Before Sukhdev Singh Kang & Jai Singh Sekhon, JJ.

SAT PAL AND CO., AMBALA,—*Petitioner*

versus

EXCISE AND TAXATION COMMISSIONER, HARYANA SECTOR 17, CHANDIGARH AND OTHERS,—*Respondents.*

Civil writ petition No. 3947 *of* 1989.

2nd August, 1989.

Income-tax Act, 1961 *as amended by Finance Act,* 1988—*Ss.* 44 *AC and* 206*C—Constitution of India,* 1950—*Art.* 14, 19(1)(*g*)—*7th Schedule, Entries* 8 *and* 51, *List II—7th Schedule, Entry* 82, *List I—Tax at source on presumptive basis—Country Liquor contractors made liable to pay income-tax on profits on presumptive basis by treating* 40 *per cent of sale-price as profits and charging income-tax at the rate of* 15 *per cent of such profits—Distilleries made liable to collect and deposit such tax—Applicability of Ss.* 44 *AC and* 206*C to country liquor contractors—Does not discriminate against contractors of IMFL—Ss.* 44 *AC and* 206 *C are* intra-vires *the Constitution.*

Held, that (1) Parliament was competent to enact sections 44 AC and 206 C. The tax levied under these sections is tax on income and not on purchases.

(2) Section 44 AC read down is an adjunct to sections 28 to 43 C and 206 C. Even country liquor contractors have to be assessed in relation to their business in country liquor in accordance with the provisions of sections 28 to 43 C. Thus, read, section 44 AC does not suffer from any constitutional infirmity.

(3) The collection of tax at source provided by section 206C is relatable to the purchase price and not to the income component thereof.

(Para 16)

Held, that country liquor and Indian-made foreign liquor are distinct and separate goods having distinct characteristics. The vends for country liquor and Indian-made foreign liquor are auctioned separately. They cater to different strata of society. The alcoholic strength in the two types of liquors is different. There is a vast difference between the prices of the two. The two liquors fall in two separate and distinct classes. The classification has a direct

nexus with the objects to be achieved, i.e., regulation of trade in intoxicants and earning of revenue for the State. Thus viewed, the attack of the petitioners to the impugned sections on this score also fails.

(Para 12)

A. Sanyasi Rao and anr. *v.* State of A.P. (1989) 178 I.T.R. 31 A.P.

(FOLLOWED)

I.T.K. Aboobacker and Ors. *v.* Union of India (1989)177 I.T.R. 358 Ker.

(DISSENTED)

Civil Writ Petition under Articles 226/227 *of the Constitution of India praying that this Hon'ble Court may be pleased to:—*

(*i*) *call for the records of the case from the respondents and after perusal of the same to;*

(*ii*) *issue a writ of certiorari striking down the provisions of section 44AC of the Income Tax Act being* ultra vires *and declaring section 206C and 276B of the Income Tax Act as unconstitutional* ultra vires, *null and void;*

(*iii*) *issue a writ in the nature of* mandamus *directing the respondents not to take any action whatsoever in persuance of the impugned provisions of the Income Tax and also direct respondents No. 1 not to collect and take action as per letter dated 30th May, 1988 issued by respondent No. 1;*

(*iv*) *dispense with the filing of certified copies of Annexure P1/1 and P/2;*

(*v*) *dispense with the service of advance notices upon the respondents;*

(*vi*) *award the costs of the writ petition in favour of the petitioner;*

(*vii*) *issue any other writ, order or direction which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case;*

It is, further prayed that the operation and enforcement of provisions of section 44, AC, 206 C, 276 BB of Income Tax Act, 1961

and of Annexure P/1 issued by respondent No. 1, dated 30th May, 1988 be stayed in the interest of justice till the final disposal of the Writ Petition by this Hon'ble Court.

C.M. No. 9868/89:—

Application on behalf of Petitioner in the admitted Writ petition, under order 1 Rule 10 read with Section 151 C.P.C. praying that the stay order already passed by this Hon'ble Court may please be continued after impleading distilleries as respondents i.e.—

3. *Haryana Distillery, Yamuna Nagar, District, Ambala through its General Manager;*

4. *Associate Distillery, Hissar through its General Manager; and*

5. *Panipat Co-Operative Distillary through its Managing Director;*

and the application may kindly be allowed in the interest of justice.

