IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 4800 of 2021

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J.B.PARDIWALA

and
HONOURABLE MS. JUSTICE NISHA M. THAKORE

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**YES**
2	To be referred to the Reporter or not ?	**YES**
3	Whether their Lordships wish to see the fair copy of the judgment ?	**NO**
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	**NO**

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THE ORIENTAL INSURANCE CO. LTD.
Versus
CHIEF COMMISSIONER OF INCOME TAX (TDS)

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Appearance:
MR RATHIN P RAVAL(5013) for the Petitioner(s) No. 1
M R BHATT & CO.(5953) for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE J.B.PARDIWALA**
and
HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 05/04/2022

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1 By this writ application under Article 226 of the Constitution of

India, the writ applicant – an Insurance Company has prayed for the following reliefs:

> *"(A) Your Lordships be pleased to admit and allow this petition.*
>
> *(B) Your Lordships be pleased to issue an appropriate writ/direction/order to quash and set aside the order at ANNEXURE A issued by the respondent and thereby allow waiver of interest charged u/s 201(1A) of the Income Tax Act, 1961.*
>
> *(C) Your Lordships be pleased to as an ad-interim ex-parte relief to stay the impugned order at Annexure A.*
>
> *(D) Your Lordships may be pleased to quash and set aside any penalty / interest that may be levied by the Income Tax Department pursuant to the Annexure A order.*
>
> *(E) Your Lordships may be pleased to lay down a fixed procedure to deal with the TDS issue in the MACP cases across the state.*
>
> *(F) Your Lordships be pleased to pass such other and further orders may be deemed just and proper looking to the facts and circumstances of the case and in the interest of the justice."*

2 The facts giving rise to this writ application may be summarized as under:

3 The writ applicant before us is an Insurance Company. One Motor Accident Claim Petition bearing No.518 of 1999 came to be filed in the City Civil Court at Ahmedabad. The said claim petition came to be

allowed by the MACT (Aux.) Judge, City Civil Court, Ahmedabad, vide judgement and award dated 18th January 2017.

4 The operative part of the order passed by the Tribunal in the above referred MACP reads thus:

> *"(a) The petitioners in MACP No. 518/1999 do recover Rs. 16.28,008/- (Rs. Sixteen lacs twenty-eight thousand eight only) from the opponent 1, 2 and 3 jointly and/or severally, together with running interest at the rate of 8% p.a from the date of petition till realization of the amount along with proportionate costs of the petition.*
>
> *(b) The opponents are directed to follow the ratio laid down in the judgment of Hansgauri P. Ladhani V Oriental Ins. Co. Ltd, reported in 2007-GLH-2-291 as far as TDS is concerned".*

5 Thus, the Insurance Company was directed to deposit the amount as awarded with interest and so far as the TDS was concerned, the Insurance Company was directed to follow the decision of this High Court rendered in the case of **Hansaguri Prafulchandra Ladhani and others vs. The Oriental Insurance Company Ltd rendered in 2007 ACJ 1897**.

6 The writ applicant herein in due compliance of the judgement and award passed by the Tribunal, deposited the entire amount along with the TDS. The TDS to the tune of Rs.2,21,516/- was deposited through a cheque on 26th May 2017.

7 The deposit of the TDS referred to above was in accordance with the judgement of this High Court in the case of **Hansaguri (supra)**.

8 It appears that thereafter, the original claimants preferred a Miscellaneous Application No.298 of 2017 before the Motor Accident Claim Tribunal, City Civil Court at Ahmedabad with a prayer to release the amount of Rs.2,21,516/- deducted towards the TDS as referred to above.

9 The Miscellaneous Application came to be partly allowed by the Tribunal vide order dated 4th August 2018, which reads thus:

> *"ORDER BELOW EXHIBIT – 1*
>
> *1. The present application has been given by the applicants to release the amount of Rs.2,21,516/- deducted towards TDS which has been deposited in the Tribunal vide 'C' No.521, on 26.05.2017.*
>
> *2. Against the afore stated application, Advocate for the Insurance Co. has made an endorsement stating that he has no objection for withdrawal as no appeal or review has been filed by the Insurance Co.*
>
> *3. Considering the papers on record, it transpires that the Tribunal has passed an order in MACP No.518/1999 on 18.01.2017, allowing the said petition and award of Rs.16,28,008/- was passed. The Insurance Co. has deposited the awarded amount with the Interest and had deducted the amount of Rs.2,21,516/- being the amount of TDS out of the interest amount. As regards the aforestated amount of TDS is concerned, no dispute has been raised by the applicant and they have also admitted that the amount deducted towards TDS is proper.*
>
> *4. As far as the aforestated amount is concerned, the said amount is deposited as Tax in the income-tax department but the Insurance Co.*

said amount has deposited the in the court. So, the said amount is required to be sent back to the insurance Co. for depositing the same with the Income Tax department and in my view it cannot be given to the applicants. So, considering the peculiar facts and circumstance on hand, this application is required to be partly allowed and in the interest of justice I pass the following order.

ORDER

The present application is hereby partly allowed.

The Registry is hereby directed to send back the amount of Rs. 2,21,516/- deposited vide 'C' No.521, dated 18.05.2017, to the Oriental Insurance Co. Ltd. with a direction that the Insurance Co. shall deposit the said amount with the Income Tax department and then after would produce the necessary document regarding the same to this Court and supply the same to the applicants.

The Insurance Co. Is further directed to follow the procedure regarding depositing the amount of TDS with the Income Tax department and issue the necessary certificate along with the relevant papers of depositing the amount to the applicants and the copy be send to this Court.

Date : 04/08/2018.

sd/-
(Pratik J. Tamakuwala)
MACT (Aux.) Judge,
City Civil Court, Ahmedabad
UNIQUE ID CODE NO.GJ00581"

10 Thus, in view of the aforesaid order passed by the Tribunal, the writ applicant deposited the TDS amount with the Income Tax Department on 26th March 2019 and also filed correction statement for 26Q for the Q-1 of F. Y. 2017-18, which resulted in the demand of

interest of Rs.69,741/- under Section 201(1A) of the Income Tax Act, 1961.

11 It appears that the directions issued by the Tribunal as above were challenged by the writ applicant herein by filing the Special Civil Application No.10060 of 2019 on 10th June 2019.

12 The Insurer filed an application dated 19th June 2019 with the Income Tax Department requesting waiver of the additional late payment interest of Rs.69741/- against processing of the latest correction statement for the F. Y. 2017-18.

13 The writ applicant herein also preferred an application to implead the Income Tax Department in the Special Civil Application No.10060 of 2019.

14 A learned Single Judge of this Court, vide order dated 30th August 2019, directed that no coercive steps shall be taken against the Insurance Company till the issue of TDS was not set at rest.

15 It appears that although this Court had passed an interim order in the Special Civil Application No.10060 of 2019 as above, yet the Income Tax Department proceeded to pass an order dated 22nd January 2021, whereby the department rejected the application filed by the Insurer seeking waiver of interest for the late deposit of the TDS amount.

16 In such circumstances referred to above, the writ applicant – Insurance Company has come up with the present writ application.

- **SUBMISSIONS ON BEHALF OF THE WRIT APPLICANT – INSURANCE COMPANY:**

17 Mr. Rathin Raval, the learned counsel appearing for the Insurance Company submitted that this litigation raised many issues of public importance. He pointed out that the practice of deducting tax at source (TDS) on interest under Section 194A of the Income Tax Act is on the basis of the ratio of the decision of this High Court in the case of **Hansaguri (supra)**. According to Mr. Raval, **Hansaguri (supra)** is based on the decision of the Supreme Court rendered in the case of **Rama Bai vs. CIT (1990) 181 ITR 400 (SC),** wherein the Supreme Court held that the interest as awarded by the Tribunal shall first spread over the relevant F. Y. covering the period for which the interest is granted. It is only if the interest for any particular financial year exceeds Rs.50,000/-, the amount would be liable to be deducted at source and shall have to be deposited with the MACT.

18 Mr. Raval submitted that the Finance Act, 2015 has inserted new Section 194A(3) (ixa) with effect from 1st June 2015. The effect of the amendment is as under:

> *"(1) No liability for TDS shall be attracted in respect of any income credited by way of interest on the compensation amount awarded by the MACT.*
>
> *(2) Such liability for deduction of tax in respect of interest on compensation will be attracted, only at the time of actual payment and only if the amount of such payment or aggregate amounts of such payments during a financial year exceeds Rs. 50,000/-."*

19 Mr. Raval pointed out that in view of the aforesaid amendment to

Section 194A, the TDS would have to be deducted out of the actual payment of interest on compensation. The rate would be 10% if the claimants had produced the PAN Card before the payment and 20% if the PAN Card had not been produced. Mr. Raval would submit that in spite of the aforesaid amendment, the Insurance Companies are being compelled to deposit the amount with the Tribunal itself. The Tribunal would thereafter decide accordingly.

20 In such circumstances referred to above, Mr. Raval prays that this Court may clarify the issue by explaining the correct position of law as regards the liability of the Insurance Company to deduct the TDS and deposit the same with the Tribunal; or with the Income Tax Department.

- **SUBMISSIONS ON BEHALF OF THE REVENUE:**

21 *Per contra*, Mr. M. R. Bhatt, the learned Senior Counsel appearing for the Revenue submitted that the writ applicant – Insurance Company was not justified in depositing the TDS with the City Civil Court instead of the Income Tax Department. Mr. Bhatt would submit that there is no ambiguity or confusion as regards the question as to where the TDS is required to be deposited. According to Mr. Bhatt, the provisions of Sections 194A(3)(ix)(ixa), 145(b), 145B, 56(1)(viii), 201(1), 201(1A) and 200 resply of the Income Tax Act make the legal position abundantly clear.

22 Mr. Bhatt would submit that the Insurance Company is liable to deduct the TDS on the interest paid by it in accordance with the provisions of Section 194A(3)(ix) and (ixa) of the Act and if the assessee is of the view that tax has been deducted in excess, then he can always claim refund of the same from the Income Tax Department.

