# Commissioner of Income Tax, Bombay City I Vs Chugandas and Co. (Securities)

**Court:** Bombay High Court

**Date of Decision:** Sept. 23, 1957

**Acts Referred:** Income Tax Act, 1922 â€" Section 10, 25(3)

**Citation:** AIR 1960 Bom 109 : (1960) 38 ITR 241

**Hon'ble Judges:** Tendolkar, J; S.T. Desai, J; K.T. Desai, J

**Bench:** Full Bench

**Advocate:** G.N. Joshi, for the Appellant; N.A. Palkhivala, for the Respondent

## Judgement

Tendolkar, J.
The question referred to this court upon this reference is :

Whether on the facts and circumstances of the case interest received on securities held by the assessee formed part of the assessee''s business

income for the purpose of claiming relief u/s 25(3) of the Indian Income Tax Act ?

2. The facts necessary for the purpose of determining this question are few. The assessee held securities as his stock-in-trade and he received

interest on these securities in the assessment years 1947-48, and 1948-49, in the sums of Rs. 4,13,992 and Rs. 1,01,229 respectively. It was held

by the Income Tax authorities that the assessee was entitle to the benefit of the provisions of section 25(3),and if, therefore, interest on securities

was within the scope of that benefit, this interest would not be taxable. If, on the other hand interest on securities is outside the scope of the benefit

conferred by section 25 (3), this interest would have to be taxed. The matter was dealt with by the Tribunal, the Members of which took different

views-done taking the view that interest on securities was taxable u/s 10 and another that it was taxable u/s 8. The matter was, therefore, referred

to the President, who took the view that interest from securities was taxable u/s 10 and not u/s 8 . The majority of Members of the Tribunal, having

held that interest on securities was taxable u/s 10 , also held that it was exempt from taxation u/s 25(3).It is out of these orders of the Tribunal that

the present reference arises.

3. Since the decision of the Tribunal, their Lordships of the Supreme Court, in United Commercial Bank Ltd. v. Commissioner of Income Tax

decided on the May 23, 1957, have held that income from interest on securities which are held as the stock-in-trade of a business is taxable u/s 8

and not u/s 10. Therefore, the question as framed does not now hearing out the real contentions between the parties. The real dispute is whether,

even if interest on securities is taxable u/s 8, such income is entitled to the benefit conferred by section 25(3) . We would, therefore, reframe the

question as follows :

Whether the assessee is entitled to the benefit of section 25(3) in respect of the interest on securities ?

4. Now, turning next to section 25(3) , it is in the following terms :

Whether any business, profession or vocation on which tax was at any time charged under the provisions of the Indian Income Tax Act, 1918

(VII of 1918), is discontinued, then, unless there has been a succession by virtue of which the provisions of sub-section (4) have been rendered

applicable no tax shall be payable in respect of the income, profits and gains of the period between the end of the previous year and the date of

such discontinuance, and the assessee may further claim that the income, profits and gains of the previous year shall be deemed that the income,

profits and gains of the said period. Where any such claim is made, an assessment shall be made on the basis of the income, profits and gains of the

said period, and if an amount of tax has already been paid in respect of the income, profits and gains of the previous year exceeding the amount

payable on the basis of such assessment, a refund shall be given of the difference.

5. In order to appreciate what was sought to be done by this sub-section, one must look at the history of Income Tax law. Under the Income Tax

Act of 1918, what was subject to tax was the income of the current year u/s 14, sub-section (2), of that Act. This basis of taxation was altered by

the Income Tax Act, 1922, which provided by section 3thereof that the charge shall be in respect of income of the previous year. this led to the

result that for the accounting year 1921-22 the income had already been subjected to tax under the Act of 1918, but was again subject to tax

under the Act of 1922, as the income for the assessment year 1922-23, the year 1921-22 being the previous year for the assessment year 1922-

23. Therefore, the income of a single year had been subjected to tax twice over; and the object of section 25, sub-section (3), was to give relief in

respect of this double taxation of the same income to the limited extent that the section prescribes. The relief took the from in section 25 , sub-

section (3), of providing that where a business, profession or vocation was discontinued, no tax shall be payable in respect of the period between

the end of the previous year and the date of such discontinuance, or, at the option of the assessee, the year previous to such period. But in order to

earn this exception, k the essential first condition was : ""Where any business, profession or vocation on which tax was at any time charged under

the provisions of the Indian Income Tax Act, 1918(VII of 1918), is discontinued"". Therefore, the exemption could only be claimed provided there

was any business, profession or vocation subjected to tax under the Income Tax Act of 1918 and not otherwise. It follows, therefore, that in so far

as a tax was levied under the Act of 1918 which did not fall within the category of a tax charge on any business, profession or vocation, no relief

was granted. Under the Act of 1918, section 5 set out the classes of income chargeable to Income Tax; they were : (i) salaries; (ii) interest on

securities; (iii) income derived from house property; (iv) income derived from business; (v) professional earnings; and (iv) income derived from

other sources. Prima facie, therefore, if any tax had been paid under (i), (ii), (iii), or (iv), of the Income Tax Act 1918, no relief was granted by

section 25(3) . Thus, for example, a person who had paid tax on property which was livable u/s 8 of the Act of 1918, had to pay tax twice over

and got no relief in respect thereof. This by itself is not disputed by Mr. Palkhivala for the assessee; but what is contended is that when section

25(3) talks of business, profession or vocation being subjected to tax under the Act of 1918, it does not relate only to the tax levied under the

heads ""(iv) income derived from business"" and ""(v) professional earnings"", but it also included say other income of the business, profession or

vocation in the commercial sense or in the legal sense, except in the context of the Indian Income Tax Act, although it may be subjected to tax

under some other head. The merits of this suggested interpretation of the condition precedent to the exemption being earned u/s 25(3) I will later

consider in another context but they do not fall to be considered for the purpose of determining whether the condition precedent is satisfied in this

case because it is common ground on this reference that the assessee carried on a business on which tax was charged under the provisions of the

Income Tax Act of 1918. But the rival contentions with which we are concerned are in relation to the nature of the income that is exempted from

tax. What is exempted form tax is ""income, profits and gains"" of the period mentioned in the sub-section; but obviously these income, profits and

gains are of the business, profession for vocation which had been charged to tax under the Income Tax Act of 1918. Mr. Joshi for the Department

urges that the words ""income, profits and gains"" of a business, profession or vocation in this subsection only include, in the context of Income Tax

law, income taxed under the head of income, which is ""profits and gains of a business, profession or vocation""; whilst Mr. Palkhivala for the

assessee contends that the income. Profits and gains of a business, profession or vocation include within their scope not only income, profits and

gains subjected to tax under the head ""profits and gains of a business, profession or vocation"", but the income, profits an d gains of a business,

profession of vocation under whichever head taxed, if they are in fact the profits of the business, profession or vocation in the commercial sense or

in the legal sense outside the context of the Income Tax Act. In other words, Mr. Palkhivala''s contention is that although interest on securities may

be taxed under a separate head, namely, interest on securities u/s 8, yet from the commercial point of view they are profits of the business if the

securities were the stock-in-trade of the business. Even from the legal standpoint, except in the context of the Income Tax Act, the profits of a

business would comprise the interest on securities held by the business as it stock-in-trade; and if there was, for example, an agreement to share

the profits of the business, there can be title doubt that for the purpose of such an agreement the profits in a legal sense would include interest on

securities. Similarly, if a business possessed immovable property, it would be taxed on its profits not u/s 10, but u/s 9. None the less, if the profits

of that business had to be ascertained in court of law, undoubtedly the income from property would necessarily have to be taken into account, and

so would that income be taken into account even in the commercial sense for ascertaining those profits. We have to consider which of these two

rival contentions is the correct one.

6. Mr. Palkhivala has attempted to counter the argument of Mr. Joshi, that the income, profits and gains of a business, profession or vocation

which are exempt u/s 25(3) are the income, profits and gains falling under the had ""profits and gains business, profession or vocation"" being head

(iv) in section 6 of the Income Tax Act, on various grounds. His first contention is that no head is referred to in section 25(3) at all, and that no

doubt is true; but it does not follow therefrom that the words ""income, profits and gains"" of a business, profession or vocation do not import into

the section the concept of income, profits and gains under the head ""profits and gains of business. profession or vocation"". But then Mr. Palkhivala

argues that whenever the Legislature desired to refer to a head of income, it has in terms so stated, and he drew our attention to a string of sections

in the Indian Income Tax Act strewn all over the Act where the expression used is ""under the head..... "" whichever the head may be. To take

only one or two examples, in section 4 , sub-section (3), clauses (xi) and (xii), there is a reference to ""income chargeable under the head'' salaries''

and ""income chargeable under the head ''Income from property""" respectively; and his argument is that if the Legislature intended that income

under the head ""Profits and gains of business, profession or vocation"" was to be exempted from tax u/s 25 (3), the Legislature would have used the

words ""under the head."" No doubt, no difficulty would have arisen if such words were used; but it does not appeal to me to follow, from the fact

that such words are not used in section 25(3) , that if the context so requires, the words used cannot be interpreted so as to be applicable to the

profits and gains of business, profession or vocation falling within the head of income u/s 6. Similarly, attention was also drawn to section 26 , sub-

section (2), and section 44. Section 26, sub-section (2), deals with succession to a business and provides that where a person carrying on any

business, profession or vocation has been succeeded in such capacity by another person, in respect of the income, profits and gains of the previous

year the taxability shall be apportioned between both the persons. Here obviously the words ""the income, profits and gains of the previous year

refer to the entire liability of the person carrying on any business, profession or vocation to whom there has been a succession; and, obviously, they

comprise not only tax payable by such person under the head ""Profits and gains of business, profession or vocation"", but any other income of the

business, profession or vocation which is taxable under another head, such as property or interest on securities. The same appears to be the

position u/s 44 which deals with the liability in case of a discontinued firm or association, which provides that upon discontinuance or dissolution the

partners of the firm or members of the association shall be jointly and severally liable to assessment in respect of the income, profits and gains of

the firm or association. Here again, obviously, the liability is in respect of the income of the firm or association which was liable to tax under

whoever head the tax came to be charged But in the case of both these sections, the result is brought about not by the mere words ""income, profits

and gains"", but by the context in which they are used; and it does not follow therefrom that wherever the words ""income, Profits and gains"" of a

business, profession or vocation are referred to, they necessarily mean income, profits and gains under whichever head they are taxed.

