

Adarsh Industrial Corporation
v.
The Market Committee,
Karnal

Tek Chand, J.

statutory enactment like section 31, although expressed in affirmative language, has to be interpreted as implying a corresponding negative. A statute which requires the manner of realisation of dues to the Government from a Market Committee as arrears of land revenue impliedly negatives such an exceptional and extraordinary mode of recovery in other cases not covered by the provision.

For reasons stated above, rule 51 in the instant case is inconsistent with the legislative intention as can be gathered from the provisions of section 31 of the Act. Rule 51 provides for an operation excluded by section 31 and must, therefore, be struck down as *ultra vires*.

The result of the above discussion is that the contention of the petitioners prevails and the petition must be allowed. The issue, whether the civil Court has got jurisdiction to entertain this suit, is answered in the affirmative and the case is remanded to the trial Court for decision on the remaining issues.

The costs of these proceedings will abide the event.

Capoor, J.

S. B. CAPOOR, J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS

Before Tek Chand and Inder Dev Dua, JJ.

THE COMMISSIONER OF INCOME-TAX, PUNJAB,—
Applicant

versus

DR. SHAM LAL NARULA,—*Respondent.*

Income-tax Reference No. 28 of 1960.

1962

Jan. 31st.

Income-tax Act (XI of 1922)—Interest awarded under Section 34 of Land Acquisition Act (I of 1894)—Whether

capital receipt not liable to tax—“Interest” and “Compensation”—Meaning of—“Acquisition” and “Requisition”—Effect of—Compensation paid in respect of—Whether capital receipt or revenue receipt.

Held, that on a true interpretation of section 34 of the Land Acquisition Act, 1894, the interest awarded by the Collector is not a capital but a revenue receipt and as such is liable to tax under the Income-tax Act. Section 23(1) of the Land Acquisition Act enumerates various factors which have to be taken into consideration in determining “compensation” for the acquisition of the land. This compensation represents the value of the land acquired and from its very nature assumes the character of capital. The words in section 34 “when the amount of such compensation is not paid or deposited on or before taking possession of land * * * * *” refer to the principal amount which takes the place of the loss of capital assets resultant from the acquisition. The words “such compensation” refer to the compensation mentioned in section 23 which in the hands of the person whose land is acquired would come as a capital receipt. Besides the amount which represents “such compensation”, the Collector is required to pay the amount awarded with interest at 4 per cent per annum from the time of taking possession until payment. This payment calculated at the rate of 4 per cent per annum represents the return on the capital or income which the statute determines and to which, such a person is entitled on the investment of the amount of compensation as comprehended by section 23. In other words, this is the *quid pro quo* for the loss of income which would have been earned on the investment of the capital sum which has been replaced by the land acquired. It, therefore, essentially retains the character of income and cannot be confused with capital. Section 34 makes it obligatory on the Collector, to pay this amount as a recompense for the delayed payment of the compensation, representing the value of the land, of which he has been deprived by reason of compulsory acquisition. Nor can the receipt of such interest be treated as exempt from tax on the ground that it is “of a casual and non-recurring nature”. Whenever the payment of the compensation under section 23 is delayed, the payment of interest under section 34 becomes a concomitant of “such compensation” as is payable under section 23. This receipt is not casual in the sense of what happens by accident or what is brought

about by an unknown cause. A casual happening is one which comes to pass without design and without being foreseen or excepted; it may be said to be fortuitous or accidental or the result of an unknown cause or chance. The payment under section 34 cannot be said to be without apparent cause, or in any unaccountable manner, or as a mere coincidence, or not designedly brought in the sense of being unexpected, unforeseen or without regularity. The word "casual" is an antonym for "regular" in the sense that something happens at uncertain times. In this sense payment under section 34 is not casual. Once payment of the compensation under section 23 is withheld after the taking of possession of the land acquired, the payment of interest at 4 per cent per annum becomes not casually but regularly and recurrently payable.

Held, that the words "interest" and "compensation" are sometimes used interchangeably and on other occasions they have distinct connotation. "Interest" in general terms is the return or compensation for the use or retention by one person of a sum of money belonging to or owed to another. In its narrow sense, "interest" is understood to mean the amount which one has contracted to pay for use of borrowed money. "Interest" in this sense may be placed broadly in three categories. The first kind is interest fixed by the parties to the bargain or contract, that is "interest" *ex pacto* or *ex contractu*. The second kind of "interest" is conventional interest, determined by the accepted usage, prevalent in a trade or a mercantile community. This is also called *ex-more*. In the third category may be placed the legal interest allowed by law or where the Court is empowered by the statute to grant interest generally or at a fixed rate, that is *ex lege*. In the instant case, four per cent rate of interest is *ex lege* as it is allowed under section 34 of the Land Acquisition Act. In whatever category "interest" in a particular case may be put, it is a consideration paid either for the use of money or for forbearance in demanding it, after it has fallen due, and thus, it is a charge for the use or forbearance of money. In this sense, it is a compensation allowed by law or fixed by parties, or permitted by custom or usage, for use of money, belonging to another, or for the delay in paying money after it has become payable. In common acceptation, "interest" is the earning, profit, income or compensation from use of money. Whenever a liquidated sum of money is unjustly withheld, "interest" is allowed