23 Mr. Bhatt has also filed a note explaining the position of Section 194A post amendment. Mr. Bhatt has also discussed few judgements on the issue in question including **Hansaguri (supra).** The same reads thus:

> *"As per Section 194A of Income Tax Act, 1961, when any person not being an individual or HUF who becomes responsible for paying to a resident any income by way of interest other than income by way of interest on securities. shall at time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income tax thereon at the rates in force. Sub-section (3) excludes the application of sub-section (1) sub-clause (ix) thereof and provides that the provisions of sub-section (1) shall not apply to such income credited or paid by way of interest on the compensation awarded by the Motor Accident Claims Tribunal, where amount of such income or, as case may be, aggregate of the amounts of such income paid during financial year does not exceed Rs.50,000/. Thus, for exemption from provisions of Sub-section (1) of Section 194A, such income paid by way of interest on compensation amount awarded by Tribunal will not be liable for tax if aggregate amount of such interest income paid during financial year does not exceed Rs.50,000/- .*
>
> - *Relevant provisions are reproduced for ready reference:*
>
> ***194A. Interest other than "Interest on securities".***
>
> *(1) Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any income by way of interest other than income by way of interest on securities, shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier. deduct income-tax thereon at the rates in force:*
>
> *Provided that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed [one crore rupees in case of business or fifty lakh rupees in case of profession] during the financial year immediately preceding the financial year in which such interest is credited or paid, shall be liable to deduct income-tax under this section.]*
>
> *Explanation - For the purposes of this section, where any income by way of interest as aforesaid is credited to any account, whether called "Interest payable account" or "Suspense account" or by any other name,*

in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

(3) The provisions of sub-section (1) shall not apply

> *(ix) to such income credited by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal:*
>
> *(ixa) to such income paid by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal where the amount of such income or, as the case may be, the aggregate of the amounts of such income paid during the financial year does not exceed fifty thousand rupees;*

145B. Taxability of certain income.

(1) Notwithstanding anything to the contrary contained in section 145, the interest received by an assessee on any compensation or on enhanced compensation, as the case may be, shall be deemed to be the income of the previous year in which it is received.

(2) Any claim for escalation of price in a contract or export incentives shall be deemed to be the income of the previous year in which reasonable certainty of its realisation is achieved.

(3) The income referred to in sub-clause (xviii) of clause (24) of section 2 shall be deemed to be the income of the previous year in which it is received, if not charged to income-tax in any earlier previous year.

56. Income from other sources.

(1) Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income-tax under the head "Income

from other sources", if it is not chargeable to income-tax under any of the heads specified in section 14, items A to E.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely :

> *(viii) income by way of interest received on compensation or on enhanced compensation referred to in [sub-section (1) of section 145B]:*

Sr. No.	*Judgment*	*Particulars*
1	*Hansaguri Prafulchandra Ladhani and Ors. vs. The Oriental Insurance Company Ltd. (Gujarat High Court (decision rendered on 04.10.2006)*	*Hon'ble Gujarat High Court gave detailed guidelines for the cases arising out of motor vehicle accident claims (at para 14 of the judgment) held that in order to attract provisions of TDS on interest component on compensation awarded in motor vehicle accident claims;* *(a) first spread the interest amount over to the relevant financial years for the period from the date of filing the claim petition till the date of deposit.* *(b) thereafter, if the interest for any particular financial year exceeds Rs.50,000/- separately deposit before the Tribunal the amount liable to be deducted at source under the provisions of Section 194A(3) (ix) of the Income Tax Act, 1961. Such amount shall not, however, straightway, be paid over to the Income Tax Department.* *(c) produce before the Tribunal a statement of computation of interest by spreading the amount over the relevant years from the date of claim petition till the date of deposit if the interest for any particular financial year exceeds Rs.50,000/- and also request the Tribunal to treat the amount as a separate deposit.*
2	*Commissioner of Income-tax vs. Oriental Insurance Co. Ltd [2012] 27 taxmann.com 28 (Allahabad) (decision rendered on 13.09.2012)*	*Does interest on delayed payment of compensation from motor vehicle claims exigible to TDS?* *Necessary ingredients of interest to be under the ambit of section 2(28A) of Income Tax Act are that it should be in respect of any money borrowed or debt incurred. The award under the Motor Vehicle Act is neither the money borrowed by the insurance company nor the debt incurred upon the insurance*

		company. (para 37) *The award including interest under motor vehicle claims cannot be considered as "income" as it is awarded to the legal heirs of the deceased for the loss of their bread earner. (para 4)*
3	*Court on its own motion [2014] 52 taxmann.com 151 [Himachal Pradesh] (decision rendered on 15.10.2014)*	*Whether TDS can be deducted on the interest accrued on fixed term deposit of the compensation awarded under motor vehicle claims?* *Hon'ble High Court held that compensation awarded under Motor Vehicles Act is in lieu of death of a person or bodily injury suffered in a vehicular accident and it could not be taxed as income.* *An SLP is preferred against the judgment and is pending before Hon'ble Supreme Court.*
4	*Oriental Insurance Co. vs. Chennabasavaiah and Ors (decision rendered on 18.02.2015)*	*In this case, interest component on the compensation was 1,42,802/-. TDS on the interest component in a sum of Rs.28,560 was deducted. The Claimants claimed that exemption from payment of tax is available on interest component upto a sum of Rs.50,000/- and therefore, petitioner – insurance company should not have deducted TDS on the entire interest amount. MACT accordingly, directed the petitioner – insurance company to deposit an amount of Rs.10,000/- which was deducted towards TDS on Rs.50,000/-* *Karnataka High Court held that "having heard the learned Counsel for the petitioner- Insurance Company, I am of the view that the court below was not justified in directing the petitioner-Insurance Company to deposit a sum of Rs.10,000/- deducted by it towards TDS. Section 194-A(3)(ix) of the Income Tax Act, 1961 grants exemption from payment of tax on the interest*

		component up-to a sum of Rs.50,000/-. This exemption has to be claimed by the respondent/claimants by filing necessary returns before the assessing authority. It is the statutory obligation of the petitioner-Insurance Company to deduct the TDS from the entire interest component and deposit the same before the competent authority, which has been done in this case. A certificate to that effect has been issued to the respondent/claimants. The respondent/claimants have to make a claim for refund of the aforesaid amount before the competent authority. With these observations, writ petition is allowed. The order dated 15.9.2012 in Ex.Case No.80/2008 passed by the court below is hereby quashed.
5	*New India Assurance Co. Ltd [2017] 80 taxmann.com 331 (Punjab and Haryana) (decision rendered on 30.11.2015)*	*Whether Insurance Company can be called upon to pay the TDS /deduct TDS on the interest part upon the compensation awarded in motor vehicle accident claims?* *Relying on the above decision rendered in [2014] 52 taxmann.com 151 by Himachal Pradesh High Court, orders calling upon the Insurance Company to pay the TDS / deduct TDS on the interest component, were set aside. (para 9)* *An SLP is preferred against the judgment and is pending before Hon'ble Supreme Court.*
6	*New India Assurance Co. Limited vs. Bhoyabhai Haribhai Bharvad and Ors. (Gujarat High Court): (decision rendered on 08.08.2016)*	*In this case, Insurance Company deducted Rs.45,190 as TDS and deposited the same with Dept. MACT directed the Insurance Company to pay the TDS to the victim-claimants owing to the amended provision of Section 194A of the Income Tax Act.* *High Court upheld MACT order and reiterated provisions of Section 194A holding that TDS was not to be deducted*

		given the new law and held that "the insurance company should have properly adviced itself before effecting tax at source on the ground that the judgement of this Court in case of Smt. Hansagauri Prafulchandra Ladhani and ors vs. The Oriental Insurance Company Ltd (supra) was no longer good law in view of the statutory amendments. Not having done that the only course left open to the insurance company would be to approach the Income Tax department for refund, as may be adviced. "(para 13) *Imp paras 11 and 12*
7	*Sr. Divisional Manager, National Insurance Co. vs. The Commissioner of Income Tax, Alwar (decision was rendered on 21.04.2017) (Rajasthan HC)*	*Rajasthan High Court followed decision rendered in DB Income Tax Appeal NO.517/2009 in which the decision of Hansagauri was followed.*
8	*Sharda Pareek vs. ACIT [2019] 104 taxmann.com 76 (Raj) decision rendered on 26.04.2017)*	*Rajasthan High Court held that interest on compensation awarded by Motor Accident Claims Tribunal is taxable on year wise accrual basis, in following words:* *"On plain reading of Section 2(28A), it is very clear that originally compensation was received by the claimant was not income but once amount received, it has become capital and interest on capital is liable to be taxable. In that view of the matter, the issue is required to be answered in favour of the department and against the assessee." (para 9)* *Other imp para 11* *An SLP is preferred against the judgment and is pending before Hon'ble Supreme Court.*

9	*Union of India vs. Hari Singh (Civil Appeal No.15041/2017 order dated 15th September 2017)*	*Hon'ble Supreme Court held that deduction of tax is not permissible on the compensation / enhanced compensation received by the assessee on compulsory acquisition of their agricultural land.* *In this case, Collector had deducted TDS on the compensation received for agricultural land as well.* *With regard to demand of assessee for refund of tax, Supreme Court held that assessees must necessary returns before Assessing Officer and it would be for the Assessing Officer to determine whether the land in question was agricultural land in question was agricultural land or not. Accordingly, it was made incumbent on Assessing Officer to ascertain whether refund of TDS can be made or not.*
10	*Iffco Tokio General Insurance Company Ltd vs. Krishnakumar Munshiram Agrawal and others (Gujarat High Court) (decision rendered on 10.11.2017)*	*In this case, the petitioner – Insurance Company deducted TDS amount from the interest accrued on awarded amount and deposited the TDS amount with Income Tax Department as per amended section 194A deducted 20% TDS as the interest exceeded 50,000.* *The claimant – respondent No.1 filed Execution Application before the Tribunal wherein the learned Tribunal issued attachment warrant against the Insurance Company.* *Gujarat High Court held that the petitioner – Insurance Company was not justified in deducting at source in view of the guideline issued in Hansaguri's case. Therefore, it instructed Insurance Company to approach the Income Tax Dept for refund.*
11	*Oriental Insurance Co. Ltd. vs. Swaroopi Bai (MP HC) (decision rendered on*	*In this case, the interest component of the compensation exceeded Rs.50,000, however MACT ruled that the interest amount if spread over to the number of*