7. Then Mr. Palkhivala contends that the language employed in section 25 (3) does not import and head at all; he says that it only deals with

chargeability. That, no doubt, is true and the condition precedent to earning the exemption u/s 25(3) undoubtedly is that a business, profession or

vocation was charged under the provisions of the Income Tax Act, 1918. Now, tax is charged under the Income Tax law on income and not on

the source of income. Business, profession or vocation is the source of income and not income itself; but since it is necessary to determine for the

purpose of this sub-section what is the source of income that was taxed, that source must be the source of income falling within one of the clauses

enumerated in section 5 of the Indian Income Tax Act of 1918. Class (i) is ""Salaries"" and the source, of course, is service; class (ii) is ""Interest on

securities"" and the source is securities; class (iii) is ""Income derived from house property"" and the source is house property; class (iv) is ""Income

derived from business"" and the source is business; class (v) is ""professional earnings"" and the source is profession, which includes a vocation by

reason of section 10, sub-section (1) of the Act, which provides that the tax under the head ""Professional earnings"" shall be in respect of the profits

of any profession or vocation; and class (vi) is ""Income derived from other sources"" and the source is obviously other sources. Therefore, if one

were to determine the source of income on which tax was chargeable - and that is what one is required to do for the purpose of ascertaining

whether the condition precedent to exemption being obtained u/s 25(3) is satisfied-then clearly tax is charged on business only under class (iv) and

on profession or vocation under class (v) enumerated in section 5 of the Act. This appears to me to lead to a very important consequence. Since

the object of section 25 (3) was indisputably to grant relief in respect of double taxation of the same income, the relief could only be in respect of

the same class of income on which tax was charged twice, that is, income charged under the corresponding ""classes"" which have been renamed

heads"" in section 6 of the Act of 1922; and the corresponding heads in section 6 of the Act of f1922 were (iv) Business and (v) Professional

earnings. Therefore, when section 25, sub-section (3), provides that no tax shall be paid in respect of the income, profits and gains of business,

profession or vocation, it appears to me that it can only mean that no tax shall be payable on income falling under the two heads which I have just

referred to.

8. Mr. Palkhivala next urges that the exemption attaches to business and is not conferred on an assessee; and from this, he seeks to argue that

whatever the nature of the income of that business and under whichever head it is taxed, it attracts the exemption. Now, in a sense, it is true that

section 25(3) appears to confer an exemption on a business profession or vocation; but this must be understood in the context of income tax law.

A business, profession or vocation is not the unit of assessment under Income Tax law. The tax is charged on income, profits and gains of the

previous year u/s 3 of the Act of 1922; but the Legislature had to refer to a business, profession or vocation on which tax was charted under the

1918 Act because the object was that when such business was discontinued whosoever was the owner of that business should get the benefit of

the exemption u/s 25, sub-section (3). Moreover, when we come to that part of the sub-section which deals with the exemption, it is quite clear

that the business does not attract the exemption, but it is ""income, profits and gains"" of any business, profession of vocation that attract the

exemption. The words are not that the business, profession or vocation, shall not be charged; if but the words are that the income, profits and

gains, admittedly of any business, profession or vocation, shall not be charged.

9. Then Mr. Palkhivala urges that in point of fact there was no such head of income under the 1922 Act when it was enacted as ""Income, profits

and gains of a business, profession or vocation."" Now, the actual heads in the 1922 Act were (iv) Business and (v) Professional earning. But when

one turned to section 10(1) of the Act, it provided that the tax under the head ""Business"" shall be payable in respect of the profits or gains of any

business, and section II, sub-section (1), provided that the tax under the head ""Professional earnings"" shall be payable in respect of the profits or

gains of any profession or vocation. Therefore, there was, no doubt, not one head, but there were two heads, which may, as a combined effect of

the sections that I have referred to, be said to be profits or gains of a business and profits or gains of any profession or vocation. These two head

were only combined into one by the Income Tax (amendment) Act of 1938 and section 6, sub-section (iv), contains the combined head ""Profits

and gains of business, profession or vocation."" The question as to whether three is one head or two heads uppers to me to be of no significance in

determining whether what is sought to be exempted founder section 25(3) is income falling under that head or heads. But then Mr. Palkhivala

argues that, in any event, the head is ""Profits and gains of business, profession or vocation"" and not ""Income, profits and gains of business,

profession or vocation."" This argument appears to me to have no substance in it, because any one familiar with the history of Income Tax law

knows that the words ""income, profits and gains"" do not in any manner add to what is taxable under the head ""income"". In commissioner of Income

Tax v. Show Wallace & Co. Sir gorge Landaus, delivering the judgment of the Privy council, pointed out :

The object of the Indian Act is to tax "income", a term which is does not define. It is expended, no doubt, into "income, profits and gains", but the

expansion is more matter of words than of substance.

10. Therefore, it seems to me file to draw a distinction between ""profits and gains ""and"" income, profits and gains."" But, in any event, so far as

section 25 (3) is concerned, there is absolutely no doubt that the words ""income, profits and gains"" are used in relation to business, profession or

vocation as synonymous with profits and gains only. This appears from

11. a proviso to sub-section (3) and (4) which is in these words :

Provided that sub-sections (3) and (4) shall not apply -

(a) to super-tax except where the income, profits and gains of the business, profession or vocation were assessed to super-tax for the first time

either for the year beginning on the day of April 1, 1920, or for the year beginning on the day of April 1, 1921.

12. Therefore, it is clear that the words ""income, profits and gains"" are used in this section as meaning nothing more or less than the profits and

gains of a business which are liable to super-tax. This view was taken in a decision of this court, to which I was a party, in Ambalal Himatlal v.

Commissioner of Income Tax. We were there dealing with section 25, sub-section (4), of the Indian Income Tax Act and held that the expression

income, profits and gains"" in sub-section (4) meant the profits and gains from the business, profession or vocation contemplated by section 10 and

nothing else. Chagla, C.J., in his judgment at page 285 observes :

What the Legislature intended by using the expression ''income, profits and gains'' was the profits and gains of the business or profession

contemplated by section 10 and not the total income of the assessee....

13. In the judgment, in an earlier passage, the learned Chief Justice observes :

It is also clear that no relief was intended to be given by the Legislature to a person who had paid tax on his property or on dividends received by

him on shares and securities.

14. Therefore, in my opinion, the attempt to include anything in the expression ""income, profits and gains"" in section 25(3) which is outside the

scope of the words ""profits and gains of business, profession or vocation"" must fail.

15. Having dealt with the main objections of Mr. Palkhivala to the construction canvassed by Mr. Joshi, I must also point out what appears to be a

matter of very great importance. Keeping in mind the fact that the Legislature set out to grant relief in respect of what I might describe as double

taxation of the same income, in respect of not all but some only of such income, is it reasonable to assume that having a ready-made classification

of all taxable income under the Income Tax law, the Legislature would proceed to invent a new classification of the purpose of such exemption ? In

my opinion, it would be reasonable to assume that the classification would be adhered to and the exemption conferred on any class or classes of

that income. However, it appears to me that strictly speaking, it would be more correct to say that the ""income, profits and gains"" so a business,

profession or vocation which is exempt u/s 25(3) is such income as understood in the Income Tax Act rather than says that it is income under the

head ""Profits and gains of business, profession or vocation."" No doubt this would bring in the head of income but it would also bring in general

exemptions such as donations to charity u/s 15B.