Application u/s 151 of the Code of Civil Procedure praying that the orders dated 6th June, 1989 may kindly be clarified/modified and stay to that extent vacated, by passing appropriate orders safeguarding the interests of the applicants so that no liability is fastened on the applicants under the Income Tax Act, in case the tax is not paid by the licencees and/or not recovered from them or their servants who come and obtain liquor on the permits issued by the Government, in view of the stay order.

Mohan Jain, Advocate, *for the Petitioner.*

B. S. Malik, Addl. Advocate Genl. (Hy.), *for the Respondents.*

R. S. Chahar, Advocate, *for U.O.I.*

M/s S. C. Sibal & D. K. Gupta, Advocates, *for distilleries.*

JUDGMENT

Sukhdev Singh Kang, J.

(1) Challenge in this bunch of writ petitions is directed to the legality and constitutional validity of Sections 44 AC, 206 C and 276BB incorporated in the Income-tax Act, 1961 (hereinafter referred to as the 'Act') by the Finance Act, 1988. The petitioners

also impugn the directions (Annexure P-1) issued by the Excise and Taxation Commissioners of the States of Punjab and Haryana directing the owners/Managers of the Distilleries situated within their respective States to treat 40 per cent of the sale price of alcoholic liquor for human consumption (other than Indian-made foreign liquor) (hereinafter, for brevity's sake, referred to as the 'country liquor') as profits and gains of the buyers (petitioners liquor contractors) from the business and recovering Income-tax at the rate of 15 per cent of such profits and gains from the buyers with effect from June 1, 1988. For the purpose of calculating Income-tax recoverable from the buyer, a seller shall have the Excise Duty paid by the purchaser to the State Government on behalf of the seller to the price charged or to be charged for such sale of country liquor.

(2) The pleadings in Civil Writ No. 3947 of 1989 shall furnish the factual matrix. The petitioners therein are engaged in the business of sale of liquor in the States of Punjab and Haryana. The Excise and Taxation Commissioner, Haryana (hereinafter referred to as respondent No. 1 auctioned, among others, country liquor vends of Camp Area of Yamunanagar, Damra and Harmal for the years 1989-90. The petitioners being the highest bidders were sold these vends. As per the terms and conditions and the prevalent practice, the liquor contractor, who intends to purchase country liquor for sale at his vend is required to deposit Excise Duty payable in respect of the quota of the country liquor he seeks to purchase. On proof of this deposit of Excise Duty, the Excise authority issues a permit to the liquor contractor to purchase country liquor from the distillery and to transport and sell it at his vend. The distillery charges for the liquor sold by them are regulated by the Government and they include the price of the liquor and the expenses on bottling, labelling, etc.

(3) Parliament passed Finance Act, 1988 and it has, among others, introduced sections 44 AC, 206 C and 276 BB in the Income-Tax Act. The provisions of section 44 AC have been enforced with effect from April 1, 1988. These sections in so far as they are relevant for our purpose read as under :—

"44 AC. (1) Notwithstanding anything to the contrary contained in sections 28 to 43 C, in the case of an assessee,

being a person other than a public sector company (hereinafter in this section referred to as the buyer), obtaining in any sale by way of auction, tender or any other mode, conducted by any other person or his agent (hereinafter in this section referred to as the seller),—

(a) any goods in the nature of alcoholic liquor for human consumption (other than Indian-made foreign liquor), a sum equal to forty per cent of the amount paid or payable by the buyer as the purchase price in respect of such goods shall be deemed to be the profits and gains of the buyer from the business of trading in such goods chargeable to tax under the head 'Profits and gains of business or profession':

Provided that nothing contained in this clause shall apply to a buyer where the goods are not obtained by him by way of auction and where the sale price of such goods to be sold by the buyer is fixed by or under any State Act;

(b) the right to receive any goods of the nature specified in column (2) of the Table below, or such goods, as the case may be, a sum equal to the percentage specified in the corresponding entry in column (3) of the Said Table, of the amount paid or payable by the buyer in respect of the sale of such right or as the purchase price in respect of such goods shall be deemed to be the profits and gains of the buyer from the business of trading in such goods chargeable to tax under the head ('Profits and gains of business or profession'.)

