to the earth as per section 3(a) of the Act. The claimant is, therefore, entitled to solatium on the amounts of Rs. 300, allowed under issue No. 5, Rs. 8,500, allowed under issue No. 7 and Rs. 500, allowed under issue No. 11. On the amounts of Rs. 950 allowed under issue No. 6, Rs. 1,250 under issue No. 8 and Rs. 9,000 under issue No. 10, no solatium is payable.

(21) *Issue No.* 14.—The appeal of Raghbir Singh is accepted in part to the extent of allowing him an enhancement of Rs. 11,800 in the amount of compensation already awarded by the learned District Judge. In the result, the amount of compensation is enhanced to Rs. 20,500. Solatium at the rate of 15 per cent will be paid on the sum of Rs. 9,300 awarded under issues Nos. 5, 7 and 11 and not on the remaining amount. On the amount already paid to the claimant by the Collector under the award of the District Judge, the interest shall be calculated at the rate of 4 per cent per annum. On the additional amount allowed in this appeal, the interest shall be calculated at the rate of 4 per cent per annum from the date of taking possession of the brick-kilns to June 30, 1967, and thereafter at the rate of 6 per cent per annum. Out of the aggregate amount thus determined, the compensation already paid to Raghbir Singh by the Collector in pursuance of the award of the District Judge shall be deducted and the remaining amount will be paid to him. A decree in these terms is passed. Raghbir Singh is allowed proportionate costs of this appeal. The appeal of the Union of India is allowed in respect of the rate of interest and solatium on Rs. 2,200 only as indicated above and the parties are left to bear their own costs.

NARULA, J.—I agree.

K.S.K.

INCOME TAX REFERENCE

Before D. K. Mahajan and P. S. Pattar, JJ.

THE ADDITIONAL COMMISSIONER OF INCOME TAX, PUNJAB,—*Appellant.*

M/S. HINDUSTAN MILK FOOD MGF. LTD., NABHA,—*Respondent.*

I.T. Ref. No. 28 of 1972

March 27, 1974.

Income Tax Act (XLIII of 1961)—Section 2(18) (b) (ii)—Interpretation of—Phrase "at any time during the relevant previous

year" occurring in the first alternative envisaged in sub-clause (b) (ii)—Whether has to be read in the second alternative of sub-clause also—Transferability of the shares to satisfy the requirements of the sub-clause—Whether has to be throughout the whole of the previous year or at any point of time of that year.

Held, that the examination of entire section 2(18) of the Income Tax Act, 1961, shows that each of the main clauses has a time limit specified therein. Sub-clause (ii) of clause (b) of the section which contains two alternatives cannot be read to mean that the limit is specified only for the first alternative and not for the second. If it were so, the result would be that there would be no criterion of time within which the shares will have to be freely transferable by the holder to the other members of the public. Thus the phrase "at any time during the relevant previous year" has to be read with both the alternatives contemplated by the sub-clause. Moreover the phrase "at any time" in the sub-clause, in the context of the scheme of the section, does not mean "the whole of the previous year". In the very nature of things it means "any part of the previous year" and, therefore, the dealing of shares in the first alternative of the sub-clause need not necessarily be during the whole year which is not possible physically also. Any deal of shares during any particular point of time during whole year would satisfy the requirements of the first alternative of the sub-clause and this expression cannot be given a different meaning in relation to the second alternative in the same clause. Hence in order to satisfy the requirements of sub-clause (b) (ii), it is not necessary that the shares have to be freely transferable throughout the relevant previous year; it is sufficient if they are freely transferable at any point of time during the relevant previous year.

Reference made under Section 256(1) *of the Income-tax Act,* 1961 *by the Income-tax Appellate Tribunal (Chandigarh Bench),—* vide *its order* 5th *August,* 1972, *for opinion to this Hon'ble Court on the following question of law arising out of the Tribunal's order dated* 26th *May,* 1971, *in I.T.A. No.* 3473 *of* 1969-70 *regarding Assessment year* 1968-69:—

> "*Whether on the facts and in the circumstances of the case and on the interpretation of section* 2(18) (b) (*ii*), *the Appellate Tribunal was justified in holding that the assessee is a company in which the public are substantially interested?*".