16. The primary principle of construction of any statute is that the language used in it must be interpreted and understood in the context of that Act,

and when it had meaning in that cortex which happens to be different from its normal meaning, or its commercial meaning, or its legal meaning in

other contexts, the meaning in the context of the Act must not be discarded unless there are compelling reasons for doing so; and, therefore, one

would not be justified in discarding the meaning of the expression ""income, profits and gains"" of a ""business, profession or vocation"" in the context

of the Income Tax Act and readings those words in their popular, commercial or legal sense, except for compelling reasons. There are not only no

compelling reasons in this case, but, on the contrary, there are compelling reasons for adhering to the meaning of that expression in the Income Tax

Act. Now, in the first instance, the words used are ""income, profits and gains"" and I must confess that I am not aware of any popular meaning of

this combined expression, nor of a commercial or legal meaning of that expression, outside Income Tax law; and, therefore, to start with, it can

have no meaning either in the popular or the commercial sense or any other legal meaning outside Income Tax law. It is only if the words were

treated as synonymous with profits of a business, profession or vocation that the word ""profits"" may have a popular, commercial or legal meaning

different from the meaning in the context of the Income Tax law. It must be noted that the profits of a business, profession or vocation have both a

narrower and a wider meaning under the Income Tax law then they have in the popular, commercial or legal sense outside the Income Tax law;

and this may be illustrated only by a few examples although they can be multiplied manifold. It has a narrower meaning in Income Tax law in the

sense of reducing profits brought to tax when, for example, section 10, sub-section (2)(vib) allows a development rebate to be deducted or when

various kinds of depreciation allowance permissible under the Act are deducted from profits in addition to ordinary depreciation which would be

taken into account in ascertaining profits in a commercial sense. In addition to ordinary depreciation, the Act allows extra depreciation for double

or multiple shift under rule 8, initial depreciation u/s 10(2)(vi)(b) and extra depreciation allowance for the first five years in respect of new buildings,

machinery and plant u/s 10(2)(via). Neither the development rebate nor these items of depreciation will be taken into account in determining

commercial or legal profits. Similarly, if the business, profession or vocation has immovable property or interest on securities which were its stock-

in-trade, they will be taxed as separate heads of income and not as profits of the business although the income from property and interest on

securities would be taken into account in arriving at the profits in a commercial sense. These are illustrations of case where the profits in the Income

Tax sense of a business, profession or vocation are less than the profits in the commercial or legal sense.

17. Turning next to a few illustrations where the profits under the Income Tax law are larger than the profits in the commercial sense or the legal

sense, expenses incurred by a business may be disallowed in the computation of income for various reasons, for example, if a bonus was paid to

the employees, it would be allowed u/s 10(2)(x) only to the extent to which it is reasonable and the rest will be disallowed; whilst it the commercial

sense the entire bonus would be allowed. similarly, an expenditure by a business may, in the commercial sense, by treated as revenue expenditure

and debited gains the profits, whilst the Income Tax authorities may treat it as capital expenditure and not allow its debit against the profits.

Similarly, bad debts, although they would be debited against commercial profits, may be disallowed in the accounting year by the Income Tax

authorities if the conditions for the allowance of bad debts set out in the Act are not satisfied.

18. Therefore, it is clear that there is a great diversity between the meaning of profits of a business. Profession or vocation under the Income Tax

Act and the popular, commercial or legal meaning of profits outside the Income Tax Act. It Mr. Palkhivala''s argument were to be accepted and

the word ""profits"" in section 25(3) were to be interpreted in the commercial or legal sense, it would lead to the result that when the profits brought

to tax in the Income Tax Act exceed commercial profits, exemption can only be claimed with regard to that part of the taxed profits which are

commercial profits. This, surely, could not have been intended by section 25(3).If the profits brought to tax are less than profits in the commercial

sense, the exemption would comprise a larger amount of profits than the amount brought to tax a result which the Legislature could not have

contemplated, because no Act can seek to provide for an exemption higher than the taxable profits. When this position was released in the course

of arguments. Mr.Palkhivala modified his first argument that the profits should be interpreted to mean committal or legal profits in this manner. He

submitted that one should determine whether a particular income was profits in the commercial sense; having determined it, such income should be

computed under the Act; and, lastly, the income so computed should be exempted from tax. Therefore, the process of determining what is exempt

from tax is at the first stage to proceed in the footing that commercial profits were involved, and at the second state to proceed on the footing that

profits under the Act were involved. How or why the process is to be split up in this manner I am quite unable to see; and there can be no warrant,

in my view, for the suggestion that merely for the initial purpose of determining whether any income is profits of a business, profession or vocation

the commercial sense or the legal sense should be taken into account and for all other purpose the sense under the Income Tax law.

19. Then Mr. Palkhivala drew attention to the inequity or injustice that may be involved in the view that Mr. Joshi has canvassed. He says that it

we adopt that vies, what was exempt from tax at any given time may attract tax at another time of the legislature chooses to alter the law. Taking

one example Mr. Palkhivala said that income from dividends from shares which were the stock-in-trade of a business were held to be taxable by a

Division bench of this court in commissioner of Income Tax v. Ahmuty & Co. Ltd., under the half ""profits and gains of business"" and, therefore,

such income would age been exempt from tax u/s 25(3) so long as the law remained as laid down in that case. But by the Finance Act of 1955

Parliament has amended section 12, which is the residuary section, and specifically provided in section 12, sub-section (1A), that dividends shall

be taxable under the head ""other sources""; with the result that thereafter, for the application of section 25(3),income from dividends, although the

shares may be held by the business as its stock-in-trade, cannot be exempted u/s 25(3) if the view canvassed for by Mr. Joshi is adopted. This, no

doubt, is true; but section 25(3) does not guarantee any fixity as to what shall be included, at the time when there is a discontinuance of business, in

the income, profits and against of a business, profession or vocation, or what shall be excluded therefrom. Parliament has the right so to amend the

law as to include or to exclude from tax any portion of the income of a assessee; and no argument on the basis of any inequity involved in such

process can be called in aid to induce me to interpret the section I have to consider in the manner in which Mr. Palkhivala wants us to interpret it.

20. Then Mr. Palkhivala contends that sections 7 to 12 are computation sections only, and since they are computation sections, they do not help to

determine whether the income computed under them was or was not from a particular source. In other words, the argument is that the income from

a business, profession or vocation may be computed under different heads and yet remains the income of the business, profession or vocation.

There has been a very strenuous argument before us as to whether in United Commercial bank Ltd. v. Commissioner of Income Tax their

Lordships of the Supreme Court have accepted the view which has been taken in Kamdar''s case that these are computation sections or have

taken the view that they are charging sections as well, Mr. Palkhivala contending that their Lordships have held that these are computation section

only and Mr. Joshi equally strenuously contending that their Lordships have held that they are not only competition sections, but taxing sections. I

do not consider it necessary for the purposes of this reference to determine what view their Lordships have adopted, because I do not consider

that any argument can legitimately turn on the question before us on the basis of whether these sections are computation sections or charging

sections. Even assuming that they are computation sections, although it may be true to say that the income of a business, profession or location as

understood in the popular, commercial or legal sense outside the context of Income Tax law may be computed under different heads and charged

to tax, yet the real question that we have to determine is whether the exemption u/s 25(3) is granted to what are profits in a commercial or legal

sense or what are income, profits and gains in the sense in which those words are used it he context of the Income Tax Act.

21. There is one direct authority of the Allahabad High court which lays down that section 25(3) confers a benefit in respect of the income, profits

and gains which fall under the head ""profits and gains of business, profession or vocation"" and that is the case of Gopi Mohan & Sons v.

Commissioner of Income Tax. In that case, the assessee had claimed exemption in respect of its income from property and the Income Tax

authorities had held that section 25 (3) did not apply so as to confer any such exemption. In upholding this view of the Income Tax authorities, their

Lordships, in their judgment, observed :

...the matter is placed beyond any doubt, if reference is made to section 6 and the following sections of the Income Tax Act. That section divides

the various sources of income chargeable under the Income Tax Act under five heads enumerated in the section. ''Income from property'' has been

described separately and put under a different head from ''Profits and gains of business, profession or vocation''. The method of computation of

income from property has been laid down in section 9, while that for the computation of income from business, profession or location has been

described in section 10. From this it is clear that the expression ''business, profession, or vocation'' used in section 25(3) relates to that head of

income, which has been dealt with in section 10, and is quite distinct from the head of ''Income from property'' which has been mentioned in

section 9.

22. With this view I am in respectful agreement. If the view that Mr. Palkhivala has canvassed before us was adopted in respect of income from

property and interest on securities, which may well be the income of a business, profession or vocation, the person who carried on the business,

profession or vocation, the person who carries on the business, profession or correction would be placed in a better position than other assesses

who have income falling under the heads ""Income from property"" or ""Interest on securities,"" because the former class would earn an exemption u/s

25(3) while the latter will not. No doubt, one cannot always look for logic or reason in Income Tax legislation; but this anomalous position that

would arise if we were to accede to the arguments of Mr. Palkhivala is only one additional ground for holding that the true interpretation of section

25(3) is that income, profits and gains of a business, profession or vocation which are exempt from tax u/s 25(3) are income, profits and gains as

understood in the Income Tax Act and not as understood in common parlance or in the commercial sense or in the legal sense outside the context

of Income Tax law.

