$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: October 29, 2015
Date of Decision: December 08, 2015

\+ **ITA 20/2003**

COMMISSIONER OF INCOME TAX, DELHI ..... Appellant
Through: Mr. Rohit Madan, Senior Standing counsel with Mr. Zoheb Hossain, Advocate.

versus

SUMAN DHAMIJA ..... Respondent
Through: Through: Mr. C.S. Aggarwal, Senior Advocate with Mr. Prakash Kumar, Advocate.

WITH

\+ **ITA 21/2003**

COMMISSIONER OF INCOME TAX, DELHI ..... Appellant
Through: Mr. Rohit Madan, Senior Standing counsel with Mr. Zoheb Hossain, Advocate.

versus

SUMAN DHAMIJA ..... Respondent
Through: Through: Mr. C.S. Aggarwal, Senior Advocate with Mr. Prakash Kumar, Advocate.

WITH

\+ **ITA 24/2003**

COMMISSIONER OF INCOME TAX, DELHI ..... Appellant
Through: Mr. Rohit Madan, Senior Standing counsel with Mr. Zoheb Hossain, Advocate.

versus

SUMAN DHAMIJA ..... Respondent
Through: Mr. C.S. Aggarwal, Senior Advocate with Mr. Prakash Kumar, Advocate.

WITH

WTA 3/2003

COMMISSIONER OF WEALTH TAX ..... Appellant
Through: Mr. Rohit Madan, Senior Standing counsel with Mr. Zoheb Hossain, Advocate.

versus

SUMAN DHAMIJA ..... Respondent
Through: Through: Mr. C.S. Aggarwal, Senior Advocate with Mr. Prakash Kumar, Advocate.

WITH

\+ **WTA 4/2003**

COMMISSIONER OF WEALTH TAX, DELHI ..... Appellant
Through: Mr. Rohit Madan, Senior Standing counsel with Mr. Zoheb Hossain, Advocate.

versus

SUMAN DHAMIJA ..... Respondent
Through: Through: Mr. C.S. Aggarwal, Senior Advocate with Mr. Prakash Kumar, Advocate.

WITH

\+ **WTA 5/2003**

COMMISSIONER OF WEALTH TAX ..... Appellant
Through: Mr. Rohit Madan, Senior Standing counsel with Mr. Zoheb Hossain, Advocate.

versus

SUMAN DHAMIJA ..... Respondent
Through: Through: Mr. C.S. Aggarwal, Senior Advocate with Mr. Prakash Kumar, Advocate.

AND

\+ **WTA 6/2003**

COMMISSIONER OF WEALTH TAX, DELHI ..... Appellant
Through: Mr. Rohit Madan, Senior Standing counsel with Mr. Zoheb Hossain, Advocate.

versus

SUMAN DHAMIJA ..... Respondent
Through: Through: Mr. C.S. Aggarwal, Senior Advocate with Mr. Prakash Kumar, Advocate.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE VIBHU BAKHRU

JUDGEMENT
08.12.2015

Dr. S. Muralidhar, J.

Introduction

1. These are three Income Tax Appeals (ITAs) and four Wealth Tax Appeals (WTAs) filed by the Revenue. ITA Nos.20, 21and 24 of 2003 are in respect of Assessment Years (AY) 1988-89, 1989-90 and 1985-86 respectively. WTA Nos.3/2003, 4/2003, 5/2003 and 6/2003 are in respect of AYs 1992-93, 1990-91, 1991-92 and 1988-89 respectively.

2. It must be noted at the outset as far as the Revenue's appeals under the Income Tax Act, 1961 ('Act') are concerned, there were originally

nine appeals, ITA Nos. 20 to 28 of 2003. Common questions of law were framed in all the appeals by the Court on 14th September, 2004. By the order dated 7th April, 2011, ITA Nos. 22 to 28 of 2003 were disposed of by the Court without answering the questions framed on account of the Circular dated 9th February, 2011 of the Central Board of Direct Taxes (CBDT) since the tax effect in each of the appeals was less than Rs.10 lakhs. Subsequently, review petitions were filed by the Revenue in respect of three of the appeals, i.e., ITA Nos. 23, 24 and 25 of 2003. The said review petitions were dismissed by the Court on 26th March, 2012, after giving liberty to the Revenue to file "proper applications, if so advised."

3. The orders dated 7th April 2011 and 26th March 2012 in ITA No. 24 of 2003 were challenged by the Revenue in the Supreme Court by filing Civil Appeal Nos. 4919-20 of 2015. The said appeals were allowed by the Supreme Court on 1st July, 2015 by holding that the CBDT Circular dated 9th February, 2011 was prospective. The appeal was remitted to the High Court for re-adjudication on merits. As a result, ITA No. 24 of 2003 was revived. Taking note of the above development, this Court on 24th August 2015, passed an order directing that the aforementioned ITA No. 24 of 2003 pertaining to AY 1985-86 be listed along with ITA No. 20/2003 (pertaining to AY 1988-89), ITA No.21/2003 (AY 1989-90) and the four WTAs as noted above.

Background Facts

4. The facts leading to the filing of the present appeals is that a land measuring 4826 *bighas* situated in Village Masoodpur was notified

under Section 4 of the Land Acquisition Act, 1894 (LA Act) on 23rd January, 1965 for being acquired for a public purpose.

5. Even while the acquisition proceedings were pending, the predecessor-in-interest of the Respondent, i.e. late Mr. J.N. Dhamija, purchased 1/16th share of the *bhumidari* rights in respect of the said land from one Mr. Rampal Malhotra and fifteen others on 1st June, 1965. A sale deed for a sum of Rs. 4,000/- was engrossed on a stamp paper and the sale deed was duly registered. It was noted in the sale deed that Mr. Rampal Malhotra, the vendor, had agreed to sell his share in the said land, which he had purchased by way of a deed dated 14th April, 1960. In the sale deed Mr. Rampal Malhotra was described as holding 1/16th share of the *bhumidari* rights regarding land measuring 4200 bighas situated in Village Masoodpur. The sale deed stated that from that date, i.e. 1st June, 1965, the vendee, i.e. Mr. J.N. Dhamija "shall become a shareholder of 1/16th share" and "shall be bound to pay or to receive, whatever is written in the purchase deed mentioned above."

