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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO.2902 OF 2016

Shri Rupesh Rashmikant Shah … Petitioner

Vs

Union of India & Ors. … Respondents

Mr.A.M. Gokhale for the Petitioner

Mr.Anil C. Singh, Additional Solicitor General with Mr.Suresh Kumar, Ms.Sumandevi Yadav, Mr.Mayur Jaisi and Mr.Pritish Chatgee for Respondent Nos.2 and 3

Mr.D.S. Joshi for Resp. No.4

Mr.Amit Shashtri, AGP, for Resp. Nos.6 and 8

Mr.J.D. Mistri, Senior Advocate, Amicus Curiae – present

CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.
JUDGEMENT RESERVED ON: JULY 23, 2019
JUDGEMENT DELIVERED ON: AUGUST 8, 2019

JUDGMENT (Per Akil Kureshi, J.):

1. A young boy, barely aged 8 years, cheerful and full of life, was trying to cross the road accompanied by his household help. His life was full of joy, happiness, his future full of possibilities. Before he crossed the road all that changed. Knocked down by a speeding vehicle, he lost his consciousness, remained in coma for

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six months. For the remainder of his life, he wished he had not regained consciousness. He has filed this petition seeking our opinion whether income tax department was justified in taking away 30% of the interest on the compensation which was determined nearly 36 years after the accident. Looking to the issues involved, we have heard the learned Counsel for the parties for final disposal of the petition. The petition arises in the following background:

FACTS:

The petitioner is presently aged about 48 years. When he was about 8 years old, on 18.10.1978, he was trying to cross Nepensea Road in South Mumbai accompanied by a household servant when a car insured by Oriental Insurance Company Ltd. - Respondent No.4, collided with the young boy causing serious injuries. His brain was severely damaged. He remained in the hospital in an unconscious state for several months. His parents brought him home setting up a nursing station at home and administered all necessary treatment. Though several months later, he regained consciousness, his brain injuries left him paraplegic. Further, treatments, therapies and cures failed to have

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the desired effect. His mental growth also stunted. Ever since the date of the accident, he is left completely bed ridden, needs constant attention even for routine activities.

2. On his behalf, his father had filed Motor Accident Claim Petition before the Motor Accident Claims Tribunal, Greater Mumbai. He had initially sought a compensation of Rs.1 lakh from the driver, owner and insurer of the vehicle involved in the accident, which was subsequently revised to Rs.15 lakhs. Yet another application was filed before the Motor Accident Claims Tribunal raising the claim to Rs.50 lakhs. The Tribunal, however, did not find any evidence of such application having been allowed.

3. More than 10 years after the accident, the Tribunal disposed of the Claim Petition by award dated 30.3.1990. The Tribunal held that the driver of the car was solely negligent in causing the accident. The Tribunal awarded compensation under various heads such as future loss of income; pain; shock and suffering; loss of amenities of life; cost of medical treatment, etc. and awarded a total compensation of Rs.4,12,000/- to be paid jointly and severally by the owner and the insurance company with interest @ 6% p.a. from the date of the Claim Petition till

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realisation. The Tribunal also directed that if this amount is not paid within three months, the rate of interest payable would be 12% p.a. on the unpaid amount.

4. By the time the Tribunal disposed of the Claim Petition, the petitioner had become major. He was brought on record in his personal capacity. He filed First Appeal before the Bombay High Court against the said judgment and award of the Claim Tribunal and sought enhancement of the compensation. Several years later his appeal was disposed of by a judgment dated 21.11.2014. The learned Single Judge awarded total compensation of Rs.39,92,000/- to be paid with interest at the rate of 9% per annum.

5. The insurance company challenged the said judgment of the High Court before the Supreme Court by filing Special Leave Petition. The said SLP came to be dismissed on 5.5.2015.

6. In an Execution Petition filed by the petitioner, the insurance company deposited an amount of Rs.1,42,04,415/- pursuant to the judgment of the High Court after deducting tax at source. According to the petitioner, no TDS should have been deducted.

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Under protest, however, he withdrew the compensation amount of Rs.1,42,04,415/-. The break-up of the amount payable to the petitioner would show that on the principal sum of Rs.39,92,000/- as awarded by this Court, interest @ 9% for 36 years came to Rs.1,18,04,606/-. The insurance company before depositing the amount, deducted tax at source a sum of Rs.11,80,461/- @ 10% on the interest component.

7. The petitioner had received interest of Rs.1,18,04,606/- during the period relevant to the A.Y. 2016-2017. According to the petitioner, such interest was not taxable. However, by way of caution, the petitioner filed the return of income for the A.Y. 2016 – 2017 in which he had presented the computation of his taxable income if the interest received by him was made taxable. His tax liability came to Rs.37,97,773/-, which also he had deposited with the Income Tax department. In the return of income, he had put the following note in order to dispute the taxability of the interest:

> **"NOTE: As per the stand taken by the Assessee the interest amount on such insurance income received should be treated as capital receipt and hence Income Tax should not be applicable on it. The Assessee has paid the Income Tax amount under protest."**

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8. This petition was initially filed with a prayer for a declaration that no tax at source is required to be deducted on the interest component of the compensation in motor accident claims. The petitioner had also prayed for a direction to refund the sum of Rs.37,97,773/- which he had paid to the Income Tax department while filing the return of income. The petitioner had also challenged the *vires* of section 194A (3)(ix) and (ixa) as also section 145A(b) and 56(2)(viii) of the Income Tax Act, 1961 ('Act' for short).

9. When this petition was pending, the Assessing Officer passed an order of assessment under section 143(3) of the Act on 30.11.2018 and assessed the petitioner's total income at Rs.1,14,99,380/- which comprised of the interest received on the compensation minus available deductions. He rejected the petitioner's contention that such interest was not taxable. He was of the opinion that the interest on compensation was distinct and independent of the principal and the interest therefore, would be income from other sources. Most unkindly, he also ordered issuance of notice of penalty under section 271(1)(c) of the Act completely ignoring the fact that the petitioner himself had filed the

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return of income, disclosed the interest income and subject to his objection to its taxability, also paid the full tax thereon. The petitioner was allowed to amend the petition and challenge this order of assessment.

10. As noted, at the time of filing of the petition, the dispute was with respect to deduction of tax at source on the interest component of the enhanced compensation. Before this issue could be resolved, the final assessment was made by the Assessing Officer holding the entire interest receipt taxable as income from other sources. The issue of validity of deducting tax at source has thus, merged into the larger question of very taxability of the receipt.