23. Lastly, it was argued by Mr. Palkhivala that since we are dealing with an exemption clause, if there was any doubt as to the true interpretation

of the exemption clause, the exemption should be liberally construed provided no violence is done to the language employed in the section. This, no

doubt, has been held to be the proper canon of construction by the Calcutta High Court in Commissioner of Agricultural Income Tax v. Raja

Jagadish Chandra Deo, and by the Patna High Court in Kameshwar Singh v. Commissioner of Income Tax and we certainly accept that canon of

construction. But I am not satisfied that the interpretation that Mr. Palkhivala canvasses for on this reference is a liberal construction at all. In the

case of the present assessee, it would lead undoubtedly in benefiting him; but that is because this is a case in which the commercial profits or the

legal profits are higher than the profits as understood in the Income Tax Act. But, as I have pointed out earlier in my judgment, there will be

numerous cases in which the profits of a business, profession or vocation brought to tax will be higher than the commercial or legal profits, and in

those cases the construction canvassed for by Mr. Palkhivala would in those cases the construction canvassed for by Mr. Palkhivala would only

yield an exemption in respect of part of the income brought to tax and not the whole. Moreover, in the view that I take of the language of section

25(3),I am not prepared to hold that without violence to that language the section can be construed in the manner in which Mr. Palkhivala wants us

to construe it.

24. The result, therefore, is that, in my opinion, the question that we have reformed should be answered in the negative.

S.T. Desai, J.

25. I had the advantage of reading the judgment just delivered by my learned brother Tendolkar, J., and have given it careful consideration. It is

with the greatest reluctance That am unable to agree with his view. This reference raises a rather important and interesting question as to the extent

of relief that an assessee can claim where a business charged under the Income Tax Act, 1918, is discontinued. The point for determination

depends wholly upon the true meaning and import of section 25(3) of the Income Tax Act of 1922 to be gathered in the light of the general

principle and rules of interpretation favoured by the court in examining fiscal legislation.

26. The relevant facts are not in controversy and lie in a narrow compass though the history of the case is some what chequered. The assessee is a

dealer in securities and received Rs. 4,14,992 in the assessment year 1946-48 and Rs. 1,01,229 in the assessment year 1948-49 as interest on

securities. The securities on which interest was received, it is common ground, were the stock-in-trade of the assessee''s business in securities. The

assessee claimed benefit of the provision of section 25 (3) which deals with assessment in case of discontinued business and the Department held

that the assessee was entitled to claims exemption under those provisions. Dispute, however, arose whether any exemption could be claimed in

respect of interest on securities, of and the question that fell for determination was whether interest on the securities which were the stock-in-trade

of the assessee was the income of the assessee''s business u/s 25(3).The contention of the Department was that interest on the securities which

were the stock-in-trade of the assessee had none the less to be assessed a u/s 8and, therefore, could not from part of the business income which

was assessable u/s 10. And if it was not income assessable under the head of ""profits and gains of business"" u/s 10 it could not for any other

purpose, including that of exemption u/s 25 (3), be regarded as the income profits or gains of the assessee''s business. In support of this

proposition reliance was placed on section 6 which enumerates the various heads of income. The argument was that interest on securities and

profits and gains of business had been given separate heads u/s 6 and since interest on securities had been given a specific head, interest on

securities, even though they may be the stock-in-trade of the assessee, could not be regarded as the income of the assessee''s business u/s

25(3).On the other hand the contention of the assessee was that when securities were held as stock-in-trade of the assessee''s business interest on

those securities could be considered as profits and gains of the bossiness u/s 10. The further contention was that even if the income from securities

help as stock-in-trade could be assessed under a separate head by virtue of section 6(iii) and section 8 as urged on behalf of the Department that

distinction had no bearing when a question arose u/s 25 as to what was the income, profits and gains of the discontinued business of an assessee.

The Income Tax Officer and the Appellant Assistant Commissioner decided against the assessee.

27. When the case was carried in appeal to the Tribunal there was a difference of opinion between the two members constituting the Bench. The

Account Member held that in the case of the assessee the receipt of interest formed part of the revenue receipt of the assessee''s business in

securities and fell u/s 10. He also stated that even if it may be held for any reason that interest on such securities had to be treated as income

assessable u/s 8 it would still from part of the income profits and gains of the assessee''s business u/s 25 (3),and the assessee was entitled to the

relief claimed by him. The Judicial member took a contrary view on both the points. There was a reference to the President of the Tribunal and the

President found himself in to the President of the Tribunal and the President found himself in agreement with the conclusion reached by the

Accountant Member with the result that the case was decided in favour of the assessee.

28. The Commissioner of Income Tax required the Tribunal to state a case to this court and the following question of law has been referred to this

court for its decision :

Whether on the facts and circumstances of the case interest received on securities held by the assessee formed part of the assessee''s business

income for the purpose of claiming relief u/s 25(3)of the Indian Income Tax Act ?

29. Before proceedings to give an outline of the arguments very ably presented before us by learned counsel on both the ideas I my digress a little

and mention that by the time this reference came up for hearing before my Lord the Chief Justice and my learned brother Tendolkar, J., an appeal

had been preferred to the Supreme Court in the case of united Commercial bank Ltd. v. Commissioner of Income Tax and the Question raised in

that appeal was as to the Interpretation of sections 8, 10 and 24(3) of the Act. In view of that appeal, the hearing of the present reference was

directed to stand over as one of the points arising for determination on this reference related to the effect of section 8 and 10. That appeal was

decided by their Lordships of the Supreme Court in May, 1957, and the view there taken is that ""... both on precedent and on a proper

construction, the source of income ''interest on securities'' would fall u/s 8 of the Act and cannot be brought under a different head even though the

securities are held as a trading asset in the course of its business by a banker."" Since I have already digressed I may also add that learned counsel

on either side have relied on various observations of their Lordships in this judgment in support of their arguments. Of this more hereafter. I may,

however, here observe that the precise point which now remains for our decision did not arise for their Lordships'' consideration. But there are

general observations made in that judgment which, as I read them, do lend some support to the present contention of the assessee. True they are

are not made in the self-same context and thy cannot be read as directly leading to any conclusion we are asked to reach. The question of the true

meaning and import of section 25(3) remains to be decided by us and I shall refer to those general observations later on in my judgment as pointers

and as instructive of the true approach to the question.

30. It has been contended before us by Mr. Palkhivala, learned counsel for the assessee, that the case clearly falls u/s 25(3).It is said that the

assessee''s business had admittedly been charged under the Act of 1918 and admittedly that business is discontinued and, therefore, no tax is

payable in respect of the income, profits and gains of that Business for the period between the end of the previous year and the date of such

discontinuance. Briefly stated the argument is that on a plain reading of the section the exemption granted by section 25(3) must extend to the

whole income, profit an gains of the assessee''s discontinued business and no notions of the mode lot method adopted for the purpose of charging

Income Tax under the various heads of income enumerated in section 6 can be introduced in this matter of exemption. The crux of the argument is

that there is no reference whatever in section 25 to the head of income chargeable to Income Tax and there is no warrant for introducing in this

section the concept whereby distinction has for certain purposes to be made between interest on security on the one hand and profits and gains of

business on the other. It is urged that it is common ground that the securities, on which interest was received, were stock-in-trade of the assessee''s

business in securities and that income neither in a commercial nor legal nor taxing sense ceased to the income of the assessee''s business simply

because the total income of that business is computed under different heads. One principle on which the argument is grounded is that Income Tax

is only one tax and there are not as many taxes as there are heads of income. It was added in this context that an examination of all the provisions

of the Act shows that wherever any ""head"" of income is contemplated the Legislature had been at pains to use that expression and our attention

was drawn to a member of sections and it was pointed out how that expression has been consistently and uniformly used throughout the Act. The

deliberate non-user of that or any similar expression in section 25, it has been said, goes to show that the exemption does not attach to any head of

income as contended by the other side but embraces the total income of the assessee''s business. The argument ran that the section does not say

Where the profits or gains of any business.... on which tax was at any time charged"" but explicitly states ""where any business.... on which tax was

at any time charged."" Stress has been laid on the latter expression which are the initial words of sub-section (3) and it has been urged that there

was nothing to prevent the Legislature from using the former expression or the mention the expression ""head"" if the intention was to restrict the

exemption in the manner contended by the Department. Reliance is placed on the expression ""business, profession or vocation"" in the context of

income, profits and gains"" used in sections 44 and 26A of the Act and it is contended that the identical expression should receive the same

meaning in section 25(3) as in the other two sections. It has been pointed out that in the case of section 44 and 26A it is obviously not possible to

give any restricted meaning to those expressions. Reliance is also placed by counsel on the rule of construction that an exemption in a taxing statute

must be liberally construed.

31. It is contended on the other had by Mr. G. N. Joshi, learned counsel appearing for the Revenue, that the crucial words are the initial words of

sub-section (3) : ""Where any business, profession or vocation on which tax was at any time charged under the provisions of the Indian Income Tax

Act, 1918"" and that these words must be construed as referable to the head of ""Profits and gains of business, profession or vocation"" mentioned in

section 6(iv) and dealt with in section 10. Reliance is also placed on the language of section 10(1) : ""The tax shall be payable by an assessee under

the head ''Profits and gains of business, profession or vocation'' in respect of the profits or gains of any business, profession or vocation carried on

by him"", and section 8 : ""The tax shall be payable by an assessee under the head ''Interest on securities'' in respect of interest receivable by him on

any security..."" The contention is that the supreme court has now laid down in United Commercial bank Ltd. v. Commissioner of Income Tax that

the source of income ""interest on securities"" would fall u/s 8 and not u/s 10 as it is specifically chargeable under the district head ""interest on

securities"" falling u/s 8 of the Act and cannot be brought u/s 10 even though the securities are held as a trading asset in the course of his business by

a banker. The arch-stone of the whole argument is that the true meaning of the initial words in section 25(3) quoted above is that the income,

profits and gains to which exemption is granted is only that which strictly falls under the head of ""profits and gains of business"" chargeable u/s 10

and cannot include any income made by the assessee''s business from interest on securities which is chargeable u/s 8. It is urged that you must think

of the heads enumerated in section 6 when you interpret section 25(3). It is said that interest on securities has to be separately treated and that

sections 8 and 10 must be read as charging sections. It is also stressed that you must go to the language of the Act of 1918 and consider the

scheme of the enactment. The section must be construed not in a popular sense but in a technical sense by confining and restricting the meaning of

the initial words ""any business"" in their context of ""income, profits and gains"" in the sense in which section 10 requires ""profits and gains"" of a

business to be understood.

