

Nawn Estates Pvt. Ltd. Vs. Commissioner of Income-tax

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Court : Kolkata

Decided On : Jan-21-1981

Reported in : (1982)26CTR(Cal)29,[1982]137ITR557(Cal)

Judge : Sabyasachi Mukharji and ;Sudhindra Mohan Guha, JJ.

Acts : Indian Income Tax Act, 1922 - Section 9

Appeal No. : Income-tax Reference Nos. 490 of 1975 and 134 of 1977

Appellant : Nawn Estates Pvt. Ltd.

Respondent : Commissioner of Income-tax

Advocate for Def. : Ajit Sengupta and ;M.L. Bhattacharjee, Advs.

Advocate for Pet/Ap. : Nirmal Mukherjee and ;Suchit Banerjee, Advs.

Judgement :

Sabyasachi Mukharji, J.

1. The assessee is a private limited company and the relevant assessment year with which we are concerned is the assessment year 1962-63 for which the previous year ended on 31st of March, 1962. It maintained accounts on the mercantile system. About this there has been certain arguments and we shall deal with this argument later on, because the ITO's order appearing at page 30 of the

paper book describes the method of accounting as mercantile. The Appellate Tribunal had held, in respect of the compensation money with which we are concerned in this reference, that the assessee was treating the said types of income as receipts from other sources and was following the cash system. Apart from income from house property and business, the assessee had also income from interest and dividend under the head 'Other sources'.

2. In the course of the relevant assessment proceedings the ITO noticed that the assessee-company had received a sum of Rs. 91,062 during the previous year from the First Land Acquisition Collector, Calcutta, being the compensation for the occupation of its land at Chowringhee Road. He found that the compensation was related to the period from 27th of May, 1947, to 4th of January, 1954. It was submitted before him, on behalf of the assessee, that the amount of compensation was not liable to tax being a receipt of a casual nature and not a recurring income. This was rejected by the ITO on the ground that the compensation was received by the assessee for the user of its land. Further, it was observed that though the amount was relatable to the period anterior to the relevant accounting year, the same was liable for inclusion in the total income of the instant year having been received during the relevant previous year. The sum of Rs. 91,062 was accordingly included in the income of the assessee. Dealing with this aspect the ITO observed, inter alia, as follows:

'The assessee is an investment company deriving income mostly from house property. During the year under review the assessee-company received a sum of Rs. 91,162 from the First Land Acquisition Collector, Calcutta, being the compensation for the occupation of its land at Chowringhee Road. The compensation was for the relevant accounting year. It is submitted on behalf of the assessee-company that the said compensation is not liable to tax as it is a receipt of a casual and non-recurring nature. I am unable to agree with the submissions of the assessee. The receipt is definitely liable to tax as it is the compensation received by the assessee for the user of its land.'

3. It is not necessary for us to deal with the other aspect of Rs. 15,094, as the question relating to this was not pressed before us.

4. Being aggrieved by the order of the ITO, the assessee went up in appeal before the AAC. The AAC upheld both the additions, viz., the addition of Rs. 91,062, with which we are concerned, as well as the addition of Rs. 15,094, with which we are not concerned, because of the stand taken by the learned advocate for the assessee before us. The AAC found that the compensation received from the First Land Acquisition Collector, Calcutta, represented a payment of the balance of 20 per cent. of the decretal amount in terms of the award of the arbitrators in respect of occupation of the vacant land at No. 46A, Chowringhee Road, Calcutta, which was requisitioned by the Central Govt. under the Defence of India Rules in 1944. There was also a building adjoining to the land but this was separately numbered. The building was numbered as 46B, Chowringhee Road, Calcutta. The land was also separately numbered and the municipal records show the number as 46A, Chowringhee Road. We are concerned with the compensation relating to the requisition of premises No. 46A, Chowringhee Road, Calcutta. It may be noted for the purpose of narration of the history that the immovable properties including the portions of the land were sold partly on 31st December, 1954, and partly on 11th July, 1955. Compensation at the rate of Rs. 2,000 per month was offered. The assessee, however, objected to the amount of compensation being small and the matter was referred to the arbitrator who awarded on 2nd March, 1960, compensation at Rs. 2,750 per month and the amount was payable from the date of requisition to 4th January, 1954, being the date of de-requisition. After referring to the decisions referred to before the AAC, the AAC rejected the assessee's contentions. It was further contended on behalf of the assessee that the premises No. 46A was appurtenant to premises No. 46B, which is known as King's Court and relying upon certain decisions of the Supreme Court, it was urged that tax was payable under the head 'Property' in respect of its bona fide annual value with reference to the buildings and land appurtenant thereto of which the assessee was the owner and as such the compensation amount received during the previous year was referable to the earlier years relating to which the sum was paid. Finding that the building was not requisitioned but the land and the building had different numbers, the AAC rejected the assessee's contention. He also rejected the assessee's contention that the compensation amount was of a casual and non-recurring nature. He upheld the order of the ITO for assessing the amount under

the residuary head 'Other sources' as no income receivable on account of the requisitioned land was included in the return of income filed by the assessee or assessed as such in the past years and as the income receivable or received from the vacant land was not assessable under any: specified head. We need not deal with other aspect of the order of the AAC dealing with the sum of Rs. 15,094.

5. Being aggrieved, the assessee went up in further appeal before the Income-tax Appellate Tribunal. The following facts emerged, as it was noted by the Tribunal, from the submissions made before the Tribunal on behalf of the assessee :

Dates :Particulars :

October 18, 1944.The Central Government requisitioned under rule 75A of the Defence of India Rules the vacant land at the junction of Chowringhee and the Theatre Road, Calcutta, for the requirement of the Military personnel.

October 21, 1944

November 11, 1944

February 9, 1945

February 22, 1945 The Military authority took possession of the aforesaid vacant land.

January 12, 1947 First offer of recurring compensation at Rs. 2,000 p.m. was made.

May 27, 1947 The appellant-company purchased from Messrs D. N. Mullick & Sons a property known as King's Court, which comprised corporation holding plot Nos. 46A and 46B, Chowringhee Road (a building stood on 46B and land adjoining that building was 46A; both forming one block claimed by the assessee). The said requisitioned land is 46A, Chowringhee Road.

May 5, 1949 At the instance of the appellant-company the Land Acquisition Collector made a reference to the arbitrator in terms of section 19(1)(b) of the Defence of India Act, 1939, for awarding compensation.

December 23, 1953 The First Land Acquisition Collector issued notice to the appellant-company under the provisions of the Requisition of Immovable Property Act, 1952 (since the Defence of India Act was repealed), inviting claim for compensation in respect of vacant land at the junction of Chowringhee and Theatre Road.

December 28, 1953 The appellant-company put a claim petition, pleading that the offer of monthly compensation at the rate of Rs. 2,000 dated 12th January, 1947, was inadequate and claiming Rs. 4,800 per month.

January 4, 1954 There was derequisitioning of the land. December 30, 1954

and

July 1, 1955 Building and major portion of land were sold. January 17, 1957 Monthly compensation of Rs. 2,750 was offered. March 2, 1960 The arbitrator, 24-Parganas and Calcutta, in Arbitration Case No. 269 of 1957, finally gave his award for payment of compensation at the rate of Rs. 2,750 per month, together with interest @ 3% p.a. from 1st June, 1947, to the date of derequisition, i.e., 4th January, 1954, and thereafter at the same interest rate from 5th January, 1954, till 31st December, 1956, i.e., the date of last offer less payments already made.

October 31, 1961 The first Land Acquisition Collector informed the appellant-company that a sum of Rs. 91,062.90 was lying in deposit with the arbitrator and requested the appellant-company to withdraw the same. November 15, 1961. The appellant-company withdrew the same amount.'