6. Mr. J.N. Dhamija was, therefore, not the owner of the land himself but had purchased 1/16th of the *bhumidari* rights therein from Mr. Rampal Malhotra under the aforementioned sale deed. Mr. Malhotra was one of the transferees, who had acquired the *bhumidari* rights from Smt. Gulab Sundri on 14th April, 1960 and she too was not the owner of the land. She had acquired the *bhumidari* certificate on 5th July, 1958, with effect from 20th July, 1954 as proprietor of M/s. Diwan Bahadur Seth Kesri Singh Budh Singh which had taken the land on sub-lease from M/s. Delhi Pottery Works, which had in turn taken the land on

lease (to the extent of 3224 *bighas*) for a period of twenty years from the owner of the said land in 1939.

7. The land was leased to Smt. Gulab Sundri, the proprietor of the aforementioned concern for the purposes of extracting minerals as well as for agricultural and horticultural purposes. The Revenue Assistant, Delhi in accordance with the provisions of the Delhi Land Reforms Act, 1954 (DLRA) declared Smt. Gulab Sundri as *bhumidar* on 5th July 1958, with effect from 20th July, 1954. A few days thereafter on an application filed by 4-5 proprietors of the land, the Revenue Assistant cancelled the *bhumidari* certificate on 14th July, 1958 and ordered that the land be vested in the Gaon Sabha.

8. On 24th November, 1959, Smt. Gulab Sundri filed a suit being Civil Suit No.174/66 before the Court of the Subordinate Judge, Delhi seeking a declaration that the order dated 14th July, 1958 of the Revenue Assistant cancelling the *bhumidari* certificate in her favour was void, illegal and without jurisdiction. This suit was decreed by the Sub Judge on 12th December, 1966. Against the aforementioned order, the Gaon Sabha as well as the Union of India filed an appeal which was dismissed by the Senior Sub Judge on 23rd April, 1968. No further appeal was filed by the Gaon Sabha. The aforementioned judgement dated 23rd April, 1968 became final and conclusive between the parties.

9. It is in the above background that late Mr. J.N. Dhamija acquired by way of sale deed dated 1st June, 1965 from Mr. Rampal Malhotra 1/16th share of the *bhumidari* rights.

Proceedings under Section 31 (2) LA Act

10. Now turning to the land acquisition proceedings that commenced with the notification dated 23rd January, 1965 under Section 4 of the LA Act, an Award No.2225 was made by the Land Acquisition Collector (LAC) on 26th March 1969 in respect of land measuring 4826 *bighas* situated in Village Masoodpur, of which included the land admeasuring 3224 *bighas*, 1/16th of the *bhumidari* rights in which was purchased by late Mr. J.N. Dhamija.

11. Since there was a dispute as to who should receive the compensation, a reference was made by the LAC under Section 31(2) of the LA Act to the Additional District Judge (ADJ), Delhi. By a judgement dated 20th April 1980, the learned ADJ decided the claims made by the following three sets of claimants – (i) Gaon Sabha of Village Masoodpur, (ii) Proprietors from owners of the land acquired under the awards and (iii) Smt. Gulab Sundri, proprietor of M/s. Dewan Bahadur Seth Kesari Singh Budh Singh, Kesari Pottery Works her transferees and *bhumidars*. While deciding the reference under Section 31(2), the learned ADJ framed the following issues on 20th November, 1969:

(i) Whether the claim of Gaon Sabha Masoodpur is not barred by *res judicata*?

(ii) If issue No.1 is not proved, whether Gaon Sabha has any right or interest in the land in dispute. If so, to what extent?

(iii) Whether the declaration of the *bhumidari* rights and the issuance of the *bhumidari* certificate in favour of Gulab Sundri was illegal, void and without jurisdiction?

(iv) Whether the alleged owners/*bhumidars* are legally barred from challenging and disputing the validity of the declaration of *bhumidari* certificates?

(v) Whether the provisions of the DLRA were not applicable to the land in dispute. If so, effect?

(vi) Whether the claims of the alleged Owners/Proprietors are barred by time?

(vii) What are the rights and shares, if any, of the various respondents in the land in dispute?

(viii) To what apportionment of the amount of compensation if any, the respondents are entitled?

12. The following additional issues were framed by the learned ADJ on 7th November, 1970:

(i) Whether the decrees of the Civil Courts passed in favour of Smt. Gulab Sundri and against Gaon Sabha or in favour of the owners and

against Gaon Sabha are illegal, without jurisdiction and a nullity. If so, to what effect?

(ii) Whether the order dated 14th July 1958 passed by the Revenue Assistant operates as *res judicata*?

(iii) Whether the land in dispute was a waste land as defined in the DLRA and as alleged by Gaon Sabha. If so its effect?

(iv) Whether there were orders of the Deputy Commissioner dated 1st November 1954 and 10th March 1966 in respect of the land in dispute as alleged by Gaon Sabha and if so, whether the same were valid (objected to).

13. While deciding the issues (i) and (ii) framed on 18th December, 1969 and 7th November, 1970, the learned ADJ (Mr. P.S.Singla) held that the earlier judgement passed by the Sub Judge confirmed by the Senior Sub Judge operated as *res judicata*. Issue Nos.(iii) and (iv) were also decided against the Gaon Sabha. Issue Nos.(iii) and (v) framed on 18th December, 1969 were decided in favour of Smt. Gulab Sundri. It was held that the land in question fell within the purview of Section 3(13) of DLRA and that Smt. Gulab Sundri was a tenant as defined under Section 4(5) of the Punjab Tenancy Act. Deciding issue No. (iv) framed on 18th December, 1969 in favour of Smt. Gulab Sundri, the learned ADJ held that she had rightly been declared as a *bhumidar* and that the proprietors were legally barred from disputing the *bhumidari* rights

confirmed in her favour. Deciding the issue No. (vi) in her favour the learned ADJ held that Smt. Gulab Sundri had been in possession of the entire land on the date of filing of the suit on 15th April, 1970. The learned ADJ while deciding issue Nos.(vii) and (viii) took note of a compromise arrived at between the parties on 31st July, 1969 by virtue of which *inter alia* Mr. J.N. Dhamija was to get 1/32nd share (later this was corrected as 1/16th share by the learned ADJ).

14. Against the aforementioned judgement dated 20th May, 1980, passed by the learned ADJ, RFA Nos.309, 310, 356, 357, 340 and 341 of 1980 were filed in this Court.

Reference under Section 18 LA Act for enhanced compensation

15. Meanwhile at the instance of Mr. J.N. Dhamija a reference was made under Section 18 of the LA Act by way of LAC No.201/80 before the learned ADJ, Mr. S.R. Goel, seeking enhancement of compensation. By the judgement dated 7th July 1987, this reference was decided in favour of Mr. J.N. Dhamija holding that he was entitled to compensation of Rs.18,000/- per *bigha* and Rs.10,000/- per *bigha* for the minerals in respect of his 1/16th share of the rights in the land acquired in terms of the Award.