32. I shall at the outset permit myself to make a few general observations since much has been said at the Bar about the popular meaning of words,

about commercial and legal connotation of terms and about technical expressions. The words I have to construe must, of course, be understood in

their legal sense and technical words where I find them must have their technical sense attributed to them and not their popular sense-uti loquitur

vulgus. The principle is of cogency when words in question represent legal conceptions. A rule firmly established is that the court should avail itself,

as an aid to construction, of the light thrown upon each of the expressions by the presence within it of the others. Another well-established rule

applicable to all statutes is the rule of contraction ex viserribus actus. The court is bound to see that every proviso of a statute is contoured with

reference to the context and the other provisions of the statute. The court is entitled and even bound, as far as possible, to see that the

interpretation it puts on a particular provision makes a consistent enactment of the whole statute. In applying these rules the court has to remember

what has so often been emphasised that as far as possible nothing can be read and nothing can be implied in a thing statute. On can be read and

nothing can be implied in a taxing statute. One can only look fairly at the language used. The indispensable starting point and the first step in the

case of any provision of the nature before us is to examine the words of the particular provision under consideration, of course, bearing in mind that

it is not a detached enactment but one forming a connected scheme. Another rule having bearing on interpretation of a provision relating to

exemption with which we are concerned is that the provision must, as far as possible, be liberally construed and in favour of the assessee, provided

no violence is done to the language used. No safer rule can be followed than to start by assuming that the same meaning is implied by the use of the

same expression in cognate sections and sections having interaction on one another. The object and scheme of the provisions relating to exemption

contained in section 25 is also a relevant consideration.

33. It is essential to note that now u/s 3 of the Act of 1923 the subject of charge is not the income of the year of assessment, but the income of the

previous year. This change was introduce by the Act of 1922. Previously under the Act of 1918 the subject of charge was the actual income of the

year of assessment. The result of this change was that, if a business was in existence and earning income, profits and gains in the year 1921 when

the Act of 1918 was in force, the owner of the business would pay Income Tax twice over on his income, profits and gains of the business in

1921. It was accordingly necessary in the 1922 Act to differentiate for the purpose of discontinued businesses between those which had, and

those which had not, been charged to tax under the Act of 1918.

34. Section 25 of the Act of 1923 deals with assessment in the case of discontinued business. Sub-section (1) provides that where any business,

profession or vocation to which sub-section (3) is not applicable is discontinued in any year, an assessment may be made in that year on the basis

of the income, profits or gains of the period between the end of the previous year and the date of such discontinuance in addition to the

assessment, if any, made on the basis of the income, profits or gains of the previous year. The reference to sub-section (3) in this sub-section

makes it clear that this sub-section is not applicable to the case of a business which falls under sub-section (3). Therefore, sub-section (1) applies

to the case of a business which had not been charged under the provisions of the Act of 1918. It provides an exception to the rule laid down in

section 3 which, as already pointed out, rules that the subject of charge is the income of the previous year and not the income of the assessment

year. It gives the Income Tax Officer an option to make an accelerated assessment on the income, profits and gains of the discontinued business in

the year of discontinuance itself, instead of in the usual financial year. No doubt the procedure is optional, the subsection being permissive, but the

purpose of it is obvious, viz., making sure of not losing the tax of a business which is closed and wound up. It the construction sought to be placed

on behalf of the Revenue on sub-section (3) is to be accepted, and if the identical expressions ""business, profession or vocation"" and ""income,

profits or gains"" of the discontinued business are to the given the same sense in sub-section (1) and sub-section (3), this option given to the Income

Tax Officer to tax the income, profits or gains of a discontinued business in the year of discontinuance, permits him only to tax such part of the total

income, profits and gains of that business as strictly fall under the head of ""profits and gains of business"" mentioned in section 6(iv) and section 10

and debars him during the year of discontinuance from taxing any interest on securities received by the assessee even though the securities were the

stock-in-trade of his business. This sub-section, of course, does not apply to the present case, but I have made reference to it at this stage only for

the purpose of showing the object and scheme of the whole section.

35. Sub-section (2) is an administrative provision. It casts an obligation on the person carrying on ""any such business, profession or vocation"", as is

visualised by sub-section (1), to give notice of discontinuance to the Income Tax Officer within fifteen days of the discontinuance and failure to do

so may invite imposition of the penalty mentioned in the sub-section. This sub-section also has no bearing on a case falling under sub-section (3)

but it is indubitable that the expressions ""business"" and ""income, profits and gains"" of the discontinued business there used must have the same

meaning that is attributable to them in sub-section (1).

36. But it is upon the meaning and import of sub-section (3) that the answer to the question raised upon this reference must turn. The relevant part

of it is in the following terms :

Where any business, profession or vocation on which tax was at any time charged under the provisions of the Indian Income Tax Act, 1918 (VII

of 1918), is discontinued, then, unless there has been a succession by virtue of which the provisions of sub-section (4) have been rendered

applicable no tax shall be payable in respect of the income, profits and gains of the period between the end of the previous year and the date of

such discontinuance, and the assessee may further claim that the income, profits and gains of the previous year shall be deemed to have been the

income, Profits and gains of the said period.

37. It is clear enough as was permitted out by their Lordships of the Privy Council in commissioner of Income Tax v. P. E. Polson that ""the

purpose and effect of this sub-section is to give relief to a taxpayer who but for it would in the aggregate be charged with tax once in respect of

every year''s income and twice in respect of one year''s income."" The object and scheme of section 25(3) which deals with exemption on case of a

busies which was discontinued was examined by Lord Simons in the above case and the scheme and object of section 25 (4) which deals with

exemption in case of a succession to a business, was examined by the Supreme court in Executors of the Estate of J. K. Dubash v. Commissioner

of Income Tax. I may, in passing, add that it has not been ""business, profession and vocation"" in the context of ""income, profits and gains"" must in

all the sub-section of section 25 have the same meaning. In answer to me, learned counsel for the Revenue stated that the construction urged by

him of the relevant expressions in sub-section (3) must be the same as that to be put upon the identical expressions used in sub-section (4).

38. To turn to the language so sub-section (3). Considerable stress has been laid by Mr. Joshi on the word ""charged"" in the initial part of this sub-

section. The argument for the Revenue here was that the business which is exempted from Income Tax can only be a business which was

charged"" to payment of Income Tax under the Act of 1918. The crucial word it was said was ""charged"". The scheme of the Act of 1922 is that

profits and gains of a business are ""charged"" separately u/s 10 : And these profits and gains, as has now been laid down by the Supreme Court,

cannot include interest on securities which must be charged u/s 8. Therefore, income, profits and gains of any discontinued business for which

exemption is climbable does not mean anything more than profits and gains of that business strictly chargeable u/s 10. The accent was on the word

charged"" which it was urged was the key word. The premises of this syllogism require careful scrutiny.

39. Now, section 25 of the Income Tax Act, 1922, deals with assessment in case of discontinued business and sub-section (3) gives relief by

granting an exemption for payment of Income Tax in respect of the ""income, Profits and gains"" of a discontinued business provided the following

conditions concur :

(1) The business must be one on which tax was at any time charged under the Act of 1918;

(2) The case must be one which does no attract the application of sub-section (4). (Sub-section (3) does not apply where a business has been

discontinued and there has been a succession by virtue of which the provision of sub-section (4) are rendered applicable).

(3) The business must be discontinued which means that there must be compete cessation of business.

40. The way I read the words in the initial part of the sub-section is that they lay down conditions (i) and (iii) above. Condition (ii) above is not

material for the purposes of this case. The section operates as an exemption in case of income, profits and gains of a discontinued business. The

words ""income, profits and gains"" are also of importance. The words ""income, profits and gains"" as also the words in the initial part of the sub-

section require to be read in their structural sense and collocation and in their proper context. I shall begin with an examination of the initial part of

this sub-section. The initial words ""Where any business... on which tax was at any time charged a under the provisions of the Indian Income Tax

Act, 1918, is discontinued"", it is obvious, refer to two factor; (i) the existence of the business which was at any time charged under the 1918 Act

and (ii) discontinuance of that business. Where these two facts are established, the income, profits and gains of that business are exempted from

taxation in respect of the period between the end of the previous year and the date of its discontinuance. That the business of the assessee had

been discontinued is not a fact in controversy. That Income Tax was charged on that business under the provision of the 1918 Act is also not in

controversy. But the whole crux of the matter, it is said by Mr. Joshi, is that the expression ""business"" in the present context must be understood

not in the ordinary legal sense of that expression but with the technical meaning given to it when profits and gains of a business are charged to tax

u/s 10 and by virtue of section 6(iv).It could not be denied and in business to learned counsel for the applicant I must add that it has not been

denied that we are asked to incorporate in section 25(3) and the word ""business"" used in the sub-section, the concept underlying section 6 which

deals with heads of income chargeable to Income Tax and the restricted meaning attributable to the words ""profits and gains of any business"" in

section 10. But it was said that you must read section 25(3) in the context of Income Tax law and you cannot, therefore, read section 25(3)

without reference to section 6 and section 8 and 10 and without bearing in mind the scheme of the whole Act. I agree that while interpreting section

25 the court must bear in mind the scheme of the Act. I also agree that the sub-section must be eras ex antecedentibus et consequentibus.

