it cannot be said that transfer resulting in capital gains is complete with taking over of possession, even if such taking over had happened earlier than the point of time of vesting contemplated in the relevant provisions.

35.1. The decision of this Court in the case of ***Avinash Sharma*** (supra), however, supports the view that in the case of urgency acquisition, even if possession of the land under acquisition is taken earlier, it should be related to the process contemplated by Section 17 (1) of the Act of 1894, and deemed to be effective from the date on which the period prescribed by Section 17 (1) would expire that is, fifteen days from the publication of the notice under Section 9(1) of the Act of 1894. In ***S. Appala Narasamma*** and ***Pandari Laxmaiah*** (supra), the Andhra Pradesh High Court applied these principles to the cases pertaining to ordinary process of acquisition and held that if possession had been taken earlier, it would relate to the award;

and the date of award would be the relevant date for vesting of the land in the Government.

35.2. In an overall conspectus of the matter, we are clearly of the view that the statements of law in the aforesaid decisions of Andhra Pradesh High Court, based on the enunciations by this Court in the case of ***Avinash Sharma*** (supra), are rather unquestionable and need to be given imprimatur for application to the controversy like the present one.

36. For what has been discussed hereinabove, in our view, in the matters relating to compulsory acquisition of land under the Act of 1894, completion of transfer with vesting of land in the Government essentially correlates with taking over of possession of the land under acquisition by the Government. However, where possession is taken over before arriving of the relevant stage for such taking over, capital gains shall be deemed to have accrued upon arrival of the relevant stage and not before. To be more specific, in such cases, capital gains shall be deemed to have accrued: (a) upon making of the award, in the case of ordinary acquisition referable to Section 16; and (b) after expiration of fifteen days from the publication of the notice mentioned in Section 9 (1), in the case of urgency acquisition under Section 17.

37. As per the facts-sheet noticed hereinbefore, in the present case, the land in question was subjected to acquisition under the Act of 1894 by adopting the ordinary process leading to award under Section 11. Therefore, ordinarily, capital gains would have accrued upon taking over of

possession after making of the award. Consequently, capital gains to the assessee-appellant for the acquisition in question could not have accrued before the date of award i.e., 29.09.1970.

38. However, on the strength of the submissions that the land in question had already been in possession of the beneficiary of acquisition, it has been suggested on behalf of the assessee-appellant that the land vested in the Government immediately upon issuance of notification under Section 4 of the Act of 1894 i.e., 15.05.1968 and capital gain accrued on that date. This suggestion and the contentions founded thereupon remain totally meritless for a variety of factors as indicated *infra*.

38.1. Even if we keep all other aspects aside and assume that the land in question was, or came, in possession of the Government before passing of the award, the position of law stated in point (a) of paragraph 36 hereinabove would apply; and capital gains shall be deemed to have accrued upon arrival of the relevant stage of taking possession i.e., making of award and hence, capital gains cannot be taken to have accrued before the date of award i.e., 29.09.1970.

38.2. In order to wriggle out of the above-mentioned plain operation of law, it has been desperately suggested on behalf of the appellant that it had been a case of urgency acquisition and hence, the process contemplated by Section 17 of the Act of 1894 would apply. This suggestion is also baseless and suffers from several infirmities.

38.2.1. In the first place, it is evident on the face of the record that it had not been a matter of urgency acquisition and nowhere it appears that the process contemplated by Section 17 of the Act of 1894 was resorted to. Even the contents of the award dated 29.09.1970 make it clear that the learned Land Acquisition Collector only awarded interest from the date of initial notification for the reason that the land was in possession of the College but, it was nowhere stated that he had received any directions from the Government to take possession of the land before making of the award while acting under Section 17.

38.2.2. Secondly, if at all the proceedings were taken under Section 17 of the Act of 1894, the land could have vested in the Government only after expiration of fifteen days from the date of publication of notice under Section 9(1); and, in any case, could not have vested in the Government on the date of publication of initial notification under Section 4 of the Act of 1894. Significantly, the assessee-appellant did not divulge the date of publication of notice under Section 9(1) of the Act of 1894 despite the queries of the Assessing Officer. The suggestion about application of the process contemplated by Section 17 of the Act of 1894 remains totally unfounded.