16. Against the aforementioned judgement of Mr. S.R. Goel, the learned ADJ, the Union of India filed RFA No.768/87 in this Court. While the said appeal was pending an order was passed on 29th October, 1987 by a Division Bench of this Court directing the Union of India to deposit the enhanced amount of compensation together with interest in the trial

court with the direction that it will not be disbursed till further orders of this Court. Thereafter on 9th March, 1988 after noticing that the compensation amount had already been deposited it was directed by the Division Bench that the undisputed amount be paid to Mr. J.N. Dhamija without any guarantee and the disputed amount be paid on Mr. J.N. Dhamija furnishing bank guarantee to the satisfaction of the learned ADJ.

17. Treasury vouchers were then prepared by the learned ADJ on 30th March, 1988 in favour of Mr. J.N. Dhamija for sums of Rs.6,02,330.67 and Rs.3,64,03,764.62 both dated 30th March, 1988.

18. As a result Mr. J.N. Dhamija received a net amount of Rs.3,64,03,764.62. This comprised the additional compensation of Rs.52,79,463.75, 30 % solatium on the said sum amounting to Rs. 15,82,839.12, additional amount of 12 % amounting to Rs. 27,64,511.90 and interest under Section 28 of the LA Act amounting to Rs.2,67,75,949.85.

Appeals arising from the proceedings under Section 31(2) LA Act

19. Meanwhile the appeals filed by the Union of India being RFA No.309 and 310/80 in respect of the proceedings under Section 31 (2) of the LA Act were dismissed by the High Court on 26th February, 1991 on the ground of partial abatement in respect of the sum of the Respondents whose LRs were not brought on record by the Appellant.

20. Against the aforementioned order, the Union of India went in appeal to the Supreme Court by way of a Special Leave Petition. By a judgement in ***S. Amarjit Singh Kalra (Dead) By LRs v. Smt. Pramod Gupta (Dead) By LRs 2002 (9) SCALE 577,*** the judgement dated 26th February, 1991 of the High Court was set aside and a direction was issued to the High Court decide the appeals afresh on merits. As a result RFA No.309 and 310/80 along with the other RFAs stand restored to the file of the High Court and are pending.

Appeals in the enhancement proceedings under Section 18 LA Act

21. As far as the order dated 7th July 1987 passed by the learned ADJ (Mr. S.R.Goel) in the proceedings under Section 18 of the LA Act, the Union of India did not question the enhancement to the extent of Rs. 6,02,330. However, as regards the balance enhanced sum of Rs. 3,64,03,754 the Union of India filed RFA Nos.85 and 868/1987 in this Court. A Division Bench of this Court passed a judgement on 5th October, 2001 dismissing RFA Nos.85 and 868/1987. The appeal filed against the said judgement by the Union of India was allowed by the Supreme Court by judgement dated 7th September, 2005 in ***Union of India v. Pramod Gupta (2005) 12 SCC 1***. The Supreme Court set aside the judgement of the High Court and remitted the appeals to this Court for a fresh decision.

22. As a result the appeals arising both from the proceedings under Section 31 of the LA Act and the proceedings for enhancement of the compensation under Section 18 of the LA Act are pending before this Court.

Proceedings under the Income Tax Act

23. Mr. J.N. Dhamija filed his return of income for AY 1989-90 on 26th August 1989 declaring an income of Rs. 15,61,044 of which Rs. 14,44,39 was shown as interest from M/s. Kashmir Holdings. During the course of the assessment proceedings, Mr. Dhamija's auditors submitted a letter dated 19th August 1990 to the Assessing Officer (AO) explaining that Mr. Dhamija had received additional compensation of Rs. 3,64,03,764/- and Rs. 6,02,3301- in the previous year relevant to AY 1989-90 for his share in land measuring 3224 bighas situated in village Masoodpur, Delhi pursuant to an order passed by the ADJ in LAC No. 201/80 on 7th July 1987. It was explained in the said letter that while the first enhanced sum of Rs.6,02,330/- was not disputed by the Union and had been disclosed by the Assessee as capital gains, the balance enhanced sum of Rs.3,64,03,764/- was not accepted by the Union of India and an appeal had been filed by it in this Court. It was pointed out that the money had been released to the Assessee against bank guarantee and that in case the Assessee did not succeed in the High Court in the said appeal of the Union of India, the entire amount would have to be returned by the Assessee to the Union of India. A copy of the guarantee was also enclosed with the letter. It was submitted that till finality was attached to the determination of the appeal by the High Court withdrawal of the amount by the Assessee was pursuant to an inchoate and contingent right and therefore not liable to any capital gains. Further details were furnished in this regard by letters dated 27th September, 1990, 5th December, 1990, 16th January, 1991, 13th February, 1991 and

27th November, 1991. A copy of the original compensation order dated 26th March 1969, which stood modified by the aforementioned order of the ADJ, was also furnished.

24. The AO passed an order dated 27th March 1992 holding that the entire compensation received by Mr. Dhamija, whether in the form of interest on solatium or additional compensation, was taxable in the year of receipt. Capital gain was charged on this amount. The CIT (A) by an order dated 28th August 1992 held following the order rendered by him in the case of Mr. K.K. Kochar, one of the co-owners of the same property, that the land in question was not agricultural land, and to this extent the plea of Mr. Dhamija was negatived. The CIT (A) however agreed with Mr. Dhamija that since the negotiable instrument in the nature of the treasury vouchers were received by Mr. Dhamija on 30th March 1988, the taxability of the said sums had to be examined in AY 1988-89 and not in the AY 1989-90. The AO was directed to examine the assessability of the amount of capital gains, in the accounting year 1987-88 relevant to AY 1988-89, after considering all the contentions of Mr. Dhamija and pass a speaking order after hearing him on all the relevant points.

25. Meanwhile in relation to the return that had been filed by Mr. Dhamija for AY 1988-89 on 29th July 1988 declaring a total income of Rs. 76,020, the assessment was completed u/s 143 (1) of the Act by the AO's order dated 24th November 1988. However, consequent upon the developments in relation to the assessment proceedings for AY 1989-90,

the assessment for AY 1988-89 was reopened under Section 147 by issue of notice under Section 148 on 22nd March 1991. In response thereto, Mr. Dhamija filed a return declaring the same income on 19th October 1992.