41. The scheme of the Act has been reviewed in numerous decisions. I shall refer to the latest decision of the Supreme court in United commercial

Bank Ltd. v. commissioner of Income Tax where their Lordships had occasion to examine the scheme of the Act while considering sections 8, 10

and 24(3) of the Act. Before I refer to the scheme of the Act and some of the general observations made in the judgment of the supreme Court, I

may observe that one important plank in the argument of Mr. Palkhivala was that sections 7 to 12 of the Act are not charging sections but are

computation sections and, therefore, have no bearing on the construction of section 25(3). The submission was that the mere fact that the

aggregate income, profits and gains of a business falls to be computed under more than one heads of section 6, as for example, under sections 8

and 10 in the present case, affords no justification for importing the concept of those ""heads"" and computation sections in section 25(3). Mr. Joshi

on the other hand has strongly urged that both sections 8 and 10 are charging sections and not computation sections. There was considerable

controversy before us as to what view their Lordships of the Supreme Court had taken of this aspect of the matter in the case of the United

Commercial Bank Ltd. and it was submitted on behalf of the Revenue that their Lordships have held that sections 8 and 10 were charging section.

I have carefully studied that decision, and as I shall presently point out while referring briefly to the scheme of the Act, their Lordships have in

express and explicit terms held that sections 7 to 1l2 are not charging sections but are provisions for computation of total income. I may add that in

a full bench case decided by this court in In re Kamdar Kania, J., and Chalga, J. (as they then were) had taken the same view.

42. Section 2(15) defines ""total income"" to mean ""total amount of income, profits and gains... computed in the manner laid down in the Act"".

chapter I of the Act deals with ""charge of Income Tax."" It consists principally of two sections 3 and 4. Section 3 provides that : ""... Income Tax

shall be charged for any year at any rate of rates... in accordance with, and subject to the provisions of this Act...

43. Section 4 provides that ""...the total income of any previous year of any person includes all income, profits and gains from whatever source

derived...

44. Chapter III deals with ""taxable income"". Section 6 enumerates the heads of income chargeable to Income Tax. It says as under :

Section 6 : ""Save as otherwise provided by this Act, the following heads of income, profits and gains, shall be chargeable to Income Tax in the

manner hereinafter appearing namely :-

(i) Salaries.

(ii) Income on securities.

(iii) Income from property.

(iv) Profits and gains of business, Profession or vocation.

(v) Income from other sources.

(vi) Capital gains.

45. The two heads (ii) and (iv), i.e., ""Interest on securities"" and ""Profits and gains of business"", are dealt with under sections 8 and 10 of the Act

respectively. According to the scheme of the Act Income Tax has to be charged in respect of the ""total income"" of the previous year of every

assessee and ""total income"" is defined u/s 2(15) to comprise all income, profits and gains from whatever source derived subject to certain

exemptions. Chapter 3 which is entitled ""taxable income"" comprises sections 6 to 17 (both sections inclusive). Section 6 enumerates the various

heads of income, profits and gains which are chargeable to Income Tax. Each of these heads of income, profits and gains is dealt with under a

separate section and these sections also give the details of allowances and exemptions in regard to each different head.

46. After an examination of the scheme of the Act in the case of United commercial Bank Ltd., their Lordships of the Supreme court cited with

approval the decision of the Federal Court in Chatturam v. Commissioner of Income Tax and the decision of the Privy ? Council in Wallace

Brothers & Co. Ltd. v. Commissioner of Income Tax, the support of the view they were inclined to take that section 3 and 4 were the charging

sections and sections 7 to 12 were computing sections. After referring to the mandatory character of section 6 their Lordships observed :

So every item of income, whatever its source, would fall under one particular head and for the purpose of computing the income for charging of

Income Tax the particular section dealing with the head will have to be looked at.

47. It is amply clear that it was this differentiation which lead their Lordships to hold that ""interest on securities"" was an exclusive head even when a

banker''s business income was being taxed and the securities were part of his stock-in-trade. It is to be noted that the purpose under consideration

was the purpose of computing the income. A little later in the judgment appears the passage which is decisive of the point with which I am

immediately concerned :

A combined reading of sections 3, 4, 6, 8, 10, 18and refund section, section 48, shows that Income Tax is to be charged take the rate or rates

prescribed in the Finance Act on the total income of the assessee as defined in section 2(15) of the Act and completed in the manner given in

section 7 to 12 which are not charging sections but are provision for the computation of ""total income.

48. In the same passage later on their Lordships again stressed this aspect of computation. Mr. Joshi has drawn our attention to one or two

sentences where their Lordships have used the expressions ""chargeable under the heard"". I need not discuss the matter any more as it is to my

mind abundantly clear that the passage cited by me above is decisive of the point that section 7 to 13 are only provision of or computation of total

income and are not charging sections.

49. The scheme of the Act outlined above and the observations cited by me do lend support to the contention pressed before us by Mr. Palkhivala

that there is no warrant for introducing in section 25(3) the concept whereby distinction has for purposes of computation of income to be made

between interest on security on the one hand and profits and gains of a business on the other. Learned counsel for the assessee was right when he

said that the language of the sub-section does not import any head of income chargeable to Income Tax and the sub-section deals only with

exemption from chargeability. Section 10 as now held by the Supreme Court is not a charging section but deals with computation of income under

the particular head. It is extremely difficult for me, therefore, to accede to the argument urged on behalf of the revenue that the meaning and scope

of the expression ""business"" in sub-section (3) must be confined strictly to what it bears when you deal with the head of ""profits and gains of

business, profession or vocation"" mentioned in section 6(iv) and section 10. This meaning, it was strenuously urged by Mr. Joshi, followed, if

section 25(3) was not read by itself but in the context of other relevant provisions of the Act. I need not repeat the general observations I have

made in perfecting this judgment. Of course, the enactment is a code and not an institutional exemption. Of course, section 25 cannot be read in

isolation. Of course again, the Act, at least the cognate sections, should be read as a whole, forming a connected scheme. But it is not possible for

me to see any reason why in the context of the provisions of the Income Tax Act, when exemption is claimed in respect of the income, profits and

gains of a discontinued business, the expression ""business"" must be circumstance and trained by the language and import of section 8 and 10,

which though valuable in their own setting are provisions relating to computation of income. Section 25(3) does not refer to any heads of

computation of income either expressly or by implication of context. I am unable to incorporate in section 25(3) the notion of the mode or manner

of computation of income under various heads. In my judgment, in these words ""income, profits and gains"" of a business which is discontinued, the

expression "" business"" must have, attributed to it, its proper legal meaning. ""Business"" as defined in the Act ""includes any trade, commerce, or

manufacture or any adventure or concern in the nature of trade, commerce, or manufacture."" It is well understood that unless there is anything

repugnant in the subject or context the expression ""business"" has to be understood as one of wide import. Its content in the Income Tax law is not

to be readily confided. Mr. Joshi has learned heavily on the expression ""charged"" in section 25(3) in its context of a discontinued business. In effect

he has asked us to take the view that the scheme of the Act and the context of Income Tax law require that the business contemplated by section

25(3) must be equated with and confided to the ""business"" which is the subject matter of section 10. I fail to see anything in section 25 read in the

cortex to Income Tax law which requires or even faintly indicates that the expression ""business"" there used must be given any artificial conception

distinct from and restrictive of its legal connotation.

50. In coming to determination as to the meaning of a particular word or expression in a statute, it is permissible to consider two points - namely :

(i) the external evidence derived from extraneous circumstances such as previous legislation and decided cases; (ii) the internal evidence derived

from the statute itself. The identical expressions in section 25(3) with which we are concerned in this reference are used in sections 26 and 44.

Section 26 deals with change in constitution of a firm carrying on any business. I need not set out section 26(1) but shall only observe that the

income, profits and gains of a firm carrying on any business contemplated there must include the total income of the bossiness of the firm regardless

of any consideration of any head of computation. That income for instance can be the aggregate of profits and gains of the business, interest on

securities forming part of the stock-in-trade of the business and also income from property belonging to the business. Section 26(2) is as under :

Where a person carrying on any business, profession or vocation has been succeeded in such capacity by another person, such person and such

other person shall, subject to the provisions of sub-section (4) of section 25, each be assessee in respect of his actual share, if any, of the income,

profits and gains of the previous year.