	24.06.2019)	*years from the date of filing of the claim, then in none of the financial years, the interest would be more than Rs.50,000. Hence, it directed Insurance company to pay over the deducted TDS to the claimants. Hon'ble MP High Court resorting to section 194-A(3)(ix) and (ix-a), held that MACT committed material illegality by holding that the insurance company is not liable to deduct TDS.*
12	*Rupesh Rashmikant Shah vs. Union of India [2019] 108 taxman..com 181 (Bombay High Court) (decision rendered on 08.08.2019)*	*Q. Whether interest awarded on compensation from motor vehicle accidents is an income?* *Does section 194A make the interest income chargeable to tax if it otherwise is not. The answer has to be in the negative. The provision for deduction of tax at source is not a charging provision. It only makes deduction of tax at source on payment of same, which, in the hands of payee, is income. If the payee has no liability to pay such income, the liability to deduct tax at source in the hands of payer cannot be fastened. In other words, the provision of deducting tax at source cannot govern the taxability of the amount which is being paid. (para 59)* *"We may clarify that these observations and conclusions would apply to interest on compensation or enhanced compensation awarded by the Motor Accident Claims Tribunal or High Court from the date of the Claim Petition till passing of the award or the judgment. Further interest which may be paid for delay in depositing the awarded amount, would not form part of the compensation and, therefore, would fall in the bracket of interest income and would be exigible to tax under the normal provisions." (para 61)* *(other important paras 48 to 58)*

		An SLP is preferred against the judgment and is pending before Hon'ble Supreme Court.
13	*The New India Assurance Company Limited vs. Govindlal Hiralal Mandora (Gujarat High Court – decision rendered on 03.10.2019)*	*Referring to guidelines emanating from the decision of Hansagauri, any TDS deducted in excess, assessee will have to approach Income Tax Dept.*
14	*Satya Narayan – D. B. Civil Writ Petition No.22025/2018 (Rajasthan HC) (18/02/2022)*	*Question whether an insurance company can deduct tax at source on the interest component of the compensation awarded in a motor vehicle accident claim was raised before Hon'ble Rajasthan High Court.* *Taking cognizance of the decision rendered in 262 Taxman 253, Rajasthan High Court referred the present case to a large bench and is pending.*

- **PRIMARY ANALYSIS:**

24 Having regard to the important issues we are called upon to decide, we also took the assistance of the learned Senior Counsel Mr. Tushar Hemani and also the learned counsel Mr. Bandish Soparkar.

25 While the writ applicant – Insurance Company seeks a declaration from this Court with regard to the non-applicability of the decision of **Hansaguri (supra);** the issue is inherently linked with the question whether the interest awarded by the MACT is chargeable to the income tax in the first place. Only if it is found chargeable, then the question would arise as to in what manner should the writ applicant – Insurance Company deduct the tax and deposit with the Tribunal or the Income Tax Department. If the interest awarded by the MACT is not chargeable

to income tax, then there would be no occasion for the Insurance Company to deduct the tax.

26 In view of the aforesaid, the following questions fall for our consideration:

(i) Whether interest allowed by the MACT in the accident case on the amount of award can be termed as the 'Income from interest' or the same is a part of compensation for the delay caused in the legal proceedings?

(ii) Whether interest allowed on the compensation amount can be equated with interest earned on the principal amount?

(iii) Whether the interest awarded by the MACT is not a part of compensation?

27 Before we proceed to answer the aforesaid question, we must look into few provisions of law.

28 Section 2(28A) of the Income Tax Act defines the term **"interest".** The same reads thus:

*"(28A) "**interest"** means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) and includes any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised;"*

29 Section 56(2)(viii) of the Income Tax Act is with regard to

"income from other sources". The same reads thus:

> *"Income from other sources.*
> *Section 56 -*
>
> *…*
>
> *(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely-*
>
> *….*
> *….*
>
> *(viii) income by way of interest received on compensation or on enhanced compensation referred to in [sub-section (1) of section 145(B)"*

30 Section 194A(3)(ix) and (ixa) of the Income Tax Act is with regard to **"interest other than interest on securities"**. The same reads thus:

> *"Interest other than "Interest on securities.*
> *Section 194A.*
> *….*
> *(3) The provisions of sub-section (1) shall not apply -*
> *…*
> *…*
>
> *(ix) to such income credited by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal.*
>
> *(ixa) To such income paid by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal where the amount of such income or, as the case may be, the aggregate of the*

amounts of such income paid during the financial year does not exceed fifty thousand rupees;"

31 Section 145B(1) of the Income Tax Act is with regard to **"taxability of certain income"**. The same reads thus:

"Taxability of certain income.

145B. *(1) Notwithstanding anything to the contrary contained in section-145, the interest received by an assessee on any compensation or on enhanced compensation, as the case may be, shall be deemed to be the income of the previous year in which it is received.*

(2) Any claim for escalation of price in a contract or export incentives shall be deemed to be the income of the previous year in which reasonable certainty of its realisation is achieved.

(3) The income referred to in sub-clause (xviii) of clause (24) of section-2 shall be deemed to be the income of the previous year in which it is received, if not charged to income-tax in any earlier previous year."

32 Section 171 of the Motor Vehicles Act, 1988 reads thus:

"171. Award of interest where any claim is allowed.— *Where any Claims Tribunal allows a claim for compensation made under this Act, such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf.*

33 Section 28 and Section 34 resply of the Land Acquisition Act, 1894

read thus:

> *"Section 28. Collector may be directed to pay interest on excess compensation. If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of [nine per centum] per annum from the date on which he took possession of the land to the date of payment of such excess into Court:*
>
> *Provided that the award of the Court may also direct that where such excess or any part thereof is paid into Court after the date of expiry of a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into Court before the date of such expiry."*
>
> *"Section 34. Payment of interest. When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of [nine per centum] per annum from the time of so taking possession until it shall have been so paid or deposited:*
>
> *Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry."*

34 In **Rama Bai (supra)**, the Supreme Court held that the arrears towards interest computed on delayed or enhanced compensation under Section 28 or Section 34 of the Land Acquisition Act, 1894 shall be taxable on accrual basis from year to year basis and not at one go – in the year of actual receipt of the award.

35 In 2003, Section 194A(3)(ix) came to be inserted to prescribe that on credit or payment of interest awarded by the MACT exceeding Rs.50,000/-, TDS is required.

36 In **Hansaguri (supra)**, the applicant claimed before this High Court that the amount of interest awarded by the MACT should be spread across the different claimants as well as across the different years. Following **Rama Bai (supra)**, a Coordinate Bench of this Court held that the interest would be spread over different years and if thereafter, if it exceeds Rs.50,000/- in any year, then for that year to year, the TDS would be liable to be deducted.

37 In 2009, by Finance (No.2) Act, 2009, Section 145A(b) and Section 56(2)(viii) came to be amended and with the same, Rama Bai (supra) got diluted. Two sections came to be amended to provide that so far as the interest on delayed or enhanced compensation (under the Land Acquisition Act, 1894) was concerned, the same was taxable only in the year of receipt and would not be spread over the years.

38 The Finance Act, 2015 amended Section 194A(3) to divide it into two parts:

(ix) said that in relation to only credit, no TDS is required.

(ixa) said that in relation to payment, if it is less than 50,000/-, then no TDS.

The aforesaid was done to rationalise Section 194A so as to give effect of the earlier amendment of 2009 which said that the taxability of interest would arise only in the year of receipt and therefore, in the years of its accrual there was no tax incidence. Therefore, to that extent the 194A(3)(ix) was inconsistent and was accordingly corrected.

39 In 2016, one another judgement came to be delivered by this High Court in the case of **New India Assurance Co. Limited vs. Bhoyabhai Haribhai Bharvad reported in 2017 ACJ 1727**. In the case of **Bhoyabhai (supra)**, the Insurance Company had deducted tax and deposited with the Income Tax Department. The claimant asserted that the total sum without deduction should have been deposited with the Tribunal itself. This Court examined the issue keeping the amended Section 194A in mind (but not Section 145A(b)) and proceeded to take the view on facts that none of the spread overs the ceiling of Rs.50,000/- was breached and therefore, the Insurance Company ought to have deducted the tax. We quote the relevant observations:

> *"9. Sub section (3) of Section 194A, however, includes those cases which would be excluded from the purview of sub section (1). Relevant portion of sub section (3) as its stood prior to 01.06.2015 amendment read as under:*
>
> > *"194A. (3) The provisions of sub-section (1) shall not apply- (ix) to such income credited or paid by way of interest on the compensation amount awarded by the Motor Accident Claims Tribunal where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid during the financial year does not exceed fifty thousand rupees;"*
>
> *10. The Gujarat High Court in case of* ***Smt. Hansagauri Prafulchandra Ladhani and ors vs. The Oriental Insurance Company Ltd (supra)*** *had*

occasion to interpret this provision. W.e.f. 01.06.2015, however, this Clause (ix) of sub section (3) of Section 194A has been omitted and is replaced by Clauses (ix) and (ixa) which read as under:

> *"(ix) to such income credited by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal; (ixa) to such income paid by way of interest on the compensation amount awarded by the Motor Accident Claims Tribunal where the amount of such income or, as the case may be, the aggregate of the amounts of such income paid during the financial year does not exceed fifty thousand rupees."*

11. Under Clause (ix) to sub section (3) of Section 194A of the Act, as it originally stood, requirement of deducting tax at source under sub section (1) would not apply in a case where any income is credited or paid by way of interest on compensation amount awarded by Motor Accident Claims Tribunal where the amount of such income or, the aggregate amounts of such income credited or paid during the financial year does not exceed fifty thousand rupees. This provision of Clause (ix) is now divide into two parts and is replaced by Clauses (ix) and (ixa). Clause (ix), in the present form, refers to such income credited by way of interest on the compensation amount awarded by the Claims Tribunal. The case of crediting of interest on compensation therefore, would fall in Clause (ix) as it stands currently. Under Clause (ixa) would fall, any payment of interest on compensation awarded by the Claims Tribunal where the amount of such income or the aggregate paid during the financial year does not exceed fifty thousand rupees.