26. As regards AY 1985-86, Mr. Dhamija had originally filed a return disclosing an income of Rs 49,540. In relation to the said AY too notice under Section 148 was issued. Mr. Dhamija filed a return in response to the said notice on 10th June 1992 declaring an income of Rs 49,540. The AO held that the interest to the tune of Rs. 2,67,75,950 paid to Mr. Dhamija was also embedded in the additional compensation. He noted that out of the said sum, Rs. 14,63,028 was liable to be included in the total income of Mr. Dhamija in relation to AYs 1981-82 to 1987-88 and accordingly added the said sum to the income of Mr. Dhamija for AY 1985-86.

27. The AO, by order dated 18th March 1993, held that under Section 45(5) the entire amount of compensation is to be taxed in the year of receipt and that since Mr. Dhamija was not following the mercantile system of accounting, the interest received was also taxable in the year of receipt. Accordingly, the AO made additions in that regard for AY 1988-89, but on a protective basis and subject to the finality of proceedings in the AY 1989-90 as the Revenue had taken a stand that the entire receipt is taxable in the AY 1989-90 and not 1988-89.

28. The CIT (A), in the appeal by Mr. Dhamija held, *inter alia*, that Section 45 (5), was not applicable on the enhanced compensation since

as of that date the order of the Delhi High Court regarding ownership of the land in favour of the Assessee to the extent of his share had not attained finality. Relying upon the decision of the Supreme Court in ***CIT v. Hindustan Housing and Land Development Trust Limited (1986) 161 ITR 524***, the CIT (A) agreed with Mr. Dhamija that he would be subject to tax at that stage only to the extent of the amount on which there was no dispute, i.e. Rs.1,20,446/- together with the corresponding interest. The CIT(A) held that the re-opening of the assessments for AY 1981-82 to 1987-88 by invoking Section 147 of the Act was not justified. Consequently, the CIT (A) invalidated the action of the AO in charging interest in AYs 1981-82 to 1987 -88.

29. At this stage Mr. J.N. Dhamija expired. Against the above order of the CIT(A), the Revenue and Mr. Dhamija's legal heir, Suman Dhamija (hereafter 'the Assessee'), filed appeals.

30. The Revenue was aggrieved by the order of the CIT (A) in invalidating the reopening of the assessments and in declining to apply Section 45 (5) of the Act for even AY 1988-89. The Revenue was also aggrieved by the CIT (A) holding that interest could not be taxed since the receipt itself was not covered under Section 45(5) of the Act. The Assessee was in appeal before the ITAT on the ground that the invoking of Section 147 was justified only for AY 1989-90 and not for other years including AY 1988-89. The other contentions urged by the Assessee were that (i) the land in question was agricultural land and therefore not amenable to capital gains tax; (ii) the Assessee was not the owner of the land and was not at all liable to tax in respect of the

enhanced compensation and (iii) since the enhanced compensation was not finally settled, the right to receive the amount had not been acquired and could not be brought to tax in these AYs. In support of the last submission the Assessee relied upon the ITAT's orders in respect of the co-owners in respect of the same land, i.e. Mr. KK Kochar and Mrs. Sharda Kochar.

31. As far as the Wealth Tax Act (WT Act) proceedings are concerned, the Assessee while computing net wealth for AY 1988-89 claimed that the compensation received under bank guarantee was not includable in the net wealth as it was only an advance towards compensation for the compulsory acquisition of the land. While the AO did not accept this claim, the CIT(A) accepted it for AY 1988-89. A similar exercise took place at the hands of the CIT(A) for AY 1990-91 as well to 1991-92 with only the amount being different. The Revenue was aggrieved by these orders and therefore appealed to the ITAT.

32. A common order dated 31st December, 2002 was passed by the ITAT disposing of all of the aforementioned appeals. The Assessee's appeals were dismissed by holding that the reopening of the assessments for AYs 1981-82 to 1987-88 by invoking Section 147 of the Act was valid. It was held that the "AO's action for reopening assessments for all the assessment years under consideration was based on the material which came into existence only after the completion of the assessments in those years according to which the income chargeable to tax was liable to taxed in those assessment years, we feel that his actions was based on his prima facie belief that income chargeable to tax has

escaped assessment." To that extent the Revenue's appeals were partly allowed. However, the ITAT agreed with the Assessee that the enhanced compensation could not be included in the total income for the AYs in question "for the reason that no finality was attached to the receipt of the amount." The ITAT followed it earlier orders in the cases of Mr. K.K. Kochar and Mrs. Sharda Kochar and also in the case of ***Gulab Sundri Bapna 79 ITD 455 (Del)***.

33. As far as the WT Act cases were concerned, the ITAT agreed with the Assessee that the monies received were in the nature of trust money. The WT Act did not contemplate including trust money in the net wealth. The appeals of the Revenue were dismissed and those of the Assessee were allowed. As regards sum of Rs.6,02,330/-, since the CIT(A) had not dealt with the grievance of the Assessee, the said issue was remitted to the CIT(A) for a fresh adjudication.

Questions of law

34. The following questions of law were framed by this Court in the ITAs by the order dated 14th September, 2004:

> "1. Whether the amount of enhanced compensation received by the assessee during the relevant previous year is taxable in view of the provisions of Section 45(5)(b) of the Income Tax Act, 1961?
>
> 2. Whether the Income Tax Appellate Tribunal was correct in law in holding that the decision of the Supreme Court in *CIT vs. Hindustan Housing and Land Development Trust Limited 161 ITR 524* is to be applied despite the subsequent change in provisions of law, namely the provisions of Section 45(5) of the Act?

> 3. Whether the ITAT was correct in law in holding that the interest received by the assessee on enhanced compensation pertaining to the assessment year could not be assessed in the same year though it had already been received by him along with enhanced compensation?"

35. In the WTAs the following question was framed by the same order:

> "Whether the Tribunal had not erred in holding that the money received by the assessee by way of enhanced compensation/interest was in the nature of trust money and, therefore, not includable in the net wealth of the assessee?"

Submissions of counsel

36. On behalf of the Revenue, it was submitted by Mr. Zoheb Hossain, Advocate as under:

(i) The order of ITAT in the cases of Mr. K.K. Kochar and Mrs. Sharda Kochar was reversed by this Court by the decision dated 18th July 2014 of this Court in ITA No. 171 of 2001 (***Commissioner of Income Tax v. Sharda Kochar***). The order of the ITAT in ***Gulab Sundri Bapna*** (*supra*) was reversed by this Court in ***CIT v. Gulab Sundri Bapna (2014) 367 ITR 498***. Consequently, these appeals of the Revenue ought to succeed on that short ground.