to the creditor by way of compensation on account of delay of payment by the debtor. Interest is in the nature of legal damages, allowed for failure to pay money due, or for wrongful retention of money. Interest is said to bear the same relation to money that rent does to land, wages to labour, and hire to chattel; it is necessary incident and the natural growth of money. It also is considered in the nature of premia paid for use of money usually reckoned on percentage basis. The term "compensation" is used to indicate what constitutes or is regarded as equivalent or recompense for loss or privation. Ordinarily, the word "compensation" connotes equivalency, which adequately remunerates for a loss or deprivation, or for a service rendered, though under a statutory definition, it may indicate not what constitutes, but what by the legislature is treated as equivalent. Thus it will be noticed that in whatever range the connotation of the term "interest" or "compensation" may oscillate, or, whether the sense in which it may be understood is strict or liberal, the meanings of the two terms largely overlap. Blind adherence to nomenclature or labels will be treading on treacherous ground. It is the essence of the transaction more than the appellation which has to be looked for. What is of consequence is the classification between 'capital receipts' and 'income receipts', or between 'capital disbursements' and 'income disbursement's'. This terminology is well established under the tax laws, though there may be particular instances where the line of demarcation becomes blurred; nevertheless, these two categories are distinct and well recognized.

Held, that a property of a citizen may either be taken by the State permanently or temporarily, and this is usually termed by calling the former taking "acquisition" and the latter "requisition". In the former case the title vests in the State or in the body acquiring the property. "Requisition" is the term used where the title in the property remains unaffected, but the title-holder is deprived of its use for a time. If compensation is paid for an act of "acquisition", such a sum would be in the nature of capital receipt, and, on the other hand, if compensation is for deprivation of user on account of act of requisitioning, the "compensation", being for loss of profits, becomes a revenue receipt. The compensation paid for the land would, therefore, constitute a capital asset, but compensation paid on requisitioning would be in the nature of a

revenue receipt. Certain compensations may be of composite quality, and in that case, it has to be determined what portion represents a capital receipt and what a revenue receipt. Instances are not wanting where the term "interest" is employed as a basis of calculation for arriving at a capital sum and, therefore, despite the use of the term "interest" the sum received is not exigible as tax; and yet, there may be another class of cases where "interest" represents income, which is taxable. Whether a particular receipt becomes a surrogatum for the income or is merely a substitute for capital would depend upon the interpretation of the statutory provisions examined in the background of its essential character having regard to the facts and circumstances of the particular case. That which is derived, gained or accrues from capital business is income, the essential difference being that the capital is in the nature of a fund and income partakes of the character of a flow. In popular and also in legal parlance "capital" is understood as the source of income and "income" as the fruit of capital. The yardstick in all such cases will be not the caption but the contents whether styled as "interest", "compensation", "damages", or "award".

Reference under Section 66(1) of the Income tax Act, 1922, by the Income-tax Appellate Tribunal (Delhi Bench), dated the 9th July, 1959, for decision of the below-noted important question of law involved in the case.

"Whether on a true interpretation of section 34 of the Land Acquisition Act and the Award given by the Collector of PEPSU on the 30th September, 1955, the sum of Rs. 48,660 was capital receipt not liable to tax under the Indian Income-tax Act"

D. N. AWASTHY AND H. R. MAHAJAN, ADVOCATES, for the Applicant.

ATMA RAM AND R. S. MARYA, ADVOCATES, for the Respondent.

ORDER

Tek Chand, J.

TEK CHAND, J.—This is an income-tax reference at the instance of the Commissioner of Income-tax arising out of the order of the Tribunal in

I.T.A. No. 5276 of 1957-58, and the following question of law has been referred to this Court under section 66(1) of the Indian Income-tax Act—

The Commissioner of Income-tax, Punjab

v.

Dr. Sham Lal Narula

Tek Chand, J.

“Whether on a true interpretation of section 34 of the Land Acquisition Act and the Award given by the Collector of Pepsu on the 30th September, 1955, the sum of Rs. 48,660 was capital receipt not liable to tax under the Indian Income-tax Act?”

The question of law reproduced above has been referred to this Court in view of the under-noted facts and circumstances.

The assessee is a Hindu undivided family represented by Dr. Sham Lal Narula. Apart from other sources, the assessee owned land measuring 40 *bighas* 11 *biswas* in the erstwhile Patiala State. This land was acquired by the Patiala Government under Patiala Act 3 of 1995 Bk. On 15th October, 1951, possession of the land was taken over by the Government though by that date the amount of compensation to which the assessee was entitled had not been determined. An award was given by the Collector of Pepsu on 30th September, 1955, and the assessee received a sum of Rs. 2,81,882 which included a sum of Rs. 48,660 as interest. The following is the relevant extract from the award made by the Collector, Pepsu—

“Hence I am of the opinion that the market value of the land in question is Rs. 5,000 per *bigha*. The total amount of compensation of the land acquired comes to Rs. 2,02,750. The possession of this land was taken by the Acquiring Department on 5th October, 1951. As such the owner of the land is entitled to receive an interest at the rate of 6 per cent per annum on the amount to be paid as price of the land. The amount of interest comes to Rs. 48,660 in addition to it the owner of the land is entitled to receive an amount of Rs. 30,412 at the

The Commis-
sioner of Income-
tax, Punjab

v.

Dr. Sham Lal
Narula

Tek Chand. J.

rate of 15 per cent on account of compulsory nature of acquisition. Thus the grand total of the amount comes to Rs. 2,81,822."