51. Prior to the Income Tax Amendment Act, 1939(VII of 1939), no exemption u/s 25 was granted in case of a business which was not

discontinued but in case of which there was succession. Both sections 25 and 26 as they previously stood were amended by the amending act of

1939. Into section 25(3) after the word ""discontinued"" were interpolated the words ""then, unless there has been succession by virtue of which the

provision of sub-section (4) have been rendered applicable.

52. The whole of sub-section (4) was newly introduced. It says as follows :

Where the person who was at the commencement of the Indian Income Tax (Amendment) Act, 1939(VII of 1939), carrying on any business,

profession or vocation on which tax was at any time charged under the provisions of the Indian Income Tax Act, 1918, is succeeded in such

capacity by another person, the change not being merely a change in the constitution of partnership, no tax shall be payable by the first mentioned

person in respect of the income, profits and gains of the period between the end of the previous year and the date of such succession, and such

person may further claim that the income, profits and gains of the previous year shall be deemed to have been the income, profits and gains of the

said period. Where any such claim is made, an assessment shall be made on the basis of the income, profits and gains of the said period, and, if

any amount of tax had already been paid in respect of the income, profits and gains of the previous year exceeding the amount payable on the basis

of such assessment. A refund shall be given of the difference.

53. it will be seen that the language of sub-section (3) and sub-section (4) is in pari materia.

54. The scheme of the amendments in section 25 and section 26d came up for consideration before the Privy council in Commissioner of Income

tax v. P. E. Polson. At pages 389-390 of the report their Lordships observed :

Sections 25 and 26 no doubt from part of a single scheme and their interaction must not be ignored. But section 26 is primarily directed not to the

circumstances in which relief from taxation is given but to the apportionment of tax where relief is not given... It is sub-section (20) of section 26 as

amended by the amending Act which applies, and inasmuch as at the time of making the assessment, i.e., in November, 1939, the respondent had

been succeeded in carrying on the business by the company, each of them became assessable in respect of his actual share, if any, of the income,

profits and gains of the previous year.

55. The scheme of the amended sections 25 and 26 was considered by their Lordships of the Supreme Court in Executors of the Estate of J. K.

Dubash v. Commissioner of Income Tax. At page 185 of the report Kania, C.J., observed :

Section 25 of the Indian Income Tax Act, 1939, gives certain concessions in respect of a business where tax had been paid by the person

carrying the business under the provisions of the Indian Income Tax Act, 1918.

56. After stating the material part of sub-section (4) his Lordship observed : BCED ""The scheme of section 25 read with the provisions of section

26(2) appear to be to give relief, inter alia, to persons who were carrying on business is 1921 and had been taxed on their income under the

Income Tax Act of 1918. By a change effected by the Income Tax Amendment Act of 1922 they were subjected to taxation twice on the income

of 1921-22. The relief is intended against this levy of tax twice over.

57. In the same case Patanjali Sastri, J. (as he then was), observed at page 188 :

... the Indian Income Tax (Amendment) Act, 1939 (hereinafter referred to as the amending Act), having amended section 26(2) so as to provide,

in the case of succession of business, profession or vocation, for the assessment of the predecessor and the successor, each in respect of his actual

share of the profits of the previous year the relief was extended, by exacting section 25(4),to cases of succession occurring after the

commencement of that Act, with the same object as in the case of discontinuance, namely, to redress the hardship of the business having been

charged twice over on the income of 1921-22. In other words, the predecessor is given the same relief as if he had discontinued the business on

the date of succession. It will thus be seen that the enactment of section 25(4) is consequential on the amendment of section 26(2),and the scope

and meaning of the expression ''succeeded in any such capacity by another person'' in section 26(2) must determine also its scope and meaning in

section 25(4).

58. Needless to say I am fortified in the conclusion at which I have so far arrived by these weighty observations entitled to highest respect. The day

after we reserved our judgment, I drew the attention of Mr. Joshi, learned counsel for the Revenue, to these two decision and particularly to the

observations quoted above and learned counsel had little to say. All that was urged was that the observations were not made in the context of

section 25(3) but were made while considering section 25(4) and sectioned 26(2) and it was added that the initial part of sub-section (3)suported

the submiion he had already made. Learned counsel , however, agreed that the meaning and scope of the business intemplated in the initial parts of

sub-sections (3) and (4) was the same and that the income profits and gains of a business contemplated by sub-section (4) must mean the same

thing in subsection (3), Now, it is clear that these observations have considerable bearing on the meaning and scope of section 25(4). In terms it is

stated by the Privy Council that sections 25 and 26 form part of a single scheme and their interaction cannot be ignored. Patanjali Sastri, J. (as then

was), has pointed out that section 25(4) was consequential on section 26. I do not intend to lean heavily on these observations but have gratefully

referred to them as they throw considerable light on the question of construction that has arisen for our decision.

59. Now it is to be noted that the amendments in sections 25d and 26 were brought about by the same Amending Act of 1939. Sub-section (2)

was added in section 26 and sub-section (4) was added in sectioned 25. Not only that but at the same time some amendment was also made in

section 25(3). The Legislature must be taken not only to have been cognizant of the general character and scope of section 25 as it them stood.

But also to have been fully apprised of the presence in it, and of the significance of the expressions ""income, profits and gains and ""business,

profession or vocation on which tax was at any time charged under the provisions of the Indian Income Tax Act, 1918(VII of 1918), is

discontinued."" It did not make any verbal change but on the contrary adopted the phraseology of section 25(3) in section 25(4) except that since

the same relief which was granted by section 25(3) was to be given in case of succession the sub-section (4) had to bring out clearly that the

exemption was given to the person whose business was succeeded. When I examine section 26(2) it rules that in case of succession to a business

both the person who is succeeded and the successor to the business shall each be assessed in respect of the income, profits and gains of that

business for the terminal period. It is obvious that the assessment would be in respect of the total income, profits and gains of the business derived

from whatever source. The operation of the rule, however, is in express terms made ""subject to the provisions of sub-section (4) of section 25"",

with the result, as I see it, that the exemption from liability is made commensurate with the liability imposed by section 26(2) and the proviso to

section 26(2).The presumption is that words are used by the law maker correctly and exactly and not loosely and inexactly. The Legislature is

always assumed to be aware of its own distinctions as well as of the form of words which it has employed and the sense attributable to them. It is

also to be assumed that a form of words uniformly observed is intentional. And it is a favoured canon of construction that in case of cognate

sections and sections having interaction and having the same words and form of words, the same sense of the words is to be adhered to unless that

would lead to some absurdity or repugnancy or inconsistency. This rule is of particular cogency when the Legislature amends an existing statute

and while doing so chooses identical words and form of words in provisions dealing with inter-connected matters. I have not so far made any

reference to another section which is part of the same scheme and can be distinctly relative to section 25(3). That is section 44 which says :

Where any business, profession or vocation carried on by a firm or association of persons has been discontinued, or where an association of

persons is dissolved, every person who was at the time of such discontinuance or dissolution a partner of such firm or a member of such

association shall, in respect of the income, profit and gains of the firm or association, be jointly and severally liable to assessment under Chapter IV

and for the amount of tax payable and all the provisions of Chapter IV shall, so far as may be, apply to any such assessment.

60. The cognation is apparent. This section in its present form was substituted by the same Amending Act of 1939. The interaction of sections 44

and 25(3) does not require to be stressed. It was not disputable and it has not been disputed before us that the liability of members of a firm whose

business is discontinued is in respect of the total income, profits and gains of that business regardless of the heads of income chargeable to Income

Tax. Considerations which apply to second 25 and 26 in the present context are also applicable to sections 25 and 44.

61. There is one more facet of this question. The heads of income chargeable to Income Tax on which so much stress is laid on behalf of the

Revenue, have varied at different times since 1918. I do not deem it necessary to examine these changes in any detail and will refer only to one

head of income. Prior to the amendment of section 12 by the Finance Act of 1956 income from dividend from shares which were the stock-in-

trade of a business was all along held to be profits and gains of the business u/s 10. By amendment made in 1955 dividends now fall u/s 12(1A) as

one of the ""other sources"" dealt with by section 12. Mr. Palkhivala has relied on this amendment in support of his arguments. In my opinion this is

an additional consideration which cannot be overlooked.

62. There is another aspect of the matter. It is sometimes said that the exemption in section 25(3) is conferred on a business and not the person

who carried on that business. Mr. Palkhivala also in the course of his arguments adopted this line for the purpose of showing that whatever the

nature of the income of a business and under whichever head it is taxed it attracts the exemption. True, section 25(3) does not in terms state that

the exemption is granted to the person and speaks of non-liability to pay tax in respect of the income, profits and gains of a discontinued business.

But the way I read the sub-section is that the exemption from double taxation is conferred on the person-it may be a firm-who was carrying on any

business which is discontinued and was charged to tax under the Act of 1918. Primarily charge of income tax is directed to the person, natural or

artificial, who earns Income Tax is directed to the person, natural or artificial, who earns income, profits and gains from whatever source rather

than to the ownership or enjoyment or activity which is the source of it. This seems to me to follow from sections 3 and 4. Take the case of a firm.