TABLE

S. No.	Nature of goods	Percentage
(1)	(2)	(3)
(i)	Timber obtained under a forest lease	Thirty-five per cent.
(ii)	Timber obtained by any mode other than under a forest lease	Fifteen per cent
(iii)	Any other forest produce not being timber	Thirty-five per cent.

(2) For the removal of doubts, it is hereby declared that the provisions of sub-section (1) shall not apply to a buyer (other than a buyer who obtains any goods, from any seller which is a public sector company) in the further sale of any goods obtained under or in pursuance of the sale under sub-section (1).

(3) In a case where the business carried on by the assessee does not consist exclusively of trading in goods to which this section applies and where separate accounts are not maintained or are not available, the amount of expenses attributable to such other business shall be an amount which bears to the total expenses of the business carried on by the assessee the same proportion as the turnover of such other business bears to the total turnover of the business carried on by the assessee.

Explanation, for the purposes of this section, 'seller' means the Central Government, a State Government, Government or any local authority or corporation or authority established by or under a Central, State or Provincial Act, or any company or firm."

"206C. (1) Every person, being a seller referred to in section 44 AC, shall, at the time of debiting of the amount payable by the buyer referred to in that section to the account of the buyer or at the time of receipt of such amount from the said buyer in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the buyer of any goods of the nature specified in column (2) of the Table below, a sum equal to the percentage, specified in the corresponding entry in column (3) of the said Table, of such amount as income-tax on income comprised therein.

TABLE

S. No. (1)	Nature of Goods (2)	Percentage (3)
(i)	Alcoholic liquor for human consumption (other than Indian-made foreign liquor)	Fifteen per cent
(ii)	Timber obtained under a forest lease	Fifteen per cent
(iii)	Timber obtained by any mode other than under a forest lease	Five per cent
(iv)	Any other forest forest produce not being timber	Fifteen per cent

Provided that where the Assessing Officer, on an application made by the buyer, gives a certificate in the prescribed form that to the best of his belief any of the goods referred to in the aforesaid Table are to be utilised for the purposes of manufacturing, processing or producing articles or things and not for trading purposes, the provisions of this sub-section shall not apply so long as the certificate is in force.

(2) The power to recover tax by collection under sub-section (1) shall be without prejudice to any other mode of recovery.

(3) Any person collecting any amount under sub-section (1) shall pay within seven days the amount so collected to the credit of the Central Government or as the Board directs.

(4) Any amount collected in accordance with the provisions of this section and paid under sub-section (3) shall be deemed as payment of tax on behalf of the person from whom the amount has been collected and credit shall be

given to him for the amount so collected on the production of the certificate furnished under sub-section (5) in the assessment made under this Act for the assessment year for which such income is assessable.

(5) Every person collecting tax in accordance with the provisions of this section shall within ten days from the date of debits or receipts of the account furnish to the buyer to whose account such amount is debited or from whom such payment is received, a certificate to the effect that tax has been collected and specifying the sum so collected, the rate at which the tax has been collected and such other particulars as may be prescribed.

(5A) Every person collecting tax in accordance with the provisions of this section shall prepare half yearly returns for the period ending on 30th September and 31st March in each financial year, and deliver or cause to be delivered to the prescribed income-tax authority such returns in such form and verified in such manner and setting forth such particulars and within such time as may be prescribed.

(6) Any person responsible for collecting the tax who fails to collect the tax in accordance with the provisions of this section, shall, notwithstanding such failure, be liable to pay the tax to the credit of the Central Government in accordance with the provisions of sub-section (3).

(7) Without prejudice to the provisions of sub-section (6) if the seller does not collect the tax or after collecting the tax fails to pay it as required under this section, he shall be liable to pay simple interest at the rate of two per cent per month or part thereof on the amount of such tax from the date on which such tax was collectable to the date on which the tax was actually paid.