D. N. Awasthy, Advocate, S. S. Mahajan, Advocate, with him, *for the appellant.*

S. E. Dastur, Advocate, L. S. Wasu, Advocate, with him, *for the respondent.*

JUDGMENT

MAHAJAN, J.—The Income-tax Appellate Tribunal, Chandigarh Bench, has referred the following question of law for our opinion :

> "Whether on the facts and in the circumstances of the case and on the interpretation of section 2(18)(b)(ii), the Appellate Tribunal was justified in holding that the assessee is a company in which the public are substantially interested ?"

It is common ground that the Hindustan Milk Food Manufacturers Limited, Nabha, was registered as a private company in October, 1958. In the year 1960, by virtue of section 43-A of the Companies Act, 1956, the Company became a public limited company, and on 30th March, 1968, the Company deleted Article 3 from its Articles of Association. The effect of this deletion was that the benefit of first proviso to sub-section (1) to section 43 of the Companies Act, 1956, was given up. The assessment year in question is 1968-69. The accounting year commenced on April 1, 1967 and ended on March 31, 1968. The assessee filed its return showing an income of Rs. 1,07,50,950 and claimed that it was a company in which the public were substantially interested within the meaning of section 2(18) of the Income-tax Act, 1961 (hereinafter referred to as the Act). The Income-tax Officer after referring to the sub-clauses (i) and (iii) of clause (b) to section 2(18) of the Act did not give a finding that these sub-clauses were not satisfied. He, however, proceeded on the basis of sub-clause (ii) of clause (b) of section 2(18) of the Act which is in the following terms :

> "the said shares were at any time during the relevant previous year the subject of dealing in any recognised stock exchange in India or were freely transferable by the holder to other members of the public."

and held that the conditions of this sub-clause were not sastified. According to him, the requirements of this clause were :

(a) that the shares of the said Company could at any time during the relevant previous year be subject to dealing in any recognised stock exchange in India, or

(b) that such shares were freely transferable by the holder to other members of the public.

So far as the first alternative is concerned, this was not set up by the assessee, but the assessee maintained that the second alternative was satisfied. But the Income-tax Officer took the view that the phrase "at any time", in sub-clause (ii) of clause (b) of section 2(18) of the Act, as reproduced above, meant that the transferability condition should be satisfied during the entire relevant previous year and not "at any one point of time" during that relevant previous year. In this view of the matter, the contention of the assessee was rejected. An appeal was taken by the assessee against the decision of the Income-tax Officer to the Appellate Assistant Commissioner, Patiala. The Appellate Assistant Commissioner allowed the appeal with the following observations :—

"The view taken by the Income-tax Officer is that the expression "at any time" has relevance only to the 1st part of the sub-clause, namely, dealings in any recognised Stock Exchange, and not to the second part which speaks of the free transferability of the shares. His alternative interpretation is that the term 'at any time' should be construed as meaning 'at all times'. I am afraid that such a constricted interpretation on the language of sub-clause under discussion, neither conforms with the known and well-recognised rules of interpretation of statutes, nor emerges from a plain reading of the language used in sub-clause (ii). Wherever the Legislature has intended that a certain happening must have persisted throughout the relevant previous year, it has used the corresponding expression, as for example in sub-clauses (i) and (ii) of clause (b) of section 2(18). Reverting back to sub-clause (ii), the expression 'at any time' during the relevant previous year governs not only the dealings in any recognised Stock Exchange, but also the free transferability of the shares. To hold otherwise would require the import of additional words, which are just not there. Now since it is an admitted fact that before the end of the relevant previous year, the appellate Company has amended its Articles of Association removing all restrictions on the free transferability of shares the condition laid down in sub-clause (ii) of clause (b) of section 2(18) stood fulfilled. I would, accordingly hold that the Company was the one in which the public was substantially

interested for purposes of 1968-69 assessment, and it should be charged to tax on that basis The controversy is decided in its favour."

Dissatisfied with the decision of the Appellate Assistant Commissioner, the Department preferred an appeal to the Income-tax Appellate Tribunal, Chandigarh Bench. The Tribunal affirmed the decision of the Appellate Assistant Commissioner and rejected the appeal.

(2) The relevant observations of the Tribunal are as follows:—

"We now turn to the main question. The Revenue wants us to read sub-clause (ii) as analysed below :

(ii) the said shares were at any time during the relevant previous year the subject of dealing in any recognised stock exchange in India.