6. Several contentions were urged before the Tribunal. The Tribunal has noted the contentions and we will refer to some of those contentions which were urged before us. After hearing both the sides on the issues raised with reference to the facts and circumstances of the case, the Tribunal found that the assessee-company had purchased the land from M/s. D.N. Mullick & Sons Ltd., with the knowledge that the land was under requisition and being occupied by the Defence Dept. The Tribunal was of the view that the Government could not be termed as a tenant in respect of the property requisitioned by it from a subject, but, for all

purposes, the Government was a tenant forced upon the landlord who was dispossessed temporarily of the property for which compensation was to be paid as agreed upon by the parties and in case of differences to be settled by the arbitrator. The Tribunal further found that the land so requisitioned was not acquired by the Government and in the opinion of the Tribunal nothing would turn on the assessee's contention regarding the difference between acquisition and requisition or the rules applicable thereto. Accordingly, the Tribunal was of the opinion that the compensation which was received by the assessee represented its income for the government's use of the vacant plot of land and was assessable to income-tax. Dealing with the other contentions that were urged before the Tribunal relating to the assessee's land appurtenant to the building, the Tribunal noted that the contracts with the tenants occupying the building known as King's Court could not be produced before the Tribunal for verification as to whether the rent paid by them was not only for the enjoyment of the premises but also for the use of the vacant plot of land. Nor was any evidence laid out on behalf of the assessee to infer that the tenants were enjoying the vacant plot of land. The Tribunal further noted that the land and building were separately numbered and noted the separate municipal holding numbers. In these circumstances, the Appellate Tribunal rejected the assessee's contention that the compensation amount received, if referable to different years, should be considered in the relevant years towards the estimation of the bona fide annual value under Section 9 of the Indian I.T. Act, 1922. Dealing with the contention of the assessee that it followed the mercantile system of accounting, the Tribunal noted, that as the assessee followed the mercantile system, hence all compensation amounts should be assessable in the respective years of assessment for which the same were received, or the right to receive the same accrued. The Tribunal was of the view that the sum of Rs. 91,062 represented 20 per cent. of the decretal amount and the balance 80 per cent. would come to Rs. 3,04,251.60. The Tribunal noted that they had enquired from the learned advocate appearing before the Tribunal if the assessee could produce evidence before it to show that the assessee had been following the mercantile system so far as the present source of income, in dispute, was concerned. The Tribunal further noted that though opportunities had been given, the assessee could not produce before the Tribunal any evidence as to how

the aforesaid balance of the decretal amount had been accounted for in the assessee's books of account. The Tribunal noted that the sum of Rs. 91,062 was entered in the books of account relevant to the assessment year 1962-63, and an extract from the journal for the year 1953-54, to show that the sum of Rs. 1,09,307 was adjusted against income-tax on 6th June, 1953, after the amount was deposited by the First Land Acquisition Collector with the Reserve Bank of India, on account of income-tax payable by the assessee-company. It may be worthwhile in this connection to refer to the relevant entries of the journal which read as follows :

' The Nawn Estates Pvt. Ltd,

Extract from the Journal for the year 1953-54

(Financial)

True copy of the Journal entry made on June 6, 1953.

Folio 57. June 6 Dr. Cr. Income-tax 1,23,261.10 To Debtors for K.C. Rent (King's Court) 1,09,307.10 'M. R. Rent (Mercantile Buildings) 13,954 Being adjustment of amounts deposited by First Land Acquisition Collector with the Reserve Bank of India on account of income-tax payable by the company.

Rs. 1,09,307.10 as per Memo. No. R/514/43/4037/1P, dated, 10th April, 1953, to the Income-tax Officer, Companies Dist-I, by the First Land Acquisition Collector, Calcutta.

Rs. 13,954 receipt confirmed by I.T.O.C-I as per his letter No. C-1/N-12/C, dated 8th January, 1953, to the First Land Acquisition Collector.'

7. The Tribunal has noted that they were informed that the said sum represented a portion of the compensation received by the assessee from the First Land Acquisition Collector. The Tribunal also observed that the assessee further could not give the Tribunal any satisfactory answer as to whether the disputed amount of Rs. 91,062 was at all included in the portion of the interest receivable by the assessee from the Government. The Tribunal, then, went on to observe that they

had before them two pieces of evidence regarding the nature of Rs. 10,907 and Rs. 91,062 in the assessee's books of account and it was evident from the nature of the entry, according to the Tribunal, that the assessee had recorded the same only after the receipt. Hence, from the conduct itself, the Tribunal was of the view that the assessee had been following the cash system as to the receipt of compensation from the Government. In the premises the Tribunal held that the amount of Rs. 91,062 could not be held to be a receipt of a casual and non-recurring nature and, therefore, further held that the departmental authorities had rightly taxed it as income under the head 'Other sources'. Then dealing with the year in which it should be taxed the Tribunal was of the view that it should be taxed in the year in question in which it was taxed.

8. Upon these facts on the application of the assessee the following two questions have been referred to this court under Section 256(1) of the I.T. Act, 1961 :

'1. Whether, on the facts and in the circumstances of the case, the sum of Rs. 91,052 received by the assessee during the relevant previous year as compensation under an award was income of the said year and assessable to income-tax in the relevant assessment year 1962-63, under the head 'Other sources'

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in upholding the sum of Rs. 15,094 as profits and gains derived from business assessable to tax in the assessment year 1962-63 ?'

9. As the assessee was not satisfied with the questions referred, the assessee made an application to this court under Section 256(2) of the I.T. Act, 1961. The Tribunal was required by this court to refer the following two other questions :

'1. Whether the Tribunal's finding that the assessee had adopted cash basis as its method of accounting with regard to the compensation of Rs. 91,062 is based on no evidence and/or is perverse

2. Whether, on the facts and in the circumstances of the case, the sum of Rs. 91,062 received by the assessee, as compensation in respect of vacant land

situated at 46A, Chowringhee Road, Calcutta, requisitioned on October 18, 1944, under Rule 75A, of the Defence of India Rules, 1939, can be brought to tax in the assessment year 1962-63, wider any of the provisions of the Income-tax Act, 1961 ?'

10. At the hearing before us, learned advocate for the assessee did not press for an answer to question No. 2, mentioned in the reference application, under Section 256(1) of the I.T. Act, 1961. Therefore, we have to determine three questions, viz., question No. 1 in the reference under Section 256(1) of the I.T. Act, 1961, and questions Nos. 1 and 2 in the reference under Section 236(2) of the I.T. Act, 1961.

11. Before us learned advocate for the assessee urged three propositions, viz., (1) that the payment of Rs. 91,062 made to the assessee as compensation in terms of an award dated 2nd March, 1960, in respect of the land at premises No. 46A, Chowringhee Road, Calcutta requisitioned by the Central Govt. under Rule 75A of the Defence of India Rules, 1939, partakes the character of capital receipt, (2) in case any sum is paid (not in the cast of compulsory acquisition) for preventing the person from earning income out of his business and property and the business of the property is not impaired or fettered, it is revenue receipt but if the same is paid for damages or injury such as dispossession of land preventing the assessee from exercising the property right it was capital receipt. (3) Alternatively, learned advocate for the assessee urged the third proposition, viz., the composite sum of Rs. 91,062, being 20 percent. of the award dated 2nd March, 1960, and the payment being made as compensation although measured by monthly rent with interest thereon up to 31st March, 1956, could not under any circumstances be considered as income for the assessment year 1962-63, far less as from other sources.

12. In this connection it would be relevant to refer to certain provisions of the relevant Act and Rules to which our attention was drawn.