INCOME TAX PROVISIONS:

11. Before recording rival stands, we may briefly refer to applicable provisions contained in the said Act.

12. Section 2(24) of the Act defines the term ‘income’. Section 2(28A) defines ‘interest’. Section 56 pertains to income from other sources, relevant portion of which reads as under:

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> "Income from other sources.
> 56.(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 clause (b) of section 145A."

13. Sub-section (2) of section 56 thus provides that in particular and without prejudice to the generality of the provisions of sub-section (1), the following incomes, contained in various clauses therein would be chargeable to income tax under the head income from other sources. Clause (viii) refers to income by way of interest received on compensation or on enhanced compensation referred to in clause (b) of section 145A. Subsection (1) of section 56 provides that income of every kind which is not to be excluded from the total income would be chargeable to tax as income from other sources if it is not chargeable under any of the heads specified in items (A) to (E) of section 14.

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14. Section 145A(b) as it stood at the relevant time reads thus:

> Notwithstanding anything to the contrary contained in section 145 -
> (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."

Sub-section (1) of section 194A of the Act enjoins any person other than an individual or Hindu Undivided Family responsible for paying to a resident any income by way of interest to deduct tax at source at the prescribed rates. The relevant portion of section 194A reads thus:

> 194A (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 the monetary limits specified under clause (a) or clause (b) of section 44AB 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.
>
> (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 Accident Claims Tribunal.

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(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”

The controversy at hand revolves around these provisions which would come up for detailed examination later.

RIVAL STANDS -

CASE OF THE PETITIONER -

15. The stand of the petitioner is that the interest component on the motor accident claim compensation paid to the petitioner is not taxable. The first contention of the petitioner is that the interest is a capital receipt. The other contention is that the interest is compensatory in nature. It is meant to offset the erosion of the principal compensation because of passage of time and the reduction of purchasing power of rupee due to inflation. According to the petitioner since the compensation itself is not taxable, the interest *pendente lite* which also forms part of the compensation, would not be taxable. When the receipt itself is not taxable, the question of deducting tax at source while making payment thereof would not arise. It was lastly contended that in any case, such

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interest should be spread over the entire period for which it is paid. The interest accrues from year to year. Merely because it is paid at a single point, would not mean the entire amount is taxable in the year of payment.

THE STAND OF THE DEPARTMENT:

16. The Department contends that the interest is an income distinct from the compensation and is, therefore, taxable. By virtue of clause (b) of section 145A of the Act, such income is taxable on actual receipt. Heavy reliance is placed on the provisions contained in section 56(2)(viii), section 145A(b) and section 194A of the Act. It was pointed out that section 145A was amended by the Finance Act of 2009 in order to obviate the difficulties arising out the judgment of the Supreme Court in the case of **Rama Bai and ors. vs. Commissioner of Income Tax, Andhra Pradesh, Hyderabad and Ors.**[1]. The learned ASG had argued that looking to these statutory provisions, any interest on compensation or enhanced compensation of motor accident claims would be chargeable to tax as income from other sources and the point of chargeability would be the actual receipt. A conjoint reading of

1 181 ITR 400

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clause (viii) of sub-section (2) of section 56, clause (b) of section 145A and section 194A (3) of the Act would lead to an inescapable conclusion that interest on the compensation or enhanced compensation would be chargeable as income from other sources at the point of time when the same is actually received by the claimants.

ARGUMENTS OF AMICUS CURIAE:-

17. Considering the fact that the petition involved complex issues, answers to which would have wider ramifications, the Court had requested the learned Senior Counsel Mr.Jehangir Mistri to assist the Court as *Amicus Curiae*. He had graciously accepted the request and ably assisted the Court with painstaking preparations and usual flare. He had presented various propositions on the interpretation of the relevant sections. He had also presented the decisions of various Courts adopting different view points. His analysis is as follows.

i) Whether the interest received on compensation or enhanced compensation is income would be the fundamental issue. One way of interpreting section 194A(3)(ix), section 145A(b) and section 56(2)(viii) would be that

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none of these provisions make such interest chargeable to tax if it is otherwise not taxable. The taxability of the interest would depend on the nature and the purpose for grant of interest. If it is held that the interest is compensatory in nature and forms part of the compensation, the same may not be exigible to tax since both sides have proceeded on the basis that the compensation *per se* is not taxable.

ii) The question would also arise whether post-insertion of section 145A(b), the spread-over theory of interest on compensation, which was first time adopted by the Gujarat High Court in the case of **Gauri Deepak Patel & ors. vs. New India Assurance Co. Ltd.**[2], would stand overruled.

iii) If the spread over theory is to be applied, deduction of tax at source will be needed only if the payment of interest in a year exceeds Rs.50,000/-.

CERTAIN IMPORTANT DECISIONS:

18. We will now notice the decisions of the High Courts and the Supreme Court having a bearing on these aspects.

2 CAF/4923/2009 decided on 17.12.2009

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19. In the case of **Rama Bai (supra)**, a 3-Judge Bench of the Supreme Court considered a situation where the assessee's land was acquired under the Land Acquisition Act. Aggrieved by the compensation awarded by the Land Acquisition Officer, the assessee sought enhancement of compensation before the Reference Court. The Reference Court awarded enhanced compensation. With solatium, the amount came to Rs.2,34,607/-. Interest of Rs.37,529/- was awarded on the enhanced compensation. The Income Tax officer while making assessment for the A.Y. 1967-1968 and A.Y. 1968-1969, held that the right to receive interest on enhanced compensation arises on the date when the Reference Court passes the order. The assessee contended that the interest should be distributed over the period commencing from the date of dispossession of the assessee under the Land Acquisition Act till the date of payment. The Supreme Court considered the question whether in the facts of the case, the interest was liable to be assessed in the A.Y. 1968-1969? The Supreme Court noticed that different High Courts had given divergent decisions. The Supreme Court held that the question of accrual of interest will have to be determined in accordance with

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the decision of the Supreme Court in the case of **Khorshed Shapoor Chenai vs. Assistant Controller of Estate Duty, A.P.**[3] The effect of the decision, it was clarified 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.