(b) the said shares were freely transferable by the holder to other members of the public.

On the other hand, Shri Dastur, who very ably and intensively argued the case, wanted us to read the sub-clause (ii) as follows :

2(ii) the said shares were at any time, during the relevant previous year, the subject of dealing in any recognised stock exchange, and the said shares were at any time during the relevant previous year freely transferable by the holder to other members of the public.

The Revenue wants us not to read 'at any time' during the relevant year in the second portion of the sub-clause whereas the company wants us to read it in that portion. Thus, it is a pure question of interpretation of the above sub-clause.

To begin with, we concede that the matter is difficult because there are two opposing principles which would govern the

case. The first principle is *expressio unius est excluso alterius.* The mention of one is the exclusion of another. The Revenue says that because the words "at any time" are expressly said in the first portion while they are not expressly stated in the second-portion, we should not read it in.

The answer of the other side is that it is clear case where two portions should take colour from each other and we should apply the rule of *nosciture a socits.* One is known by his companions. Maxwell (2511) says where two or more words which are susceptible of analogous meanings, are coupled together then, they are understood to be used in a cognate sense and they take their colours from each other. It is strenuously urged that wherever the Legislature wants to set a limit in time or limitation in time they have expressly said so and Mr. Dastur gave the instances of sections 16(4), 23(3), 80(0)(2), 80H92 (iv), 80J(iv) etc. In fact, in sub-clause (iii) itself, it is required that 50 per cent of the voting power should at no time during the relevant previous year be controlled by 5 or less persons and, if so, the company loses the advantage; Mr. Dastur is right that there is express or implied mention of that time limit at many places. If the Legislature wanted that the transferability to the members of the public should operate for every minute of the year than they could expressly have said so. We agree that there is substance in what Shri Dastur has urged and we are inclined to agree with it.

It will, thus, be seen that the question which has been posed before us in undoubtedly complex and much can be said on both sides. It is at best, a doubtful case and we note that the Appellate Assistant Commissioner, who is a very senior officer of the Department, has after detailed consideration, taken a view which is more beneficial to the assessee. As the matter is extremely doubtful, we would like to apply a well known rule of construction of taxing statutes, viz., that in case of doubt the more favourable constructions should be adopted. This has been repeatedly laid down and is well known rule of construction in

difficult and doubtful cases. This principle can be called "the principle of lesser burden" and the Supreme Court has explained it as follows :—

"*Subba Rao, J. Commissioner of Income Tax, Patiala* v. *Shahazada Nand and Sons* (1).

....in case of reasonable doubt, the construction most beneficial to the State is to be adopted."

The House of Lords expressed it as follows :

"*The National Provident Fund Institution* v. *Browns* (2). In any case, the statutory language cannot be construed by asking which construction will most benefit the Revenue."

Shah, J., explained how this rule is to be applied keeping in view the rule of strict construction as follows :

C.A. Abraham v. *Income-tax Officer Kottayam and another* (3).

In interpreting the fiscal statute, the Court cannot proceed to make good deficiencies if there be any; the Court must interpret the statute as it stands and in case of doubt in a manner favourable to the taxpayer."

As we have pointed out, it is a difficult and doubtful case in which both sides have much to say. We, therefore, would give the benefit of doubt to the assessee and would not interfere with the decision of learned

(1) 60 I.T.R. 392—400.
(2) (H.L.) S.T.C. 57, 99.
(3) 41 I.T.R. 425, 431.

Appellate Assistant Commissioner who has passed a well reasoned order."

The Department was dissatisfied with the decision of the Tribunal and moved an application under section 256(1) of the Act, that the question of law, referred to above, be stated for the opinion of this Court. This application was allowed and that is how the matter has been placed before us.

(3) The decision of the question we have to answer depends upon the correct interpretation of section 2(18) (b) (ii) of the Act. Mr. Awasthy, learned counsel for the Department, urges that the phrase "at any time," only governs the first alternative in the said clause and, therefore, the transferability of the shares had to be throughout the year and not at any one point of time during the year in order to bring it within the second alternative.