The interest of Rs. 48,660 was awarded under section 34 of the Land Acquisition Act (1 of 1894) read with Pepsu Land Acquisition Act of 1954. When assessment was made by the Income-tax Officer for the assessee's income in 1956-57, it was contended on behalf of the assessee that the sum of Rs. 48,660 was capital receipt not liable to tax under the Indian Income-tax Act. The Income-tax Officer was of the view that the same was in the nature of revenue receipt and, therefore, attracted tax liability. This view on appeal by the assessee, was affirmed by the Appellate Assistant Commissioner. The assessee then appealed to the Income-tax Tribunal and succeeded. The Tribunal held that the receipt of Rs. 48,660 was clearly receipt of a capital nature not liable to tax under the Act. According to the Tribunal, section 34 of the Land Acquisition Act quantified the amount of interest to be paid to a person whose land was acquired. The Tribunal felt that merely because the amount of compensation was determined by a particular measure, its real character would not change. Following the rule laid down by the Allahabad High Court in *Behari Lal Bhargwa v. Commissioner of Income-tax* (1), the Tribunal held that the amount in question was not liable to tax.

The Commissioner of Income-tax applied under section 66(1) of the Income-tax Act requiring the Appellate Tribunal to refer to this Court the question of law reproduced above and the Tribunal has drawn up the statement of the case and framed the question of law for the opinion of this Court.

Learned counsel at the bar cited a number of authorities in support of their respective contentions which will be examined presently. It will be

(1) (1941) 9 I.T.R. 9,

advantageous to consider at this stage the general scheme of the Land Acquisition Act with reference to the relevant provisions.

The Land Acquisition Act (1 of 1894) was passed to amend the law for the acquisition of land needed for public purposes and for companies, and for determining the amount of compensation to be paid on account of such acquisitions. In brief outline, the provisions of the Act are attracted when it appears to the Government that land is needed, or likely to be needed, for any public purpose, and a preliminary notification to that effect is published (section 4). Under section 5A, any person interested may object to the acquisition and the Collector, after hearing such objections and after an enquiry, may submit the case to the appropriate Government for its decision. On the appropriate Government being satisfied as to the need for acquisition, a declaration with particulars is published in the official gazette (section 6). The Collector then causes the land to be marked out, measured and a plan to be made (section 8), and causes a public notice inviting persons concerned to claim compensation (section 9). Under section 11, the Collector proceeds to enquire into the objections and then makes an award, which is final except as otherwise provided in the Act. On making the award, the Collector may take possession of the land which thereupon vests absolutely in the Government free from all encumbrances (section 16). The Collector has special powers in cases of emergency (section 17). The award made by the Collector is not decisive and any person, who is dissatisfied with the award may require the Collector to refer it for the determination of the Court (section 18); and the procedure for reference is provided,—*vide* sections 19 to 22. Section 23 is important as it lays down the matters which the Court must take into consideration in determining the amount of compensation to be awarded for land acquired under this Act and is reproduced *in extenso*—

“23. (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall

The Commis-
sioner of Income-
tax, Punjab

v.

Dr. Sham Lal
Narula

Tek Chand, J.

The Commis-
sioner of Income-
tax, Punjab

v.

Dr. Sham Lal
Narula

Tek Chand, J.

take into consideration—First, the market-value of the land at the date of the publication of the notification under section 4, sub-section (1); Secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof; thirdly, the damage (if any) sustained by the person interested at the time of the Collector's taking possession of the land by reason of severing such land from his other land; fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings; fifthly, if in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and sixthly, the damage (if any) *bona fide* resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land.

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

Section 24 enumerates matters which shall not be taken into consideration in determining compensation. The next three succeeding sections provide rules as to the amount of compensation, the

form of award and costs of proceedings. Section 28, which is next in importance, runs as under—

The Commissioner of Income-tax, Punjab

v.

Dr. Sham Lal Narula

—
Tek Chand, J.

“28. 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 four 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”.

Section 31 requires the Collector to tender payment of the compensation awarded by him and to pay the amount to persons interested unless prevented by certain specified contingencies. Section 34, the interpretation of which is sought in the question of law referred to us, deals with payment of interest and runs as under—

“34. When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of four per centum per annum from the time of so taking possession until it shall have been so paid or deposited”.

The provisions that follow do not require any detailed notice as they deal with temporary occupation of land, acquisition of land, for companies, and miscellaneous matters with which this Court is not concerned for purposes of this case.

The words “compensation” and “interest” which occur in section 34 may now be considered. In the absence of any statutory definitions, their uncircumscribed application is prone to cause confusion. As the connotation of these two terms does not admit of precision, and admits of considerable flexibility and varying shades of meaning,

The Commis-
sioner of Income-
tax, Punjab
v.

Dr. Sham Lal
Narula

Tek Chand, J.

which are both narrow and broad, their true import needs to be examined with close scrutiny in the background of chargeability of income-tax.