(8) Where the tax has not been paid as aforesaid, after it is collected, the amount of the tax together with the amount of simple interest thereon referred to in sub-section (7) shall be a charge upon all the assets of the seller."

276 BB. If a person fails to pay to the credit of the Central Government the tax shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine."

(4) The price of country liquor charged by the distillery is controlled by the State Government. The Excise duties are also paid by the Contractor before purchasing the country liquor. The quota for the purchase of country liquor to the contractor is also fixed by the State Government and the contractor cannot purchase more than the fixed quota.

(5) It is pleaded that Income-Tax is payable on the income of the income-tax payee/assessee, which may vary from year to year dependent upon innumerable imponderables. Income from the liquor business varies from contractor to contractor and place to place. For example, a contractor having a vend just adjoining the distillery is to pay less carriage charges whereas the contractor whose vend is situated at a greater distance from the distillery has to incur transportation charges. The provisions are otherwise discriminatory as in Punjab, price of liquor is less, the contractor has to pay less Income-tax and the sale price are higher and the actual profits are more: whereas in Haryana, price of liquor is higher but the sale price is the same and the profits are less. In reality, the impugned provisions of the Act levy a purchase tax on the purchase value of liquor purchased by the liquor contractors. This is beyond the legislative competence of Parliament. The State Legislatures because of entries 8 and 51 of List II of Seventh Schedule of the Constitution are alone competent to legislate on the subjects of sale, purchase of goods and on intoxicants. Entry 82 of List I of Seventh Schedule of the Constitution empowers Parliament to frame laws in relation to tax on income other than agricultural income. Constitution does not authorise Parliament to make laws for levy of Income-tax on notional, deemed or presumptive incomes. The impugned provisions are violative of Article 19(1) of the Constitution as they impose an unreasonable restriction on the carrying on of trade and business by the petitioners. The Income-tax is sought to be levied on the whole of the liquor contractors though this purchase price cannot logically be termed as income of the liquor contractor, who has paid the purchase price of the country liquor. No income has accrued to him in this transaction. Equivalent of this purchase price paid shall

not convert itself into profits or gains. At best, only a percentage thereof can come to the contractor as profit. The tax imposed is confiscatory in nature. The provisions are arbitrary whimsical and violative of Article 14 of the Constitution. The contractors who deal in country liquor have been made liable to pay Income-tax under the impugned provisions. However, the contractors who are engaged in the business of sale of Indian-made foreign liquor have been let off. Mostly, the liquor contractors obtain vend licence for the sale of Indian-made foreign liquor and country liquor. As liquor contractors form a single and homogenous class, an invidious discrimination has been made against the country liquor contractors. There are different purchase prices fixed in different States for the country liquor. The same contractor, who has his business in more than two States, may have to pay Income-tax at different rates in relation to his business in the country liquor in different States. This again is indefensible discrimnation having no relationship with the objects achieved i.e. the collection of Revenue. The quantum of profit/Income has been arbitrarily fixed and without any relationship to the ground realities and liability to pay Income-tax has been created. The *non obstante* clause in seciton 44-AC excludes the application of the provisions of sections 28 to 43-C of the Income tax Act to the liquor contractors carrying on the business of country liquor. Even if a contract for any reason whatsoever incurs losses, he is not entitled to so plead and claim that he is not liable to pay any Income-tax because he had suffered losses. Though the Excise Duty is paid by the contractor, yet it has been made a component of the purchase price and the same is included in the income of the contractor and he is, made to pay Income-tax on that amount also. The provisions are violative of Articles 240 and 258 of the Constitution. Only Central Government can collect Income-tax, but persons other than Central Government and even the State Government are collecting Income-tax. There is no rational basis whatsoever for assuming the profit of forty per cent on the purchase price of country liquor.

