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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Judgment delivered on: 15.07.2024***

+ ITA 1163/2018

PRINCIPAL COMMISSIONER OF INCOME
TAX-4

.....Appellant

Through: Mr. Prashant Meharchandani,
SSC with Mr. Akshat Singh,
JSC, Ms. Ritika Vohra & Mr.
Utkarsh Kandpal, Advts.

versus

GOMANTAK EXIMIS LTD.

.....Respondent

Through: Mr. Somil Agarwal & Mr.
Dushyant Agrawal, Advts.**CORAM:****HON'BLE MR. JUSTICE YASHWANT VARMA****HON'BLE MR. JUSTICE RAVINDER DUDEJA****J U D G M E N T****YASHWANT VARMA, J. (Oral)**

1. The Commissioner of Income Tax impugns the order of the **Income Tax Appellate Tribunal**¹ dated 15 May 2018 and which came to be admitted in terms of our order dated 20 March 2024. Upon hearing learned counsels for respective sides, we had observed as follows:

“3. The only question which according to us merits further examination is question B and which pertains to the applicability of Section 115JB of the Income Tax Act, 1961 [“Act”]. Mr. Meharchandani, learned counsel representing the appellant draws our attention to the following salient observations as rendered by the Supreme Court in **Union of India vs. S. Muthyam Reddy**

¹ Tribunal



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[(1999) 7 SCC 545]:-

“1. This appeal is by special leave against an order passed by the High Court of Andhra Pradesh in a batch of cases. By that order, the High Court considered the effect of a combined reading of Sections 2(1-A) and 2(14) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) and has held that (i) capital gains arising from sale of land used for agricultural purposes would be revenue derived from such land and, therefore, “agricultural income” within the definition under Section 2(1-A) of the Act with the result that Parliament would have no legislative competence to tax such agricultural income; and (ii) amended Section 2(14)(iii) should be read down to preserve its constitutionality. All land used for agricultural purposes whether situated in areas mentioned in Section 2(14)(iii)(a) and (b) should be held to be excluded from the definition of capital asset. Thus Section 2(14)(iii) should read as excluding from capital asset agricultural land in India, not being land situated in the areas mentioned therein. Upon such interpretation, Section 2(14)(iii) does not enable levy of tax on capital gains arising from transfer of land which is used for agricultural purposes wherever it may be situated.

2. In this appeal, challenge to this order is based on many grounds and our attention has been drawn to several decisions not only taking similar but also a contrary view. The respondents having remained ex parte, we requested Shri Dhruv Mehta, learned advocate to assist the Court as amicus curiae. We are beholden for the valuable assistance rendered by him to the Court.

3. By the Finance Act, 1989, explanation to Section 2(1-A) was inserted with effect from 1-4-1970 to supersede the view expressed in the order under appeal and several decisions setting out similar ratio. This declaratory amendment having retrospective operation though coming into force during the pendency of this appeal must be given effect to. The said explanation clearly declares that the revenue derived from land shall not include and shall be deemed never to have included any income arising from the transfer of any land referred to in Section 2(14)(iii)(a) or (b). The upshot of the same is that income derived from sale of such agricultural lands cannot be treated as “agricultural income”. Thus, the whole basis of the decision has been lost and, therefore, the order under appeal cannot be sustained and deserves to be set aside.”



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According to learned counsel, since the income was derived from sale of agricultural land, it cannot possibly be treated as agricultural income and consequently, the provisions of Section 115JB would be applicable.

4. We note that the ITAT, however, while dealing with this aspect has proceeded to observe as follows:-

“20. Coming to the issue of 115JB as raised in ground no.3, we find that, firstly, neither the issue of computation or taxation of book profit u/s. 115JB has been raised by the Assessing Officer, nor such grounds were raised in the original grounds of appeal by the Department. Apart from that, once Assessing Officer has not treated the said gain for the purposes of book profit then by way of such ground the issue cannot be raised by the Department. Otherwise also when the income of agricultural land is exempt from tax, then the said exempt income cannot be added to the books profit while calculating the MAT u/s.115JB. Thus, the said ground raised by the Revenue cannot be entertained and same is dismissed.”