The words "interest" and "compensation" are sometimes used interchangeably and on other occasions they have distinct connotation. "Interest" in general terms is the return or compensation for the use or retention by one person of a sum of money belonging to or owed to another. In its narrow sense, "interest" is understood to mean the amount which one has contracted to pay for use of borrowed money. "Interest" in this sense may be placed broadly in three categories. The first kind is interest fixed by the parties to the bargain or contract, that is "interest" *ex pacto* or *ex contractu*. The second kind of "interest" is conventional interest, determined by the accepted usage, prevalent in a trade or a mercantile community. This is also called *ex-more*. In the third category may be placed the legal interest allowed by law or where the Court is empowered by the statute to grant interest generally or at a fixed rate, that is *ex lege*. In the instant case, four per cent rate of interest is *ex lege* as it is allowed under section 34 of the Land Acquisition Act. In whatever category "interest" in a particular case may be put, it is a consideration paid either for the use of money or for forbearance in demanding it, after it has fallen due, and thus, it is a charge for the use or forbearance of money. In this sense, it is a compensation allowed by law or fixed by parties, or permitted by custom or usage, for use of money, belonging to another, or for the delay in paying money after it has become payable. In common acceptance, "interest" is the earning, profit, income or compensation from use of money. Whenever a liquidated sum of money is unjustly withheld, "interest" is allowed to the creditor by way of compensation on account of delay of payment by the debtor. Interest is in the nature of legal damages, allowed for failure to pay money due, or for wrongful retention of money. Interest is said to bear the same relation to money that rent does to land, wages to labour,

and hire to chattel; it is a necessary incident and the natural growth of money. It also is considered in the nature of premia paid for use of money usually reckoned on percentage basis.

The term "compensation" is used to indicate what constitutes or is regarded as equivalent or recompense for loss or privation. Ordinarily, the word "compensation" connotes equivalency, which adequately remunerates for a loss or deprivation, or for a service rendered, though under a statutory definition, it may indicate not what constitutes, but what by the Legislature is treated as equivalent. Thus it will be noticed that in whatever range the connotation of the term "interest" or "compensation" may oscilate, or, whether the sense in which it may be understood is strict or liberal, the meanings of the two terms largely overlap. In these circumstances, it will not be free from confusion if the answer to the question posed is to be furnished by styling the amount either as "interest" and, therefore, taxable or as "compensation" and consequently immune from tax liability. I am aware of certain decided cases in which the decision has rested on whether a particular sum is "interest" or "compensation" for incurring or avoiding tax liability. Blind adherence to nomenclature or labels will be treading on treacherous ground. It is the essence of the transaction more than the appellation which has to be looked for. What is of consequence is the classification between 'capital receipts' and 'income receipts', or between 'capital disbursements' and 'income disbursements'. This terminology is well established under the tax laws, though there may be particular instances where the line of demarcation becomes blurred; nevertheless, these two categories are distinct and well recognized. It may, however, be difficult to determine whether a particular receipt or disbursement can infallibly be placed under one caption or the other in all cases, but a large number of illustrative cases afford some assistance.

For purposes of the instant case it is well to remember that a property of a citizen may either be taken by the State permanently or temporarily,

The Commis-
sioner of Income-
tax, Punjāb
v.

Dr. Sham Lal
Narula

—
Tek Chand, J.

The Commis-
sioner of Income-
tax, Punjab
v.
Dr. Sham Lal
Narula
Tek Chand, J.

and this is usually termed by calling the former taking "acquisition" and the latter "requisition". In the former case the title vests in the State or in the body acquiring the property. "Requisition" is the term used where the title in the property remains unaffected, but the title-holder is deprived of its use for a time. If compensation is paid for an act of "acquisition", such a sum would be in the nature of capital receipt, and, on the other hand, if compensation is for deprivation of user on account of act of requisitioning, the "compensation", being for loss of profits, becomes a revenue receipt. The compensation paid for the land would, therefore, constitute a capital asset, but compensation paid on requisitioning would be in the nature of a revenue receipt. Certain compensations may be of composite quality, and in that case, it has to be determined what portion represents a capital receipt and what a revenue receipt. Instances are not wanting where the term "interest" is employed as a basis of calculation for arriving at a capital sum and, therefore, despite the use of the term "interest" the sum received is not exigible as tax; and yet, there may be another class of cases where "interest" represents income, which is taxable. Whether a particular receipt becomes a surrogatum for the income or is merely a substitute for capital would depend upon the interpretation of the statutory provisions examined in the background of its essential character having regard to the facts and circumstances of the particular case. That which is derived, gained or accrues from capital business is income, the essential difference being that the capital is in the nature of a fund and income partakes of the character of a flow. In popular and also in legal parlance "capital" is understood as the source of income and "income" as the fruit of capital. The yardstick in all such cases will be not the caption but the contents whether styled as "interest", "compensation", "damages", or "award". This matter was examined by the House of Lords in *Westminster Bank Ltd. v. Riches* (2), in considerable detail and certain

observations are in the nature of *loci classici*. The House of Lords overruled the decision in *In re National Bank of Wales* (3), negating the contention that "interest" which was really by way of damages could not be income for purposes of income-tax law. It was held, that the real question in cases of this type, was not whether the amount received was interest, principal or damages, but whether it was income or capital sum estimated in terms of interest. In that case, a decree was passed against the Westminster Bank for £ 36,255 as representing a debt due to Riches and in the exercise of its statutory powers the Court also awarded a further sum of £10,028 as representing interest due on the debt from the date when the cause of action arose. It was held that the additional sum of £ 10,028 was taxable being in the nature of income. Viscount Simon in his speech in the House of Lords said—

The Commissioner of Income-tax, Punjab
v.
Dr. Sham Lal Narula
—
Tek Chand, J.