(4) Much is sought to be made by the learned counsel for the Department on the use of the word "were" twice in clause (ii) of section 2(18) (b) of the Act. In our opinion, nothing hinges on this. The clause contains two alternatives and to give full content to these two alternatives, it has to be read as follows :—

(a) the said shares were at any time during the relevant previous year the subject of dealing in any recognised stock exchange in India :—

or

(b) the said shares were, at any time during the relevant previous year, freely transferable by the holder to other members of the public.

If the aforesaid clause is not read as indicated above, the result would be that there will be no criterion of time within which the shares have to be freely transferable by the holder to other members of the public. If the entire section 2(18) is examined, it will appear that each of the main clauses has a time-limit specified therein. It cannot be taken to mean that the time-limit is specified in clause (ii) of section 2(18) (b) only for the first alternative and not for

the second. If the contention of Mr. Awasthy is accepted, in that event the second alternative would only come into play when the dispute as to the matter arises, and if a day previous to that dispute the shares are freely transferable, the second alternative cannot be satisfied. Therefore, the correct way to read the clause is to read "at any time" and "the relevant previous year" with both the alternatives and not with one, and the phrase "at any time" would in context mean "at any one given point of time."

(5) Faced with this situation, the learned counsel for the Department contends that the expression "said shares" in clause (ii) of sesction 2(18) (b) must take its colour from clause (b) (i) of the said sub-section and, therefore, the transferability has to be throughout the relevant year. This contention cannot be accepted because different periods are prescribed for different clauses of section 2(18)(b). So far clause (i) is concerned, it uses the expression "throughout the relevant previous year"; clause (ii) uses the expression "during the relevant previous year" and clause (iii) uses the expression "at no time, during the relevant previous year". If the object of the Legislature was that the expression "relevant previous year" was to have the same meaning, it would have used the expression "throughout the relevant previous year" and not three different expressions with regard to the previous year in the same provision in the three different clauses. In the scheme of the Income-tax Act, different provisions provide different periods of time. For instance, section 23(3) (a) mentions the period of the whole of the previous year; section 24(1) (ix) mentions a part of the period of the previous year; section 80H2(iv) mentions the period of whole of the previous year; and whereas in section 80J4(iv) there is no mention of time. If the scheme of section 2(18) is kept in view, the phrase "at any time" in clause (ii) cannot be taken to mean "the whole of the previous year". In the very nature of things, it would be "any part of the previous year". The dealing of shares in the first alternative of clause (ii) need not necessarily be during the whole year and physically it cannot be so. Any deal of shares during any particular point of time in the whole year would satisfy the requirements of first alternative of clause (ii). The notion that the transfer must take place throughout the year is foreign to the first alternative and that explains why the expression "at any time" was deliberately used. This furnishes the key to the meaning of the phrase "at any time" and this

expression cannot be given a different meaning in relation to the second alternative in the same clause. We are, therefore, of the opinion that the view adopted by the Appellate Assistant Commissioner and affirmed by the Tribunal is correct.

(6) Moreover, even if we are to accept Mr. Awasthy's contention we will be driven to the conclusion that at least two interpretations are possible so far as section 2(18) (b) (ii) is concerned: one canvassed by Mr. Awasthy, learned counsel for the Department, and the other by Mr. Dastur, learned counsel for the assessee. In regard to the interpretation of fiscal statutes, the rule is well-settled that where two interpretations are possible, that interpretation should be adopted which is beneficial to the assessee. In this view of the matter, we see no reason to differ from the decision of the Tribunal.

(7) For the reasons recorded above, we answer the question referred to us in the affirmative, that is, in favour of the assessee and against the Department. There will be no order as to costs.

PATTAR, J.—I agree.

B. S. G.

REVISIONAL CIVIL

Before M. R. Sharma, J.

SURAT SINGH,—*Petitioner*

versus

NAFE SINGH, ETC.—*Respondents.*

C. R. 802 of 1973

March 28, 1974.

Code of Civil Procedure (Act V of 1908)—Order 21 Rule 90—Punjab High Court Rules and Orders Volume I Chapter 12-L, rule 21(ii)—Property worth more than Rs. 500 auctioned in execution of decree by an agent of the Court Auctioneer—Such auction—Whether illegal—Objections regarding the illegality not taken in the application for setting aside of the sale—Whether can be entertained later.