5. Prima facie, we find ourselves unable to sustain the view as taken. We, consequently admit the appeal on the following question of law:-

A. Whether the ITAT is legally justified in not admitting and adjudicating legal grounds taken by the Revenue with regard to applicability of section 115JB of the Act?”

2. The appellant is essentially aggrieved by the Tribunal having refused to admit and rule upon certain grounds which were urged with regard to the applicability of Section 115JB of the **Income Tax Act, 1961**². We deem it appropriate to briefly recapitulate the following essential facts in order to provide some context to the issues which arise.

3. The respondent/assessee is stated to have undertaken a sale transaction with respect to a piece of agricultural land along with houses constructed thereon in **Assessment Year**³ 2006-07. It was

² Act

³ AY



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claimed that the profit from the sale of that property would be exempt from taxation since it constituted a sale of agricultural land and would thus not fall within the ambit of the expression ‘capital asset’ as defined by Section 2(14) of the Act. Before us, it was not disputed that the land constituted rural agricultural land and would not fall within the scope of Section 2(14)(iii).

4. The submission of Mr. Meharchandani, learned counsel appearing in support of the appeal, however, had proceeded on the following lines. According to learned counsel, Section 115JB puts in place a special mode and methodology of assessment based on the book profits of an assessee. Learned counsel firstly referred to Explanation 1 of that provision which defines book profit to mean the profit as discernable from the statement of profit and loss that may be maintained by the assessee, “as increased by” the amount or amounts of expenditure relatable to any income to which Section 10 may apply as one of the various heads which are set out in clauses (a) to (k) thereof. Explanation 1 refers to Section 10 in clause (f). Proceeding further, we note that the provision after factoring for the aforementioned additions then speaks of book profit being liable to be “reduced by” the amount of income to which the provisions of Section 10 would be applicable. Apart from that deduction are others which are set out in clauses (i) to (ii-h).

5. Undisputedly, agricultural income is liable to be excluded from total income as per Section 10(1) of the Act. The expression ‘agricultural income’ is defined by Section 2(1-A) as follows:

“(1-A) “agricultural income” means—

(a) any rent or revenue derived from land which is situated in India and is used for agricultural purposes;



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(b) any income derived from such land by—

(i) agriculture; or

(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market; or

(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in paragraph (ii) of this sub-clause;

(c) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any process mentioned in paragraphs (ii) and (iii) of sub-clause (b) is carried on:

Provided that—

(i) the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator, or the receiver of rent-in-kind, by reason of his connection with the land, requires as a dwelling house, or as a store-house, or other out-building, and

(ii) the land is either assessed to land revenue in India or is subject to a local rate assessed and collected by officers of the Government as such or where the land is not so assessed to land revenue or subject to a local rate, it is not situated—

(A) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee or by any other name) or a cantonment board and which has a population of not less than ten thousand [* * *]
or

[(B) in any area within the distance, measured aially,—

(I) not being more than two kilometres, from the local limits of any municipality or cantonment board referred to in item (A) and which has a population of more than ten thousand but not exceeding one lakh; or

(II) not being more than six kilometres, from the local limits of any municipality or cantonment board referred to in item (A) and which has a population of more than one lakh but not exceeding ten lakh; or

(III) not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in



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item (A) and which has a population of more than ten lakh.]