(ii) After the decision of the Supreme Court in ***CIT v. Ghanshyam (HUF) (2009) 315 ITR 1 (SC)***, the earlier decision in ***CIT v. Hindustan Housing and Land Development Trust Limited*** (*supra*) was no longer good law as far as receipt of enhanced compensation, solatium, additional amount and interest in the financial year ending 31st March

2008 (relevant to AY 1988-89) was concerned. It made no difference whether the proceedings concerning enhancement of compensation were pending in appeal in the High Court. Section 155(16) read with Section 45(5)(c) of the Act would take care of the consequences of the final orders that might be passed in either the proceedings for enhancement of compensation or those under Section 31(2) LA Act. Reliance was also placed on the decision in ***CIT v. Govindbhai Mamaiya 367 ITR 498 (SC)***.

(iii) In support of the submission that Section 45 (5) was applicable from AY 1988-89 onwards reliance was placed on the decisions in ***CIT v. Commissioner of Wealth Tax, Calcutta v. U.C. Mehatab AIR 1995 SC 1925, Commissioner of Wealth Tax, Kolkata v. Smt. Anjamli Khan AIR 1991 SC 2023, CIT v. Bhanwarlal Choudhary (2002) 125 Taxman 361 (Raj)***.

37. In reply, it was submitted by Mr. C.S.Aggarwal, learned Senior counsel for the Assessee as under:

(i) By virtue of the sale deed executed by Mr. Ram Pal Malhotra in favour of Mr. Dhamija, the latter had merely became a shareholder of 1/16th share of the *bhumidari* rights which were acquired by him from Mr. Ram Pal Malthora who had agreed to sell his share which he had purchased by virtue of the purchase deed executed on 14the April 1960. In view of the aforesaid purchase deed, Mr. Ram Pal Malhotra had nothing to do with the land in question and consequently the Assessee too had nothing do with it. The compensation received and/or receivable

was not in respect of any land and was in respect of a capital asset being merely a right which right itself was an inchoate right. Thus Section 45(5) of the Act had no application since the Assessee had not acquired any land but only a 1/16th share in the *bhumidari* rights.

(ii) Further, the question whether the Assessee had the right to receive the compensation was itself in dispute and as such Section 45(5) of the Act had no application. Thus, where the right to receive the compensation itself was inchoate and not merely the amount received or receivable, Section 45 (5) of the Act would have no application. The decision in ***CIT v. Hindustan Housing and Land Development Trust Ltd.*** (*supra*) was still applicable. Reliance was also placed on the decisions in ***CIT v. Sharda Sugar Industries Ltd. 239 ITR 393 (Bom)***. and ***CIT v. Smt. Prakash Kaur 330 ITR 332(P&H)***,

(iii) The decisions of this Court in ***CIT v. Sharda Kochar*** and ***CIT v. Smt. Gulab Sundri Bapna*** are not applicable as in neither decision, the question whether the two assessees therein had an inchoate right in the title to the asset said to have been transferred was examined. The dispute was only in respect of their inchoate right in the amount of compensation.

(iv) Mere receipt of an amount of compensation could not be held to be income. Reliance is placed on the decision in ***Parimisetti Seetharamamma v. CIT 57 ITR 532 (SC)***. A receipt can be brought to tax only if it falls under any tax provisions of the Act and the burden is

on the Revenue to establish the same. Section 155(16) of the Act cannot also be invoked to contend that in case the assessee loses its right, the order could be amended so as to refund the amount.

(v) Alternatively, and without prejudice, it is contended that if the amount is held to be includible in the total income then only the amount as computed by the AO for AY 1989-90 i.e. Rs. 26,41,232/- could be assessed to tax and the addition made of Rs. 2,70,64,077/- should be held untenable in law. Without prejudice thereto, if it is held that the amount is to be added while computing capital gain then the AO be directed to compute the capital gain as per the statutory provisions contained in that AY i.e. 1989-90. As regards the interest amount, if at all it has to be added to the compensation received then only 50% thereof could be brought to tax by way of capital gain as is the sum computed by the AO out of the compensation received as per Section 45 of the Act as it stood for the relevant AY.

Analysis of Section 45(5) of the Act

38. The central issue that arises is whether the land acquisition compensation received by the Assessee can be subjected to capital gains tax in her hands for the AYs in question. Section 45 (5) of the Act is relevant in the present case reads as under:

> "45 (5) Notwithstanding anything contained in sub-Section (1), where the capital gain arises from the transfer of a capital asset, being a transfer by way of compulsory acquisition under any law, or a transfer the consideration for which was determined or approved by the Central Government or the Reserve Bank of India, and the compensation or the consideration for such transfer is

enhanced or further enhanced by any Court, Tribunal or other authority, the capital gain shall be dealt with in the following manner, namely:-

(a) the capital gain computed with reference to the compensation awarded in the first reference or, as the case may be, the consideration determined or approved in the first instance by the Central Government or the Reserve Bank of India shall be chargeable as income under the head 'Capital gains' of the previous year in which such compensation or part thereof, or such consideration or part thereof, was first received; and

(b) the amount by which the compensation or consideration is enhanced or further enhanced by the Court, Tribunal or other authority shall be deemed to be income chargeable under the head 'Capital gains' of the previous year in which such amount is received by the assessee:

Provided that any amount of compensation received in pursuance of an interim order of a court, Tribunal or other authority shall be deemed to be income chargeable under the head 'Capital gains' of the previous year in which the final order of such court, Tribunal or other authority is made;

(c) where in the assessment for any year, the capital gain arising from the transfer of a capital asset is computed by taking the compensation or consideration referred to in clause (a) or, as the case may be, enhanced compensation or consideration referred to in clause (b), and subsequently such compensation or consideration is reduced by any court, Tribunal or other authority, such assessed capital gain of that year shall be recomputed by taking the compensation or consideration as so reduced by such court, Tribunal or other authority to be the full value of the consideration.

Explanation – For the purposes of this sub-Section-

> (i) in relation to the amount referred to in clause (b), the cost of acquisition and the cost of improvement shall be taken to be nil;
>
> (ii) the provisions of this sub-section shall apply also in a case where the transfer took place prior to the 1st day of April 1988;
>
> (iii) where by reason of the death of the person who made the transfer, or for any other reason, the enhanced compensation or consideration is received by any other person, the amount referred to in clause (b) shall be deemed to be the income, chargeable to tax under the head "Capital gains" of such other person."

39. In order to understand the rationale behind the insertion of sub-section (5) to Section 45 of the Act with effect from 1st April 1988, the law that was in force prior to its insertion requires to be noted.