"The appellant contends that the additional sum of £ 10,028 though awarded under a power to add interest to the amount of the debt, and though called interest in the judgment, is not really interest such as attracts Income-tax, but is damages. The short answer to this is, that there is no essential incompatibility between the two conceptions. The real question for the purpose of deciding whether the Income-Tax Acts apply, is whether the added sum is capital or income, not whether the sum is damages or interest". (p. 187).

Lord Wright referring to the contention of the appellant said—

".....the contention is that money awarded as damages for the detention of money is not interest and has not the quality of interest. Evershed, J., in his admirable judgment, rejected that distinction. The

(2) (1942-48) 28 T.C. 159,
(3) L.R. (1899) 2 Ch. 629.

The Commis-
sioner of Income-
tax, Punjab

v.

Dr. Sham Lal
Narula

—
Tek Chand, J.

Appellant's contention is in any case artificial and is, in my opinion, erroneous, because the essence of interest is that it is a payment which becomes due because the creditor has not had his money at the due date. It may be regarded either as representing the profit he might have made if he had had the use of the money or conversely the loss he suffered because he had not that use. The general idea is that he is entitled to compensation for the deprivation. From that point of view it would seem immaterial whether the money was due to him under a contract express or implied, or a statute, or whether the money was due for any other reason in law. In either case the money was due to him and was not paid, or, in other words, was withheld from him by the debtor after the time when payment should have been made, in breach of his legal rights, and interest was a compensation, whether the compensation was liquidated under an agreement or statute, as for instance under section 57 of the Bills of Exchange Act, 1882, or was unliquidated and claimable under the Act as in the present case. The essential quality of the claim for compensation is the same and the compensation is properly described as interest." (p. 189).

Lords Simonds remarked—

"Here the argument is that, call it interest or what you will, it is damages and, if it is damages, then it is not 'interest in the proper sense' or 'interest proper' expressions heard many times by your Lordships.

This argument appears to me fallacious. It assumed an incompatibility between the ideas of interest and damages for

which I see no justification. It confuses the character of the sum paid with the authority under which it is paid. Its essential character may be the same, whether it is paid under the compulsion of a contract, a statute or a judgment of the Court. In the first case it may be called 'interest', and in the second and third cases 'damages in the nature of interest', or even 'damages'. But the real question is still what is its intrinsic character, and in the consideration of this question a description due to the authority under which it is paid may well mislead". (P. 194).

The Commis-
sioner of Income-
tax, Punjab
v.

Dr. Sham Lal
Narula

Tek Chand, J.

Lord Simonds also referred to a decision in *Glenboig Union Fireclay Co. Ltd. v. Commissioner of Inland Revenue* (4), where "the claim to tax was rejected because, though certain sums were described as interest, yet in substance a capital sum of compensation was awarded, the element of interest being introduced *in modum aestimationis*". Reference was also made to cases "which fell on the other side of the line, i.e. in which sums of money described and paid or received as interest were held to be "interest of money and taxable as such". Finally, Lord Normand said—

"This matter of terminology is, however, of no great importance, for the liability of a payment to income-tax does not depend on whether or not it is a payment of damages, but on whether or not it is received as income". (p. 198).

When referring *in extenso* to the above decision of the House of Lords. I was not unaware of the warning given by the Privy Council in *Commissioner of Income-tax, Bengal v. Shaw Wallace and Company* (5), against the desirability of relying upon the English case law evolved in the

(4) 12 T.C. 427.

(5) A.I.R., 1932 P.C. 138.

The Commis-
sioner of Income-
tax, Punjab
v.
Dr. Sham Lal
Narula
—
Tek Chand. J.

construction of the English Income-Tax statutes as the Indian Act is not in *pari materia* and in arrangement and language differs greatly from the English Acts and similarly warning was issued in *Pondicherry Railway Co. Ltd. v. Commissioner of Income-tax, Madras* (6), English authorities, therefore, naturally have to be examined with caution when applying to cases based upon differently-worded statutory language. But it is otherwise where observations are made by eminent Judges expounding and illumining similar principles; and where such is the case, they may be referred to as a valuable guide to our Courts. The decision of the House of Lords in the case of *Westminster Bank Ltd. v. Riches* (2), has been frequently relied upon by Courts in this country, and on the principle enunciated therein it is an authoritative pronouncement. It is not necessary to advert to other English cases bearing on this matter as they have been all noticed by the House of Lords in the above-mentioned case.

Section 23(1) of the Land Acquisition Act enumerates various factors which have to be taken into consideration in determining "compensation" for the acquisition of the land. This compensation represents the value of the land acquired and from its very nature assumes the character of capital. The words in section 34 "when the amount of such compensation is not paid or deposited on or before taking possession of the land * * " refer to the principal amount which takes the place of the loss of capital assets resultant from the acquisition. The words "such compensation" refer to the compensation mentioned in section 23 which in the hands of the person whose land is acquired would come as a capital receipt. Besides the amount which represents "such compensation", the Collector is required to pay the amount awarded with interest at 4 per cent per annum from the time of taking possession until payment. This payment calculated at the rate of 4 per cent per annum represents the return on the capital or income which statute determines and to which,

such a person is entitled on the investment of the amount of compensation as comprehended by section 23. In other words, this is the *quid pro quo* for the loss of income which would have been earned on the investment of the capital sum which has been replaced by the land acquired. It, therefore, essentially retains the character of income and cannot be confused with capital. Section 34 makes it obligatory on the Collector, to pay this amount as a recompense for the delayed payment of the compensation, representing the value of the land, of which he has been deprived by reason of compulsory acquisition. The observations of the Supreme Court in the case of *Satinder Singh v. Umrao Singh and another* (7), are a helpful guide in determining the character of such a receipt. Gajendragadkar, J., observed—

“It would thus be noticed that the claim for interest proceeds on the assumption that when the owner of immovable property loses possession of it he is entitled to claim interest in place of right to retain possession. * * * * when a claim for payment of interest is made by a person whose immovable property has been acquired compulsorily he is not making claim for damages properly or technically so called; he is basing his claim on the general rule that if he is deprived of his land he should be put in possession of compensation immediately; if not, in lieu of possession taken by compulsory acquisition interest should be paid to him on the said amount of compensation”.