[*Explanation 1*].—For the removal of doubts, it is hereby declared that revenue derived from land shall not include and shall be deemed never to have included any income arising from the transfer of any land referred to in item (a) or item (b) of sub-clause (iii) of clause (14) of this section;

[*Explanation 2*.—For the removal of doubts, it is hereby declared that income derived from any building or land referred to in sub-clause (c) arising from the use of such building or land for any purpose (including letting for residential purpose or for the purpose of any business or profession) other than agriculture falling under sub-clause (a) or sub-clause (b) shall not be agricultural income;]

[*Explanation 3*.—For the purposes of this clause, any income derived from saplings or seedlings grown in a nursery shall be deemed to be agricultural income;]

[*Explanation 4*.—For the purposes of clause (ii) of the proviso to sub-clause (c), “population” means the population according to the last preceding census of which the relevant figures have been published before the first day of the previous year;]”

6. Mr. Meharchandani had drawn our attention to the significant amendments which came to be introduced in Section 2(1-A) by virtue of Finance Act, 1989 and sought to draw sustenance for the challenge that was raised at the behest of the appellant from the Memorandum explaining the provisions of Finance Act, 1989. Our attention was specifically drawn to Clause 22 of that Memorandum and which is extracted hereunder:

“22. Prior to 1st April, 1970, capital gains arising from transfer of agricultural land was not subjected to tax, as agricultural land was excluded from the definition of "capital asset" in section 2(14) of the Income-tax Act. By virtue of amendment of sub-clause (iii) of clause (14) of section 2 with effect from 1st April, 1970, agricultural land situated in any area comprised within the jurisdiction of a Municipality or Cantonment Board (having a population of not less than ten thousand) or in any area outside the limits of any Municipality or Cantonment Board (having a population of not less than ten thousand) up to a maximum distance of 8 Kms. from such limits as notified by the Central Government was included within the definition of "capital asset" and hence, any gain arising from the transfer of such agricultural land was brought within the purview of capital gains taxation. Certain Courts have,



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however, held that profits from the sale of agricultural land constitute "agricultural income" and, therefore, it is exempt from tax under section 10 of the Income-tax Act. Some Courts have held that such income is taxable. The settlement of the judicial controversy by a decision of the Supreme Court may take a long time. Till then, uncertainty in law would not be desirable.

Therefore, as a measure of rationalisation, it is proposed to clarify by way of insertion of an *Explanation* that capital gains arising from the transfer of the aforesaid agricultural land will not constitute "revenue" within the meaning of section 2(IA) of the Income-tax Act

This amendment will take effect retrospectively from 1st April, 1970, and will, accordingly, apply in relation to the assessment year 1970-71 and subsequent years."

7. According to Mr. Meharchandani, Section 2(1-A) came to be amended with retrospective effect from 01 April 1970 and in terms of which agricultural land, though broadly excluded from the definition of a capital asset, was conceptually amended and the statute thereafter for the purposes of exemption restricting the same to rural agricultural land only. According to learned counsel, the definition of 'capital asset' was also amended pursuant to which the concept of "urban agricultural land" came to be introduced and specifically included within the meaning of the expression 'capital asset'.

8. Mr. Meharchandani submitted that the Kerala High Court in **CIT vs. Harrisons Malayalam Ltd.**⁴ while examining the interplay between Section 115JB and the aforementioned amendments had pertinently observed as under:

"15. We notice from the judgment of the Division Bench of the Andhra Pradesh High Court in S. Muthiyam Reddy (supra) that therein the question arose as to whether Parliament was competent to levy tax on sale of agricultural lands situated within the limits of municipalities and cantonments, as provided under section 2(14)(iii)(a) and (b) of the Act. The assessee therein also held lands

⁴ 2018 SCC OnLine Ker 23366



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coming within items (a) and (b) of section 2(14)(iii) of the Act. The Division Bench, while considering the issue, found that the sale of agricultural land would be agricultural income and also held that the provision bringing in capital gains on such agricultural lands situated within the municipal area would not be exigible to tax. The provision enabling such inclusion was found to be ultra vires. On appeal, the hon'ble Supreme Court in S. Muthiyam Reddy (supra), noticed the Explanation brought into the definition clause ; to find that it takes away the whole basis of the decision of the Andhra Pradesh High Court.