20. In the case of the **Commissioner of Income Tax, Faridabad vs. Ghanshyam (HUF)**[4]**,** the Supreme Court considered a question whether the enhanced compensation, solatium and interest under the Land Acquisition Act would be chargeable as capital gains tax in the year of receipt. In the context of interest payable under section 28 of the Land Acquisition Act, it was observed that the same is applicable only in respect of excess amount which is determined by the Court under a reference under section 18 of the Land Acquisition Act. Section 28 does not apply to cases of undue delay in making award of compensation. It was observed that interest is not compensation and section 45(5) of the Act refers to compensation but held that

3 (1980) 122 ITR 21 (SC)
4 (2009) 8 SCC 412

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interest under section 28 of the Land Acquisition Act is an accretion of the value of the land acquired. The Court drawing a distinction between interest payable under section 28 and section 34 of the Land Acquisition Act held thus:

> **“50. 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. So also additional amount under Section 23(1A) and solatium under Section 23 (2) of the 1961 Act forms part of enhanced compensation under Section 45(5)(b) of the 1961 Act.**
>
> 54. Section 45(5) read as a whole [including clause (c)] not only deals with re-working as urged on behalf of the assessee but also with the change in the full value of the consideration (computation) and since the enhanced compensation/consideration (including interest under Section 28 of the 1894 Act) becomes payable/paid under 1894 Act at different stages, the receipt of such enhanced compensation/consideration is to be taxed in the year of receipt subject to adjustment, if any, under Section 155 (16) of the 1961 Act, later on. Hence, the year in which enhanced compensation is received is the year of taxability. Consequently, even in cases where pending appeal, the Court/Tribunal/Authority before which appeal is pending, permits the claimant to withdraw against security or otherwise the enhanced compensation (which is in dispute), the same is liable to be taxed under Section

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45(5) of the 1961 Act. This is the scheme of Section 45(5) and Section 155(16) of the 1961 Act. We may clarify that even before the insertion of Section 45(5)(c) and Section 155 (16) w.e.f. 1-4-2004, the receipt of enhanced compensation under Section 45(5)(b) was taxable in the year of receipt which is only reinforced by insertion of clause (c) because the right to receive payment under the 1894 Act is not in doubt.

55. It is important to note that compensation, including enhanced compensation/consideration under the 1894 Act, is based on the full value of property as on date of notification under Section 4 of that Act. When the Court/Tribunal directs payment of enhanced compensation under Section 23(1A), or Section 23(2) or under Section 28 of the 1894 Act it is on the basis that award of Collector or the Court, under reference, has not compensated the owner for the full value of the property as on date of notification."

21. In the case of **Hansaguri Prafulchandra vs. The Oriental Insurance Company**[5], a Division Bench of the Gujarat High Court taking cue from the decision of the Supreme Court in the case of **Rama Bai (supra)**, applied the theory of spreading over of interest on enhanced compensation for the purpose of levying tax. The facts were that Hansaguri alongwith her four daughters had filed a Claim Petition seeking compensation of Rs.20 lakhs on account of the death of her husband, Prafulchandra, who died in a vehicular accident. The Tribunal awarded compensation of Rs.11,78,000/- to be recovered with interest @ 9% p.a. from the date of the Claim

5 2007 ACJ 1897

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Petition till the date of payment. Pursuant to such directions, the insurance company deposited a sum of Rs.25,27,812/- which included the enhanced compensation, interest minus the tax deduction of Rs.1,70,279/-. The claimants, who had filed appeal before the High Court against the judgment of the Tribunal, moved an application praying that the amount awarded by the Tribunal as compensation and interest should be apportioned equally amongst all claimants and tax deduction should be by spread over on year to year basis, commencing from the date of filing of the Claim Petition till payment. The Division Bench of the High Court referring to and relying upon the decision of the Supreme Court in the case of **Rama Bai (supra),** held and observed as under:

> "(13). Accordingly, the income-tax liability of the concerned claimants to pay tax on the interest accrued on the compensation awarded to them shall arise if such interest income accrued in the concerned financial year together with other income of the respective claimants in that financial year exceeds the chargeable limit as specified in the provisions of the Income-tax Act, 1961 in force for the relevant years. It will, therefore, be open to the claimants to make appropriate applications/representations before the concerned income-tax authority for refund of such amount/s as may be due to them out of the amount of Rs. 1,70,269/- which has already been deducted by the Insurance Company as tax deducted at source under the provisions of Section 194A of the Act.
>
> 14. It is necessary to obviate such a situation in future for other claimants who may be awarded compensation with

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interest thereon, and the amount of interest being deposited exceeds Rs. 50,000/-, but who may not be liable to have any tax deducted at source as per the interpretation placed by us on the provisions of Section 194A of the Act. We, therefore, direct that - I. The Insurance Companies or the owners of the motor vehicles depositing the amounts in compliance with the awards of the Motor Accident Claim Tribunals shall - (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 Page 2108 shall not, however, straightaway, 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. II. (i) The Tribunal shall take into account the principles laid down in this judgment and ensure that the amount of interest accrued each year is apportioned amongst the claimants on year to year basis. (ii) If the interest payable to any claimant for any particular financial year exceeds Rs. 50,000/-, the Tribunal shall permit the Insurance Companies/owners to pay over the amount liable to be deducted at source under Section 193(3)(ix) of the Income-tax Department in respect of that particular claimant for that particular year, without prejudice to the claimant's case that he is not liable to pay any income-tax for that year. (iii) for the financial year/s for which the interest payable to the concerned claimant does not exceed Rs. 50,000/-, the Tribunal may permit such claimant to withdraw the amount deposited as per direction I(b) without producing the certificate from the concerned income-tax authority that there is no income-tax liability on the interest which has accrued on the compensation awarded by the Tribunal. (iv) It is clarified that the amount other than the amount liable to be deducted at source under Section 194A(3)(ix) shall be invested/disbursed by the Tribunal. III. When the claimants

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make applications/representations before the authority under the Income-tax Act, 1961 for refund of the amount deducted under the provisions of Section 194A(3)(ix) of the Act, the concerned authority shall decide such applications/ representations within six months from the date of receipt of the applications/representations."

22. This view was adopted by the Bombay High Court in the case of **Gauri Deepak Patel & ors. (supra),** in which the following observations were made:

6. Accordingly, we direct that the following procedure as laid down in the case of Hansaguri (supra) shall be followed in the present case and in all the similar cases arising in future before the Motor Accidents Claims Tribunal:-

"(i) The insurance companies or the owners of the motor vehicles depositing the amounts in compliance with the awards of the Motor Accidents Claims Tribunal shall:

(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 194-A (3) to (ix) of the Income-Tax Act, 1961. Such amount shall not, however, straightaway be paid over to Income Tax Department,

(c) produce before the Claims Tribunal a statement of computation of interest by spreading the amount over the relevant years from the date of claim application till the date of deposit if the interest for any particular financial year exceeds

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Rs.50,000/- and also request the Tribunal to treat the amount as a separate deposit.