(6) The pleadings in the other cases are also on the same lines. Initially, in most of the writ petitions, the petitioners had not impleaded the distilleries as respondents, but later on in many cases, the distilleries had been impleaded. At the motion stage, it was argued on behalf of the petitioners that the vires of the impugned sections had been challenged in various High Courts and the

operation of the orders directing the distilleries to charge Income-tax from the liquor contractors had been stayed. This point was conceded by the learned counsel appearing for the Revenue and he had submitted that the Union of India was moving the final Court for the transfer of all these cases for decision by it and for that reason, the written statements had also not been filed in these writ petitions. So, in view of the facts and circumstances, the operation of the orders of the Excise and Taxation Commissioners were stayed. In the meantime, various distilleries filed applications for vacation/modification of the stay orders passed by the Motion Benches on the plea that the applicants (the distilleries) were obliged by the impugned provisions to charge/collect Income-tax from the liquor contractors on the purchase price and to deposit the same in the Union Treasury. Because of the stay orders granted by this Court, on the applications of the petitioners, the distilleries had been restrained from charging Income tax from the petitioner. However, under the law, they were under a duty to collect Income-tax. They were in a predicament. They also aver that the High Courts of Andhra Pradesh and Kerala had in the two decisions reported as *A. Sanyasi Rao and another* v. *Government of Andhra Pradesh and others* (1); (1989) and *I.T.K. Aboobacker and others* v. *Union of India* (2), upheld the constitutional validity and vires of the impugned provisions and dismissed the writ petitions filed by the liquor contractors and dealers in forest produce and timber. Since huge sums of revenue were involved and the recovery of Income-tax had been stayed, we directed pre-poning the hearing of the applications for vacation of the stay orders and confirmation of stay orders. At the hearing of those applications, learned counsel for the parties contended that for deciding the applications, merits of the cases shall have to be gone into and, therefore, instead of deciding these applications, the main writ petitions be heard and decided. In this view of the matter, we decided to hear and dispose of the writ petitions.

(7) Learned counsel appearing for the petitioners repeated the arguments taken up in the writ petitions, which have been extracted above. All these questions stands answered against the petitioners by a recent Division Bench decision of the Andhra Pradesh High Court in *A. Sanyasi Rao and another* v. *Government of Andhra Pradesh and others.* B. P. Jeevan Reddy, J.

(1) (1989) 178 I.T.R. 31.

(2) (1989) 177 I.T.R. 358.

Reddy, J, has, if we may say so with great respect, in his lucid judgment, minutely examined and analysed the impugned provisions of the Act and the arguments of the parties bearing upon the constitutionality and validity of these provisions and in the context of various decisions of the apex Court having a bearing on the points of controversy. We, respectfully, concur in the felicitus formulations articulated in the judgment.

(8) The first question that calls for determination is the legislative competence of Parliament to enact Sections 44-AC and 206-C of the Act. Power of Parliament to frame laws in respect of Income-tax flows from Entry 82 in List I of the Seventh Schedule to the Constitution. This entry authorises Parliament to make laws with respect to income, other than agricultural income. It is well established that "Entries in the Lists are not powers but are only fields of legislation and that widest import and significance must be given to the language used by Parliament in the various entries." Entries in these lists not only authorise the imposition of tax but also enactment of laws which prevent the evasion of such taxes, and other incidental and consequential matters. The conclusions in A. Sanyasi Rao's case are illuminating :—

> "Entries in legislative lists in the Constitution must be given a wide interpretation. The Income-tax Act defined the expression 'income' in clause (24) of section 2, but that definition cannot be read back into entry of List I of the Seventh Schedule to the Constitution. Even the said definition is an inclusive one and has been expanding from time to time. Several items have been brought within the definition from time to time by various amending Acts. The said definition cannot, therefore, be read as exhaustive of the meaning of the expression 'income' occurring in entry 82 of List I in the Seventh Schedule. This, of course, does not mean that an amount which can by no stretch of imagination be called 'income' can be treated as 'income' and taxed as such by Parliament. It must have some characteristics of income as broadly understood. So long as the amount taxed as income can rationally be called income as generally understood, it is competent for Parliament to call it 'income' and levy