12. It would, therefore, be wholly incorrect to read the current provision of sub section (3) of Section 194A to argue that the cases of income credited by way of interest on compensation awarded by the Claims Tribunal is no longer part of sub section (3) for exclusion from purview of sub section (1) of Section 194A. In other words, worded slightly differently. The case of credit of interest on compensation awarded by the Claims Tribunal continues to find place in the exclusion clause contained in sub section (3) of Section 194A. In fact, it would prima facie appear that the ceiling of Rs. 50,000/- per annum for such exclusion is now done away with in case of crediting of interest on compensation awarded by the Claims Tribunal while retaining such limit in cases of payment of interest on such compensation. However, we need not thresh out this last part of the issue since admittedly, in the present case, for none of the years under consideration, the interest income exceeded Rs. 50,000/-. In fact, this Court in case of ***Smt. Hansagauri Prafulchandra Ladhani and ors vs. The Oriental Insurance Company Ltd (supra)*** *provided for further splitting up of this ceiling of Rs. 50,000/- per claimant basis. Looked from any angle, the insurance company was not justified in deducting tax at source while depositing the compensation in favour of the claimants. It therefore, cannot avoid*

liability of depositing such amount with the Claims Tribunal. The Claims Tribunal had committed no error in insisting on the insurance company in making good the shortfall.

13. At this stage, learned counsel for the petitioner drew our attention to the order dated 05.03.2012 passed by this Court in Civil Application No. 2592 of 2012, in which, the insurance company had deposited with the Income Tax Department a sum of Rs. 7, 91, 971/- by way of tax on compensation of Rs. 34,39,070/- awarded by the Claims Tribunal. This Court allowed the claimants to seek refund of such amount from the Income Tax department and permitted the insurance company to receive it back from the claimants as and when such refund would be made by the Income Tax department. However, in the present case, we are not inclined to accept such a formula. Firstly, the amount in question is not very large. Secondly, in order to provide for such formula, we would have to call upon the claimants to appear before us, a luxury which poor litigants can ill-afford. Thirdly, the insurance company should have properly adviced itself before effecting tax at source on the ground that the judgement of this Court in case of Smt. Hansagauri Prafulchandra Ladhani and ors vs. The Oriental Insurance Company Ltd (supra) was no longer good law in view of the statutory amendments. Not having done that the only course left open to the insurance company would be to approach the Income Tax department for refund, as may be adviced."

40 In the Finance Act, 2021, the erstwhile Section 145A(b) is now Section 145B(1).

41 The case of the Revenue is that the legislative intent in insertion of Section 145A(b) is very clear. According to the Revenue, the interest received on any compensation or enhanced compensation is deemed to be income of the assessee in the year of its receipt after the insertion of Section 145A(b). The ratio of **Rama Bai (supra)** stands overruled by Section 145A(b) and therefore, to that extent, even **Hansaguri (supra)** is not relevant after the insertion of Section 145A(b). According to the Revenue, the interest received as a part of the award is deemed to be income in the year of its receipt and is not to be accounted across many years under the accrual system.

42 According to the Revenue, such interest income is liable to the TDS under Section 194A(3)(ixa) if it exceeds Rs.50,000/- for any claimant at the time of its deposit by the Insurance Company with the Tribunal.

43 The stance of the Revenue is that **Bhoyabhai (supra) f**ailed to take notice of the amendment in Section 145A(b) and thereby ordered to spread over the ceiling of Rs.50,000/- over years.

44 The stance of the Revenue is that whenever any Insurance Company would deposit the amount with the Tribunal, at that time, if the total sum deposited exceeds Rs.50,000/- for any claimant, then for that claimant, tax is required to be deducted.

- **FINAL ANALYSIS:**

45 Section 171 of the Motor Vehicles Act, 1988 empowers the Tribunal to award interest on the claim made under the Motor Vehicles Act from the date of making the claim. Sections 28 and 34 resply of the Land Acquisition Act, 1894 relate to the interest on compensation for the land compulsorily acquired and the compensation received for.

46 It is very essential to bear the fine distinction between the interest awarded under the two enactments viz. the Motor Vehicles Act,1988 and the Land Acquisition Act, 1894 resply. There are few amendments brought under the Income Tax Act keeping a specific law (Land Acquisition Act, 1894) in mind. Various High Courts have taken the view that the treatment of all the three Sections 28, & 34 resply of the Land Acquisition Act and Section 171 of the Motor Vehicles Act interest is not

the same so far as taxability under the Income Tax Act is concerned.

47 The amendment in Section 145A(b) only creates a deeming fiction as to the year of taxability of the interest on compensation. It does not create a deeming fiction as to the taxability of the interest on compensation. Even after the insertion of Section 145A(b), the interest on compensation under the Motor Vehicles Act which is exempt does not become taxable by operation of Section 145A(b).

48 The compensation received under the compulsory acquisition of land is in any case taxable under Section 45 as the Capital Gains and therefore, the issue under the Land Acquisition with regard to interest under Sections 28 and 34 i.e limited to the extent that the same would be taxable under Section 56(2)(viii) (Section 34 interest) or Section 45 the Capital Gains (Section 28 interest that is part of the compensation) and therefore, only the year of its taxability is decided by Section 145A(b) and not the taxability of interest on the compulsory acquisition of land. Whereas under the Motor Vehicles Act, the compensation itself is exempt. The nature of interest, therefore, would assume significance and cannot be given the same treatment as interest on compensation under the Land Acquisition Act and be taxed by operation of Section 145A(b).

49 It is crucial to note that in **Rama Bai (supra),** the Supreme Court drew no distinction between the interest under Section 28 and interest under Section 34 of the Land Acquisition Act, 1894. Later in **Ghanshyam (2009) 315 ITR 1 (SC),** the Supreme Court drew this distinction and held that the interest under Section 28 of the Land Acquisition Act, 1894 would form part of the compensation itself and is taxable under the capital gain only. The amendment of Section 145A(b), Sections 56(2)

(viii) and 194A resply would therefore not apply to the interest under Section 28 of the Land Acquisition Act, 1894, but would apply only to Section 34 interest as is held in the case of **[2016] 388 ITR 343 (Gujarat) Movaliya Bhikhubhai Balabhai.** Therefore, the implication of Sections 145A(b) is not absolute even with respect to the interest awarded under Section 28 of the Land Acquisition Act and cannot apply to the interest awarded by the MACT as well.

50 The term **"income"** is inclusively defined in Section 2(24). Such definition does not include the **"interest"** referred to in the Section 56(2) (viii) or interest received in the MACT award.

51 The words of Section 194A(3) are crucial i.e **"income by way of interest"** and not simply **"interest".** Therefore, even when interest is paid, if the same is received not in the name of **"income",** then Section 194A(3) would not operate.

52 Therefore, the interest on compensation not being taxable at all there is no question of deducting tax on the same under Section 194(A).

53 In **Hansaguri (supra)**, the Court had no occasion to examine the taxability of the interest which proceeded on the basis that it is taxable. Therefore, now if it is held to be exempt, the guidelines prescribed in **Hansaguri (supra)** are no longer applicable. The Insurance Company must deposit the full award before the Tribunal without deducting tax and the same is to be disbursed to the claimants.

- **RATIONALIZATION OF PROVISIONS FOR TAXATION OF INTEREST RECEIVED ON ENHANCED COMPENSATION OR DELAYED COMPENSATION:**

54 *The existing provisions of the Income Tax Act provide that the income chargeable under the head "Profits and gains of business or profession" or "Income from other sources", shall be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee. Further, the Supreme Court, in the case of* ***Rama Bai (supra)*** *has held that arrears of interest computed on delayed or enhanced compensation shall be taxable on accrual basis. This has caused undue hardship to the taxpayers. With a view to mitigating the hardships, it is proposed to amend Section 145A to provide that the interest received by an assessee on compensation or enhanced compensation shall be deemed to be his income for the year in which it is received, irrespective of the method of accounting followed by the assessee. Further, it is proposed to insert clause (viii) in sub-section (2) of Section 56 to provide that income by way of interest received on compensation or on enhanced compensation referred to in sub-section (2) of Section 145A shall be assessed as "income from other sources" in the year in which it is received. This amendment will take effect from 1st April 2010 and shall accordingly apply in relation to the assessment year 1998-99 and subsequent assessment years. [Clauses 26, 27, 56]*

- **RATIONALISATION OF PROVISIONS RELATING TO DEDUCTION OF TAX ON INTEREST (OTHER THAN INTEREST ON SECURITIES):**

55 *Under Section 194(3)(ix) of the Act, tax is not required to be deducted from the interest or paid on the compensation amount awarded by the Motor Accident Claim Tribunal if the amount of such interest credited or paid during a financial year does not exceed*

Rs.50,000/-. Finance (No.2) Act, 2009 amended the provisions of Section 56 of the Act as well as substituted Section 145A of the Act to, inter alia, provide that interest income received on compensation or enhanced compensation shall be deemed to be the income of the year in which the same has been received. However, the existing provisions of Section 194A of the Act provide for deduction of tax from the interest paid or credited on compensation, whichever is earlier. Section 145A(b) of the Act provides an exception to the method of accounting contained in Section 145 of the Act and mandates for taxation of interest on compensation on receipt basis only. Therefore, deduction of tax on such interest on mercantile / accrual basis results into undue hardship and mismatch. It is, therefore, proposed to amend the provisions of Section 194A of the Income Tax Act, 1961 to provide that deduction of tax under Section 194A of the Act from the interest payment on the compensation amount awarded by the Motor Accident Claim Tribunal compensation shall be made only at the time of payment, if the amount of such payment or aggregate amount of such payments during a financial year exceeds Rs.50,000/-. These amendments will take effect from 1st June, 2015. [Clause 42].

56 We are of the view that compensation under the award of the MACT is not income. The expression "income" used in the Entry 82 of List I of Seventh Schedule to the Constitution can be given widest meaning. Under Section 2(24), the definition is inclusive and not exhaustive. In the absence of any express provision to the contrary, income can be held to refer to something earned. What is received as compensation for loss in one or the other form may not be income.