39. In view of the above, the only question that remains is as to what is the effect of possession of College over a part of the subject land at the time of issuance of initial notification for acquisition.

39.1. Going back to the facts-sheet, it is not in dispute that a large part of the subject land was given on lease to the College[16] and the said lease expired on 31.08.1967 but, the land continued in possession of the College. The legal effect of these facts could be gathered from the relevant provisions of the Transfer of Property Act, 1882 and the enunciations by the Courts.

39.2. As noticed, where the time period of any lease of immovable property is limited, it determines by efflux of such time, as per Section 111(a) of the Act of 1882. Further, in terms of Section 108(q) of the Act of 1882, on determination of lease, the lessee is bound to put the lessor into possession of the leased property. In case where lessee does not deliver possession to the lessor after determination of the lease but the lessor accepts rent or otherwise assents to his continuing in possession, in the absence of an agreement to the contrary, the status of such lessee is that of tenant holding over, in terms of Section 116 of the Act of 1882. But, in the absence of acceptance of rent or otherwise assent by the lessor, the status of lessee is that of tenant at sufferance.

39.3. The aforesaid aspects relating to the status of parties after expiry of the period of lease remain well settled and do not require much elaboration. However, for ready reference, we may point out that in the case of ***Nand Ram (D) through LRs. and Ors. v. Jagdish Prasad (D) through***

16 As noticed from the contents of the award, the land comprising Khasra Nos. 361 and 364 admeasuring 5 kanals and 7 marlas was not on lease with the College

***LRs.*: 2020 (5) SCALE 723,** this Court has re-expounded the relevant principles in sufficient details, albeit in a different context. The relevant background of the said case had been that the land of plaintiff was taken on lease by the defendant where it was agreed that the plaintiff-lessor will not seek ejectment of defendant-lessee except in the case where the rent for one year remained in arrears. The entire leased land was acquired under the Act of 1894. The Land Acquisition Collector determined the amount of compensation but then, dispute arose with regard to apportionment between the plaintiff and the defendant for which, the matter went in reference. The Reference Court held that lessee having not paid rent for more than twelve months, the lease had come to end and, therefore, he had no right to claim any share in the compensation. Later on, a part of the land was de-notified from acquisition and that part remained in possession of the defendant-lessee. Thereafter, the plaintiff-lessor took up action claiming possession of the land by filing a suit against the defendant-lessee. The suit was decreed by the Trial Court and the decree was affirmed by the First Appellate Court. However, the High Court allowed the second appeal holding that the finding recorded in the award about the lease coming to an end operated as *res judicata* and the suit was filed beyond the period of limitation. In further appeal, this Court did not approve the decision of High Court and, in the course of allowing the appeal, exposited on the principles relating to the status of parties after expiry of the

lease but retention of possession by the lessee, *inter alia*, in the following passage:-