(ii) The Tribunal shall ensure that the amount of interest accrued each year is apportioned amongst the claimants on year to year basis.

(iii) If the interest payable to any claimant during any particular financial year exceeds Rs.50,000/-, the Tribunal shall permit the insurance companies/owners to pay over the amount liable to be deducted at source under section 194-A(3)(ix) to the Income Tax Department in respect of that particular claimant for the particular year, **without prejudice to the claimant's case that he is not liable to pay any income tax for that year.**

(iv) For the financial year(s) for which the interest payable to the concerned claimant does not exceed Rs.50,000/-, the Tribunal may permit such claimant to withdraw the amount deposited as per direction (i)(b) without producing the certificate from the concerned income-tax authority that there is no income-tax liability on the interest which has accrued on the compensation awarded by the Tribunal.

(v)It is clarified that the amount other than the amount liable to be deducted at source under section 194-A(3)(ix) shall be invested/disbursed by the Tribunal.

(vi) When the claimants make applications before the authority under the Income-tax Act, 1961 for the refund of the amount deducted under the provisions of section 194-A(3) (ix) of the Act, the concerned authority shall decide such applications with utmost expedition."

23. The Legislature took cognisance of the judgment of the Supreme Court in the case of **Rama Bai (supra)** and certain

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undue hardship caused to the taxpayers on account of taxing the interest on compensation or enhanced compensation on accrual basis. Section 145A of the Act was, therefore, amended by Finance Act, 2009 to obviate such hardship. In the amended form, as noted, clause (b) of section 145A of the Act provides that notwithstanding anything to the contrary contained in section 145, interest received by an assessee on compensation or on enhanced compensation shall be deemed to be income of the year in which it is received.

24. The Gujarat High Court in the case of **Movaliya Bhikhubhai Balabhai vs. Income-Tax Officer (TDS) and another**[6] considered the effect of this amendment on the question of charging tax on the interest payable to a claimant under section 28 of the Land Acquisition Act. We may recall, the decision of the Supreme Court in the case of **Ghanshyam (HUF) (supra),** was rendered when section 145A was not so amended and the Court had held that interest under section 28 of the Land Acquisition Act payable to a claimant is part of compensation. The question before the Gujarat High Court, therefore, was does the amendment in section 145A and the corresponding amendments in section 56(2) of the Act

6 [2016] 388 ITR 343 (Guj.)

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change the position of law laid down by the Supreme Court in the case of **Ghanshyam (HUF)** (supra). The Division Bench of the Gujarat High Court noticed the distinction between interest payable under section 28 and one payable under section 34 of the Land Acquisition Act. It was observed that the interest under section 28 which is paid on enhanced compensation is treated as accretion to the value and, therefore, part of the enhanced compensation or consideration making it exigible to capital gain tax under section 45(5) of the Act. The Court noticed the Departmental Circular explaining the said amendment in section 145A of the Act and observed as under:

> **"Thus, the substitution of section 145A by the Finance (No.2) Act, 2009 was not in connection with the decision of the Supreme Court in *Ghanshyam (HUF)* (supra) but was brought in to mitigate the hardship caused to the assessee on account of the decision of the Supreme Court in *Rama Bai v. CIT* [1990] 181 ITR 400 (SC) whereby it was held that arrears of interest computed on delayed or enhanced compensation shall be taxable on accrual basis. Therefore, when one reads the words "interest received on compensation or enhanced compensation" in section 145A of the Income-tax Act, the same have to be construed in the manner interpreted by the Supreme Court in *Ghanshyam (HUF)* (supra)."**

25. The Court eventually held as under:

> **"The upshot of the above discussion is that since interest under section 28 of the Act of 1894, partakes the**

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> **character of compensation, it does not fall within the ambit of the expression "interest" as contemplated in section 145A of the Income-tax Act. The first respondent – Income-tax Officer was, therefore, not justified in refusing to grant a certificate under section 197 of the Income-tax Act to the petitioner for non-deduction of tax at source, in as much as, the petitioner is not liable to pay any tax under the head "Income from other sources" on the interest paid to it under section 28 of the Act of 1894."**

26. We may now take note of the decisions of various High Courts touching on the question of taxability of motor accident claim compensation and interest payable thereon.

27. The Division Bench of the Himachal Pradesh High Court in the case of **Court on its own Motion v. The H.P. State Cooperative Bank Ltd. & Ors.**[7] held that the compensation awarded under the Motor Vehicles Act is not a taxable income. It was observed as under:

> "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."

7 CWPIL No.9 of 2014 decided on 15.10.2014

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28. The Division Bench of Allahabad High Court in the case of **Commissioner of Income Tax vs. Oriental Insurance Co. Limited**[8] took somewhat restricted view of charging interest as income to tax. Reference was made to the definition of 'interest' under section 2(28A) of the Act and held as under:

> "36. 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 Vehicles 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."

29. Learned Single Judge of Madras High Court in the case of **The Managing Director, Tamil Nadu State Transport Corporation (Salem) Ltd. vs. Chinnadurai**[9] held that neither the compensation in motor accident claims awarded by the Tribunal nor the interest thereon can be subjected to deduction of tax at source since such receipts are not income under the said Act.

8 [2012] 211 TAXMAN 369 (All)
9 CRP (PD) No.1343 of 2012 and M.P. No.1 of 2012 decided on 2.6.2016

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30. A contrary view has been taken in the following decisions:

Rajasthan High Court in the case of **Kailash Narain Gupta vs. Commissioner of Income Tax**[10] held that interest on compensation stands on a different footing as compared to the compensation awarded. It was held that such interest is in the nature of income. This was reiterated in a later decision of the High Court in the case of **Smt.Sharda Pareek v. Assistant Commissioner of Income Tax**[11]**.** We are informed that leave to appeal against this decision is granted and appeal is pending before the Supreme Court.

DISCUSSION ON RIVAL CONTENTIONS:

(I) NATURE OF COMPENSATION UNDER THE MOTOR VEHICLES ACT.-

31. In order to arrive at a correct answer, we would have to appreciate the interplay between the decisions of the Supreme Court in the case of **Rama Bai** (supra)**, Ghanshyam (HUF)** (supra) and that of Gujarat High Court in the case of **Movalia Bhikhubhai Balabhai** (supra) in the context of the amendments made in section 145A of the Act. Before doing that, it would be

10 225 ITR 921
11 [2019] 104 Taxmann.com 76 (Raj.)