- **CASE LAW:**

57 It was observed in the **Commissioner of Income Tax, Bengal Vs.**

Shaw Wallace and Company [AIR 1932 Privy Council 138] by the Privy Council as under:

> *"The object of the Indian Act is to tax "income" a term which it does not define. It is expanded, no doubt, into income, profits and gains," but the expansion is more a matter of words than of substance, Income, their Lordships think, in this cannotes a periodical monetary return "coming in" with some sort of regularity, or expected regularity, from definite sources. The source is not necessary one which is expected to be continuously productive, but it must be one whose object is the production of a definite return, excluding anything in the nature of a mere windfall. Thus income has been likened pictorially to the fruit of a tree, or the crop of a field. It is essential the produce of something, which is often loosely spoken of as "capital". But capital, though possibly the source in the case of income from securities, is in most cases hardly more than an element in the process of production."*

58 In **Rani Amrit Kunwar Vs. Commissioner of Income Tax, C. P. & U.P. (1946) XIV ITR 561**, the Allahabad High Court observed:-

> *"Under Indian law, therefore, we come back in my opinion, to the relatively simple test whether in the ordinary parlance of language what the assessee receives is "income" or not. I should not dream of suggesting that every payment made by one person to another is necessarily the recipient's income since it may, as Viscount Dunedin has said, be merely a casual payment or, as Sir George Lowndes has suggested, a mere windfall. Such sweeping proposition would be absurd. Many things have to be considered. In the case of a payment by a parent to a child or by a husband to a wife or by one relation to another obvious questions arise whether in the particular circumstances of each case the payments are made in such a way as to constitute what is paid the money of the recipient at all or whether the payments themselves are not merely a series of casual payments or windfalls. But there seems to me to be another class of cases altogether in which in particular circumstances payments may be made by one person to another which can only be explained on the ground that the giver intends to give, and the recipient expects to receive, with regularity or expected regularity and from a source the nature of which is to produce such a payment, an "income" which is in the income-tax sense his own. I can find nothing in the Indian Income-tax Act to warrant any general conclusion that it is only in a case in which, if the payment is discontinued, the recipient will have an immediate right of action against the payer, that it will be income in his hands in the Indian income-tax sense. That is to put too limited a construction on the word*

"income." If the payments are such as to come within the category of payments which are casual and nonrecurring, then it is to be observed that the Act itself has taken them out of the category of "income". The very fact that the framers of the Indian Income-tax Act found it necessary by a special clause to exempt casual and non-recurring receipts from the category of income, profits and gains is itself, in my opinion, an indication that, but for that exemption, they are to be regarded as capable of falling within the class of income, profits or gains under the charging section. If it is to be assumed that ex hypothesi a casual and nonrecurring payment could never be income, then, as I see it, the statutory exception of it would be otiose and unnecessary. Another reason is afforded by Section 4 (3)(ii) of the Income-tax Act for inducing me to think that so narrow a construction cannot be placed on the word "income". If the assessee were right in saying that the test of "obligation" has in all cases to be applied in deciding what is or is not "income", it is difficult to see why voluntary contributions to a religious or charitable institution (whether applicable solely to religious or charitable purposes or not) should be specially excepted by the Act. The conclusion, therefore, I have reached is that, in construing that word "income" in the Indian Income-tax Act, one has to ask oneself whether, having regard to all the circumstances surrounding the particular payments and receipts in question, what is received is of the character of income according to the ordinary meaning of that word in the English language or whether it is merely a casual receipt or mere windfall."

59 In **Raghuvanshi Mills Ltd., Bombay Vs. Commissioner of Income-Tax, Bombay City, (1952) XXII ITR 484** while considering the nature of receipt of insurance claim for the business loss, the Supreme Court observed:-

"It is true the Judicial Committee attempted a narrower definition in Commissioner of Income-tax v. Shaw Wallace & Co., by limiting income to "a periodical monetary return 'coming in' with some sort of regularity, or expected regularity, from definite sources" but, in our opinion, those remarks must be read with reference to the particular facts of that case. The non-recurring aspect of this kind of receipt was considered by the Privy Council in The King v. B.C. Fir and Cedar Lumber Co. and we do not think their Lordships had in mind a case of this nature when they decided Shaw Wallace & Company's case."

60 In **Raja Bahadur Kamakshya Narain Singh of Ramgarh Vs. Commissioner of Income-Tax, Bihar and Orissa, AIR 1943 Privy Council**

153, it was observed:-

> *"Income is not necessarily the recurrent return from a definite source, though it is generally of that character. Income again may consist of a series of separate receipts, as it generally does in the case of professional earnings. The multiplicity of forms which "income" may assume is beyond enumeration. Generally, however, the mere fact that the income flows from some capital assets, of which the simplest illustration is the purchase of an annuity for a lump sum, does not prevent it from being income, though in some analogous cases the true view may be that the payments, though spread over a period, are not income, but instalments payable at specified future dates of a purchase price. Such a case is illustrated by (1903) A.C.299. But, in their Lordships' judgment, the royalties here are clearly income and not capital. They are periodical payments for the continuous enjoyment of the various benefits under the leases. The actual acquisition of the property in a particular ton of coal at the moment when the lessees have cut and taken away the coal is only the final stage."*

61 In **Navinchandra Mafatlal, Bombay Vs. Commissioner of Income Tax, Bombay City, AIR 1955 S.C. 58,** while considering the question whether capital gain could be treated as income if so provided for under statutory provisions, it was observed:-

> *"7. 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; Stroud, 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 US 189 (K); -'Merchants' Loan and Trust Co. v. Smietanka', (1920) 255 US 509 (L) and - 'United States of America v. stewat', (1940) 311 US 60 (M) and - 'Resch v. Federal Commissioner of Taxation', (1943) 66 CLR 198 (N). In each of these cases very wide meaning was ascribed to the word "income" as its natural meaning."*

62 In **The Commissioner of Income-Tax, Hyderabad, Deccan Vs. M/s Vazir Sultan and sons, AIR 1959 SC 814** the issue was whether compensation for loss of agency was a capital receipt. The compensation

for loss of agency was held to be a capital receipt on the ground that the agency was a capital asset in that case. It was observed:-

> *"35. .....The agency agreements in fact formed a capital asset of the assessee's business worked or exploited by the assessee by entering into contracts for the sale of the "charminar" cigarettes manufactured by the Company to the various customer and dealers in the respective territories. This asset really formed part of the fixed capital of the assessee's business. It did not constitute the business of the assessee but was the means by which the assessee entered into the business transactions by way of distributing those cigarettes within the respective territories. It really formed the profit-making apparatus of the assessee's business of distribution of the cigarettes manufactured by the Company. If it was thus neither circulating capital nor stock-in-trade of the business carried on by the assessee it could certainly not be anything but a capital asset of its business and any payment made by the Company as and by way of compensation for terminating or cancelling the same would only be a capital receipt in the hands of the assessee."*

63 In **Navnit Lal C. Javeri Vs. K. K.Sen AIR 1965 SC 1375,** it was observed:-

> *"16. The question which now arises is, if the impugned section treats the loan received by a shareholder as a dividend paid to him by the company, has the legislature in enacting the section exceeded the limits of the legislative field prescribed by the present Entry 82 in List I? As we have already noticed, the word "income" in the context must receive a wide interpretation; how wide it should be it is unnecessary to consider, because such an enquiry would be hypothetical. The question must be decided on the facts of each case. There must no doubt be some rational connection between the item taxed and the concept of income liberally construed. If the legislature realises that the private controlled companies generally adopt the device of making advances or giving loans to their shareholders with the object of evading the payment of tax, it can step in to meet this mischief, and in that connection, it has created a fiction by which the amount ostensibly and nominally advanced to a shareholder, as a loan is treated in reality for tax purposes as the payment of dividend to him. We have already explainer how a small number of shareholders controlling a private company adopt this device. Having regard to the fact that the legislature was aware of such devices, would it not be competent to the legislature to device a fiction for treating the ostensible loan as the receipt of dividend? In our opinion, it would be difficult to hold that in*

making the fiction, the legislature has travelled beyond the legislative field assigned to it by entry 82 in List 1."

64 In **Senairam Doongarmall Vs. Commissioner of Income-Tax, Assam, AIR 1961 SC 1579,** the question was whether compensation received from military authority on account of loss of earning of tea estate was income or capital receipt. It was observed that quality of payment was decisive of the character of income and compensation received was not income. During the discussion following passage from English judgment in Sutherland Vs. Commissioners of Inland Revenue (1918) 12 Tax Case 63 was referred:-

"Now it is quite clear that if a source of income is destroyed by the exercise of the paramount right... and compensation is paid for it, that that is not income, although the amount of compensation is the same sum as the total of the income that has been lost."

65 In **CIT v. G.R. Karthikeyan, 1993 Supp 3 SCC 222,** it was observed:-

"7. It is not easy to define income. The definition in the Act is an inclusive one. As said by Lord Wright in Kamakshya Narayan Singh v. CIT, (1943) 11 ITR 513 (PC) "income ... is a word difficult and perhaps impossible to define in any precise general formula. It is a word of the broadest connotation". In Gopal Saran Narain Singh v. CIT (1935) 3 ITR 237 (PC) the Privy Council pointed out that "anything that can properly be described as income is taxable under the Act unless expressly exempted". This Court had to deal with the ambit of the expression 'income' in Navinchandra Mafatlal v. CIT, (1954) 26 ITR 758. The Indian Income Tax and Excess Profits Tax (Amendment) Act, 1947 had inserted Section 12(B) in the Indian Income Tax Act, 1922. Section 12(B) imposed a tax on capital gains. The validity of the said amendment was questioned on the ground that tax on capital gains is not a tax on 'income' within the meaning of Entry 54 of List 1, nor is it a tax on the capital value of the assets of individuals and companies within the meaning of Entry 55 of List 1 of the Seventh Schedule to the Government of India Act, 1935. The Bombay High Court repelled the attack. The matter was brought to this Court. After rejecting the

argument on behalf of the assessee that the word 'income' has acquired, by legislative practice, a restricted meaning — and after affirming that the entries in the Seventh Schedule should receive the most liberal construction — the Court observed thus:

"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; Stroud, 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, 252 US 189; Merchants' Loan and Trust Co. v. Smietunka, 255 US 209 and United States v. Stewart, 311 US 60 and Resch v. Federal Commissioner of Taxation, 66 CLR 198 (1943). In each of these cases very wide meaning was ascribed to the word 'income' as its natural meaning. The relevant observations of 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 supplied)

8. Since the definition of income in Section 2(24) is an inclusive one, its ambit, in our opinion, should be the same as that of the word income occurring in Entry 82 of List I of the Seventh Schedule to the Constitution (corresponding to Entry 54 of List I of the Seventh Schedule to the Government of India Act)."