16. The hon'ble Supreme Court found the Andhra Pradesh High Court's decision to be without any legal sustenance ; in so far as the Explanation having been introduced with retrospective effect. We do not think the declaration, made by the Andhra Pradesh High Court with respect to the consideration received on sale of agricultural land being agricultural income, would survive for more reason than one. Primarily the Supreme Court has found the decision to have no basis on the introduction of the Explanation, leaving no room to find any portion of the decision having been affirmed or left to survive. Then the question arising before the Andhra Pradesh High Court was only on the taxability of sale consideration of agricultural lands coming within section 2(14)(iii) (a) and (b) and the other declaration, if at all discernible, being per incuriam does not even have a persuasive effect on us. Further there is a contrary decision by a Division Bench of our own High Court reported in CIT v. T. K. Sarala Devi (1987) 167 ITR 136 (Ker).

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21. We see from section 10 of the Act that agricultural income is granted an exemption under the Income-tax Act. Sub-clause (2) of the first Explanation to section 115JB, provides a downward adjustment of the profits as revealed from the books of account, to that income, to which any of the provisions of sections 10, 10A, 10B, 11 or 12 applies. Hence, if any portion of the profits as reflected in the books of account relates to agricultural income, then there is a clear exemption provided under section 10. In view of the exemption under section 10, any revenue from agricultural land would have to be reduced from the profits in computing the "minimum alternate tax" (MAT) under section 115JB. Explanation 1 of section 2(1A) however specifically excludes any income derived from transfer of land, referred to in items (a) and (b) of section 2(14)(iii) from the definition of revenue derived from land. This exclusion brought in by way of abundant caution, as is evident from the words employed : "For the removal of doubts. . ." ; cannot lead to a corollary being drawn of inclusion of sale of agricultural land as agricultural income or as revenue derived from land.



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Obviously the Explanation was brought in, to render invalid the declaration of the Andhra Pradesh High Court in S. Muthiyam Reddy (supra). The question then arises as to whether the consideration on sale of agricultural land not coming within section 2(14)(iii)(a) and (b) would be agricultural income as defined under section 2(1A) ; as a revenue derived from land.

22. Agricultural income as defined under section 2(1A) inter alia takes within its ambit "any rent or revenue derived from land, which is situated in India and is used for agricultural purposes". The question arises as to whether on sale of agricultural land, it could be said that there is an agricultural income derived by the owner of the land, who sells such property. We revert back to All India Tea and Trading Co. Ltd. Therein the specific question considered was whether the compensation received on requisition of agricultural land, would come within the definition of capital gains. The honourable Supreme Court had specifically noticed that the requisition was for the purpose of handing over the lands to the refugees, again for the specific purpose of carrying on agricultural operations. The owner of the land was not divested of the title, till the subsequent acquisition made. The compensation received by the owner was only in so far as the owner being divested of the right to cultivate his lands, which right was granted to the refugees who were handed over the lands requisitioned, for carrying on agricultural operations. There, the Revenue, definitely could be deemed to be an agricultural income as it is compensation for divesting the owner from his right to cultivate the lands.

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25. We also notice the judgment of another Division Bench of this court in CIT v. T. K. Sarala Devi (1987) 167 ITR 136 (Ker). This court in paragraph No. 4 thereof held thus (page 137):

"The reasoning of the Tribunal is that proceeds of sale of land constituted income derived from land. If that proposition was correct, the Tribunal would be justified in saying that proceeds of sale of land used for agricultural purposes were income derived from agricultural land within the meaning of section 2(1) and, therefore, not chargeable under the Act. But the fallacy of that assumption is that, when land is sold, the sale proceeds do not constitute revenue but capital:(see Commissioner of Agricultural Income-tax v. Kailas Rubber and Co. Ltd. (1966) 60 ITR 435 (SC) ; MANU/SC/0206/1965 and A. K. T. K. M. Vishnudatta Antharjanam v. Commr. of Agrl. I.T. (1970) 78 ITR 58 (SC) ; MANU/SC/0217/1970. The profits or gains arising from the sale of land constitute income because section 2(24) of the Act includes as 'income' capital gains chargeable under section 45. Such gain is,



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nevertheless, not income derived from land ; it is income derived by the sale of land. Although land is the source of the income, income is derived not by the use of the land, but by the sale of the land, that is, by conversion of the land into cash. If income results from the sale of agricultural land, it is not 'agricultural income' within the meaning of section 2(1)."