tax thereon. Section 44 AC of the Income-tax Act, 1961, clearly indicates that the profits and gains meant by it are the profits and gains of the business of trading in specified goods. This is evident not only from the marginal note given to the section, but also from the words 'from the business of trading in such goods', occurring in clauses (a) and (b) of sub-section (1) thereof. Tax is undoubtedly on the business income. For the sake of convenience and also having regard to the difficulty in making a normal assessment in the case of such assessees, it adopts the purchase price as a measure of tax. Moreover, Parliament has power to enact a provision which prevents evasion of tax. Section 44 AC was meant to check evasion of tax. Sections 44 AC and 206 C are anti-evasion measures. Section 44 AC does not bar a regular assessment of the business income of the assessee in accordance with sections 28 to 43 C. There is no violation of the principle that each year of assessment is a unit by itself. The only departure is that the tax collected under section 206 C(1) at the time of the purchase of goods will be given credit for in the year in which those goods are sold. Until such sale is effected, the tax collected will be held over. This is what sub-section (4) of section 206 C says and there is no illegality in this. Hence, Parliament was perfectly competent to enact sections 44 AC and 206C. Section 206C does not suffer from any constitutional infirmity and is valid."

We are in complete agreement with the above observations and, following the same hold that Parliament was fully competent to enact sections 44 AC and 206C of the Act.

(9) We next take up the plea that sections 44 AC and 206 C of the Act are violative of Articles 14 and 19(1)(g) of the Constitution. This point has been examined by the Bench in A. Sanyasi Rao's case (supra) from all possible angles and it has been concluded that the non obstante clause in section 44 AC excludes the applicability of provisions of sections 28 to 43 C to the cases of the petitioners. Even if there is large scale evasion and the State was losing a lot of revenue and the same required to be plugged, the remedy therefor should be proportionate to the evil sought to be remedied; it should be reasonable. It cannot be said that every

country liquor contractor was evading Income-tax or was running the business in benami names and had set up fictitious firms/ associations. Still there are honest liquor contractors in the country. There is no basis for assessing the profits and gains of every liquor licensee at the rate of 40 per cent of the purchase price. In the very nature of things, there may be many persons who may actually earn less profit than specified or may incur losses. In the bill the profits and gains were proposed to be assessed at the rate of 60 per cent of the purchase price. It has not been explained why it was reduced to 40 per cent in the Act. Because of these measures, section 44 AC offends Article 14 of the Constitution. It also imposes unreasonable restriction upon the fundamental right guaranteed by Article 19(1)(g). However, in social interest instead of striking down section 44 AC, it was thought better to read it down to make it consistent with the guarantees in Articles 14 and 19(1)(g) and to read it as an adjunct to sections 28 to 43 C. It is apt to quote the observations of their Lordships in this context :—

> "Literally read, section 44 AC brings about a legislative assessment of the profits and gains of persons trading in specified goods. The normally applicable provisions, sections 28 to 43 C, are dispensed with altogether. It is declared that profits and gains of every person from the said business, irrespective of his circumstances, volume of business, finance, expenditure or other attendant matters, shall be deemed to be the specified percentage of the purchase price. Person trading in specified goods form a class, inasmuch as they are difficult to trace once the contract period is over. Very often, these contracts are taken in the names of fictitious persons. There was large scale evasion and the State was losing a lot of revenue. Loss of revenue had to be plugged. But the remedy should be proportionate to the evil. It should be reasonable. It should not assume the charactor of a confiscatory measure. It would have been enough if Section 206C had been enacted and it was provided that such collections shall be subject to a regular assessment. It was not necessary to dispense with sections 28 to 43C in the matter of assessment of profits and gains of business as had been done by section 44 AC. The percentages