13. Our attention was drawn to the Defence of India Act, 1939. Section 2 of the said Act empowered the Central Govt. to make such rules as appeared to it to be necessary or expedient for securing the defence of British India, the public safety,

the maintenance of public order or the efficient prosecution of war, or for maintaining supplies and services essential to the life of the community. Sub-section (2) of Section 2 of the said Act empowered the Central Govt. to make certain rules and Clause (xxiv) provided for making rules for the requisitioning of any property, movable or immovable, including the taking possession thereof and the issue of any orders in respect thereof. Section 19 deals with compensation to be paid in accordance with certain principles for compulsory acquisition of immovable property. Sub-section (1) of Section 19 provided that where by or under any rule made under that Act any action was taken of the nature prescribed in Sub-section (2) of Section 299 of the Govt. of India Act, 1935, there should be paid compensation, the amount of which should be determined in the manner and in accordance with the principles set out thereunder, and Clause (b) of that section provided that where no agreement between the parties could be reached as to what amount of compensation the Central Government should pay, the Central Govt. should appoint as arbitrator a person qualified under Sub-section (3) of Section 220 of the Govt. of India Act, 1935, for appointment as judge of a High Court. Clause (e) of the said section provided that the arbitrator in making his award should have regard to the provisions of Sub-section (1) of the section of the Land Acquisition Act, being Act I of 1894, so far as the same could be made applicable and whether the acquisition was of a permanent or temporary character and thereafter an appeal would lie to the High Court against an award of an arbitrator except in cases where the amount thereof did not exceed the amount prescribed by rules made by the Central Govt. We need not detain ourselves with the other provisions of the Act.

14. Our attention was also drawn to Section 299 of Sub-section (2) of the Government of India Act, 1935. Sub-section (1) of Section 299 of the Govt. of India Act, 1935, had provided that no person should be deprived of his property in British India save by authority of law. Sub-section (2) of Section 299 had stipulated that neither the Federal nor a Provincial Legislature should have the power to make any law authorising the compulsory acquisition for public purposes of any land or any commercial or industrial undertaking or any interest in or in any company owning, or any commercial or industrial undertaking unless the law provided for the payment of compensation for the property acquired and either

fixed the amount of compensation or specified the principles on which and the manner in which it was to be determined. Our attention was also drawn to Rule 75A of the Defence of India Rules. Rule 75A provided for circumstances under which the Government by requisition may take property, movable or immovable. Sub-rule (4) of Rule 75A provides that whenever in pursuance of Sub-rule 1, the Central Govt. or Provincial Govt. make a requisition or acquisition of any movable property the owner thereof would be paid such compensation as the government determines provided where immediately before the requisition of the property was by virtue of hire purchase agreement (sic). We need not deal with the proviso.

15. Before we deal with the several contentions and the authorities cited before us, in our opinion, it would be necessary and instructive to bear in mind the significant difference between requisition and acquisition of a property. This aspect of the matter was very clearly brought out in a decision of the Supreme Court in the case of CIT v. Manna Ramji & Co. : [1972]86ITR29(SC) . There the assessee-firm had carried on business in timber, it had an office and six sheds for storing timber which it had constructed on the site taken on a long lease. In 1944 the Collector requisitioned the premises under the Defence of India Act. Though the requisition order covered the six sheds as well as the office, at the respondent's request the Collector allowed the respondent to remain in possession of the office premises. On a claim for compensation, the civil judge awarded, in addition to rent for the premises, a lump sum of Rs. 1,25,500 for loss of earnings. The compensation was received by the assessee in the previous year relevant to the assessment year 1951-52. After making adjustments for expenditure incurred by the assessee for pursuing the claim for compensation, the balance of Rs. 1,05,074 was brought to tax under Section 10 of the Indian I.T. Act, 1922. The Appellate Tribunal found that the business had not come to a standstill altogether, that the assessee had continued to carry on the business, though on a reduced scale after the requisition, and that, if any injury was caused to the respondent's business, it was to the volume of the business and not to the profit-making apparatus. The Tribunal accordingly held that a sum of Rs. 1,05,074 was a revenue receipt. On a reference, the High Court held that the amount received by the assessee was in the nature of a capital receipt. The Supreme Court, in appeal from the decision of the High Court, reversed the decision and held that the sum of Rs. 1,05,074

received by the assessee as compensation for loss of earnings was a revenue receipt in the hands of the assessee. This was not a case where the assessee was permanently deprived of a source of income. Dealing with the finding of the Tribunal, the Supreme Court observed at page 34 of the report as follows :

'In the light of the above findings of fact, we have no doubt that the amount received by the respondent for the loss of earnings was revenue receipt. It can hardly be disputed that if the respondent-firm had been earning profits as a result of its business during the years the premises in question remained under requisition, the said profit would have been treated as revenue receipt and liable to be taxed as such. The amount received in lieu of the profits which would have been earned if the premises had not been requisitioned, in our opinion, would partake of the same character as the profits. The present is not a case wherein the respondent-firm was permanently deprived of a source of income. On the contrary, the present is a case arising out of requisition of the premises. Requisition, unlike acquisition, is of a temporary nature and though it may extend over some years, it has not the element of permanence. The compensation paid to the respondent represents the supposed profit which the respondent would have earned during the years the premises remained under requisition but which profit the respondent could not earn because of the requisition.'

16. As would be evident from the aforesaid observations of the Supreme Court that requisition, unlike acquisition, is of a temporary nature and though it may extend over some years it has not the element of permanence. Apart from the question of the lack of permanency, in our opinion, a fundamental difference between requisition and acquisition is that the title to the property is lost to the person from whom the property is acquired while in the case of requisition the title to the property remains with the person from whom the property is requisitioned, though his right of user or his possession is to a very large extent curtailed and controlled. This is a significant difference in the light of which we must examine the facts found in this case. We will have occasion to refer to a decision in the case of CIT v. Manna Ramji & Co. : [1972]86ITR29(SC) later on. For the present purpose it will be instructive to refer to the decision of the Supreme Court in the case of Paresh Chandra Chatterjee v. State of Assam, : [1962]3SCR88 . There at page

170 of the report the Supreme Court observed that the Land Acquisition Act applied only to the acquisition of land as distinguished from a requisition of land. The Supreme Court further noted that an acquisition deprived the owner permanently of his land ; and requisition deprived him only of his right to present possession. So, in the case of acquisition the right goes completely. In the case of requisition the right is taken over temporarily. In the case of Charanjit Lal Chowdhury v. Union of India, : [1950]1SCR869 , the Supreme Court had observed in the context of a particular Act, namely, Sholapur Spinning and Weaving Company (Emergency Provisions) Act, 1950, that the Act did not infringe the fundamental rights conferred on a shareholder of the Sholapur Spinning and Weaving Company by Article 19(1)(f) and Article 31 of the Constitution of India and the Act was not unconstitutional or void on that ground. The right to dispose of the share and the right to receive dividend, if any, or to participate in the surplus in the case of winding up that had been left to the shareholder could not be said to be illusory or practically valueless, because the right to control the management by directors elected by him, the right to pass resolutions giving directions to the directors and the right to present a winding-up petition had, for the time being, been suspended. The rights still possessed by the shareholder are the most important of the rights constituting his 'property', although certain privileges incidental to the ownership had been put in abeyance for the time being. The Supreme Court further noted that 'acquisition' meant and implied the acquiring of the entire title of the expropriated owner, whatever the nature or extent of that title might be. In the context in which the word 'acquisition' appeared in Article 31(2), it could only mean and refer to acquisition of the entire interest of the previous holder by a transfer of the title. So, the element of transfer of the title to the property and not the question of restriction on the property is the distinguishing feature between requisition and acquisition. The Punjab High Court at Chandigarh observed in the case of CIT v. Sham Lal Narula , that the property of a citizen might be taken over either by the State permanently or temporarily and this was usually termed by calling the former taking 'acquisition' and the latter 'requisition'. In the former case the title vested in the State or in the body acquiring the property. Requisition was the term used where the title in the property remained unaffected but the title-holder was deprived of the use of the property for the time