We respectfully follow the dictum as laid down by the Division Bench of this court in T. K. Sarala Devi and find that the consideration received on sale of agricultural land in rural area, not coming under section 2(14)(iii)(a) and (b) would not be income or revenue derived from land. But it has to be added to the profit and loss account and would be reflected in the book profits, for assessment under section 115JB. There is no statutory provision enabling a downward adjustment of the said sum from the book profits in the computation as provided in section 115JB."

In view of the aforesaid it was Mr. Meharchandani's contention that since the issue which was sought to be canvassed was purely legal, the Tribunal had clearly erred in refusing to admit the issue for consideration.

9. Mr. Agarwal, learned counsel appearing for the respondent/assessee, on the other hand, submitted that the question which is sought to be canvassed by the appellant was rightly not admitted by the Tribunal since undisputedly the aspect of computation and taxation of book profit under Section 115JB had neither been raised before the **Assessing Officer**⁵ nor was it a ground urged in the appeal as originally preferred. Quite apart from the above, Mr. Agarwal submitted that the position that income arising from transfer of rural agricultural land would not fall within the ambit of Section 2(14) is one which is no longer *res integra* as would be apparent from the following observations of the Supreme Court in **Singhai Rakesh**

⁵ AO



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Kumar vs. Union of India⁶:

“9. The position, as a result, is that income arising from the transfer of agricultural land that falls within the terms of Items (a) and (b) of sub-clause (iii) of clause (14) of Section 2 falls outside the ambit of revenue derived from land and therefore, outside the ambit of “agricultural income”. Such income, therefore, is liable to capital gains tax chargeable under Section 45 of the 1961 Act.”

10. It was the submission of learned counsel that only urban agricultural land and which falls within the ambit of clauses (a) and (b) of Section 2(14)(iii) would fall outside the ambit of revenue derived from land and thus fall outside the scope of agricultural income. It was his submission that since in the present case the land which formed the subject matter of sale was rural agricultural land, the argument which is sought to be canvassed is liable to be negated.

11. Apart from the decision in *Singhai Rakesh Kumar*, learned counsel also invited our attention to the following passages from the decision of the Bombay High Court in **Manubhai A. Sheth vs. N.D. Nirgudkar⁷**:

“18. So far as the first ground of challenge is concerned, four questions arise for consideration. They are:

- (1) Whether profits or gains made on transfer of agricultural land is income?
- (2) If so, whether such income is “revenue “within the meaning of that word as used in sub-cl. (a) of cl. (1) of s. 2 of the I.T. Act, 1961?
- (3) If such income is “revenue” within the meaning of that word as used in s. 2(1)(a), whether it is “revenue derived from land”?

⁶ (2001) 1 SCC 364

⁷ 1980 SCC OnLine Bom 345



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- (4) Whether the expression “agricultural land” in s. 2(14)(iii) means the same thing as the expression “land which is used for agricultural purposes” in s. 2(1)(a)?

19. The first of these questions presents no difficulty, for it is now definitively decided by the Supreme Court in *Navinchandra Mafatlal v. CIT*, [1954] 26 ITR 758 that profits or gains arising from the sale of a capital asset are income. *Navinchandra's case* was an appeal to the Supreme Court from a judgment of the Bombay High Court on a reference made under s. 66(1) of the Indian I.T. Act, 1922. The question raised in that reference was whether s. 12B inserted in the said Act by the Income-tax and Excess Profits Tax (Amendment) Act, 1947, which authorized the imposition of a tax on capital gains, was invalid as being ultra vires the Central Legislature. This question came up by way of a reference because in those days it had not been definitively settled that the High Court could not decide the validity of a taxing statute or any of its provisions in a reference made under that taxing statute. The same question had come up earlier for decision before the Bombay High Court in another reference, namely, *J.N. Duggan v. CIT*, [1952] 21 ITR 458. In that case a Division Bench of the Bombay High Court held the imposition of capital gains tax to be intra vires the Central Legislature. However, each of the two judges who composed the Division Bench based their finding on different grounds. Chagla C.J. held that the imposition of tax by the Central Legislature was valid as it fell within entry 55 in List I in the Seventh Schedule to the Govt, of India Act, 1935. The said entry 55 provided as follows:

“55. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies, and taxes on the capital of companies.”

20. The corresponding entry in the Constitution of India is entry 86 in List I of the Seventh Schedule to the Constitution. Tendolkar J., on the other hand, held that the tax fell within entry 54 in the said List I of the Seventh Schedule to the Govt, of India Act. We have already set out earlier the said entry 54 and the corresponding entry 82 in List I of the Seventh Schedule to the Constitution of India. Both these entries refer to “Taxes on income other than agricultural income. The Supreme Court approved the view taken by Tendolkar J. In view of this judgment of the Supreme Court it was not disputed by the respondents that the profits or gains on the transfer of agricultural lands would be income, but in view of certain other arguments advanced before us on the other questions arising in connection with the consideration of the second ground of challenge mentioned above, it is necessary to refer to the Supreme Court judgment in *Navinchandra's case*, [1954] 26 ITR 758 in



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some detail. It was sought to be argued before the Supreme Court on behalf of the appellant-assessee that the word “income” did not signify capital gains either according to its natural import or common usage or according to judicial interpretation of relevant legislation both in England and in India. It was further argued that English lawyers and English jurists as also English legislative practice always recognised a clear line of demarcation between “income” and “capital”, and, therefore, the British Parliament which enacted the Govt. of India Act, 1935, must be regarded as having understood and used the word “income.” in entry 54 in that sense. After examining this argument the Supreme Court pointed out that what was relied upon by the appellant-assessee as being legislative practice was nothing but judicial interpretations of the word “income” as appearing in fiscal statutes and that a perusal of those cases revealed that they were concerned with ascertaining the meaning of that word in the context of the income-tax legislation. The Supreme Court referred with approval to the following observations of Lord Wright in *Kamakshya Narain Singh v. CIT*, [1943] 11 ITR 513, 521 (PC):

“Income, it is true, is a word difficult and perhaps impossible to define in any precise general formula. It is a word of the broadest connotation.”

21. The Supreme Court held that it would be wrong to interpret the word “income” in the said entry 54 in the light of any supposed English legislative practice. The Supreme Court also pointed out that in the English Income Tax Act of 1945, capital gains had been included as taxable income. The Supreme Court further pointed out that in construing an entry in a legislative list the widest possible construction according to their ordinary meaning must be put upon, the words used therein. The following passage from the judgment of the Supreme Court is relevant and requires to be reproduced in *extenso* (p. 764 of 26 ITR):

“What, then, is the ordinary, natural and grammatical meaning of the word ‘income’? According to the dictionary it means ‘a thing that comes in’. (*See Oxford Dictionary*, Vol. V, p. 162; *Strouds*, Vol. II, pp, 14-16). In the United States of America and in Australia, both of which also are English-speaking countries, the word ‘income’ is understood in a wide sense so as to include a capital gain. Reference may be made to *Eisner v. Macomber*, [1919] 252 USR 189; 64 L Ed. 521, *Merchants' Loan & Trust Co. v. Smietanka*, [1920] 255 USR 509; 65 LEd. 751 and *United States of America v. Stewart*, [1940] 311 USR 60; 85 L Ed. 40 and *Resch v. Federal Commissioner of Taxation*, [1943] 66 CLR 198. In each of these cases very wide meaning was ascribed to the word ‘income’ as its natural meaning. The relevant