referred to in section 44AC(1) could have been indicated as merely explaining and justifying the level of collection in section 206C. Once the tax is collected, based upon the purchase price of the specified goods, it is really immaterial whether the business is carried on in the names of dummies, in fictitious names, or in the names of persons of no means. The tax collected is already with the State. An assessment can then be made in accordance with the provisions of law. If the tax assessed is more than the tax already collected, may be there is little likelihood of such collection; but, even with these provisions, the situation is the same. There is no reason behind saying that even where a person actually earns less profit than that specified or incurs loss, even then his profits and gains should be arbitrarily fixed at 40 per cent of the purchase price, or that he should not be allowed to establish his real income from the said business or trade. May be these persons do not maintain the books properly; but that is not an insuperable difficulty. If the books are not properly maintained, or are suspicious or unacceptable otherwise, they can always be rejected and a best judgment assessment made. The level of profits in such trade in a given area, region or State can always be kept in mind while making a best judgment assessment and/or while determining the genuneness of accounts. The existence of some honest traders even in the specified goods cannot be ruled out. It was not explained on what basis profits and gains of business in the specified goods were assessed at 60 per cent uniformly at the stage of the Finance Bill nor was it clear on what basis the percentages were altered to the several figures in section 44AC. The imposition is disproportionate and offends against article 14. It is also an unreasonable restriction upon the fundamental right guaranteed by article 19(1) (g). In such a situation, the court has the option to strike down section 44 AC or to read it down to make it consistent with the guarantees in articles 14 and 19(1)(g). In view of the overall objects underlying the provisions and language in sub-section (4) of section 206C, it would serve public interest and further the intendment of Parliament if section 44AC is read down. Section 206C serves the purpose underlying the provisions. Once the tax is collected, the contractor

cannot run away. Probably, only in cases where the profit is far higher than 40 per cent would he make himself scarce. In all other cases, he would come to the Department for an assessment of his income, and there is no reason why a regular assessment should not be made in his case. In other words, section 44AC must be read as an adjunct to and as explanatory of section 206C. On this construction, section 44AC does not dispense with sections 28 to 43AC absolutely. The non obstante clause in section 44AC(1), 'notwithstanding anything to the contrary contained in sections 28 to 43C' would be confined to the limited purpose of sustaining the deductions provided for in section 206C. The level of profits and gains would be relevant only as explaining and justifying the level of deductions provided in section 206C. Collections will be made at the rates specified in section 206C and then a regular assessment will be made like in the case of any other assessee. So far as the percentages of collection at source, maintained in section 206C are concerned, they cannot be said to be unreasonable or excessive since they would be only tentative collections subject to a final assessment. After the tax is collected in the manner provided by section 206C, a regular assessment will be made in accordance with sections 28 to 43C. Read down in this manner, section 44AC also does not suffer from any constitutional infirmity. Thus, sections 44AC and 206C are valid."

(10) It may be appropriate to mention at this stage that a Division Bench of the Kerala High Court in *I.T.K. Aboobacker and others* v. *Union of India and others*, (1989) 177 I.T.R. 358, had upheld the vires of sections 44AC and 206C of the Act on the ground that these provisions were inserted in the Income-tax Act with the object of working out profits on a presumptive basis to get over the problems in assessing the income and recovering the tax in the cases of persons dealing in timber, forest produce, (country liquor), etc. It was noted that a large number of such persons either did not maintain any books of acccount or the books maintained were irregular or incomplete. Further, locating such persons after the contract or agreement also became impossible in many cases. Tax collection

from those persons was also found to be extremely difficult by the Department. Therefore, sections 44AC and 206C provide for an easy method of assessment of income and recovery of tax.

(11) With respect, we prefer to follow the view taken in *A. Sanyasi Rao's case* (supra) to the ratio of *I.T.K. Aboobacker's case* (supra). We hold that when read down in the maner suggested in *A. Sanyasi Rao's case,* sections 44AC and 206C are valid and constitutional. It may be mentioned here that no argument was addressed regarding the constitutional validity of section 276BB of the Act or the infraction of Articles 240 and 258 of the Constitution.