being. If the compensation was paid for an act of acquisition such sum would be in the nature of a capital receipt, and on the other hand, if compensation is for deprivation of user on account of the act of requisitioning, the compensation being for loss of profits would become a revenue receipt. There the court was concerned with the interest paid to a person whose land had been acquired under Section 34 of the Land Acquisition Act, 1894 (which provides that the amount, whether the compensation was not paid or deposited, on or before taking possession of the land, the Collector should pay). At the time of taking of the possession until compensation was paid or deposited it was not a receipt of a capital nature but revenue receipt nor was it a casual or non-recurring receipt and, therefore, liable to be taxed under the I.T. Act, though in the context of the facts in which the decision was rendered, allowing the decision, in our opinion, also to be applicable to the facts in this case. We may also incidentally mention that this decision was approved by the Supreme Court and the decision of the Supreme Court is reported in : [1964]53ITR151(SC) .

17. The Rajasthan High Court in the case of CIT v. Rao Raja Kalyansingh , had observed that where compensation was received for the sterilisation or destruction of a revenue yielding asset, the character of such receipt could not be anything but capital. There the assessee had the paramount right to levy excise duty within the limits of his jagir. This right was taken over by the State of Jaipur and the State Govt. agreed to pay him what was called a compensation. Subsequently, in 1952, when Jaipur merged in the State of Rajasthan, the Union of India decided to cancel the manufacture and distribution of liquor and other excisable articles and terminated the arrangement to pay the compensation. It was, however, clarified that the compensation payable in respect of the period prior to the issue of the termination order would continue to be paid up to the date preceding the resumption of the jagir. Accordingly, the assessee received a sum of Rs. 62,204 for the period from July 18, 1952, to February 16, 1954. On the question whether this sum was assessable it was held that the sum of Rs. 62,204 was paid to the assessee in compensation of the destruction of a capital asset, namely, the right to levy excise duty in his jagir. The amount was, therefore, a capital receipt and not liable to tax. There at page 695 of the report the court observed that where what had been received was compensation for the revenue yielding asset then the

character of the receipt could not be anything but capital. The court felt that if they were to employ an age old simile that if the compensation was for the hen that lays the egg and not for the egg itself then it could not be but capital. The Madras High Court in the case of Associated Oil Mills Ltd. v. CIT : [1960]40ITR118(Mad) , had dealt with the case of an assessee who had constructed a building at Arkonam, but before it could house its mill therein and commence working, the Collector in May, 1942, had requisitioned the building for the use of the military authorities under the Defence of India Rules. The assessee put up a building at Katpadi, removed the machinery there and began working its mill in October, 1942. The building at Arkonam, for which the assessee had received rent from the Government, was derequisitioned in January, 1945. The assessee preferred a claim for compensation and the dispute which arose thereon as to the amount of compensation was referred to an arbitrator under Section 19(1)(b) of the Defence of India Act, 1939. A sum of Rs. 63,249 was awarded as compensation on the basis of profits earned by the assessee at Katpadi and this amount the assessee received on May 31, 1948. The question was whether it was taxable income. It was held that the character of the receipt had to be decided on a consideration of the legal basis of the claim; the fact that the compensation was based on the assessee's profits was not decisive of the nature of the receipt. It was further held that, as the structure of the assessee's business was not as such affected, the occupation of its building did no amount to an injury to or sterilisation of any profit-earning apparatus. The compensation awarded to the assessee was not a capital receipt but was income. It may also be mentioned, as was rightly pointed out by the learned advocate for the assessee, that the context of the facts of this case as well as the context of the facts of the previous two cases, as we have mentioned hereinbefore, were entirely different. Learned advocate for the assessee, therefore, contended that the said ratio of the said decisions should not be applied to these cases.

18. In our opinion, so far as deciding the nature of the receipt, we have to bear in mind these principles enunciated by the decisions as to the difference between requisition and acquisition. We must, however, deal with the main decisions referred to by learned advocate for the assessee. Reliance was placed on the decision in the case of Simpson v. Executors of Banner Maurice as Executor of

Edward Kay [1929] 14 TC 580. There the court was dealing with the case where a naturalised British subject, domiciled and ordinarily resident in the United Kingdom had at various dates deposited securities, stocks and shares in banks in Germany with instructions under which the interest and dividends were collected and credited to his accounts at certain of the said banks. He died during the War. As a result of the Peace Treaty, claims on the part of his representatives were admitted in respect of amounts representing partly capital of securities realised by sale or redemption, partly interest and dividends and interest thereon, partly compensation under the Treaty computed on the basis of interest on certain amounts. For the question of liability to income-tax, falling to be dealt with by reference to Rule 1, Case IV and Rule 1 of Case V, Schedule D, Income-tax Act, 1918, the main question at issue was whether the income involved arose, so far as concerned the owner of the securities and after his death his representatives, at the time the interest, etc., was paid to the banks or credited by them in the accounts separately or at the time it was recovered by the representatives. In the former event much of it was out of time for assessment. A further question was whether the compensation computed on the basis of the interest was or was not income for the purposes of income-tax. The Special Commissioners, on appeal, accepted the contentions adverse to the Crown on both points. The assessee, respondents, had become the executors of the estate of the owner of the securities as being the executors of his last surviving executor. It was held by Mr. Justice Rowlatt, that the income in question arose when received by the banks and that the compensation was not income for income-tax purposes. Mr. Justice Rowlatt observed at page 592 of the report as follows :

'The Treuhander did not receive this money subject to any liability to hold it at interest. No doubt the German law recognised it as remaining the property of Mr. Kay, but not so as to bear interest. The Treaty did not give Mr. Kay any right to interest, nor did it declare the Treuhander a trustee so as to found any consequential claim for interest; it did not empower the Tribunal to give interest as such, or to make any declaration as to the character of the purpose for which the Treuhander had held the money. The Treaty gave compensation, and the Tribunal which assessed the principal sum has assessed it on the basis of interest. I think this sum first came into existence by the Award, and no previous history or anterior

character can be attributed to it. It is exactly like damages for detention of a chattel, and unless it can be said that damages for detention of a chattel can be called rent or hire for the chattel during the period of detention, I do not think this compensation can be called interest. I, therefore, think the Crown fails on this point also.

Now I will only add this in case the matter goes further. All questions of figures were reserved by the Commissioners, and I have heard no argument upon them; nor do I know if any question has been raised or would emerge as regards application of the average required by Case V or otherwise.

In the result the appeal is dismissed with costs.'