40. To begin with, prior to introduction of sub-section (5) in Section 45, the compensation initially awarded and the enhanced compensation, finally determined on conclusion of the proceedings in appeal, were both taxable in the year of acquisition. Section 155 (7A) of the Act provided for rectification of the assessment of an earlier year and this provision was invoked as and when additional compensation was received. Where the additional compensation was awarded at several stages by different appellate authorities, it necessitated rectification of the original assessment at each of the said stages. To overcome this difficulty sub-section (5) was inserted in Section 45 with effect from 1st April 1988. In terms of this provision, both the compensation as first determined in the land acquisition Award as well as the enhanced

compensation would be taxed in the respective years of receipt. The amount would be taxed in the hands of the recipient of the additional compensation, even if that person was not the original transferor. Section 155 (7A) was omitted with effect from 1st April 1992. By a further amendment with effect from 1st April 2004, clause (c) to sub-section (5) to Section 45 was introduced in terms of which, for this purposes of Section 45 (5) (b) the cost of acquisition would be taken as nil.

41. For the purposes of Section 45 (5), in order to attract capital gains in regard to enhancement of compensation received in respect of land that has been acquired, the following conditions must be fulfilled:

(i) There must be a transfer of a capital asset
(ii) the compensation or consideration for such transfer has to be enhanced by a court, Tribunal or other authority

42. Two questions that have arisen in the past in relation to the enhanced compensation received in terms of Section 45 (5) are: what happens (a) when the right to receive compensation is itself in dispute and has not attained finality, and (b) when the question of the quantum enhanced compensation is pending final determination before a Tribunal or Court?

43.1 The distinction between the two situations was brought out in the decision of the Supreme Court in ***CIT v. Hindustan Housing and Land Development Trust Limited*** (*supra*). There the Assessee company was dealing in land and maintaining its accounts on the mercantile system.

Some of the plots belonging to it initially requisitioned and later acquired by the Government of West Bengal. The Land Acquisition Officer (LAO) awarded a sum of Rs. 24,97,249 as compensation.

43.2 Not satisfied with the compensation, the Assessee preferred an appeal before the Arbitrator who made an award enhancing the compensation to Rs. 30,10,873 with interest at 5% and a further recurring compensation at Rs. 6,272-10-4 per month. The State Government appealed to the High Court and during the pendency of the appeal, it deposited Rs. 7,36,691, which the Assessee was permitted to withdraw on furnishing security. On receipt of the amount, the assessee credited it in its suspense account on the same date.

43.3 During the assessment proceedings for the AY 1956-57, relevant to the accounting period ending 31st March 1956, the AO brought to tax a sum of Rs. 7,24,914 as the Assessee's business income. This represented the difference between the sum of Rs. 7,37,190 payable to the assessee in terms of the award dated 29th July, 1955, of the arbitrator and a sum of Rs. 12,276 out of that amount which had already been assessed to tax. The Income-tax Officer treated the sum as liable to income-tax during that year on the basis that the income accrued to the assessee on the date of the award. The assessment was confirmed by the Appellate Assistant Commissioner of Income-tax on first appeal. The question was whether the additional amount could be brought to tax in the year in which it was received by the Assessee. The ITAT held that the amount did not accrue to the Assessee as its income in the AY in question.

43.4 Reversing the High Court, the Supreme Court held that "there is a clear distinction between cases such as the present one, where the right to receive payment is in dispute and it is not a question of merely quantifying the amount to be received, and cases where the right to receive payment is admitted and the quantification only of the amount payable is left to be determined in accordance with settled or accepted principles."

The decision in CIT v. Ghanshyam (HUF)

44.1 The Supreme Court in ***CIT v. Ghanshyam (HUF)*** (*supra*) was called upon to interpret Section 45 (5) of the Act and determine if it applied to a situation where the order of the civil court enhancing compensation was pending challenge in the superior court. The facts were that the in the return filed for AY 1999-2000, the Assessee did not offer the amount of enhanced compensation and the interest received thereon during the previous year relevant to the assessment year for taxation, on the plea that the amount of enhanced compensation received had not accrued during the year of receipt as the entire amount was in dispute in appeal filed by the State before the High Court against the order of the Reference Court granting enhanced compensation. The amount was received by the Assessee in terms of the interim order of the High Court against the Assessee furnishing security to the satisfaction of the executing court. The Assessee also contended that the interest received on enhanced compensation during the previous year was not chargeable to tax.

44.2 The AO did not accept the contentions of the Assessee in view of the clear language of Section 45 (5) of the Act which was effective from 1st April 1988. In appeal, the CIT (A) agreed with the Assessee that the enhanced compensation and the interest thereon had not accrued to the Assessee since the appeal was pending before the High Court and the Assessee had only been permitted to withdraw the sum upon furnishing security. The CIT (A) referred to the decision in ***CIT v. Hindustan Housing and Land Development Trust Limited*** (*supra*). The ITAT as well as the High Court affirmed the said order.

44.3 The Supreme Court reversed the above appellate orders and affirmed the order of the AO. It held that:

(i) The following conditions need to be satisfied for taxing a transaction as capital gains, viz., the subject-matter must be a capital asset, the transaction must fall in the definition of "transfer", there must be profit or loss called "Capital Gains" and that the taxpayer has claimed exemption in whole or in part by complying with legal provisions.

(ii) Interest under Section 28 is part of the amount of compensation whereas interest under Section 34 is only for delay in making payment after the compensation amount is determined. Interest under Section 28 is a part of enhanced value of the land which is not the case in the matter of payment of interest under Section 34.

(iii) Section 45 (5) of the Act refers to compensation. Interest under Section 28 of the LA Act unlike interest under Section 34 of the LA Act is an accretion to the value and hence it is a part of enhanced compensation or consideration which is not the case with interest under Section 34 of the LA Act. The additional amount under Section 23 (1A) and solatium under Section 23 (2) of the LA Act forms part of the enhanced compensation under Section 45 (5 (b) of the Act.

(iv) The receipt of enhanced compensation is to be taxed in the year of receipt subject to adjustment, if any, under Section155 (16) of the Act later on.

45. Three other provisions require to be noticed. The proviso in clause b) of sub-Section (5) that the amount by which the compensation or consideration is enhanced shall be deemed to be income chargeable under the head 'Capital gains' of the previous year in which such amount is received by the Assessee, was introduced with effect from 1st April 2015. It contemplates the passing of an interim order by a court, Tribunal or authority pursuant to which compensation is received. It is not in dispute that the said proviso which is prospective does not apply to the case on hand. Clause (c) to Section 45 (5), introduced with effect from 1st April 2004 envisages re-computation of capital gains of a particular AY where by a subsequent order of a Court the enhanced compensation is reduced. Likewise Section 155 (16) introduced simultaneously also envisages likewise. This would take care of the final

outcome of the compensation enhancement proceedings, which may be pending in the Court.