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observations of the learned judges deciding those cases, which have been quoted in the judgment of Tendolkar J., quite clearly indicate that such wide meaning was put upon the word 'income' not because of any particular legislative practice either in the United States or in the Commonwealth of Australia but because such was the normal concept and connotation of the ordinary English word 'income'. Its natural meaning embraces any profit or gain which is actually received. This is in consonance with the observations of Lord Wright to which reference has already been made..... The argument founded on an assumed legislative practice being thus out of the way, there can be no difficulty in applying its natural and grammatical meaning to the ordinary English word 'income'. As already observed, *the word should be given its widest connotation in view of the fact that it occurs in a legislative head conferring legislative power.*"

(emphasis [Here printed in italics.] has been supplied by us.)

22. We now turn to consider whether profits or gains on sale of agricultural land would be revenue within the meaning of that word as used in s. 2(1)(a) of the I.T. Act, 1961. For the purpose of this discussion, we will treat the expression "agricultural land" as if it were synonymous with the expression "land which is used for agricultural purposes". *Murray's Oxford English Dictionary*, inter alia, defines "revenue" as "that which comes in to one as a return from property or possessions, esp., of an extensive kind; income from any source (but esp., when large and not directly earned)." The *Concise Oxford Dictionary*, inter alia, defines the word "revenue" as "income, esp., of large amount, from any source that the word "revenue" in sub-cl. (a) of cl. (1) of s. 2 has been used in a very wide sense is shown by that sub-clause itself. That sub-clause states, "any rent or revenue derived from land". The word "any" qualifies not merely the word "rent" but also the word "revenue". The word "any", when used affirmatively, means "whichever, of whatever kind, of whatever quantity" (See *Murray's Oxford English Dictionary*). The *Shorter Oxford Dictionary* defines it as "every one of the sort named". Thus, the expression "any revenue" would mean income of every kind. Under cl. (1) of s. 2 "agricultural income" is divided into three categories. Sub-clause (a) speaks of "any rent or revenue derived from land which is situated in India and is used for agricultural purposes". Sub-clause (b) speaks of any income derived from such land by one of the three modes specified in that sub-clause. Sub-clause (c) speaks of "any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any process mentioned in paras,



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(ii) and (iii) of sub-cl. (b) is carried on”. The proviso to sub-cl. (c) lays down the conditions subject to which such income under sub-cl. (c) would become agricultural income. Thus, sub-cl. (b) and (c) deal with specific types of income derived from land situate in India and used for agricultural purposes. Sub-clause (a) deals with two types of income, namely, (1) rent, and (2) revenue derived from land which is situate in India and used for agricultural purposes. The word “revenue” is not used in sub-cl. (a) merely as a synonym for the word “rent”. It is used to cover every type of income which does not fall under the heading “Rent” or does not come under sub-cl. (b) and (c) provided such income is derived from land which is situate in India and is used for agricultural purposes. The word “rent” has a technical connotation and implication. As Lord Uthwatt said in *CIT v. Raja Bahadur Kamakhya Narayan Singh*, [1948] 16 ITR 325, 328 PC:

“Rent is a technical conception, its leading characteristic being that it is a payment in money or in kind by one person to another in respect of the grant of a right to use land.”