19. This decision went up in appeal before the Court of Appeal and Lord Hanworth M. R. observed as follows at pages 601-602 of the report:

'I want to add now one more word in reference to the sum which has been paid by way of compensation under article 297. It is said in reference to that 'that, at least, arose at the time when it was paid under the order of the Mixed Arbitral Tribunal. It was a sum which was calculated as interest'--I think it was five per cent.-- 'and it is interest, and, therefore, it is within the words of the Schedule, which undoubtedly impose a tax upon interest which arises or accrues to a person liable to tax'. But is it interest? Is that its quality, or is it compensation estimated and measured in terms of interest? It appears to me quite clear that, apart from article 297, no such sum could have been recovered. It could not have been recovered, according to English law as interest. In the case of *London, Chatham and Dover Railway v. South Eastern Railway Company* which was before the House of Lords, [1893] AC 429, there was a delay in payment of an important sum by one railway to another, and the creditor sought to recover interest in consequence of the delay. It was pointed out that interest, according to our law, depends upon, first a contract express or implied, and, secondly, the Statute of 3 and 4 William IV, Chapter 42, under which you can make interest payable in respect of a debt or sum certain, payable by virtue of a written instrument at a certain time, or after a demand has been made giving notice that interest will be charged. Now it is quite clear that there was no contract made by the Germans to pay this interest. The duty to pay

compensation was imposed upon them by the Treaty. The Statute does not apply it, and the root of the payment is the duty to pay compensation. So far as English law goes, as pointed out by Lord Herschell and the others, and much as they would desire to impose a liability to pay interest, yet interest cannot be given under English law by way of damages for the detention of the debt; and their Lordships add that, although the law is unsatisfactory upon that point, it has long been settled in that sense. That being our law about it, how has this sum come to be paid It appears to me that it has been paid only by virtue of Sub-clause (e) of Article 297, which lays down that the nationals, such as Mr. Kay, ' shall be entitled to compensation in respect of damage or injury inflicted upon their property, rights or interest' and it is that right on which the sum paid is based---' compensation in respect of damage or injury inflicted upon their property, rights or interests'. For withholding this sum, for preventing Mr. Kay, or his executors, exercising the power of disposition over his property, the Germans have been compelled to pay compensation. The way to estimate that compensation or damages--the sensible way no doubt--would be by calculating a sum in terms of what interest it would have earned. That has been done, but the sum that was paid has not been turned into interest so as to attach Income Tax to it. It remains compensation and, for these reasons, it appears to me that it is not a sum which attracts or attaches Income Tax to it.'

20. Learned advocate for the assessee, as we have mentioned before, tried to urge on the basis of the observations of Mr. Justice Rowlatt that the sum came into existence by the award and no previous history or anterior character could be attached to it. It was exactly like damages for the detention of a chattel and unless it could be said that damages for the detention of a chattel could be called rent or hire for the chattel during the period of detention this compensation could be called interest. Learned advocate for the assessee tried to apply the analogy of the ratio of the said observations to the facts of this case. In this case, however, the compensation that was paid was for the injury that was done by a temporary restriction on the possession and enjoyment by the owner of the land in question, which was a trading asset in the hands of the assessee, being the utility in land and buildings. If that is the position, then (a payment for) the injury done to the trading assets in the case of the utility and not a compensation for the deprivation

of a right or source of asset, would be a revenue receipt. Reliance was also placed in this connection on certain observations of this court in the case of Calcutta Electric Supply Corporation Ltd. v. CIT : [1951]19ITR406(Cal) . There, the assessee was an Electric Supply Co. During the war the government had requisitioned a generating plant of the assessee under Rule 83(1) of the Defence of India Rules. As the assessee was not willing to sell the plant, they requested the government to re-examine the position but the government refused to reconsider its decision. The amount which the assessee eventually received as price or compensation for the plant exceeded the written down value of the plant by Rs. 3,27,840. The taxing authorities treated the excess as assessee's profits under Section 10(2)(vii) of the 1922 Act, and assessed the amount to tax. It was held that the transaction by which the Government acquired the plant should not be regarded as a sale within the meaning of Section 10(2)(vii) and, therefore, the sum of Rs. 3,27,840 was not taxable as profit. Learned advocate for the assessee, in this context, relied on the observations of Chief Justice Harris of this court appearing at page 414 of the report. So far as that decision was concerned, it must be noted that the court was dealing really with the acquisition of an asset. But at page 414 of the report, when the analogy of sale was being applied, the court was not dealing with the requisition in contradistinction or at variance with acquisition because that was not the context in which the case fell to be considered. As the case was not concerned with the question of requisition, therefore, in our opinion, the ratio of the said observations cannot also be of much assistance to the assessee in the instant case. Reliance was also placed in aid of his submissions referred to hereinbefore on the decision of the Supreme Court in the case of Ukhara Estate Zamindaries P. Ltd. v. CIT : [1979]120ITR549(SC) . Reliance was placed on the observations of the court at page 558 but having regard to the controversy involved, vis., whether the salami premium and compensation for compulsory acquisition were capital receipts or not, in the context of the facts of this case, in our opinion, the said decision and the said observation cannot also be of help to us in resolving the disputes that have arisen in the instant case. Reliance was also placed on the decision of the Supreme Court in the case of P.H. Divecha v. CIT : [1963]48ITR222(SC) . The context in which the controversy arose was the amount paid to the partners on the

termination of a sole selling agency was a capital receipt or not. In that context, the court observed that in determining whether the payment amounted to a return for the loss of a capital asset or was income, profits or gains liable to income-tax, one must have regard to the nature and quality of the payment. If the payment was not really to compensate for the loss of profits of the business, the receipt in the hands of the assessee could not properly be described as income, profits or gains, as commonly understood. The Supreme Court noted that to constitute income, profits or gains, there must be the source from which particularly the receipt had arisen and a connection must exist between the quality of the receipt and the source. If the payment was by another person it must be found out why that payment had been made. Applying the ratio of the said observation it could be said that in this case the assessee being the owner of the land in question, viz., the premises No. 46B, Chowringhee Road, Calcutta, was being temporarily deprived of the right to use and occupy the premises in question without affecting his title to the premises in question. Now, if that is the position and the right of possession being one of the incidences of his ownership to the land in respect of which the assessee was dealing, then, in our opinion, it would be referable to the assets of land and would be revenue receipt. Furthermore, if the other criterion indicated by the Supreme Court, viz., why the payment had been made should be taken into consideration, the payment that had been made is for the deprivation of the right of user of one of the assets held by the assessee.

21. In support of the second contention urged before us, learned advocate for the assessee strongly relied on the decision in the case of *Glenboig Union Fireclay Co. Ltd. v. IRC* [1922] 12 TC 427, a decision to which reference had been made by the Supreme Court in several cases. There, the assessee-company had carried on business as manufacturers of fireclay goods and as merchants of raw fireclay and was a lessee of certain fireclay fields over part of which ran the lines of the Caledonian Railway. In 1908 the Railway Company, to whom the lands belonged, though not the minerals beneath, had instituted an action to restrain the assessee-company from working the fireclay under the railway, contending that the fireclay was not a mineral and consequently formed part of the railway company's property. Pending the settlement of the action, the assessee-company was interdicted from working under the railway. In 1911, the House of Lords decided

against the railway company, which thereupon exercised its statutory powers to require part of the fireclay to be left unworked on payment of compensation. The amount of compensation was settled by arbitration and duly paid to the assessee-company in 1913. For the years 1908 to 1911, during which the action was proceeding, the assessee-company had charged in its trading accounts, the expenditure incurred in keeping open the fireclay field which formed the subject of the proceedings, and in the year 1913 it received a sum from the Railway company as damages in respect of such expenditure. The sums received by the assessee-company in respect of compensation and damages were included in their trading accounts for the year 1913, and in their profits for that year as computed for income-tax purposes. In computing the prewar standard of profits of the assessee-company for excess profits duty purposes, however, the Commissioners of Inland Revenue eliminated the said payments, contending that they did not constitute profits arising to the assessee-company from the produce of the fireclay fields. It was held by the House of Lords that the amount received for compensation in respect of the fireclay left unworked was not a profit earned in the course of the assessee-company's trade but was a capital receipt, being a payment made for the sterilisation of a capital asset. It was held by the majority in a court of seven Judges of the Court of Sessions that the amount received as damages for the wrongous interdict was not a trading profit of the assessee-company but was merely the equivalent of expenditure incurred in protecting a capital asset which subsequently turned out to be unproductive owing to the exercise by the Railway company of its statutory powers. We may incidentally point out that we are not concerned with the second aspect. No decision, however, was given by the House of Lords on the damages point, an arrangement being reached between the parties by which a portion of the sum paid for damages was treated as a trading receipt of the assessee-company. We are, however, not concerned with this aspect of the matter. In support of the conclusion reached, the Lord President Clyde in the Court of Appeal observed at page 448 of the report that, in short, the position, so far as the company was concerned, was that it had been permanently excluded (underlined by us) from the beneficial possession and enjoyment of certain portions of its fixed assets, and the value of its undertaking was correspondingly diminished. In that context, perhaps, one may venture to suggest