66 In the context of compensation received under the Motor Vehicles Act, the compensation is either on account of loss of earning capacity on account of death or injury or on account of pain and suffering. Such receipt is not by way of earning or profit. Award of compensation is on the principle of restitution to place the claimant in the same position in which he would have been had the loss of life or injury not been

suffered. In **Gobald Motor Service Ltd. and another Vs. R. M. K. Veluswami and others [AIR 1962 SC 1],** it was observed:-

> *"The same principle was restated with force and clarity by Viscount Simon in Nance v. British Columbia Electric Railway Co. Ltd., 195l AC 601. There, the learned Lord was considering the analogous provisions of the British Columbia legislation, and he put the principle thus at p. 614:*
>
> > *"The claim for damages in the present case falls under two separate heads. First, if the deceased had not been killed, but had eked out the full span of life to which in the absence of the accident he could reasonably have looked forward, what sums during that period would he probably have applied out of his income to the maintenance of his wife and family?"."*

67 In **Central Bank of India Vs. Ravindra and others [AIR 2001 SC 3095]**, the question was whether the interest component of the principal sum could carry further interest. It was observed:-

> *"44. We are of the opinion that the meaning assigned to the expression 'the principal sum adjudged' should continue to be assigned to "principal sum" at such other places in Section 34(1) where the expression has been used qualified by the adjective "such", that is to say, as "such principal sum". Recognition of the method of capitalisation of interest so as to make it a part of the principal consistently with the contract between the parties or established banking practice does not offend the sense of reason, justice and equity. As we have noticed such a system has a long established practice and a series of judicial precedents upholding the same. Secondly, the underlying principle as noticed in several decided cases is that when interest is debited to the account of the borrower on periodical rests, it is debited because of its having fallen due on that day. Nothing prevents the borrower from paying the amount of interest on the date it falls due. If the amount of interest is paid there will be no occasion for capitalising the amount of interest and converting it into principal. If the interest is not paid on the date due, from that date the creditor is deprived of such use of the money which it would have made if the debtor had paid the amount of interest on the date due. The creditor needs to be compensated for deprivation. As held in Pazhaniappa Mudaliar v. Narayana Ayyar (supra), the fact situation is analogous to one as if the creditor has advanced money to the borrower equivalent to the amount of interest debited. We are, therefore, of the opinion that the expression "the principal sum adjudged" may include the amount of interest, charged*

on periodical rests, and capitalised with the principal sum actually advanced, so as to become an amalgam of principal in such cases where it is permissible or obligatory for the Court to hold so. Where the principal sum (on the date of suit) has been so adjudged, the same shall be treated as "principal sum" for the purpose of "such principal sum" - the expression employed later in Section 34 of C.P.C. The expression "principal sum" cannot be given different meanings at different places in the language of same section, i.e. Section 34 of C.P.C."

68 In **Drawing and Disbursing Officer vs. Income Tax Officer [Income Tax Appeal No.495 of 2009 decided on 30th March 2011]**, the Punjab and Haryana High Court held as under:

"21. Having regard to nature of receipt of compensation as per award under the M.V.Act, compensation is in the nature of capital receipt for death or injury and cannot be held to be in the nature of income. Learned counsel for the revenue also fairly accepts this legal position. It appears to be for this reason that the said receipt is not sought to be treated as income.

22. We may now consider the question whether interest on account of delay in adjudication becomes part of compensation or can be treated as a separate component of income.

23. Section 171 of the M.V.Act authorizes the Tribunal to award interest on the claim made under the Act from the date of making the claim. It reads thus:

> *"171.Award of interest where any claim is allowed:*
>
> *Where any Claims Tribunal allows a claim for compensation made under this Act, such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from*
> *such date not earlier than the date of making the claim as it may specify in this behalf."*

24. In the context of compensation under the provisions of Land Acquisition Act, 1894, the Hon'ble Supreme Court in Commissioner of Income-Tax Vs. Ghanshyam (HUF), (2009) 315 ITR 1 SC held that interest paid by the Collector under Section 34 of the said Act was part of compensation and was treated to be at par with the compensation for purposes of taxability. The relevant observations therein are:-

> *"…Section 28 of the 1894 Act applies only in respect of the*

> *excess amount determined by the Court after reference under Section 18 of the 1894 Act. It depends upon the claim, unlike interest under Section 34 which depends on undue delay in making the award. It is true that "interest" is not compensation. It is equally true that Section 45(5) of the 1961 Act refers to compensation. But as discussed hereinabove, we have to go by the provisions of the 1894 Act which awards "interest" both as an accretion in the value of the lands acquired and interest for undue delay. Interest under Section 28 unlike interest under Section 34 is an accretion to the value, hence it is a part of enhanced compensation or consideration which is not the case with interest under Section 34 of the 1894 Act…"*

69 We have a very erudite and lucid order passed by the Income Tax Appellate Tribunal, Ahmedabad Bench in the case of **Urvi Chirag Sheth vs. Income-tax Officer, Ward 5(2)(3), Ahmedabad reported in [2016] 70 taxmann.com 33(Ahmedabad-Trib.),** wherein the following has been observed:

> *"5. As we have noted earlier in this order, the assessee had to go right upto Hon'ble Supreme Court to have her compensation claim accepted. What ought to have been paid to her soon after the accident, was eventually paid in full after twenty one years of the tragic incident. Hon'ble Supreme Court, vide judgment dated 26th April 2011, concluded that "Considering all this, we grant compensation of Rs 15 lacs (Rupees fifteen lacs) with interest at the rate of 8% on the enhanced compensation from the date of filing the claim petition before MACT (Motor Accidents Claims Tribunal) till the date of realization". The payment made to the assessee, therefore, is in the nature of compensation for the loss of her mobility and physical damages. Clearly, such a receipt, in principle, is a capital receipt and beyond the ambit of taxability of income since only such capital receipts can be brought to tax as are specifically taxable under section 45. Hon'ble Supreme Court has, in the case of Padmaraje R. Kadambande vs. CIT [(1992) 195 ITR 877 (SC)], observed that, ". . . . we hold that the amounts received by the assessee during the financial years in question have to be regarded as capital receipts and, therefore, are not income within meaning of s. 2(24) of the Income Tax Act." [Emphasis supplied]. This clearly implies, as is the settled law, that a capital receipt, in principle, is outside the scope of 'income' chargeable to tax and a receipt cannot be taxed as income unless it is in the nature of a revenue receipt or is specifically brought within ambit of 'income' by way of specific provisions of the Income Tax Act. The accident compensation is thus not taxable as income of the assessee. What is*

termed as interest also is of the same character and it seeks to compensate the time value of money on account of delay in payment. On the first principles, such an interest cannot have a standalone character of income, unless the interest itself is a kind of statutory interest at the prescribed rate of interest. Right now, however, we are dealing with a situation in which the interest is awarded by Hon'ble Supreme Court in its complete and somewhat unfettered discretion. An interest of this nature is essentially a compensation in the sense it accounts for a fall in value of money itself at the point of time when compensation became payable vis-a-vis the point of time when it was actually paid, or, for the shrinkage of, what can be termed as, a measuring rod of value of compensation. If the money was given on the date of presenting the claim before the MACT, it would have been Rs 15 lacs but since there is an inordinate, though partial, delay in payment of this amount, interest payment is to factor for fall in value of money in the meantime. The transaction thus remains the same, i.e. compensation for disability, and the interest rate, on a rather notional basis, is taken into account to compute the present value of the compensation which was lawfully due to the assessee in a somewhat distant past. Viewed thus, the amount of compensation received at this point of time, whichever way is it computed, has the same character. If compensation itself is not taxable, the interest on account of delay in payment of compensation cannot be taxable either. In the case of CIT Vs Oriental Insurance Co Ltd [(2012) 211 Taxman 369 (All)], Hon'ble Allahabad High Court has, inter alia, held that "To our opinion, the award of compensation under motor accidents claims cannot be regarded as income. The award is in the form of compensation to the legal heirs for the loss of life of their bread earner. Hence the interest on such an award cannot be termed as income to the legal heirs or to the victim himself". Their Lordships have also observed, referring to a series of judicial precedents on the issue, that "if interest awarded by the court for loss suffered on account of deprivation of property or paid for breach of contract by means of damages, or were not paid in respect of any debt incurred or money borrowed, shall not attract the provisions of Section 2(28A) read with Section 194A(1) of the Income Tax Act". Essentially, this conclusion supports the school of thought that when principal transaction, i.e. accident compensation for the delayed payment of which the interest is awarded, itself is outside the ambit of taxation, similar fate must follow for the subsidiary transaction, i.e. interest for delay in payment of compensation, as well. Touching a different chord but coming to the rescue of the assessee, Hon'ble Punjab & Haryana High Court, in the case of CIT Vs B Rai [(2004) 264 ITR 617 (P&H)], draws a line of demarcation between the interest granted under the statutory provisions and interest granted under discretion of the court, and holds that the latter is outside the scope of 'income' which can be brought to tax under the Income Tax Act, 1961. As Their Lordships stated, in so many words, "where interest……is to be paid is in the discretion of the court, as in the present case, the said interest

would not amount to 'income' for the purposes of income tax". That precisely is the situation before us as well.

6. Revenue, however, does not even challenge these propositions, and, in our considered view, rightly so; it is only on the scope of provisions of Section 145A(b) and section 56(2)(viii) that they rest their case. It is, therefore, perhaps only appropriate to appreciate the scope of these provisions and take a look at the facts surrounding introduction of these provisions vide the Finance Act 2009.