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necessary to examine the nature of compensation and interest awarded under the Motor Vehicles Act, 1988 (for short, 'Act of 1988'). The Act of 1988 makes detailed provisions for awarding compensation for death or disablement of any person resulting from an accident arising out of the use of a motor vehicle. Essentially, such claim is in the nature of tortious liability. Over a period of time, the same has been substantially codified. With exponential increase in the number of vehicles and the road network, legislations have tried to keep pace with the challenges arising out of road accidents. The concept of compulsory third party insurance has been statutorily introduced. The relationship between the insurer and the insured is basically a contractual relationship but interjected by a range of statutory provisions. Under such contract of insurance, the insurer undertakes to indemnify the insured to the extent agreed. The statutory provisions contained in the Act of 1988 make third party insurance compulsory and limit the defences which the insurance company may raise to repudiate its liability.

32. The first law to be framed in India in this field was the Fatal Accidents Act, 1855. It provided that whenever the death of a

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person is caused by a wrongful act, neglect or default and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the party, who would have been alive if death had not ensued, shall be liable to an action or suit for damages notwithstanding the death of the person injured and although the death shall have been caused under such circumstances as amount in law to felony or other crime.

33. The Motor Vehicles Act, 1939 was thereafter enacted in order to consolidate the law relating to motor vehicles, which contained various provisions for use of the motor vehicles and for claiming compensation for death or bodily injury caused in a motor accident. Special Claims Tribunals were set up to decide such cases. The Motor Vehicles Act, 1939 was replaced by the Motor Vehicles Act, 1988. The Statement of Objects and Reasons for enactment of the said Act records that the need was felt for consolidation and amendments of laws relating to motor vehicles and such law should take into account changes in the road transport technology, pattern of passenger and freight movements, development of road network in the country and in particular,

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improved techniques in the motor vehicles management. Chapter X of the Act of 1988 pertains to liability without fault in certain cases. Chapter XI pertains to insurance of motor vehicles against third party rights. Chapter XII pertains to Claims Tribunals. Section 166 of Act of 1988 pertains to applications for compensation under which a person who has sustained injury or the owner of the property or where death has resulted from the accident, the legal representatives of the deceased could make an application for compensation to the Motor Accident Claims Tribunal. On such an application, the Claims Tribunal would pass an award as provided in section 168 of the Act of 1988. Sub-section (1) of section 168 provides that on receipt of application for compensation, the Tribunal shall after giving notice to the insurer and giving an opportunity of being heard to the parties, hold an enquiry into the claim and may make an award determining the amount of compensation which appears to it to be just and specify the person or persons to whom the compensation shall be paid. Awarding just compensation is thus, of paramount importance.

34. Section 171 of the Act of 1988 provides that where a Tribunal allows the claim for compensation, such Tribunal may direct that in

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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.

35. Instances of petitions before the Claims Tribunal broadly fall within the categories of fatal or injury cases. A case of injury may lead to permanent disability or temporary disability and such disability may be partial or total.

36. We may take note of a few leading judgments in the context of the nature of compensation awarded to a victim of a motor accident.

37. In the case of **General manager, Kerala S.R.T.C. vs. Susamma Thomas[12],** it was observed that the compensation in a motor accident claim must be just, fair and reasonable. It was observed thus:

> "8. The measure of damage is the pecuniary loss suffered and is likely to be suffered by each dependent. Thus "except where there is express statutory direction to the contrary, the damages to be awarded to a dependent of a deceased person under the Fatal Accidents Acts must take into account any pecuniary benefit accruing to that dependent in consequence of the death of the deceased. It is the net loss on balance which constitutes the measure of damages. …."

12 (1994) 2 SCC 176

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38. In the case of **R.D. Hattangadi vs. M/s.Pest Control (India) Pvt. Ltd.**[13]**,** while referring to different heads for assessing compensation in injury case, it was observed as under:

> "9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which is capable of being calculated in terms of money-, whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may, include expenses incurred by the claimant : (i) medical attendance; (ii) loss of earning of profit upto the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e. on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."

39. In the case of **Jagdish vs. Mohan and others**[14], it was observed as under:

> "8. In assessing the compensation payable the settled principles need to be borne in mind. A victim who suffers a permanent or temporary disability occasioned by an accident is entitled to the award of compensation. The award of

13 (1995) 1 SCC 551
14 (2018) 4 SCC 571

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compensation must cover among others, the following aspects:
(i) Pain, suffering and trauma resulting from the accident;
(ii) Loss of income including future income;
(iii) The inability of the victim to lead a normal life together with its amenities;
(iv) Medical expenses including those that the victim may be required to undertake in future; and
(v) Loss of expectation of life."

40. In **Reshma Kumari (supra),** it was held that while taking into account the income of the deceased at the time of the accident, deduction for income tax payable should be made. Similar view was expressed in the case of **Vimal Kanwar vs. Kishore[15].**

41. In **Sarla Varma vs. DTC[16]**, in the context of computation of compensation, the Court had stressed the requirement of taking into account the income of the deceased at the time of the accident (of course after adjusting for future increase) ignoring the later developments such as future pay revisions. The following observations were made:

> "45. The assumption of the appellants that the actual future pay revisions should be taken into account for the purpose of calculating the income is not sound. As against the contention of the appellants that if the deceased had been alive, he would have earned the benefit of revised pay scales, it is equally possible that if he had not died in the

15 (2013) 7 SCC 476
16 (2009) 6 SCC 121

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accident, he might have died on account of ill health or other accident, or lost the employment or met some other calamity or disadvantage. The imponderables in life are too many. Another significant aspect is the non-existence of such evidence at the time of accident.

46. In this case, the accident and death occurred in the year 1988. The award was made by the Tribunal in the year 1993. The High Court decided the appeal in 2007. The pendency of the claim proceedings and appeal for nearly two decades is a fortuitous circumstance and that will not entitle the appellants to rely upon the two pay revisions which took place in the course of the said two decades. If the claim petition filed in 1988 had been disposed of in the year 1988-89 itself and if the appeal had been decided by the High Court in the year 1989-90, then obviously the compensation would have been decided only with reference to the scale of pay applicable at the time of death and not with reference to any future revision in pay scales."