that the House of Lords quite justifiably arrived at the conclusion that the compensation in respect of the fireclay left unworked was not a profit earned in the course of the company's trade but was a capital receipt. When the decision went up to the House of Lords, Lord Buckmaster observed at page 463 of the report that it appeared to his Lordship to make no difference whether it be regarded as a sale of the asset out and out or whether it be treated merely as a means of preventing the acquisition of profit that would otherwise be gained. In either case, the capital asset of the company, according to his Lordship, to that extent had been sterilised and destroyed (underlined by us) and it was in respect of that action that the sum of 15316 was paid. His Lordship in that context felt that it was unsound to consider the fact that the measure, adopted for the purpose of seeing what the total amount should be, was based on considering what were the profits that would have been earned. That, no doubt, according to his Lordship, was a perfectly exact and accurate way of determining the compensation. In that context, his Lordship felt that it was capital. But that was, as we have mentioned hereinbefore, in the background of the view taken that certain assets had been sterilised and destroyed. In the context of the sterilisation or destruction of the entirety or certain portion of the assets. Lord Wrenbury, in the Court of Appeal, posed the question, at page 465 of the report : was the sum profit which was paid to an owner of property on the terms that he should not use his property so as to make a profit, and his Lordship felt that, the answer must be in the negative. The whole point was that he was not to make a profit and was paid for abstaining from seeking to make a profit. The matter, according to his Lordship, might be regarded from another point of view. The right to work the area in which the working was to be abandoned was part of the capital asset consisting of the right to work the whole area demised. Had the abandonment extended to the whole area all subsequent profit by working would have been impossible but it would be impossible to contend that the compensation would be other than on the right of user or restriction of possession of one of the trading assets of the assessee-company. The compensation paid on that account cannot be treated on the same ground as a damage done to a capital asset. Reliance was also placed by learned advocate for the assessee on another decision of the House of Lords in the case of *Ensign Shipping Co. Ltd. v. IRC* [1928] 12 TC 1169. There, during a coal strike

in 1920, two ships belonging to the assessee-company which were ready to proceed to sea with cargoes of coal were detained in port by order of the Government for periods of 15 and 19 days. The company immediately lodged a claim against the Government for compensation for loss of use of the ships and for wages, etc., and after prolonged negotiations they received in April, 1924, a sum of 1,078 in settlement. This sum was treated in the company's accounts as a capital receipt, but was assessed to Excess Profits Duty as a trading receipt of the year ended 31st December, 1920. It was held that the sum in question had been properly assessed to Excess Profits Duty as a trading receipt of the company for the year ended 31st December, 1920. There, at page 1175 of the report. Mr. Justice Rowlatt observed that it was quite clear that if a source of income was destroyed by the exercise of the paramount right and compensation was paid for it, that was not income although the amount of the compensation was the same sum as the total of the income that had been lost. It was important in this connection to note that Mr. Justice Rowlatt was emphasising on the payment of compensation which was paid for destruction of the source of income and not damages to the property yielding assets. It was the price paid for sterilising the asset from which otherwise profit might have been obtained. In that context, his Lordship observed, that what was true of the whole must be equally true of part. Therefore, the view that his Lordship took in the context of the facts of that case was that the part of the asset yielding profit was destroyed and sterilised and the compensation was paid for that purpose. This decision was considered by the Supreme Court in the case of CIT v. Manna Ramji & Co. : [1972]86ITR29(SC) , to which we have already referred. Dealing with the aforesaid decision of the House of Lords, the Supreme Court noted at page 35 of the report that it was held by the House of Lords that the amount received was a capital receipt as the compensation was really the price paid for 'sterilising the assets from which otherwise profit might have been obtained'. The Supreme Court emphasised the expression 'sterilising the assets from which otherwise profit might have been obtained'. It would follow from the above, according to the Supreme Court, that the fireclay field was accepted to be a capital asset which was to be utilised for the purpose of carrying on the business of manufacturing fireclay goods. When the assessee was prohibited from exploiting the field, it was considered to be an injury

inflicted on his capital asset. In that context the decision of the House of Lords was understood by the Supreme Court in the last mentioned case. If understood in that context, then in this case there was no permanent injury to any capital asset of the assessee, as had been found by the Tribunal, but only a temporary embargo. It referred to the observation of Lord Buckmaster that the nature of the measure of the sum had no relation to the quality of the payment but in the case before his Lordship, his Lordship had to consider what was a case of a temporary interference.

22. There was an appeal before the Court of Appeal and Lord Han-worth M.R. as well as Sargant L.J, agreed with the observations with the view of Rowlatt J. Reliance was placed on behalf of the assessee on another decision in the case of IRC v. Newcastle Breweries Ltd. [1927] 12 TC 927. There the respondent-company carried on the business of brewers and wine and spirit merchants, and in the course of this business kept large stocks of rum which had to be reduced and blended before sale. The blended product was sold either wholesale or retail in relatively small quantities. In January, 1918, the Admiralty, acting under the Defence of the Realm Regulations, took over about one-third of the stocks in question then owned by the respondent-company. Payment of 10,315 was offered by the Admiralty, based on the actual cost of the rum and allowing a profit of about 1sh. per proof gallon, and this amount was accepted on account by the respondent-company, without prejudice to its claim for a larger amount. In regard to this claim litigation ensued, but before its conclusion, the Indemnity Act, 1920, was passed, providing that any person who had sustained loss or damage by reason of interference with his property or business through the exercise or purported exercise of any power under the Defence of the Realm Regulations should be entitled to payment or compensation in respect of such loss or damage, to be assessed on the principles mentioned in the Regulation. Following a claim by the company, the War Compensation Court in November, 1921, gave judgment for payment to them of a total sum of 15,624, and the balance of 5,309 was accordingly paid by the Admiralty in January, 1922. The original payment of 10,315 was credited in the company's accounts for the year ended 30th October, 1918, under the head of 'Sales of rum', and was included in the Excess Profits Duty assessment for that accounting period. No appeal was entered against this

assessment, but in subsequent proceedings the company did not admit that the payment was rightly included in its assessable profits. The further payment of 5,309 was credited under the same head in the accounts for the half-year ended 30th April, 1922, but was charged to Excess Profits Duty by an additional assessment for the accounting period ended 30th October, 1918. Reliance was placed in the observation of Viscount Cave L.C. at page 953, that the context in which the said observations were made that means to say that the rum was taken in 1918, and the right to some payment arose at once, though there was delay in ascertaining the amount to be paid. It is true that the Indemnity Act, 1920, entrusted the duty of ascertaining the amount to a new tribunal, namely, the War Compensation Court, but on the principle of the Regulation as it stood in the year 1918. The change of the tribunal which was to ascertain the amount and enforce payment did not create the right to payment, or alter the date when the right to payment in fact arose. These observations, in our opinion, could have been of some assistance to the assessee in determining the alternative contention of the assessee but might be if the facts were otherwise but. it would not be of much assistance as we shall presently notice.