The position in the present case

46. The question that then arises is whether in the facts and circumstances of the present case the conditions for sub-section 5 (b) of Section 45 to be attracted can be said to have been fulfilled?

47. There are two strands of litigation. One pertains to right of the Assessee to receive compensation which, from the above narration of facts, has obviously not attained finality. The civil suit pertaining to the right of the Assessee was decreed. However, after the land acquisition Award was passed, there were three sets of claimants to the compensation and this led to the reference to the ADJ under Section 31 (2) of the LA Act. The appeals challenging the order passed by the ADJ in the said proceedings have been remanded by the Supreme Court to this Court for a fresh hearing. The outcome of the said appeals and any further proceedings arising therefrom would decide whether or not the Assessee has a right to receive compensation for the 1/16th share of the *bhumidari* rights.

48. Therefore, although there is a transfer of the 1/16th share of the *bhumidari* right in the land in question in favour of the Assessee, the question whether the Assessee is entitled to receive compensation for the extinguishment of such right on its vesting in the State is still uncertain or inchoate. That will also depend on the answer to the

question whether the transfer of the *bhumidari* right by way of sale can be construed as transfer of an asset for the purposes of Section 45 (5) of the Act.

49. The second strand of litigation pertains to the enhancement of compensation in the reference under Section 18 of the LA Act. The appeals in those proceedings have also been remanded to this Court and are pending. During the pendency of the appeals, the Assessee has been permitted to withdraw the undisputed and disputed sums of compensation deposited in the Court. She has withdrawn the disputed (enhanced) sum by furnishing a bank guarantee.

50. As far as the second strand of litigation is concerned, in view of the decision of the Supreme Court in ***CIT v. Ghanshyam (HUF)*** (*supra*) the legal position is clear that notwithstanding the pendency of appeals regarding enhancement of compensation, the amount of enhanced compensation is taxable in the year of receipt. Also, the said decision clarifies that interest under Section 28 of the LA Act, the additional compensation and the solatium would also be likewise taxable.

51. The right to receive such compensation in the present case is intrinsically linked to the outcome of the appeals arising from the proceedings under Section 31 (2) LA Act. The question whether the transfer of the *bhumidari* rights is also a transfer of a right in the land acquired and is, therefore, capable of being compensated would also hinge on the outcome of the appeals arising from the proceedings under Section 31 (2) of the LA Act. There is a possibility that if the Assessee

is unable to be successful in the said appeals arising from the proceedings under Section 31 (2) LA Act, she may have to return the compensation amount and the enhanced compensation she has received.

52. As is evident from the decision of the Supreme Court in ***S. Amarjeet Singh Kalra (Dead) by LRs v. Smt. Pramod Gupta (Dead) by LRs*** (*supra*) there are two other claimants for compensation, viz., the Gaon Sabha of Village Masoodpur and owners of the land. It was acknowledged in the said decision that "the claim of each one was in respect of his distinct, definite and separate share and their respective rights are no inter-dependant but independent."

53. The decision of the Bombay High Court in ***CIT v. Sharda Sugar Industries Limited*** (*supra*) also appears to support the case of the Assessee insofar as it holds that "where the right to receive payment is in dispute, no income will arise or accrue." In that case, again the amounts deposited by the State which was withdrawn by the Assessee on furnishing a bank guarantee, where rights to dispute the amount can be said to have accrued to the Assessee. It is noticed that "the Assessee was accountable for the excess collection and obliged to refund the same if so directed by the court. Such amounts collected by the Assessee are not assessable as the income of the Assessee." It was held that the said amounts were, therefore, not assessable in the hands of the Assessee in the AY in which the amount was withdrawn by the Assessee. The decision of the Punjab and Haryana High Court in ***CIT v. Smt. Prakash Kaur*** (*supra*)also supports the stand of the Assessee.

54. Turning to the decisions relied upon by the Revenue, it is seen that in ***Commissioner of Income Tax v. Sharda Kochar*** (*supra*), the Assessee was compensated pursuant to the land acquisition award against the bank guarantee. The AO rejected the Assessee's contention that the enhanced amounts were not taxable since the question of enhancement was under challenge in the Supreme Court. The AO applied newly enacted Section 45 (5) itself with effect from 1st April 1988 and brought to the enhanced compensation of the tax. The ITAT further accepted the contention of the Assessee following the decision of this Court of ***CIT v. Harish Chander 154 ITR 473*** and ***CIT v. Devki Nand 138 ITR 225*** and held that Section 45 (5) would not applicable as the money had been paid on furnishing of bank guarantee. This Court applied the decision of the Supreme Court in ***Commissioner of Income Tax v. Ghanshyam (HUF)*** (*supra*) and reversed the decision of the ITAT.

55. There are two distinct features as far as the above case is concerned. One is there was no issue regarding right to receive the compensation itself being inchoate. In other words there was no ground urged in that case that the Assessee was not entitled to receive compensation. Secondly, the decision was rendered in the absence of the Assessee and perhaps for that reason, the above issue was not considered.

56. Turning to the facts in ***CIT v. Gulab Sundri Bapna*** (*supra*) which was again given in the absence of the Assessee, the vacant possession of land under sub-lease was handed over by the Assessee on 30th March 1976 and the possession of the factory building, which was also

acquired, was handed over on 17th September 1976. There were three claimants and the District Judge, held that the compensation for acquisition of land and building should be distributed *inter se* between assigning of the rights in land and the transferring of the land from the original lessor. The Assessee also filed a reference under Section 18 of the Act. Like in the present case, the award for enhanced compensation was challenged by the Union of India ('UOI') in the High Court, in an appeal, which was admitted but the Assessee was allowed to withdraw the compensation that has been deposited on furnishing security. The amount was withdrawn on 30th July 1987, by the Assessee by furnishing security/guarantee. The CIT (A) reversed the order and the Revenue filed an appeal before the ITAT before which it invoked Section 45 (5) of the Act. The ITAT upheld the order of the CIT (A).

57. The questions framed by this Court in the Revenue's appeal read as under:

> "1. Whether the ITAT is justified in law in deleting the addition of Rs. 59,63,410 being the amount of enhanced compensation received by the Assessee during the year?
> 2. Whether the amount of Rs. 59,63,410 received by the Assessee during the previous year relevant to assessment year 1988-89 is taxable in view of the provisions of Section 45 (5) of the IT Act?
>
> 3. Whether the ITAT is correct in law that no capital gains arose to the Assessee on receipt of compensation because of the acquisition of land in which the Assessee had tenancy rights only?