> "29. The Defendant was inducted as a lessee for a period of 20 years. The lease period expired on 23rd September, 1974. Even if the lessee had not paid rent, the status of the lessee would not change during the continuation of the period of lease. The lessor had a right to seek possession in terms of Clause 9 of the lease deed. The mere fact that the lessor had not chosen to exercise that right will not foreclose the rights of the lessor as owner of the property leased**. After the expiry of lease period, and in the absence of payment of rent by the lessee, the status of the lessee will be that of tenant at sufferance and not a tenant holding over**. Section 116 of the TP Act confers the status of a tenant holding over on a yearly or monthly basis keeping in view the purpose of the lease, only if the lessor accepts the payment of lease money. If the lessor does not accept the lease money, the status of the lessee would be that of tenant at sufferance. This Court in the judgments reported as *Bhawanji Lakhamshi and Ors. v. Himatlal Jamnadas Dani and Ors.* (1972) 1 SCC 388, *Badrilal v. Municipal Corp. of Indore* : (1973) 2 SCC 388 and *R.V. Bhupal Prasad v. State of A.P. and Ors*.: (1995) 5 SCC 698 and also a judgment in *Sevoke Properties Ltd. v. West Bengal State Electricity Distribution Co. Ltd*. examined the scope of Section 116 of the TP Act and held that the lease would be renewed as a tenant holding over only if the lessor accepts the pay-ment of rent after the expiry of lease period. This Court in *Bhawanji Lakhamshi* held as under:
>
> > "9. The act of holding over after the expiration of the term does not create a tenancy of any kind. If a tenant remains in possession after the determination of the lease, the common law rule is that he is a tenant on sufferance. A distinction should be drawn between a tenant continuing in possession after the determination of the term with the consent of the landlord and a tenant doing so without his consent. The former is a tenant at sufferance in English Law and the latter a tenant holding over or a tenant at will. In view of the concluding words of Section 116 of the Transfer of Property Act, a lessee holding over is in a better position than a tenant at will. The assent of the landlord to the continuance of possession after the determination of the tenancy will create a new tenancy. What the section contemplates is that on one side there should be an offer of taking a new lease evidenced by the lessee or sub-lessee remaining in possession of the property after his term was over and on the other side there must be a definite consent to the continuance of possession by the

landlord expressed by acceptance of rent or otherwise.
……"

(emphasis in bold supplied)

39.3.1. Further, in ***Nand Ram*** (supra), this Court also quoted with approval the principles stated by Delhi High Court in the case of ***MEC India Pvt. Ltd. v. Lt. Col. Inder Maira & Ors.*: 80 (1999) Delhi Law Times 679**. A relevant part of such quotation from the decision of Delhi High Court may also be usefully noticed for the present purpose as under:-

> "43. Thus, a tenant at sufferance is one who wrongfully continues in possession after the extinction of a lawful title and that a tenancy at sufferance is merely a legal fiction or device to avoid continuance in possession from operating as a trespass. A tenant remaining in possession of the property after determination of the lease does not become a trespasser, but continues as a tenant at sufferance till possession is restored to the landlord. The possession of an erstwhile tenant is juridical and he is a protected from dispossession otherwise than in due course of law. Although, he is a tenant, but being one at sufferance as aforesaid, no rent can be paid since, if rent is accepted by the landlord he will be deemed to have consented and a tenancy from month-to-month will come into existence. Instead of rent, the tenant at sufferance and by his mere continuance in possession is deemed to acknowledge both the landlord's title and his (tenant's) liability to pay mesne profits for the use and occupation of the property."

39.4. The said principles, when applied to the present case, leave nothing to doubt that in relation to that part of the land in question which was given on lease, possession of the College, after determination of the lease on 31.08.1967, was only that of a tenant at sufferance because it has not been shown if the lessor i.e., the appellant accepted rent or otherwise assented to the continuation of lease. The possession of College over the part of land in question being only that of tenant at sufferance, had the corresponding acknowledgment of the title of the appellant and of the liability of the College to pay *mesne profits* for use and occupation. The same status of the parties

*qua* the land under lease existed on the date of notification for acquisition i.e., 15.05.1968 and continued even until the date of award i.e., 29.09.1970. In other words, even until the date of award, the appellant-assessee continued to carry its status as owner of the land in question and that status was not lost only because a part of the land remained in possession of the College. In this view of the matter, the suggestion that the land vested in the Government on the date of initial notification remains totally baseless and could only be rejected.

39.5. Apart from the above, the significant factor for which the entire case of the assessee-appellant is knocked to the ground is that neither on the date of notification i.e., 15.05.1968 nor until the date of award, the Government took over possession of the land in question. As noticed, the possession had been of the erstwhile lessee, the College. Even if the said College was going to be the ultimate beneficiary of the acquisition, it cannot be said that immediately upon issuance of notification under Section 4 of the Act of 1894, its possession became the possession of the Government. Its possession, as noticed, remained that of tenant at sufferance and not beyond.