This interest is in lieu of delayed payment of compensation to which he was entitled immediately on the acquisition of his land. Learned Counsel for the assessee relies in the main upon the decision of the Allahabad High Court in *Behari Lal Bhargava v. Commissioner of Income-tax* (1), which no doubt supports the principle contended for by the assessee. In that case the

The Commis-
sioner of Income-
tax, Punjab
v.

Dr. Sham Lal
Narula

—
Tek Chand, J.

(7) A.I.R. 1961 S.C. 908.

The Commis-
sioner of Income-
tax, Punjab
v.
Dr. Sham Lal
Narula
—
Tek Chand, J.

Division Bench of that Court was examining the nature of the interest awarded under section 28 of the Land Acquisition Act and expressed the view that it was in the nature of compensation for the loss of the right to retain possession of the property acquired and was, therefore, damages assessed in terms of interest for loss of possession of property up to the date of the receipt of its consideration; and as such was not income and was not assessable. The facts of that case were that to houses belonging to the assessee's father had been acquired and the Land Acquisition Officer had awarded a certain sum as compensation. The assessee did not accept that sum as adequate and on a reference having been made by him to the Tribunal, the amount of compensation was increased. Consequently, the Improvement Trust who had acquired the property was directed under section 28 of the Land Acquisition Act to pay interest to him from the date of taking possession of the property to the date of payment. On his father's death the assessee received a certain sum as share of interest and the income-tax authorities assessed this amount to income-tax. The question of law referred to the High Court under section 66 of the Income-tax Act was—

“Whether the sum of Rs. 12,415 received by the petitioner as interest from the Improvement Trust was part of his income, profits or gains within the meaning of the Act?”

The view expressed by the Allahabad High Court was that the interest awarded under section 28 of the Act was in the nature of compensation for the loss of the late owner's right to retain possession of the property acquired. In other words, it was damages assessed in the terms of interest for loss of possession of property up to the date of the receipt of its consideration. The Bench expressed the opinion that the money in question did not represent the interest which the assessee might have received by investing the principal sum. One reason which induced the Bench to

come to that conclusion was that under section 28 the awarding of interest was not mandatory, but was discretionary with the Court and the claimant was not entitled to it as of right under any rule of law, but under section 34 under which the interest in the instant case has been calculated, it is compulsorily awardable. While answering the question referred in the negative, the High Court observed—

The Commis-
sioner of Income-
tax, Punjab
v.
Dr. Sham Lal
Narula
—
Tek Chand, J.

“It was not without considerable doubt and hesitation that we have arrived at this decision, for there is much to be said on the other side; but upon the whole matter we think that this is the correct view to take and we also bear in mind that where the interpretation of a fiscal enactment is open to doubt, it should be construed favourably to the subject”.

This decision has been considered in a number of cases and has not been followed as laying down the correct law. In that very High Court it came up for consideration in *Jagdambika Pratap Narain Singh v. Commissioner of Income-tax* (8). In this case the *zamindari* rights had been acquired by the State of U.P. According to the scheme of the U.P. Act, the rights of an intermediary in an estate, after the vesting of the same in the Government, are converted into a right to receive money on the date of vesting or as from the date of vesting, but inasmuch as the payment of money is not immediately made, and is temporarily withheld from him, and the amounts are paid gradually, 2½ per cent interest is paid. The Government issues compensation bonds and the *zamindari* rights are converted into compensation and the compensation is converted into a promise to pay through bonds. The payment of interest at 2½ per cent was, in the circumstances, held as not related to the acquisition of the property, but to the promise to pay or to the temporary use of the money by the Government. It was held that the amounts paid by the Government under the name of interest could not

(8) A.I.R. 1961 All. 574 (F.B.).

The Commis-
sioner of Income-
tax, Punjab
v.
Dr. Sham Lal
Narula
—
Tek Chand, J.

partake of the nature of compensation or damages but were in the nature of a return for the use that the Government makes of the money under the law, deemed to be belonging to the intermediary. The receipt of interest on securities referred to above was treated as an "income from some other source" and, therefore, taxable. In this connection the earlier Allahabad decision in *Behari Lal Bhargava's case* was considered and distinguished. It was also mentioned that the decision was not followed in the following cases:—

- (1) *Commissioner of Income-tax, Madras v. Narayanan Chettiar* (9),
- (2) *Gopaldas v. Commissioner of Income-tax* (10),
- (3) *Commissioner of Income-tax v. Kameshwar Singh* (11),

for the reason, that the learned Judges, who decided that case were not very sure about the correctness of their conclusion in view of their observations which have already been cited above. The above Full Bench decision of the Allahabad High Court is helpful as the observations made in it bear some analogy to the nature of the amount which the Commissioner of Income-tax claims to be chargeable to income-tax. Just as the interest of 2½ per cent payable under the compensation bonds partook of the nature of income, being a return for the use of the assessee's money by the Government for similar reasons in this case, the interest of 4 per cent which is being paid under the section 34 of the Land Acquisition Act is for deprivation of the use of the amount of compensation which was payable on or before taking of possession of the land.