23. Reliance was also placed on the decision in the case of *Senairam Doongarmal v. CIT* : [1961]42ITR392(SC) . Before we deal with the ratio of the decision of the said case it would be instructive to remind ourselves of the observations made by Hidayatullah J., as the learned Chief Justice then was, at page 406 of the report where his Lordship observed that after setting out the different cases before their Lordships that these cases did no more than stimulate the mind, but none could serve as a precedent without advertence to its facts. The nature of the business, or the nature of the outlay or the nature of the receipt in each case was the decisive factor, or there was a combination of these factors. Each is thus an authority in the setting of its own facts. This is a salutary advice which we find is very instructive to bear in mind specially in view of a large number of authorities cited before us. There what had happened was that the assessee, which owned a tea estate consisting of tea gardens, factories and other buildings, carried on the business of growing and manufacturing tea. The factory and other buildings on the estate were requisitioned for defence purposes by the military authorities. Though the assessee continued to be in-possession of the tea gardens and tended them

to preserve the plants, the manufacture of tea was stopped completely. The assessee was paid compensation for the years 1944 and 1945 under the Defence of India Rules calculated on the basis of the out-turn of tea that would have been manufactured by the assessee during that period. The question was whether the amounts of compensation were revenue receipts taxable in the hands of the assessee. It was held that the first consideration before holding a receipt to be profits or gains of business within Section 10 of the Indian I.T. Act was to see if there was a business at all of which it could be said to be income. The primary condition for the application of Section 10 was that tax was payable by an assessee under the head 'Profits and gains of a business' in respect of a business carried on by him. This aspect is important to bear in mind because the Supreme Court, in that case, was concerned and concerned only with a narrow question whether the income was assessable under Section 10 of the Indian I.T. Act, 1922. It was dealing with the profits and gains of a business. Therefore, the Supreme Court held that where the assessee did not carry on business at all, the section could not be made applicable, and any compensation for requisition of assets that he received could not bear the character of a business. Then the Supreme Court dealing with the nature of the business observed that the measure and method of its payment was not decisive of the character of a payment of compensation. The Supreme Court was of the view that the assessee was in possession of the tea garden and manufacture of tea was stopped completely and in a way there was a complete stoppage of that business. It is in that context that the decision of the Supreme Court was rendered and the observations by Hidayatullah J., as his Lordship then was, at page 407, upon which the learned advocate for the assessee relied on, have to be understood. Hidayatullah J. emphasized that the direct and immediate result of the requisition was stoppage of the business. In the instant case before us that was not the consequence. It is in this light that the Supreme Court in a subsequent decision in the case of CIT v. Manna Ramji & Co. : [1972]86ITR29(SC) , understood the ratio and held that in that case as the assessee had not carried on the business at all, the compensation receivable could not be treated as profits and gains of business which was not carried on by the assessee. We are in this case not confined within the narrow question in view of the question that we have indicated. We are concerned with the question

whether it is assessable under any head under the Act. Our attention was also drawn to the observations of the Supreme Court in the case of CIT v. Rai Bahadur Jairam Valji : [1959]35ITR148(SC) , where the Supreme Court noted that there is a difference between a payment made as a compensation for the termination of an agency contract and an amount paid as solatium for the cancellation of a contract entered into by the businessman in the ordinary course of business. Reliance was placed on the observations of Venkatarama Aiyar J. at page 166 of the report. Though this distinction has to be borne in mind the real difficulty arises in appreciating what is the effect of the right in respect of which a certain payment is made.

24. Learned advocate for the assessee strongly relied on the decision of the Supreme Court in the case of S.R.Y. Sivaram Prasad Bahadur v. CIT : [1971]82ITR527(SC) . There interim payments under Section 50(2) of the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948 (as applicable to Andhra Pradesh) received every year by a former holder of an estate which was abolished under the Act, during the period between the taking over of the estate and the final determination and deposit of the compensation under the Act, were of a capital nature and, it was held, not liable to income-tax. Reliance was placed on the observations of Hegde J., at page 535, where, after referring to the decision in Senairam Doongarmal : [1961]42ITR392(SC) and the observations of Rowlatt J. in the case of Simpson (H.M. Inspector of Taxes) v. Executors of Banner Maurice as Executor of Edward Kay [1929] 14 TC 580 referred to hereinbefore and the observations of Lord Hanworth M.R., it was observed that the receipts in question were capital in nature. Now, here, one has to bear in mind what was being paid was interim payments only on the acquisition of the estate. Therefore, this was part of the price or in other words it was, though paid as interim measure, in respect of the taking over of the title to the property in question. These decisions as mentioned hereinbefore were reviewed by the Supreme Court in the case of CIT v. Manna Ramji and Co. : [1972]86ITR29(SC) , which we have mentioned hereinbefore. There the Supreme Court referred both to the decision in the case of CIT v. Rai Bahadur Jairam Valji : [1959]35ITR148(SC) , as well as to the decision in the case of S. R. Y. Sivaram Prasad Bahadur v. CIT : [1971]82ITR527(SC) , referred to hereinbefore. So far as the last-mentioned case was concerned, it was

noted that the compensation was paid to a former holder of an estate which was abolished during the period between the taking over of the estate and the final determination and deposit of compensation.

25. On this aspect of the matter, on behalf of the Revenue, reliance was placed on the decision of the Patna High Court in the case of Rai Bahadur H.P. Banerji v. CIT : [1951]19ITR596(Patna) , where the assessee was carrying on several business activities and had purchased about 13 bighas of land for the purpose of setting up a market and making profit. The plot was requisitioned by the military authorities under the Defence of India Rules. The question was, whether a certain sum paid to the assessee by the military authorities as compensation for the use of land was taxable. The assessee had contended that the sum was not taxable because it was merely compensation from the military authorities for preventing the assessee from making use of his capital asset. It was held that the amount of compensation received by the assessee was really a profit derived from the land and was, therefore, taxable.

26. Similarly, reliance was placed on the case of Gobardhandas Jagannath v. CIT : [1955]27ITR225(Patna) , where the assessee had received a sum of Rs. 8,272 from the Central Public Works Dept. as compensation for the use and occupation of its land which was requisitioned by the Govt. of India. The assessee did not produce any material to show the nature of the payment or the period to which it related. No damage was inflicted on the land and the land was returned to the assessee after the period of requisition in the same condition as it was before. The assessee claimed that the amount was a capital receipt and was not liable to be taxed as income. It was held that as the assessee was only prevented for the period in question from enjoying the usufruct of the land and was not permanently deprived of the use of the land, the amount of Rs, 8,262 represented merely the loss of income suffered by the assessee for the period during which the Government was in occupation of the land and was liable to be taxed as income from other sources.

27. Similar view was expressed by the Calcutta High Court in the case of CIT v. National Insurance Co. Ltd. : [1978]113ITR37(Cal) , and reliance was placed at

page 45 of the report, where the court observed that the compensation received by the assessee could not be in the nature of revenue receipt, for, this receipt did not arise in the ordinary course of carrying out of any business. It was paid not for 'mere deprivation of the user of an asset but for a total deprivation of the management of the life insurance business of the assessee and for an outright sterilization of its entire profit-making apparatus for all time to come'. Therefore, the difference that was emphasised was that if there was a total deprivation of a right and an outright sterilization of the profit-making apparatus, then it might be treated as capital, but mere deprivation of the user of an asset could not be treated as capital.