CONCEPT OF MULTIPLIER -

The Supreme Court in **Susamma Thomas** (supra) referred to the methods adopted for determination of compensation in fatal accident cases and endorsed that the multiplier method is logically sound and legally well established. The following observations were made:

"As to the multiplier, Halsbury states:

"However, the multiplier is a figure considerably less than the number of years taken as the duration of the expectancy. Since the dependents can invest their damages, the

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> **lump sum award in respect of future loss must be discounted to reflect their receipt of interest on invested funds, the intention being that the dependents will each year draw interest and some capital (the interest element decreasing and the capital drawings increasing with the passage of years), so that they are compensated each year for their annual loss, and the fund will be exhausted at the age which the court assesses to be the correct age, having regard to all contingencies.** The contingencies of life such as illness, disability and unemployment have to be taken into account. …...

16. It is necessary to reiterate that the multiplier method is logically sound and legally well-established. There are some cases which have proceeded to determine the compensation on the basis of aggregating the entire future earnings for over the period the life expectancy was lost, deducted a percentage therefrom towards uncertainties of future life and award the resulting sum as compensation. This is clearly unscientific. For instance, if the deceased was, say 25 years of age at the time of death and the life expectancy is 70 years, this method would multiply the loss of dependency for 45 years virtually adopting a multiplier of 45 and even if one-third or one-fourth is deducted therefrom towards the uncertainties of future life and for immediate lump sum payment, the effective multiplier would be between 30 and 34. This is wholly impermissible. …...

17. The multiplier represents the number of years' purchase on which the loss of dependency is capitalised. Take for instance a case where annual loss of dependency is Rs. 10,000. If a sum of Rs 1,00,000 is invested at 10% annual interest, the interest will take care of the dependency, perpetually. The multiplier in this case works out to 10. If the rate of interest is 5% per annum and not 10% then the multiplier needed to capitalise the loss of the annual dependency at Rs 10,000 would be 20. Then the multiplier, i.e., the number

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of years' purchase of 20 will yield the annual dependency perpetually. Then allowance to scale down the multiplier would have to be made taking into account the uncertainties of the future, the allowances for immediate lump sum payment, the period over which the dependency is to last being shorter and the capital feed also to be spent away over the period of dependency is to last etc. Usually in English Courts the operative multiplier rarely exceeds 16 as maximum. This will come down accordingly as the age of the deceased person (or that of the dependents, whichever is higher) goes up."

42. In the case of **Sarla Verma** (supra), the Supreme Court standardised the choice of the multiplier for achieving degree of uniformity in awarding compensation in motor accident claim cases. This was reiterated by the Supreme Court in the case of **Reshma Kumari vs. Madan Mohan**[17].

NATURE OF INTEREST PAYABLE:

43. In the context of interest, the case of **Kaushnuma Begum vs. New India Assurance Co. Ltd.**[18], it was observed as under:

> "24. Now, we have to fix up the rate of interest. Section 171 of the MV Act empowers the Tribunal to 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 may be specified in this behalf'. Earlier, 12% was found to be the reasonable rate of simple interest. With a change in economy and the policy of

17 (2013) 9 SCC 65
18 (2001) 2 SCC 9

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Reserve Bank of India the interest rate has been lowered. The nationalised banks are now granting interest at the rate of 9% per annum from the date of the claim made by the appellants. The amount of Rs.50,000 paid by the Insurance Company under Section 140 shall be deducted from the principal amount as on the date of its payment, and interest would be recalculated on the balance amount of the principal sum from such date."

44. In the case of **United India Insurance Company Ltd. and others vs. Patricia Jean Mahajan and Others[19],** it was observed as under:

> "In our view the reason indicated in the case of Kaushnuma Begum (supra) is a valid reason and it may be noticed that the rate of interest is already on the decline. We therefore, reduce the rate of interest to 9% in place of 12% as awarded by the High Court."

45. In the context of interest on the compensation to be awarded by the Claims Tribunal in the case of **Abati Bezbaruah vs. Dy.Director General Geological Survey of India[20],** it was observed by A.R. Lakshmanan, J. in a concurring judgment, as under:

> "18. Three decision were cited before us by Mr.A.P. Mohanty, learned counsel appearing on behalf of the appellant, in support of his contentions. No ratio has been laid down in any of the decisions in regard to the rate of interest and the rate of interest was awarded on the amount of compensation as a matter of judicial discretion. **The rate**

19 (2002) 6 SCC 281,
20 2003 ACJ 680

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of interest must be just and reasonable depending upon the facts and circumstances of each case and taking all relevant factors including inflation, change of economy, policy being adopted by the Reserve Bank of India from time to time, how long the case is pending, permanent injuries suffered by the victim, enormity of suffering, loss of future income, loss of enjoyment of life, etc., into consideration. No rate of interest is fixed under section 171 of the Motor Vehicles Act, 1988. Varying rates of interest are being awarded by Tribunals, High Courts and the Apex court. Interest can be granted even if claimant does not specifically plead for the same as it is consequential in the eyes of law. Interest is compensation for forbearance or detention of money and that interest being awarded to a party only for being kept out of money which ought to have been paid to him. No principle could be deduced nor any rate of interest can be fixed to have a general application in motor accident claim cases having regard to nature of provision under section 171 giving discretion to the Tribunal in such matter. ……”

46. In the case of **Dharampal vs. U.P. State Road Transport Corporation**[21], it was observed as under:

> “8. As per section 171 of the Motor Vehicle Act, 1988 (hereinafter referred as 'Act') where the claim for compensation made under the act is allowed by the Claims Tribunal, the tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate from such date not earlier than the date of making claim.
>
> 9. In National Insurance co. Ltd. v. Keshav Bahadur [(2004) 2 SCC 370] this court has held that the provisions require payment of interest in addition to compensation already determined. Even though the expression "may" is used, a duty is laid on the Tribunal to consider the question of

21 (2008) 12 SCC 2018

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interest separately with due regard to the facts and circumstances of the case. It was clearly held in the said decision that the provision of payment of interest is discretionary and is not and cannot be bound by rules.