The Madras High Court in *Narayanan Chettiar's case* (9), doubted the correctness of the decision in *Behari Lal Bhargava's case* and the reasoning of the Allahabad High Court

(9) (1943) 11 I.T.R. 470.

(10) A.I.R. 1951 Nag. 407.

(11) A.I.R. 1953 Pat. 217. (1953) 23 I.T.R. 212.

was not followed. In the Madras case on the death of the assessee's father the amount due to the assessee and his brother on account of their father's share was held to be a specified sum due to them in 1921, the date of the death of their father. The assessee and his brother being minors, the amount was not paid to them till 1938 when a further sum was ordered to be paid to them on account of interest. The assessee received a sum of Rs. 21,153 and this amount was treated as assessable to income-tax as it represented interest and not damages for the wrongful detention of money.

The Commis-
sioner of Income-
tax, Punjab
v.
Dr. Sham Lal
Narula
—
Tek Chand, J.

The decision in *Behari Lal Bhargava's case* was considered by the Patna High Court also, to be of doubtful authority, —(vide *Commissioner of Income-tax v. Kameshwar Singh* (11)). In this case the assessee was the owner of textile mills and the manager of the mills had sold away the machinery and a sum of Rs. 13,363 was thus due from the manager to the assessee. During the accounting year the assessee realised, as a result of litigation between him and the manager, a sum of Rs. 25,530 which included the principal, interest and certain other expenses. The interest was calculated by the income-tax authorities to be Rs. 10,497 and this amount in the hands of the assessee was taxed. The assessee, *inter alia*, maintained that this amount was really in the nature of damages for retention of money and was not interest. The sum was treated as interest on the sale proceeds which the manager ought to have made over to the assessee.

In *Commissioner of Income-tax, U.P. v. Jagmohan Das Rastogi* (12), on an application to stay the execution proceedings in a suit the debtor was asked to furnish security for a certain sum and to pay interest thereon. Subsequently the amount of the interest was handed over to the decree-holder. It was held that this receipt was in lieu of the enjoyment of the amount which had been calculated as security and was, therefore, a revenue receipt.

The Commis-
sioner of Income-
tax, Punjab
v.
Dr. Sham Lal
Narula
—
Tek Chand, J.

The learned counsel for the assessee drew our attention to certain observations made by the Patna High Court in *Commissioner of Income-tax, Bihar and Orissa v. Rani Prayag Kumari Debi* (13). These observations relate to the particular facts of that case which are no analogue for this case. The Patna decision referred to cases dealing with the situation where damages, pure and simple, had been awarded. The essential test which was preferred by the Patna High Court on a review of a number of decisions in English cases was that nomenclature did not matter. A sum may be recovered by styling it as interest, though essentially it may be by way of damages. If that be so, its receipt would not be chargeable to income-tax as that is a part of damages, but where a sum is due on a definite date with interest for use of the principal amount, it is none-the-less interest and chargeable to income-tax, although it is recovered along with the principal. Reliance was placed, *inter alia*, upon the observations of Lord Johnston in *Schulze v. S.W. Benstead* (14). The principle propounded in the judgment is unexceptionable. Referring to the sum received by the assessee as interest at the rate of 3½ per cent Lord Johnston remarked—

“* * so that when it reached the hands of the trustees it was a surrogatum for that which ought to have termly reached the hands of the trustees and have been applied by them as income, in which case it would have been subject to income-tax, * *”.

The receipts may fall between either of the two categories regardless of how they are styled. Whether they partake of the nature of capital receipts even if styled as interest or of revenue receipts, though called by the name of damages or compensation, does not really matter. There is no observation in the above-named Patna case which could be treated as laying down any proposition in support of the assessee's stand.

(13) A.I.R. 1939 Pat. 662.

(14) (1917-19) 7 Tax. cases 30.

For the reasons considered above, I cannot persuade myself to subscribe to the view taken in *Behari Lal Bhargava's case* by the Allahabad High Court. I have already noticed the observations of the learned Judges which were indicative of doubt and misgivings in their own minds. Whatever value one might attach to those observations in the light of the language of section 28 of the Land Acquisition Act according to which the grant of interest was discretionary, that case is no guide when examining the nature of the amount of interest compulsorily awardable under section 34 of the Act.

In *Commissioner of Income-tax v. Shamsheer Printing Press* (15), the facts were that the premises in which the assessee-firm carried on its business were requisitioned by the Collector under the Defence of India Rules and a certain sum was paid by way of compensation to him. The Income-tax authorities assessed this item on the ground that it represented loss of profits and was, therefore, profit arising from the assessee's business. Repelling the contention of the Department the Bombay High Court treated the receipt as of capital nature and, therefore, not liable to tax. In the view of the High Court the claim was based on the injury done to the business of the assessee and the payment was received as damages and not income arising out of the business or in the course of the business. The compensation paid by the Government was deemed by the High Court as a capital receipt. An appeal was taken by the Department to the Supreme Court and the decision of the High Court was reversed.—vide *Satinder Singh v. Umrao Singh and another* (7). The Supreme Court found that the sum was received as compensation for loss of profits for the period during which, it was imagined, the assessee's business would remain stopped before it could be restarted at new premises, and that being so, it was a revenue receipt and liable to tax. It was also observed that as it was a trading receipt, it could not be held exempt from tax under section 4(3)(vii) of the Income-tax Act either.