28. Learned advocate for the Revenue also drew our attention to the decision in the case of Racecourse Betting Control Board v. Wild (H. M. Inspector of Taxes) [1938] 22 TC 182. Though in principle the ratio of the decision supports the contention of the Revenue, the facts of the case were entirely different which are not necessary for us to explain in greater detail.

29. Reliance was also placed on the decision of the Supreme Court in the case of CIT/EPT v. Shamsker Printing Press : [1960]39ITR90(SC) . There the assessee-firm had for the purpose of its business a printing press. The premises in which the press was housed was requisitioned by the Government and the assessee had to shift its business to another place. Of the various sums paid as compensation for the requisition, Government had paid Rs. 57,435 towards the claim of the assessee 'on account of the compulsory vacation of the premises, disturbance and loss of business'. The question was whether the sum of Rs. 57,435 was a revenue receipt and liable to tax. It was held, on the facts, that the sum was not received by the assessee for any injury to its capital assets including goodwill. It was received as compensation for loss of profits and was a revenue receipt liable to tax. Reliance was placed on the observations of the court at pages 92 and 93 of the report.

30. Now so far as the argument of the learned advocate for the Revenue that inasmuch as the sum of Rs. 91,062 represented both interest as well as compensation, the entirety could not be treated as revenue receipt for the year in

question, it was pointed that this point was not urged before the Tribunal and it was also urged that under Section 23(1) and Section 28 read with Section 34 of the Land Acquisition Act, 1894, the assessee was entitled to be paid interest for the period during which it has been paid and from another point of view in any event the interest that was paid was paid for the loss of user of the money. In order to determine the nature of a receipt, it is important to bear in mind the nature of the right of deprivation for which the amount is paid. On this aspect reliance was placed on the observations of the Madras High Court in the case of Ramanathan Chettiar v. CIT : [1963]50ITR43(Mad) . This decision was affirmed by the Supreme Court in its decision in the case of Ramanathan Chettiar v. CIT : [1967]63ITR458(SC) . In repelling the argument of the assessee that the payment was an ex gratia payment, learned advocate for the Revenue relied on the observations of the Madras High Court, in the case of CIT v. T.N.K. Govindarajulu Chetty : [1964]52ITR867(Mad) , and relied on the observations at pages 871 and 874.

31. In view of the principles enunciated in these decisions and bearing in mind that each decision is an authority in the context of the facts of each case and the principles that have been discussed in several decisions, which stimulate the mind, as was observed by Hidayatullah J. in the passage referred to hereinbefore, no principle can be applied without reference to the facts of each particular case. It may be worthwhile to remember for deciding a controversy of this nature that it is necessary to bear in mind (i) that a requisition is different from an acquisition. While in acquisition there is a passing away of a title and the deprivation by the act of acquisition, in requisition, there is a temporary moratorium of the user of the asset and the title remains with the person from whom the property is requisitioned; (ii) the nature of the payment of compensation depends upon the nature of the asset which is requisitioned or acquired. In the instant case, the land was held as a trading asset by the assessee, because the assessee being a dealer in lands and buildings was dealing in properties and selling and buying lands. Indeed, the assessee had purchased the land after the requisition. It has also to be borne in mind that by the order of requisition the assessee was prevented of the user of the assets and was not deprived of his right to the capital of the assets. The fact that it was paid compensation as a result of an award does

not, in our opinion, militate against this being treated as a revenue receipt. Whether the interest that was paid should be appropriated to the different years or not was not argued before the Tribunal. But quite independently of the same it appears to us that, in view of the system of accounting followed in this respect, which we shall discuss later, in treating the interest as compensation for deprivation of the user of the money, the Tribunal was not unjustified in treating it as revenue receipt. In the aforesaid view of the matter, we would answer question No. (1) of the reference under Section 256(1) as well as question No. (2) of the reference under Section 256(2) in the affirmative.

32. This leads us to discuss question No. (1) of the reference under Section 256(2) which we have set out hereinbefore. We have referred to the evidence upon which the Tribunal has based its finding and the relevant portion of the Tribunal's finding. It is true that there is an adjustment. But adjustment in an appropriate case can be treated as receipt. In this connection, it may be instructive to refer to the observations in the case of IRC v. Paterson [1924] 9 TC 163, where at page 182 of the report, Scrutton L.J. observed as follows:

'The question is whether, when a debtor buys property with borrowed money and charges the proceeds of the property in favour of creditors to repay the debt, those proceeds are income of the debtor on which he must pay super-tax; and I may ask, if they are not income of the debtor whose income are they

Here the lady wanted to help her husband by buying some shares from him. She borrowed from the insurance company some money to buy the shares. She borrowed by giving them the security of, amongst other things, the dividends on the shares, out of which, in the language of Clause 6 of the Scheme, 'So long as any money remains owing on the securities of these presents the dividends on all the said shares shall be received by the estate trustees and applied by them in paying the debt.' The result in any year was that debts of the debtor were discharged to the extent of the dividends--the interest for the year, the premium for the year and repayment of part of the principal. Whose income was it that paid those debts It seems to me that in any ordinary sense it was the income of the debtor, the lady, which discharged the debts and which she was obliged to allow to

be used to discharge the debts by the charge she had given on that income to the creditor.

I think the Scotch case, IRC v. Wemyss [1924] 8 TC 551, says that it does not make it a man's income that somebody else's money pays his debts. The money of another person applied to pay his debts is not necessarily the income of the debtor. Lord Skerrington puts that at the end of his judgment in the Scotch case. He says : 'While it is true that Captain Wemyss derived a direct and immediate advantage from the income in question being applied in paying a debt for which he was personally liable, it is equally true that the income so applied was not his income but that of his marriage contract trustees,' who held it for other people, children and third parties, not the debtor. And it appears to me that Lord Sands put this case when he put the case of the application of money which would otherwise be enjoyed by a debtor year by year under the debtor's irrevocable mandate for the purpose of liquidating his debt. He said : 'It may be that the money so applied would fall to be treated as part of his income'. I go further than 'may be', and say I should have thought it must be treated as part of his income applied in paying the debt because of the charge he had given to the creditor to whom he owed the money. It appears to me, if it is not the debtor's income, it must be the creditor's income, and I am not sufficiently topsy-turvy to think of a creditor discharging debts due to him out of his own income.

Under these circumstances I think the Commissioners came to a wrong conclusion, and, with great respect to the learned judge, I think he did not entirely appreciate the effect of the Scotch case which he purported to follow. For these reasons I agree that the appeal must be allowed.'

33. In view of the evidence that the Tribunal had discussed about the past conduct of the assessee which we have referred to hereinbefore, it cannot be said that there was no evidence before the Tribunal or that the conclusion arrived at by the Tribunal was not a possible one. If that is so, then question No. (1) in reference under Section 256(2) of the I.T. Act, 1961, must be answered in the negative and in favour of the Revenue.

34. Before we conclude we must observe that it was urged on behalf of the Revenue that if the answer to question No. (1) was in the negative and in favour of the Revenue, then automatically question No. (2) must be answered in favour of the Revenue, because, according to the learned advocate for the Revenue, whether the same was assessable at all was not the question, but whether it was assessable in a particular year. We have, however, considered this question from a broader point of view, as we have indicated before, and we have come to the conclusion that we have (sic)ated before.

35. (sic)that view of the matter, question No. (1), under Section 256(1) refer-(sic)answered in the affirmative and in favour of the Revenue. Question No. (1), under Section 256(2) reference, is answered in the negative and in favour of the Revenue and question No. (2), under Section 256(2) reference, is answered in the affirmative and in favour of the Revenue.

36. In the facts and circumstances of the case, parties will pay and bear their own costs.

Sudhindra Mohan Guha, J.

37. I agree.

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