39.6. Viewed from any angle, it is clear that accrual of capital gains in the present case had not taken place on 15.05.1968. If at all possession of the College was to result in vesting of the land in the Government, such vesting happened only on the date of award i.e., 29.09.1970 and not before. In other words, the transfer of land from the assessee-appellant to the

Government reached its completion not before 29.09.1970 and hence, the earliest date for accrual of capital gains because of this acquisition was the date of award i.e., 29.09.1970. Therefore, the assessment of capital gains as income of the appellant for the previous year relevant to the assessment year 1971-1972 does not suffer from any infirmity or error.

40. An incidental aspect of the submissions on behalf of the appellant that interest and solatium accrued on 15.05.1968 as per the award and that being the income pertaining to the financial year 1968-1969 could not have been taxed in the assessment year 1971-1972, also deserves to be rejected for the reasons foregoing and for additionally the reason that in his order dated 25.01.1988, the AO has consciously made protective assessment on accrual basis on the interest component referable to the previous year 1970-1971, relevant for the assessment year 1971-72.

40.1. We may also usefully observe that awarding of interest from 15.05.1968 in the award had only been just and equitable application of the provisions of law, including Section 28 of the Act of 1894 but that did not result in vesting of the land in Government on that date of notification.

41. For what has been discussed hereinabove, the answer to Point No. 1 is clearly in the negative i.e., against the assessee-appellant and in favour of the revenue that on the facts and in the circumstances of the present case, transfer of the capital asset (land in question), for the purposes of Section 45 of the Act of 1961, was complete only on 29.09.1970, the date of award and not on 15.05.1968, the date of notification for acquisition under

Section 4 of the Act of 1894; and hence, capital gains arising out of such acquisition have rightly been charged to tax with reference to the date of award i.e., 29.09.1970.

**Point No. 2**

42. Though we have found that vesting of land in question for the purpose of accrual of capital gains in this case was complete only on the date of award that falls within the previous year relevant for the assessment year 1971-72, the question still remains, in view of the submissions made on behalf of the appellant, about the effect of the decision of ITAT in relation to the other case of the assessee-appellant for the assessment year 1975-1976 where the issue concerning date of accrual of capital gains was decided against the revenue with reference to the date of taking possession. Admittedly, the said decision for the assessment year 1975-1976 was not appealed against and had attained finality. Hence, it has been argued on behalf of the appellant that it is not open for the revenue to question the similar decision of ITAT in the present case pertaining to the assessment year 1971-1972.

43. We may gainfully recapitulate that in the case pertaining to the assessment year 1975-1976, the question of capital gains arose in the backdrop of the facts that another parcel of land of the appellant was acquired for the purpose of construction of warehouse of Ambala City. The

notification under Section 4 of the Act of 1894 was issued on 26.06.1971 and the award of compensation was made on 27.06.1974 but, possession of the said land was taken by the Government on 04.09.1972 i.e., before making of the award. In the given set of facts and circumstances, in ITA No.635/Chandi/84, the ITAT accepted the contention that the case fell under the urgency provision contained in Section 17 of the Act of 1894 where the assessee was divested of the title to the property, that vested in the Government with effect from 04.09.1972, the date of taking over possession. Hence, the ITAT held that the capital gains arising from the said acquisition were not assessable for the accounting period relevant for the assessment year 1975-1976.

43.1. Learned counsel for the appellant has strenuously argued that the revenue is not entitled to take a different stand in the present case pertaining to the assessment year 1971–1972, after having accepted the said decision pertaining to the assessment year 1975–1976 where it was held that capital gains accrued on the date of taking over possession of the land under acquisition by the Government. The learned counsel has relied upon the following observations in ***Berger Paints India Ltd***. (supra):-

> "In view of the judgments of this court in *Union of India* v. *Kaumudini Narayan Dalal* [2001] 249 ITR 219; *CIT v. Narendra Doshi* [2002] 254 ITR 606 and *CIT v. Shivsagar Estate* [2002] 257 ITR 59, the principle established is that if the Revenue has not challenged the correctness of the law laid down by the High Court and has accepted it in the case of one assessee, then it is not open to the Revenue to challenge its correctness in the case of other assessees, without just cause."

44. The question is whether the above-noted observations apply to the present case? In our view, the answer to this question is clearly in the negative for more than one reason.