58. It was held by the Court that the tenancy right had computable cost of acquisition and therefore, the consideration received on surrender or acquisition was taxable as capital gains even prior to 1st April 1988. The

decision in ***CIT v. Ghanshyam (HUF)*** (*supra*) held that the additional compensation is taxable in the AY in question , i.e., 1988-89. It was held that Section 45 (5) is both the charging Section as well as the computation section. For the purpose of taxation of enhanced compensation received, cost of acquisition has to be taken as 'nil'. Logically, therefore, it followed that the compensation received in this year by the Assessee has to be taxed. Each AY was separate and distinct and enhanced compensation received was to be taxed in the year of receipt, i.e., the year in question. Accordingly, the question was answered in favour of the Revenue and against the Assessee.

59. What is significant is that there was no question in the said case of the entitlement of the Assessee to receive compensation in the first place. This is what distinguishes the said decision in its applicability to the facts at hand.

60. In ***Commissioner of Wealth Tax, Calcutta v. U.C. Mehatab*** (*supra*) it was held following the decision in ***Commissioner of Wealth Tax, Kolkatta v. Smt. Anjamli Khan*** (*supra*) that "the moment an Assessee's land is acquired or otherwise vested in the State, he becomes entitled to compensation and merely because the amount of compensation is not determined immediately, it cannot be said that there is no right to compensation in the erstwhile holder." Again this decision did not involve the question concerning the entitlement of the Assessee to be considered as a holder of any rights in land and therefore, entitled to receive compensation as such.

61. In the present case the Assessee is justified in contending that although award has been made and the compensation payable has been enhanced, the amount itself is in dispute, that dispute is pending in the Court. In ***E.D. Sassoon & Co. v. CIT (1954) 26 ITR 27 (SC)*** it was held that income cannot be said to accrue or arise to an Assessee unless and until there is created in favour of the Assessee a debt due by somebody. Unless that happens it could not be said that the Assessee had acquired a right to receive the income or the income has accrued to him.

62. The upshot of the above discussion is that but for the proceedings under Section 31 (2) of the LA Act still being inconclusive, the amounts received by the Assessee by way of enhanced compensation would have been amenable to capital gains tax in the year of receipt as explained in ***CIT v. Ghanshyam (HUF)*** (*supra*). However, on account of the pendency in this Court of the appeals arising from the order of the ADJ in the proceedings under Section 31 (2) of the LA Act, the right of the Assessee to receive the said sums is still unclear or inchoate. Consequently, the question of bringing to tax the said enhanced compensation has to await the final outcome of the above proceedings. This would equally apply to the interest, solatium, additional sums received by the assessee on enhanced compensation in the AYs in question. A further corollary is that the stage for applying Section 45 (5) (c) read with Section 155 (16) of the Act cannot be said to have arisen yet. Consequently, that question need not be examined at this stage.

Section 45 (5) effective from AY 1988-89

63. On the question as to the AY from which Section 45 (5) would become applicable, reference may be made to the Circular No. 495 issued by the Central Board of Direct Taxes. Para 24.5 to 24.7 which explain the rationale behind the introduction of Section 45 (5) of the Act read as under:

> "24.5 Under the existing provisions where capital gains accrue or arise by way of compulsory acquisition of assets, the additional compensation is taken into consideration for determining the capital gain for the year in which the transfer took place. To provide for rectification of assessment for the year in which the capital gain was originally assessed, Section 155 (7A) was introduced. The additional compensation is awarded in several stages by different appellate authorities and necessitates rectification of the original assessment at each stage. This causes great difficulty in carrying out the required rectification and in effecting the recovery of additional demand. Another difficulty which arises is in cases where the original transferor dies and the additional compensation is received by his legal heirs. In the latter type of cases, proceedings have to be initiated against the legal heirs. Repeated rectification of assessment on account of enhancement of compensation by different Courts often results in mistakes of computation of tax.
>
> 24.6 With a view to removing these difficulties, the Finance Act, 1987 has inserted a new sub-Section (5) in Section 45 to provide for taxation of additional compensation in the year of receipt instead of in the year of transfer of the capital asset. The additional compensation will be deemed to be income in the hands of the recipient happens to be a person different from the original transferor by reason of death, etc. For this purpose, the cost of acquisition in the hands of the receiver of the additional compensation will be deemed to be nil. The compensation awarded in the first instance would continue to be chargeable as income under the head "Capital gains" in the previous year in which the transfer took place.

> 24.7 These amendments will come into force with effect from 1st April 1988 and will, accordingly, apply from the assessment year 1988-89 and subsequent years."

64. It is, therefore, clear that Section 45 (5) applies with effect from the AY 1988-89. The decision in ***Karimatharuvi Tea Estate Limited v. State of Kerala*** (*supra*) also supports this position.

Conclusions in the ITAs

65. Consequently as far the income tax appeals are concerned, the questions framed by the Court are answered as under:

(i) Question (1) is answered by holding that the question of bringing the enhanced compensation received by the Assessee during the relevant previous year to tax for the purposes of capital gains under Section 45 (5) (b) of the Act will have to await the final decision in the appellate proceedings emanating from the order of the ADJ in the proceedings under Section 31 (2) LA Act.

(ii) Question (2) is answered by holding that, in the facts of the present case, the ITAT was incorrect in law in holding that the decision in ***CIT v. Hindustan Housing and Land Development Trust Limited*** (*supra*) is to be applied despite Section 45(5) of the Act.

(iii) Question (3) is answered by holding that the question of assessing to tax the interest received by the assessee on enhanced compensation in the same year in which the enhanced compensation is received will also have to await the final decision in the appellate proceedings emanating

from the order of the ADJ in the proceedings under Section 31 (2) LA Act.

The Wealth Tax appeals

66. Turning to the wealth tax appeals, it is seen that as held by the ITAT in the present case, amount of compensation received by the Assessee in the nature of 'trust money' which may be required to be returned by the Assessee in case she does not succeed in the appeal emanating from the order in the proceedings under Section 31 (2) of the LA Act. For an Assessee to be brought to tax within the ambit of the wealth tax provisions, it should be shown, as on the valuation date, to be belonging to the Assessee. In the facts of the case, the ITAT was justified in holding that the provision of WT Act did not stand attracted yet. That too will have to await the final decision in the appellate proceedings emanating from the order of the ADJ in the proceedings under Section 31 (2) LA Act.

67. The appeals are accordingly dismissed but, in the facts and circumstances of the case, with no orders as to cost.

S. MURALIDHAR, J.

VIBHU BAKHRU, J.

DECEMBER 08, 2015
b'nesh/Rk