7. Ironically, the statutory provisions being pressed into service to bring this income to tax, were provisions meant to give relief to the assessee. When these provisions were introduced, the Memorandum Explaining the Provisions of the Finance Bill 2009 had this to say:

Rationalization of provisions for taxation of interest received on delayed compensation or enhanced compensation

The existing provisions of Income-tax Act provide that income chargeable under the head "Profits and gains of business or profession" or "Income from other sources", shall be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee. Further, the Hon'ble Supreme Court, in the case of Rama Bai Vs. CIT (181 ITR 400) has held that arrears of interest computed on delayed or enhanced compensation shall be taxable on accrual basis. This has caused undue hardship to tax payers. With a view to mitigating the hardship, it is proposed to amend section 145A to provide that the interest received by an assessee on compensation or enhanced compensation shall be deemed to be his income for the year in which it is received, irrespective of the method of accounting followed by the assessee. Further, it is proposed to insert clause (viii) in sub-section (2) of section 56 to provide that income by way of interest received on compensation or on enhanced compensation referred to in sub-section (2) of section 145A shall be assessed as "income from other sources" in the year in which it is received. This amendment will take effect from 1st April, 2010 and shall accordingly apply in relation to assessment year 1998-99 and subsequent assessment years. [Clauses 26,27,56]

8. In the case of Rama Bai (supra), which is raison d'être for this amendment in law, Hon'ble Supreme Court, speaking through Hon'ble Justice S Ranganathan- as he then was, one of the most illustrious former Presidents of this Tribunal, had observed that "the interest cannot be taken to have accrued on the date of the order of the Court granting enhanced compensation but has to be taken as having accrued year after year from the date of delivery of possession of the lands till the date of such order". What is significant, however, that taxability of interest was not in dispute in the said case; the only dispute was the

year in which the income should be taxed. The amendment in law, therefore, deals with the point of time when an income is it to be taxable. It does not bring to tax an income which was, until the point of time when amendment was made, not taxable earlier. Section 145A, it is important to bear in mind, deals with the method of accounting on cash or mercantile basis which again has its focus on the point of time when an income is taxable rather than taxability of income itself. When an income is not taxable, section 145A has no relevance. It is in this backdrop that we can take a look at Section 145A which is as follows:

> *"Section 145A: Method of accounting in certain cases—*
>
> *Notwithstanding anything to the contrary contained in section 145,—*
>
> *(a)……..(not relevant for our purposes)*
>
> *(b) interest received by an assessee on compensation or on enhanced compensation, as the case may be, shall be deemed to be the income of the year in which it is received."*

9. Section 145A starts with a non obstante clause which restricts the scope of Section 145 dealing with the method of accounting. It is not a charging provision. The only impact it has on taxability of an income is its timing of taxability. What is not taxable is not made taxable under section 145A(b) but what is taxable under the mercantile method of accounting, i.e. on accrual basis, is made taxable on cash basis of accounting, i.e. at the point of time when interest is actually received. Nothing else needs to read into this provision, and the memorandum explaining the provision of Finance Bill 2009, as reproduced earlier, makes that amply clear. As for the provisions of Section 56(2)(viii), it is only an enabling provision, as unambiguously made clear in the above memorandum as well, to bring interest income to tax in the year of receipt rather than in the year of accrual. Section 56(2)(viii) provides that……"incomes, shall be chargeable to income tax under the head 'income from other sources', namely ….(viii) income by way of interest received on compensation or enhanced compensation referred to in clause (b) of Section 145A". The starting point of this exercise is income, and it is only when the receipt is in the nature of an income, that the classification of income under a particular category arises. In other words, when interest received by the assessee is in the nature of income, such interest can be taxed under section 56 (2)(viii). Section 56(1) makes this aspect even more clear when it states that "Income of every kind, which is not to be excluded from the total income under this Act, shall be chargeable to income tax under the head "income from other sources", if it is not chargeable to income tax under any of the heads specified in Section 14, items A to E", and then, in the subsequent provision, i.e. Section 56(2), proceeds to set out an

illustrative, rather than exhaustive list of, such "incomes". Clearly, unless a receipt is not an income, there is no occasion for the provisions of Section 56(1) or 56(2) coming into play. Section 56 does not decide what is an income. What it holds is that if there is an income, which is not taxable under any of the heads under Section 14, i.e item A to E, it is taxable under the head 'income from other sources'. The receipt being in the nature of income is a condition precedent for Section 56 coming into play, and not vice versa. To suggest that since an item is listed under section 56(2), even without there being anything to show that it is of income nature, it can be brought to tax is like putting the cart before the horse. The very approach of the authorities below is devoid of legally sustainable merits. The authorities below were thus completely in error in bringing the interest awarded by Hon'ble Supreme Court to tax. The question of deduction under section 57(iii), given the above conclusion, is wholly irrelevant. We vacate this action of the Assessing Officer, and disapprove the CIT(A)'s action of confirming the same. Grievance of the assessee is thus upheld.

10. As we part with the matter, we must say that, as fellow citizens, we are deeply anguished to take note of the long journey that the assessee had to undertake to get her dues and then to fight this unjust income tax demand on her. In order to ensure that others do not have to tread the same arduous path- at least with respect to the tax demand, and to bring an element of certainty, we would suggest that the Central Board of Direct Taxes may as well take a conscious call on issuing appropriate administrative instructions in this regard and ensuring that what was brought as a measure of relief to the taxpayers is not used, by the field officers, as a source of taxation. Such a step certainly cannot mitigate the pain of an accident victim but it can probably help in ensuring that hardships of the accident victim are not further compounded, and that's the least that a responsive tax administration, like the one we fortunately have at present, can do. We must also place on record that fact that despite smallness of amount involved, learned representatives have rendered valuable assistance in this case, and that we deeply appreciate their assistance."

70 In the case of **Managing Director, Tamil Nadu State Transport Corpn. (Salem) Ltd vs. Chinnadurai reported in [2016] 70 taxmann.com 53 (Madras),** the Madras High Court held as under:

"13. The question is whether the provisions of the Income Tax Act 1961, and more specifically, whether the compensation awarded by the Motor Accident Claims Tribunal to the victim can be classified as a taxable income under the Income Tax law?. The answer to this question in the opinion of this Court is in the negative. Compensation cannot be

categorized or even described as income as it has already been stated that the intention of the legislature in awarding compensation to the victims of Motor Accident cases is to restitute them and rehabilitate them.

14. The Income Tax Department appears to have issued a circular dated 14.10.2011 whereby deduction of Income Tax has been ordered on the award amount and the interest accrued on the deposits made under the order of the Court in Motor Accident Cases. Taking serious view of this circular, the Division Bench of the Himachal Pradesh High Court took Suo-Moto cognizance of the matter and considered the same as a Public Interest Litigation in the judgment reported in Court on its Motion Vs. H.P.State Co-operative Bank Ltd & Ors 2014 SCC Online HP 4273 and has quashed the circular and in an elaborate and well considered judgment, His Lordship the Hon'ble Chief Justice Mansoor Ahmed Mir has held that:

> *"13.While going through the said provisions of law, one comes to the inescapable conclusion that the mandate of the said provisions does not apply to the accident claim cases and the compensation awarded under the Motor Vehicles Act cannot be said to be taxable income. The compensation is awarded in lieu of death of a person or bodily injury suffered in a vehicular accident, which is damage and not income.*
>
> *14. Chapters X and XI of the Motor Vehicles Act, 1988 provides for grant of compensation to the victims of a vehicular accident. The Motor Vehicles Act has undergone a sea change and the purpose of granting compensation under the Motor Vehicles Act is to ameliorate the sufferings of the victims so that they may be saved from social evils and starvation, and that the victims get some sort of help as early as possible. It is just to save them from sufferings, agony and to rehabilitate them. We wonder how and under what provisions of law the Income Tax Authorities have treated the amount awarded or interest accrued on term deposits made in Motor Accident Claims Cases as income. Therefore, the said Circular is against the concept and provisions referred to hereinabove and runs contrary to the mandate of granting compensation.*
>
> *...23. Having said so, the Circular, dated 14.10.2011, issued by the Income Tax Authorities, whereby deduction of income Tax has been ordered on the award amount and interest accrued on the deposits made under the orders of the Court in Motor Accident Claims Cases, is quashed and in case any such deduction has been made by respondents, they are directed to refund the same, with interest at the rate of 12% from the date of deduction till payment, within six weeks from today."*

15. Following the Division Bench Judgment, a learned Single Judge of the Punjab and Haryana High Court, in a recent decision, in New India Assurance Company Ltd. Vs.Sudesh Chawla and others, CR.No.430 of 2015 (O&M), reiterating the reasoning given by the Division Bench of Himachal Pradesh High Court, has opined that award of compensation is on the principle of restitution to place the claimant in the same position in which he would have been loss of life or injury has not been suffered and accordingly held that the orders calling upon the Insurance Company to pay TDS/deduct TDS on the interest part are not sustainable.

16. If we look at other jurisdictions like Australia, Unites States and United Kingdom, even there, the matters where a person has suffered an injury or there has been a loss of life and a compensation has been paid in lieu of that, then it has been held by the Courts that there cannot be any Tax deduction on such compensation. The underlying basis behind this is that a person who suffers a loss cannot be asked to part with the solatium he receives since it is the only remedy he has been provided with by the law.

17. If there is a conflict between a social welfare legislation and a taxation legislation, then, this Court is of the view that a social welfare legislation should prevail since it subserves larger public interest. The Motor Vehicle Act is one such legislation which has been passed with a benevolent intention for compensating the accident victims who have suffered bodily disablement or loss of life and the Income Tax Act which is primarily intended for Tax collection by the State cannot put spokes in the effective and efficacious enforcement of the Motor Vehicles Act. In fact, if one might deeply analyse, it could be seen that there is no direct conflict between any provisions of the Income Tax Act and the Motor Vehicles Act and it is only by the interpretation of the provisions the concept of compulsory payment of TDS has crept into the realm of compensation payment in Motor Vehicle Accident cases.

18. Hence, with due respect I am unable to concur with the findings of the Karnataka High Court, the Chattisgarh High Court and this Court cited by the Revision Petitioner. This Court is of the view that the Division Bench judgment of the Himachal Pradesh high Court and the judgment of the Single Judge of the Punjab and Haryana High Court lay down the right law and hence, this Court arrives at the conclusion that the compensation awarded or the interest accruing therein from the compensation that has been awarded by the Motor Accident Claims Tribunal cannot be subjected to TDS and the same cannot be insisted to be paid to the Tax Authorities since the compensation and the interest awarded therein does not fall under the term 'income' as defined under the Income Tax Act, 1961.

19. Therefore, this Court directs that the Petitioner Corporation cannot deduct any amount towards TDS and the same shall also be deposited in addition to the amount that has already been deposited to the credit of M.C.O.P.No.879 of 2006, on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court, Dharmapuri, within a period of four weeks from the date of receipt of a copy of this order and the Respondent is entitled to take appropriate steps in a manner known to law to withdraw the amount."