44.1. In the first place, it is *ex facie* evident that the matter involved in the said case pertaining to the assessment year 1975-1976 was taken to be an acquisition under the urgency provision contained in Section 17 of the Act of 1894 whereas, the acquisition proceedings in the present case had not been of urgency acquisition but had been of ordinary process where possession could have been taken only under Section 16 after making of the award. As noticed, the very structure of the ordinary process leading to possession under Section 16 of the Act of 1894 has been different than that of the urgency process under Section 17; and the said decision pertaining to the proceedings under Section 17 of the Act of 1894 cannot be directly applied to the present case.

44.2. Secondly, the fact that the said case relating to the assessment year 1975-1976 was not akin to the present case was indicated by the ITAT itself. As noticed, both the cases, i.e., the present one relating to the assessment year 1971-1972 (in ITA No. 634/Chandi/84) and that relating to the assessment year 1975-1976 (in ITA No. 635/Chandi/84) were decided by ITAT on the same date i.e., 19.12.1985. While the answer in relation to the assessment year 1975-1976 was given by the ITAT in favour of assessee-appellant to the effect that possession having been taken on the specified date i.e., 04.09.1972, capital gains were not assessable for the

assessment year 1975-1976 but, while deciding the appeal relating to the present case for the assessment year 1971-1972, the ITAT found that the date of taking over possession was not available and hence, the matter was restored to the file of the ITO to find out the actual date of possession.[17]

44.3. Thirdly, even if we assume that the stand of revenue in the present case is not in conformity with the decision of ITAT in relation to the assessment year 1975-1976, it cannot be said that revenue has no just cause to take such a stand. As noticed, while rendering the decision in relation to the assessment year 1975-1976, the ITAT did not notice the principles available in various decisions including that of this Court in ***Avinash Sharma*** (supra) that even in the case of urgency acquisition under Section 17 of the Act of 1894, land was to vest in Government not on the date of taking over possession but, only on the expiration of fifteen days from the publication of the notice mentioned in Section 9(1). Looking to the facts of the present case and the law applicable, in our view, the revenue had every reason to question the correctness of the later decision of ITAT dated 29.06.1990 in the second round of proceedings pertaining to the assessment year 1971-1972.

44.4. Fourthly, the ITAT itself on being satisfied about the question of law involved in this case, made a reference by its order dated 15.07.1991 to the High Court. The High Court having dealt with the matter in the reference

17 Of course, one observation was made by the ITAT in the order dated 19.12.1985 relating to the present case that possession of the land in question was taken before making of the award. However, this observation turns out to be incorrect on facts as also in law, for the reasons mentioned hereinbefore in Point No. 1.

proceedings and having answered the reference in conformity with the applicable principles, the assessee cannot be heard to question the stand of the revenue with reference to the other order for the assessment year 1975-1976. In any case, it cannot be said that the decision in relation to the assessment year 1975-1976 had been of any such nature which would preclude the revenue from raising the issues which are germane to the present case.

45. Hence, the answer to Point No. 2 is also clearly in the negative i.e., against the assessee-appellant and in favour of the revenue that the fact situation of the present case relating to the assessment year 1971-1972 is not similar to that of the other case of the appellant relating to the assessment year 1975-1976 and the revenue is not precluded from taking the stand that the transfer of capital asset in the present case was complete only on the date of award i.e., on 29.09.1970.

**Conclusion**

46. For what has been discussed hereinabove, we have not an iota of doubt that in the second round of proceeding, the AO had rightly assessed the tax liability of the appellant, on long-term capital gains arising on account of acquisition, on the basis of the amount of compensation allowed in the award dated 29.09.1970 as also the enhanced amount of compensation accrued finally to the appellant; and as regards interest income, had rightly made protective assessment on accrual basis.

47. In the result, this appeal fails and is, therefore, dismissed. No costs.

**……..……J.**
**(A.M.KHANWILKAR)**

**……..……J.**
**(HEMANT GUPTA)**

**……..……J.**
**(DINESH MAHESHWARI)**

New Delhi,
Dated: 25th August, 2020.