(12) In fairness to the learned counsel for the petitioners, it may be mentioned that they had argued that country liquor contractors had been subjected to hostile and invidious discrimination by making them subject to provisions of sections 44AC and 206C and leaving out the contractors of Indian-made foreign liquor. Both sets of contractors are engaged in the business of sale of liquor. There cannot be any differentiation on the ground that in one case the contractors sell country liquor and in the other case they sell Indian-made foreign liquor. We are unable to accept this contention. The country liquor and Indian-made foreign liquor are distinct and separate goods having distinct characteristics. The vends for country liquor and Indian-made foreign liquor are auctioned separately. They cater to different strata of society. The alcoholic strength in the two types of liquors is different. There is a vast difference between the prices of the two. The two liquors fall in two separate and distinct classes. The classification has a direct nexus with the objects to be achieved, i.e. regulation of trade in intoxicants and earning of revenue for the State. Thus viewed, the attack of the petitioners to the impugned sections on this score also fails.

(13) The submission that a contractor engaged in the business of sale of country liquor in two different States may have to pay Income-tax at different rates and, for that reason, the impugned provision are unsustainable, has not appealed to us. In our view, the Income-tax authorities will assess each set of the contractors on the basis of the income earned by them whether the business is in State 'A' or in State 'B' will not have any bearing. The argument could have some force if we had held that the provisions of sections 44AC and 206C, if read in their literal sense, were valid.

(14) It was then contended that the Excise Duty which is paid by a contractor before getting a permit to purchase country liquor from the distillery cannot be a component of the purchase price for the purpose of calculating the presumptive income. This argument has been repelled in *A. Sanyasi Rao's* case and for the same reasons, we reject the same.

(15) Lastly, it was submitted that under section 44AC, 40 per cent of the purchase price is deemed to be profits and gains of the contractor, then under section 206C the distillery cannot charge from the contractor income-tax at the rate of 15 per cent of the total purchase price. It could, at best, be charged only at 40 per cent of the purchase price. This very argument had been raised in *A. Sanyasi Rao's case* and has been dealt in detail and has been turned down. We are in respectful agreement with the reasoning and conclusions therein and hold that on a harmonious construction of sections 44AC and 206C of the Act, an inescapable conclusion is that the distillery is entitled, rather obliged, to charge a sum equal to 15 per cent of the purchase price as Income-tax as a provisional collection.

(16) We conclude that:

(1) Parliament was competent to enact sections 44AC and 206C. The tax levied under these sections is tax on income and not on purchases.

(2) Section 44AC read down is an adjunct to sections 28 to 43C and 206C. Even country liquor contractors have to be assessed in relation to their business in country liquor in accordance with the provisions of sections 28 to 43C. Thus read, section 44AC does not suffer from any constitutional infirmity.

(3) The collection of tax at source provided by section 206C is relatable to the purchase price and not to the income component thereof.

(17) Due to the interim orders passed by this Court, the distilleries in the two States of Punjab and Haryana and Union Territory of Chandigarh had been restrained from charging and collecting

Income Tax under sections 44AC and 206C though they were required by law to do so. Even uptil today, they have not been charging Income-tax at source. Since the distilleries were restrained by this Court from performing their statutory duties, they cannot be held liable civily or criminally for not following the legislative command in sections 44AC and 206C and no action should be taken and can be taken against them on this score. The petitioners country liquor contractors shall be liable to pay Income-tax on the purchases made by them from the distilleries during this interregnum and the same shall ultimately be set off or taken into account while framing the final assessment by the authorities.

(18) We accordingly dispose of these writ petitions in the above terms with no order as to costs.

R.N.R.

Before A. L. Bahri, J.

SMT. RAVI KANTA,—*Petitioner.*

versus

THE LAND ACQUISITION TRIBUNAL, HISSAR AND OTHERS,—

Respondents.

Civil Writ Petition No. 738 *of* 1988.

25th August, 1989.

Land Acquisition Act (I of 1894)—Ss. 19 and 50(2)—Punjab Town Improvement Act, 1922 (as applicable to the State of Haryana)—Ss. 28(2), 32(1), 36, 38, and 42—Constitution of India, 1950—Article 226—Land acquired by the State Government for improvement trust—Improvement trust is an interested party and has right to seek reference and challenge award—Trust is competent to maintain writ petition under Art. 226—Adoption of belting system for purposes of fixing market value—Land bearing residential and commercial potential—Applying belting system is not warranted—Uniform rate applied.