71 A Division Bench of the Allahabad High Court in the case of **Commissioner of Income-tax vs. Oriental Insurance Co. Ltd. reported in [2012] 27 taxmann.com 28 (All.)** held as under:

"35. Most of the rulings cited by learned counsel for the revenue relates to interest paid on the delayed payment of compensation awarded under Land Acquisition Act. The award under Land Acquisition Act and the award under Motor Vehicle Act cannot be equated for the simple reason that in land acquisition cases, the payment is made regarding the price of the land and on such price, the provisions of Capital Gain Tax are attracted, while in the motor accidents claims, the payment is made to the legal representatives of the deceased for loss of life of their bread earner. In most of the cases under motor vehicle accidents claims, the recipients of awards are poor and illiterate persons who even do not come within the ambit of Income Tax Act. The amount of compensation under Motor Vehicle Act, also do not come within the definition of "income". Therefore, the analogy of compensation under land acquisition cannot be applied to the motor vehicle accidents claims.

36. The word "interest" as defined under Section 2(28A) has to be construed strictly. We may refer to Polestar Electronic (Pvt.) Ltd. Vs. Addl. CST (1978) 41 STC 409, in which hon'ble the Apex Court has held as under:-

> *"if there is one principle of interpretation more well settled than any other, it is that statutory enactment must ordinarily be construed according to the plain natural meaning of its language and that no words should be added, altered or modified unless it is plainly necessary to do so in order to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute."*

37. The necessary ingredients of such interest are that it should be in respect of any money borrowed or debt incurred. The award under the Motor Vehicle Act is neither the money borrowed by the insurance company nor the debt incurred upon the insurance company. As far as

the word "claim" is concerned, it should also be regarding a deposit or other similar right or obligation. The definition of Section 2(28A) of the Income Tax Act again repeats the words "monies borrowed or debt incurred" which clearly shows the intention of the legislature is that if the assessee has received any interest in respect of monies borrowed or debt incurred including a deposit, claim or other similar right or obligation, or any service fee or other charge in respect of monies borrowed or debt incurred has been received then certainly it shall come within the definition of interest.

38. The word "claim" used in the definition may relates to claims under contractual liability but certainly do not cover the claims under the statutory liability. The claim under the Motor Vehicle Act regarding compensation for death or injury is a statutory liability.

39. Insertion of clause (ix) to Section 194A(3) by the Finance Act 2003 with effect from 1.6.2003 also goes to show that prior to 1.6.2003, the legislature had no intention to charge any tax on the interest received as compensation under the Motor Vehicle Act. Even under the amended Act, interest received in excess of Rs.50,000/- has been subjected to tax liability. Certainly such interest exceeding Rs.50,000/- has further to be split amongst all the claimants and has to be spread over for each of the assessment years. Accordingly there appears to be no justification to cast liability to deduct the tax at source on the amount of interest paid on compensation under Motor Vehicle Act prior to 1.6.2003.

40. Further more the definition as provided under Section 194A(1) is also relevant which provides that if any person is responsible for paying to a resident any income by way of interest on securities, shall at the time of credit of such income to the account of the payee deduct income tax thereon at the rates in force.

41. To our opinion, the award of compensation under motor accidents claims cannot be regarded as income. The award is in the form of compensation to the legal heirs for the loss of life of their bread earner. Hence the interest on such award also cannot be termed as income to the legal heirs of the deceased or the victim himself.

42. Learned Commissioner of Income Tax (Appeals)-I, Agra in his order dated 28.3.2003 has discussed most of the cases relating to interest on land acquisition cases which have also been cited by learned counsel for the revenue before us. But as mentioned above, the award under land acquisition can not be equated in any way with the award under motor accidents claims.

43. The award under the Motor Vehicle Act is like a decree of the court. It do not come within the definition of income as mentioned in Section 194A(1) read with Section 2(28A) of the Income Tax Act. Proceedings

regarding claim under Motor Vehicle Act are in the nature of a garnishee proceedings under which the MACT has a right to attach the judgment debt payable by the insurance company. Even in the MAC award, there is no direction of any court that before paying the award, the insurance company is required to deduct the tax at source. In view of All India Reporter Ltd. Vs. Ramchandra D. Datar (supra), if no provision has been made in the decree for deduction of tax, before paying that debt, the insurance company cannot deduct the tax at source from the amount payable to the legal heirs of the deceased.

44. In Commissioner of Income Tax Vs. Chiranji Lal Multani Mal Rai Bahadur (P.) Ltd. (supra), Ghaziabad Development Authority Vs. Dr. N.K. Gupta (supra), Commissioner of Income-tax Vs. H.P. Housing Board (supra), Commissioner of Income-tax Vs. Sahib Chits (Delhi) (Pvt.) Ltd. (supra), it has been clearly held that if interest is awarded by the court for loss suffered on account of deprivation of property or paid for breach of contract by means of damages or were not paid in respect of any debt incurred or money borrowed, shall not attract the provisions of Section 2(28A) read with Section 194A(1) of the Income Tax Act."

72 In the last, we take notice of a very recent pronouncement of the Bombay High Court in the case of **Shri Rupesh Rashmikant Shah vs. Union of India and others [Writ Petition No.2902 of 2016 decided on 8th August 2019],** wherein the following has been held:

"57. We, therefore, hold that the interest awarded in the motor accident claim cases from the date of the Claim Petition till the passing of the award or in case of Appeal, till the judgment of the High Court in such Appeal, would not be exigible to tax, not being an income. This position would not change on account of clause (b) of section 145A of the Act as it stood at the relevant time amended by Finance Act, 2009 which provision now finds place in sub-section (1) of section 145B of the Act. Neither clause (b) of section 145A, as it stood at the relevant time, nor clause (viii) of sub-section (2) of section 56 of the Act make the interest chargeable to tax whether such interest is income of the recipient or not. Section 194A of the Act is only a provision for deduction of tax at source. Any provision for deduction of tax at source in the said section would not govern the taxability of the receipt. The question of deduction of tax at source would arise only if the payment is in the nature of income of the payee.

58. We are not oblivion to erstwhile clause (ix) of sub-section (3) of section 194A or the newly amended clauses (ix) and (ixa) thereof

substituting original clause (ix) w.e.f. 1.6.2015 by Finance Act, 2015. Subsection (1) of section 194A provides for deduction of tax at source upon payment of any income by way of interest. Sub-section (3) of section 194A contains exclusion clauses from the purview of sub-section (1). Clause (ix) contained in sub- section (3) prior to amendment pertained to income credited or paid by way of interest on the compensation amount awarded by the Motor Accident Claims Tribunal where such amount did not exceed Rs.50,000/-. In substitution of this provision, clause (ix) now provides that the provision of sub-section (1) will not apply to such income credited by way of interest on the compensation awarded by the Motor Accident Claims Tribunal. Clause (ixa) virtually retains the original provision of unamended clause (ix). The learned ASG would, therefore, contend that by virtue of these provisions, requirement of deducting tax at source on interest income would not arise only if the same does not exceed Rs.50,000/- in a financial year or where such income is merely credited. In other words, at the time of payment of interest, the provision for deduction of tax at source would kick in.

59. So far as the plain meaning of section 194A(1) read with erstwhile clause (ix) and substituted clauses (ix) and (ixa) of sub- section (3) is concerned, there can be no doubt or dispute. However, the fundamental question is does section 194A make the interest income chargeable to tax if it otherwise is not. The answer has to be in the negative. The provision for deduction of tax at source is not a charging provision. It only makes deduction of tax at source on payment of same, which, in the hands of payee, is income. If the payee has no liability to pay such income, the liability to deduct tax at source in the hands of payer cannot be fastened. In other words, the provision of deducting tax at source cannot govern the taxability of the amount which is being paid.

60. In the decision of the Gujarat High Court in the case of Hansaguri Prafulchandra (supra), the Court had no occasion to decide the taxability of interest on compensation or enhanced compensation of motor accident cases. This was also the position in the case of decision of this Court in the Gauri Deepak Patel & ors. (supra).

61. We may clarify that these observations and conclusions would apply to interest on compensation or enhanced compensation awarded by the Motor Accident Claims Tribunal or High Court from the date of the Claim Petition till passing of the award or the judgment. Further interest which may be paid for delay in depositing the awarded amount, would not form part of the compensation and, therefore, would fall in the bracket of interest income and would be exigible to tax under the normal provisions."

73 The upshot of the aforesaid discussion is that the compensation received under the Motor Vehicles Act is either on account of loss of earning capacity on account of death or injury or on account of pain and suffering and such receipt is not by way of earning or profit. The award of compensation is on the principle of restitution to place the claimant in the same position in which he would have been as the loss of life or injury would not have been suffered.

74 Our final conclusion may be summarized as under:

[a] The interest awarded by the Motor Accident Claim Tribunal u/s 171 of the Motor Vehicles Act 1988 is not taxable under the Income Tax Act, 1961.

[b] The interest awarded in the motor accident claim cases from the date of the Claim Petition till the passing of the award, or in the case of Appeal, till the judgment of the High Court in such appeal, would not be exigible to tax, not being an income. This position would not change on account of clause (b) of Section 145A of the Act as it stood at the relevant time amended by Finance Act, 2009, which provision now finds place in sub-section (1) of Section 145B of the Act. Neither clause (b) of Section 145A, as it stood at the relevant time, nor clause (viii) of sub-section (2) of Section 56 of the Act make the interest chargeable to tax, whether such interest is income of the recipient or not. Section 194A of the Act is only a provision for deduction of tax at source. Any provision for deduction of tax at source in the said section would not govern the taxability of the receipt. The question of deduction of tax at source would arise only if the payment is in the nature of income of the payee.

[c] The Insurance Companies or the owners of the motor vehicles depositing the requisite amount in due compliance with the awards of the Motor Accident Claims Tribunals shall deposit the full amount with the Tribunal and shall not deduct tax u/s 194A of the Income Tax Act on the interest awarded by the Motor Accident Claims Tribunal.

75 We may clarify that the aforesaid observations and conclusions would apply to interest granted on compensation or enhanced compensation awarded by the Motor Accident Claims Tribunal or the High Court from the date of the Claim Petition till the passing of the award or the judgment.

76 Further, the interest that may be paid for the delay in depositing the awarded amount, would not form part of the compensation and, therefore, would fall in the bracket of interest income and would be exigible to tax under the normal provisions.

77 The matter shall now be notified along with the other allied matters for further hearing on other factual issues arising in the present matter.

(J. B. PARDIWALA, J)

(NISHA M. THAKORE,J)

CHANDRESH