10. Interest is compensation for forbearance or detention of money, which ought to have been paid to the claimant. No rate of interest is fixed under section 171 of the Act and the duty has been bestowed upon the court to determine such rate of interest. In order to determine such rate we may refer to the observations made by this court over the years. In the year 2001 in the case of Kaushnuma Begaum v. New India Assurance Co. Ltd. [(2001) 2 SCC 9] on the question of rate of interest to be awarded it was held that earlier, 12% was found to be the reasonable rate of simple interest but with a change in economy and the policy of Reserve Bank of India the interest rate has been lowered and the nationalized banks are now granting interest @ 9% on fixed deposits for one year. Accordingly, interest @ 9% was awarded in the said case. We may at this stage also refer to the following observations of their Lordships in the aforesaid decision which are relevant to the present case: (SCC p. 16, para 24)"

47. It can, thus, be seen that in the case of fatal accident cases, the Courts award compensation for loss of dependency benefit, loss of estate, loss of consortium in case of a spouse, loss of love and affection for the family members and funeral charges. In injury cases, generally, the compensation is computed under the heads of actual loss of income, future loss of income, pain, shock and suffering, loss of enjoyment of amenities of life, medical treatment – past and future, miscellaneous heads such as attendant

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charges, special diet, transportation, etc. The multiplier method is found to be most appropriate for computing loss of dependency benefits in fatal and future loss of income in injury cases.

48. From the above judgments, it can further be seen that be it a fatal case or an injury case, compensation includes future loss. In case of fatal accidents, it is awarded under the head of loss of dependency benefits. In case of injury cases, such future loss may either be in the form of loss of future income or even for future medical treatment and other expenditure. However, the computation of such future loss is on the basis of the income of the deceased or the injured on the death or accident. This is adjusted by a reasonable future rise in income. The concept of taking into account full possible rise in income is not accepted. For example, in case of a salaried person, particularly in government service, by the time a Claim Petition or Appeal is decided, there is hard evidence of the implementation of pay revisions and consequential rise in salary of other employees of the same cadre as that of the deceased. However, the Courts have rejected the request for awarding compensation on the basis of such future predictions. To the multiplicand so determined multiplier is applied to ascertain

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future loss. The method of multiplier takes into account various factors and imponderables of life and, therefore, the multiplier is not equivalent to the full length of the remainder of the expected life of the deceased. The multiplier theory proceeds on the basis that with interest that may be earned on the compensation and a portion drawn from the capital, should be equivalent to what the deceased would have contributed to his family. At the end of the period, the capital should be completely utilised. It is, therefore, that while awarding compensation, though the Claims Tribunal awards future loss *in praesenti,* interest is awarded for the period between filing of the Claim Petition till passing of the award and, therefore, as held by the Supreme Court in the case of **Abati Bezbaruah (supra)** and **Dharampal** (supra), such interest is considered to be part of compensation, and accretion to the compensation since the same is awarded for the compensation which is ascertained with reference to an earlier date i.e., the date of accident. At the same time, courts have not approved granting interest on future expenditure.

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INTERPRETATION OF THE PROVISIONS CONTAINED IN THE INCOME TAX ACT -

49. We may apply these conclusions to the relevant provisions contained in the Income Tax Act. Section 56 pertains to income from other sources. Sub-section (1) of section 56 provides that income of every kind which is not to be excluded from the total income under the Act shall be chargeable to income tax under the head of 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). Section 56(1) of the Act thus, makes a residuary provision for charging income of every kind, not falling under items (A) to (E) of section 14, to be charged as income from other sources. Sub-section (2) of section 56 provides that in particular and without prejudice to the generality of the provisions of sub-section (1), the incomes contained in the following clauses shall be chargeable to income tax under the head income from other sources. Clause (viii) inserted by the Finance Act, 2009 w.e.f. 1.4.2010 sub-section (2) of section 56 pertains to income by way of interest received on compensation or enhanced compensation referred to in clause (b) of section 145A.

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50. Before proceeding to analyse clause (b) of section 145A, we may note that section 56 of the Act *per se* does not make a particular receipt chargeable to tax if it otherwise does not happen to be income. This section merely provides for taxing an income not falling under the other heads as income from other sources. Sub-section (2) of section 56 when it lists various incomes, which would be treated as income from other sources, merely amplifies this purpose. Therefore, clause (viii) of sub-section (2) of section 56 by itself would not make the receipt of interest on compensation chargeable to tax as income from other sources, if such receipt is not income.

51. We have briefly noted the history behind enactment of section 145A of the Act. Section 145 pertains to method of accounting. Sub-section (1) of section 145 provides that income chargeable under the head profits and gains of business or profession or income from other sources would be, subject to the provisions of sub-section (2) computed in accordance with either cash or mercantile system of accounting regularly employed by assessee. This provision thus, leaves an option to assessee to offer the income of profit and gains of business or profession or

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from other sources to tax either on cash or mercantile system. In case of **Rama Bai (supra)**, the Supreme Court held that interest on compensation cannot be stated 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. The Legislature felt that this decision would cause undue hardship to the assessees. Even otherwise, it can be seen that, this position would cause severe hardship to the assessees. Interest would be charged to tax on accrual basis before the compensation is enhanced. The assessee who seeks enhanced compensation would go on paying tax on notional interest for years together till the reference or appeal for enhancement is allowed. With a view to mitigate such hardship, section 145A was amended by the Finance Act of 2009 w.e.f. 1.4.2010.

52. Clause (b) of section 145A of the Act as amended, we may recall provides that notwithstanding anything to the contrary contained in section 145, interest received by an assessee on compensation or enhanced compensation, as the case may be, shall be deemed to be income of the year in which it is received.

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This provision in our opinion, would have two significant effects. Firstly, it would overcome the decision of the Supreme Court in the case of **Rama Bai (supra)** and, therefore, the principle of accrual of interest on land acquisition compensation from the date of taking possession of the land till passing of the award would not apply. Second effect of this provision would be that whether an assessee follows the mercantile system of accounting or cash basis in terms of the option in section 145(1) of the Act, insofar as the interest on compensation or enhanced compensation is concerned, the same would be deemed to be the income of the year in which it is received. Once again, as observed in the context of section 56(2)(viii), clause (b) of section 145A of the Act does not make interest on compensation or enhanced compensation taxable if it is otherwise not exigible to tax. It merely provides for the point of time when it would be subjected to tax if otherwise taxable.