The Commission-
er of Income-
tax, Punjab
v.
Dr. Sham Lal
Narula

—
Tek Chand, J.

The Commis-
sioner of Income-
tax, Punjab

v.

Dr. Sham Lal
Narula

—
Tek Chand, J.

The next argument urged before us by the learned Counsel for the assessee was that the amount of Rs. 48,660 was "of a casual and non-recurring nature" and as such could not be included in the total income of the person receiving it in view of section 4(3)(vii) of the Income-tax Act. I do not think this argument is helpful to the assessee. This matter was also considered in *Commissioner of Income-tax, Bihar and Orissa v. Kameshwar Singh* (11), to which decision a reference has already been made in another connection. The Income-tax Officer had assessed to tax a sum of Rs. 10,497 which in the hands of the assessee had been calculated as interest due, the assessee's contention on the other hand being that the amount was not taxable, because it was really not interest but was in the nature of damages for retention of money and also because it was a casual and non-recurring receipt within the meaning of section 4(3)(vii). The last argument also did not find favour with the High Court and it seems to have adopted the view taken by the House of Lords in *Westminister Bank Ltd. v. Riches* (2). The relevant observations of Lord Simonds are—

“* * I do not understand why a sum which is calculated upon the footing that it accrues *de die in diem* has not the essential quality of recurrence in sufficient measure to bring it within the scope of income-tax”.

Regarding the argument based upon casual nature of the receipt it was observed by the Patna High Court in the case of *Kameshwar Singh* :—

“The expression ‘casual’ has not been defined in the Act and must, therefore, be construed in its plain and ordinary sense. According to the Oxford English Dictionary the word ‘casual’ is defined to mean (a) subject to, depending on, or produced by chance; (b) occurring at uncertain times; not to be calculated on.

A receipt of interest which is foreseen and anticipated cannot be regarded as casual even if it is not likely to recur again". (page 224).

The Commission-
er of Income-
tax, Punjab
v.
Dr. Sham Lal
Narula

It will be wrong to think that the word "non-recurring" in section 4(3)(vii) implied incapability or impossibility of recurrence. Malik J. in *Rani Amrit Kunwar v. Commissioner of Income-tax* (16), said—

Tek Chand. J.

"The word 'non-recurring' does not mean that the receipt has not as a matter of accident or as a matter of fact recurred but that there is no claim or right in the recipient to expect its recurrence".

To the same effect are observations made in *Sacred Heart's Monastery v. Income -Tax Officer* (17). The guiding factor in a case like the present is the nature of the receipt and not the likely frequency or infrequency of such transaction. The wording of section 34 of the Land Acquisition Act gives considerable assistance as the sum in question is calculated on the basis of interest payable at 4 per cent per annum. This basis implies recurrence. Such a receipt cannot be said to arise occasionally or incidentally. Whenever the payment of the compensation under section 23 is delayed, the payment of interest under section 34 becomes a concomitant of "such compensation" as is payable under section 23. This receipt is not casual in the sense of what happens by accident or what is brought about by an unknown cause. A casual happening is one which comes to pass without design and without being foreseen or expected; it may be said to be fortuitous or accidental or the result of an unknown cause or chance. The payment under section 34 cannot be said to be without apparent cause, or in any unaccountable manner, or as a mere coincidence, or not designedly brought about in the sense of being unexpected, unforeseen or without regularity. The word

(16) (1946) 14 I.T.R. 561 (591).

(17) (1956) 30 I.T.R. 451.

The Commis-
sioner of Income-
tax, Punjab
v.
Dr. Sham Lal
Narula
—
Tek Chand, J.

“casual” is an antonym for “regular” in the sense that something happens at uncertain times. In this sense payment under section 34 is not casual. Once payment of the compensation under section 23 is withheld after the taking of possession of the land acquired, the payment of interest at 4 per cent per annum becomes not casually but regularly and recurrently payable. I cannot, therefore, persuade myself to treat the receipt as exempt from tax on the ground that it is “of a casual and non-recurring nature”.

For reasons stated above I would answer the question of law referred to this Court in the negative. In other words, the answer is that on a true interpretation of section 34 of the Land Acquisition Act and the award given by the Collector of Pepsu on the 30th of September, 1955, the sum of Rs. 48,660 was not a capital, but a revenue receipt and as such was liable to tax under the Income-tax Act. The Commissioner of Income-tax shall be entitled to costs of this reference which are assessed at Rs. 250.

Dua, J.

INDER DEV DUA, J.—I agree

B.R.T.

REVISIONAL CIVIL

Before Shamsher Bahadur, J.

MAHARAJA HARINDER SINGH AND OTHERS,—
Appellants.

versus

PUNJAB STATE,—*Respondent.*

Civil Revision No. 627 of 1961.

1962

Feb. 12th

Land Acquisition Act (I of 1894)—Section 18—Collector—Whether bound to make reference to court for apportionment of compensation amongst the claimants and for enhancement of the award.