23. In *CIT v. V. T.S. Sevuga Pandia Thevar*, [1933] 1 ITR 78 (Mad) [FB], it was observed that the word “revenue” is a word of wider import than the word “rent”. It was for this reason that in sub-cl. (a) of s. 2(1) of the Indian I.T. Act, 1922, it was used separately and is so used in s. 2(1)(a), of the I.T. Act, 1961. The scheme of cl. (1) of s. 2 shows that it is not used synonymously with “rent” but, on the other hand, is used in contradistinction to it. That “revenue” is the same as “income” is; also shown by the judgment of the Federal Court in *Hulas Narain Singh v. Province of Bihar*, [1942] 10 ITR 115 (FC). In that case, a suit was filed in the Court of the First Subordinate Judge, Patna, to challenge the validity of ‘the Bihar Agrl. I.T. Act, 1938. The suit was transferred for hearing and disposal to the Patna High Court and a Special Bench of that High Court dismissed the suit. An appeal against that judgment was dismissed by the Federal Court. One of the contentions urged was that the definition of “agricultural income” in the Bihar Act was in some respects wider and in other respects narrower than the definition in the Indian I.T. Act, 1922, and that this departure from the definition in the Central Act rendered the impugned Act invalid. An argument in support of this contention was that while the definition of “agricultural income” in the Indian I.T. Act, 1922, used the words “rent or revenue”, the words used in the Bihar Act were “rent or income”. Before the Federal Court it was conceded by the appellants that this variation was immaterial. Though this point was conceded, on a perusal of the judgment of the Federal Court, it will appear that according to the Federal Court this point was rightly conceded. It appears that in addition to the suit from which the above appeal to the Federal Court was filed other similar



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suits were also filed in the Court of the First Subordinate Judge, Patna, and were transferred to the Patna High Court and disposed of by a Special Bench of the Patna High Court. The judgment of the Patna High Court in one of these cases, which judgment seems to have governed the decision of all the other suits, is reported as *Jhalak Prasad Singh v. Province of Bihar*, [1941] 9 ITR 386 (Pat) [FB]. The point that “revenue” and “income” meant the same thing was not conceded before the Patna High Court. The Patna High Court considered that point and repelled the contention that revenue was something different from income. Harries C.J., in the course of his judgment, said (at p. 396):

“In my view the word ‘revenue’ in the Income-tax Act is used to denote income or a revenue receipt as opposed to a capital receipt and therefore covers all income from agricultural land other than rent. No real distinction can be drawn between the expressions ‘rent or revenue’ and ‘rent or income’, and in my view it cannot be said that by the use of the words ‘rent or income’ the Provincial Government are taxing something more than is permissible by the definition in the Income-tax Act.”

(Emphasis [Here printed in italics.] has been supplied by us.)

24. Fazal Ali J., in a concurring judgment, observed (p. 431):

“But as revenue in clause (a), Income-tax Act, is used in the same ‘sense as income, the difference in the two provisions is merely a difference in phraseology and not a difference in substance.”

25. The above decisions fortify us in the conclusion we have reached that the word “revenue” in s. 2(1)(a) of the 1961 Act is not used as a synonym for the word “rent”. but is used in contradistinction to it and to cover all income from land which is used for agricultural purposes other than rent and income of the types specified in sub-cl. (b) and (c) of cl. (1) of s. 2.”

12. In our considered opinion, the Tribunal appears to have not only refused to admit the additional grounds which was sought to be urged, it also and simultaneously appears to have ruled on the merits of the question which stood raised. This becomes apparent from a reading of para 20 of its order which is extracted hereinbelow:

“20. Coming to the issue of 115JB as raised in ground no.3, we find that, firstly neither the issue of computation or taxation of book profit u/s. 115JB has been raised by the Assessing Officer,



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nor such grounds were raised in the original grounds of appeal by the Department. Apart from that, once Assessing Officer has not treated the said gain for the purposes of book profit then by way of such ground the issue cannot be raised by the Department. Otherwise also when the income of agricultural land is exempt from tax, then the said exempt income cannot be added to the books profit while calculating the MAT u/s.115JB. Thus, the said ground raised by the Revenue cannot be entertained and same is dismissed.”

13. We are of the opinion that since the question which was raised was purely legal, the Tribunal would have been well advised to have accorded an opportunity to respective sides to address submissions on the merits before proceeding to hold that the same could not be entertained.

14. We, accordingly and for the aforesaid reasons, allow the instant appeal and answer the question framed for our consideration in the negative and in favour of the appellant. The order of the Tribunal dated 15 May 2018 is hereby set aside.

15. The matter shall, consequently, stand remitted for consideration afresh. All rights and contentions of respective parties on merits are kept open.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

JULY 15, 2024/kk