53. The Supreme Court in the case of **Rama Bai** (supra) also, had no occasion to consider the taxability of interest on compensation or enhanced compensation in case of land acquisition cases. In the case of **Ghanshyam (HUF)** (supra)**,** the

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Supreme Court held that interest awarded on compensation as well as solatium are part of the compensation and, therefore, in terms of section 45(5) of the Act, would be chargeable to capital gain in the year in which enhanced compensation is received. We are conscious that this decision was rendered before the amendment in Section 145A under the Finance Act, 2009. We are drawing reference to this judgment only for the limited purpose of noting that the decision of the Supreme Court in case of **Rama Bai** (supra) is not an authority on the question of taxability of interest on compensation or enhanced compensation. The Division Bench of the Gujarat High Court, we may recall, in the case of **Movaliya Bhikhubhai Balabhai** (supra), held that the ratio of the decision of the Supreme Court in the case of **Ghanshyam (HUF)** (supra), would continue to apply even after amendment in section 145A of the Act. Secondly, interest under section 28 of the Land Acquisition Act cannot be treated as income subject to tax irrespective of clause (b) of section 145A of the Act. Such interest would form part of the compensation and, therefore, subject to capital gain. We may note that the Punjab & Haryana High Court in case of **Puneet Singh vs. Commissioner of Income Tax**[22] has

22 (2019) 415 ITR 215 (P&H)

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held that interest on enhanced compensation under Land Acquisition Act is assessable in the year of receipt as income from other sources. This decision is directly contrary to the view expressed by the Gujarat High Court in the case of **Movalia Bhikhubai Balabhai** (supra). It is not necessary for us to resolve this controversy since our reference to and reliance on the judgment of Gujarat High Court is limited to the effect of amendment in section 145A by the Finance Act, 2009.

54. To summarise, the decision of the Supreme Court in the case of **Rama Bai** (supra) is not an authority on the question of taxability of interest on compensation or enhanced compensation in motor accident claim cases. In **Ghanshyam (HUF)** (supra), the Supreme Court held that interest under section 28 of the Land Acquisition Act would invite capital gain tax. This judgment was rendered before amendment in section 145A of the Act. The Gujarat High Court in **Movalia Bhikhubhai Balabai** (supra), held that the ratio of the Supreme Court in the case of **Ghanshyam (HUF)** (supra), would continue to apply post amendment in section 145A by virtue of Finance Act, 2009 also.

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55. In order to ascertain the taxability of interest on compensation or enhanced compensation in motor accident claim cases, we, therefore would have to ascertain the true nature of interest. Even the Assessing Officer has proceeded on the basis that the compensation by itself is not taxable. As noted earlier, income of the deceased or the injured for earmarking compensation is ascertained after deducting income tax. We have noticed certain decisions of the Courts holding that such compensation is by way of reimbursement of the loss and cannot be treated as income. We, therefore, proceed on such basis. In the context of the nature of the interest awarded by the Claims Tribunal or the High Court on motor accident claim compensation or enhanced compensation, we have referred to the decisions of the Supreme Court including in cases of **Abati Bezbaruah** (supra), **Kaushnuma Begum** (supra), **Patricia G. Mahajan** (supra) **and Dharampal** (supra)**.** These decisions suggest that the interest is awarded for delayed computation of compensation. Right to award interest flows from section 170 of the Motor Vehicles Act, 1988. As is well settled, the authority of the Court to award interest must be traced to a statutory provision or in agreement between the parties. In absence of section 170 of the Motor Vehicles Act,

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perhaps it would not be lawful for the Tribunal and for that matter, the High Court in Appeal, to award interest on compensation. The Supreme Court in the cases of **Abati Bezbaruah** (supra)**, Kaushnuma Begum** (supra), **Patricia G. Mahajan** (supra) **and Dharampal** (supra), explained the nature of interest awarded in motor accident claims cases. Culmination of discussion in these judgments would be that such interest is compensatory in nature and will thus, form part of the compensation itself. Compensation is computed with reference to the date of accident. All calculations of multiplicand and multiplier are based on such reference point. But computation by the Tribunal takes time. If compensation is revised by the High Court it takes further time. Interest is awarded keeping in mind the rate of inflation. Effort thus is to award just compensation. Awarding interest for delayed computation of compensation is therefore integral part of this exercise.

56. The issue can be looked from a slightly different angle. In the context of interest, there are three crucial dates. The date of the accident is a date in reference to which the entire compensation is calculated. The date of filing of the claim petition is the date from which the claimant can seek interest on the

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compensation awarded by the Claims Tribunal. Under section 170 of the Motor Vehicles Act, the interest cannot be awarded for a period prior to filing of the Claim Petition. The date of passing of the award by Claims Tribunal is the date on which the compensation is determined and the right to receive interest pendente lite ceases. The interest for the period between the filing of the claim petition and passing of the award thus, is for the period when the claimant for the first time approached the Claims Tribunal asking the Tribunal to assess and award compensation and the time consumed in disposing of the Claim Petition. We may also recall, the interest can be awarded even though part of the compensation would comprise of future loss of income. This is so because, the multiplier method factors this aspect also. At the same time, as noted, the Courts do not award interest on future expenditure since the amount is being paid to the claimant for an expenditure which may be incurred at a later point of time. This dichotomy, thus, between awarding interest on future income while not awarding interest for future expenditure brings out the true character of the interest being awarded.

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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

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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.

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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

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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.

62. Before closing we would tie a few loose ends:

(i) Learned Counsel for the petitioners had not made any submissions on the vires of the provisions of the Act, virtually giving up the challenge. We have therefore not examined the same.

(ii) Though no serious opposition was raised to the petition on the ground of availability of statutory appeal, we think it is our duty to explain why this petition was entertained. In the present case, only question was of charging interest on compensation/enhanced compensation of motor accident to tax. This was a pure question of law. No facts were to be ascertained. It was otherwise important that such a question is decided by the High Court. We had, therefore, entertained the petition.

(iii) The Assessing Officer has passed the order of assessment. He has made a bonafide assessment. With his approach, there can be no criticism. But when it comes to

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issuing notice for penalty, it defies logic. The petitioner despite his stand that the interest is not taxable, filed the return, offered the interest to tax and also deposited such tax under protest. What was the purpose of issuing notice for penalty is difficult to understand.

63. In the result, we find that the Assessing Officer had committed an error in levying tax on the interest component of the compensation awarded to the petitioner till the date of the judgment of the High Court. On any interest paid to him post the judgment, tax had to be collected as income from other sources. We, therefore, set aside the impugned order of assessment and place the assessment of the petitioner back to the Assessing Officer for passing fresh order in line with this judgment. Before closing, we record our appreciation for the industry and punctuality with which the learned Senior Counsel Mr.Jamshed Mistri, the Amicus Curiae, had assisted the Court in the present petition.

64. Writ Petition is disposed of accordingly.

(S.J. KATHAWALLA, J.) **(AKIL KURESHI, J.)**

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