A firm by virtue of these charging sections is taxed in respect of the total income of its business-to at here to the words of section 4 - ""including all

income, profits and gains from whatever source derived. ""Speaking generally the tax is on the entity - the firm - in respect of its income. The

assessment is made on the entity who is the assessee, and again speaking generally, collected from the assessee, this principle is the substratum of

section 3. Another basic principle on which the section rests is that the levy is to be on the total income of that assessable entity. Where that

assessable entity is an individual or a firm carrying on business the charge is on the aggregate income, profits and gains derived from that business.

And if exemption is given in respect of the income, profits and gains of that business on the principle of avoidance of double taxation, it would

naturally and normally be a concession in respect of the aggregate income, profits and gains derived from that business by the assessable entity. It

is these basic principles which lead me to the conclusion that the exemption is to the person, natural or artificial, whose income from that business is

the subject-matter of section 25(3). Section 25(4) in terms speaks of the person. Considerable support is to be derived for this proposition from

the observations of the Privy Council and of Kania, C.J., which I have already quoted before. The liability of that person, natural or artificial, to

pay the tax is founded on sections 3 and 4 of the Act. Therefore, when you consider a provision which exacts that the liability is exempt in case of

discontinuance of the business carried on by that person in respect of the terminal period, you have to go to those sections to see what that liability

was which attracts the exemption .The fundamental position was brought out in bold relief in the House of Lords case of Whitney v.

Commissioners of Inland Revenue where Lord Dunedin, speaking with accredited accuracy as to these tax cases, stated :

Now, there are three stages in the imposition of a tax : there is the declaration of liability, that is the part of the statute which determines what

persons in respect of what property are liable. Next, there is the assessment. Liability does not depend on assessment, that ex hypothesi, has

already been fixed. But assessment particularizes the exact sum which a person liable has to pay. Lastly, come the methods of recovery, if the

person taxed does not voluntarily pay.

63. This passage has become locus classicus and was cited with approval by the Federal Court in Chatturam v. Commissioner of Income Tax and

very recently by the Supreme court in Chatturam Horilram v. Commissioner of Income Tax. The exemption in section 25(3) has to do with the

incidence of liability. The subsequent provisions as to assessment and so on are machinery only. They enable the liability to be quantified. The

liability is definitely and finally fixed by the charging sections. The stage of assessment is not yet. Therefore, when you say that the liability to pay tax

is exempt, it is not in the context of that machinery but in the context of the first stage of liability which, as Lord Dunedin pointed out, ex hypothesis

has already been fixed. It is this concept of imposition of the tax and exemption from such imposition which to my mind leads to the solution of the

case. No tax is to be charged in a case falling u/s 25(3) and Chapter III which deals with heads of income does not enter into the scheme or

meaning of section 25(3). Sections 7 to 17 in that chapter are computing sections. They deal with the mode or manner of computation or

ascertainment of the quantum of tax under various heads and come into operation only when tax has to be charged as enjoined by sections 3 and

4. Therefore, in a section which lays down that no tax is to be charged in respect of the income, profits and gains of a discontinued business in

respect of the terminal period, it is impermissible go implant either the concept or the language and meaning of any of the sections 6 to 17.

64. All these considerations lead me to the conclusion that the ""business"" contemplated in section 25(3) is to be understood it he proper legal sense

attributable to that expression without recourse to the artificial conception urged on behalf of the Revenue. Aid can, of course, be derived in

considering a section from other sections of the statute so long as doing so you do not alter the meaning of what is itself clear and explicit or

diminish the efficacy of any express provision therein contained. In case of the section before us I am unable to see any reason for attributing to the

word ""business"" any modified and straitened meaning as pressed on behalf of the Revenue. Words of limitation are not as a rule to be read into a

statute unless the subject-matter or context so requires. We are not dealing with any sweeping general words but and expression of ample legal

content. We are asked to acquiesce in a non-legal constriction which limits the operation of the sub-section, so as to make the exemption given by

it, not commensurate with the income, profits and gains of a business, as understood in the legal sense and as understood in other cognate

provisions and provisions having interaction. It is not permissible in case of a provision of the nature under consideration, therefore, to read into it

words by implication and make it smaller than what its terms express. Considerations grounded on the scheme of the Act, the scheme and object

of section 25(3),the principle of cogency which requires that relevant provisions of an enactment must as far as possible be read so as to harmonize

them and other considerations which I have already discussed, are in my judgment abiding grounds for construing section 25(3) as exempting the

income, profits and gains of a discontinued business, without excluding from such income, profits and gains interest on securities where the

securities are themselves stock-in-trade of the business. This is the only way I am able to read section 25(3) after giving the words of the section

their proper legal meaning and after reading the sub-section along with other cognate sections and in the context of Income Tax law by which latter

expression I understand that the meaning and import of and provision in this fiscal enactment must be gathered in the light of general principles and

the well-established rules of interpretation, that the true meaning of any passage is that which (being permissible) best harmonizes with the subject

and with very other passage of the statute and if you can do so without training the language of a fiscal statue you must construe it in a manner

which enables the smooth working of the system which it purports to regulate.

65. I have so far omitted from discussion the meaning and import of words ""income, profits and gains"" in section 25(3) without being unmindful of

them. Learned counsel for the Revenue in the very opening of his argument stated that they were not germane to the question of construction of this

sub-section. The submission also was that the expression meant nothing more than profits and gains of a business as understood in case of the head

of income mentioned in section 6(iv) and dealt with in section 10. The whole case for the Revenue had to be based on this narrows foundation of

section 10. In my judgment it is ill-founded. Mr. Joshi has in effect asked us to treat the word ""income"" used in sectioned 25(3) as tautologies land

superfluous when the said that it meant the same thing as ""profits and gains"" and was synonymous with the latter expression. I am unable to agree.

It is well established that in the context of the charging section the expression ""income"" has a very wide import-wider than profits and gains. And I

see no reason for equating the words ""income, profits and gains"" used in section 25(34) with ""profits and gains."" The word ""income"" itself is of such

broad connotation that without adding anything to it you can cover the whole ground of chargeability but the words ""profits and gains"" are not of

such plastic ambit. How wide is the import of the expression ""income"" used in the charging sections 3 and 4, can be gathered from numerous

decisions. I shall quote one passage from the judgment of my Lord the Chief Justice (Chagla, J., as he then was) in In re Kamdar where reference

was made to the leading cases on the point :

In commissioner of Income Tax v. Shaw Wallace & Co. Sir George Lowndes delivering the judgment of the Privy Council defined "income" as a

periodical monetary return "coming in" with some sort of regularity, or expected regularity, from definite sources. He likened "income" pictorially to

the fruit of a tree, or the crop of a field. He further points out that the expansion of "income" into income, profits and gains is more a matter of

words than of substance. In Gopal Saran v. Commissioner of Income Tax, the Privy Council went as far as saying that anything which can properly

be described as income is taxable under the Act unless expressly exempted. Lord Wright in the Judgment of the Privy Council in Kamakshya

Narain Singh v. Commissioner of Income Tax, appreciates the difficulty of defining "income" and concedes that it is perhaps impossible to define it

in any precise general formula, but he says that it is word of the broadest connotation. He rather disapproves of Sir George Lowndes" pictorial

language and sounds a note of warning against using picturesque similes to limit the true character of income in general.

66. In Gopal Saran v. Commissioner of Income Tax, their Lordships of the Privy Council held that in section 12 the words ""income, profits and

gains"" are used in a disjunctive sense and the word ""income"" is not limited by the words ""profits"" and ""gains"". It was there contended that these

words as used in section 12(1) must be construed as including only such income as constitutes or perfidies a profit or gain to the recipient, i.e., that

the word ""income"" was in some way limited by its association with the words ""profits"" and ""gains"". The contention was negatived and it was

observed :

The word "income" is not limited by the words "profits" and "gains". Anything which can properly be described as income, is taxable under the

Act unless expressly exempted.

67. I have already observed that the concept of imposition of the tax and exemption from such imposition emerges from sections 3, 4 and 25(3)

read together. In the observations cited above their Lordships of the Privy Council, it humbly appears to me, do broadly approve of this concept.

In my judgment, the use of the words ""income, profits and gains"" in the context of a discontinued business is purposeful and connotes their

amplitude and the words lend support to the conclusion I have already arrived at that from this income, profits and gains you cannot exclude

interest on securities in case of person who claims exemption on the ground that the interest was on securities which themselves were the stock-in-

trade of his business. But the Revenue while it claims the statutory right to impose tax on a person in respect of any income of his business from

whatever source derived demurs to his claim for exemption from double taxation under a provision in which also are to be found the same words

of wide import and asks us to put a narrow construction on them.

68. The whole contention on behalf of the Revenue here also has depended upon an insistence that inasmuch as the words ""profits and gains of a

business"" have a restricted meaning in the scheme of sections 6 to 12 they must control the ambit of section 25 and the words ""income, profits and

gains"" there used must also be read to mean no more than the profits and gains of a business in the same restricted sense. How fragile this argument

is, can be seen when one reads section 25(1) which says :

Where any business. Profession or vocation to which sub-section (3) is not applicable, is discontinued in any year, an assessment may be made in

that year on the basis of the income, profits or gains of the period between the end of the previous year and the date of such discontinuance in

addition to the assessment, if any, made on the basis of the income, profits or gains of the previous year.

69. It is not disputable that the income, profits and gains of discontinued business must mean the same thing in sub-section (1) and sub-section (3).

As I have already pointed out an accelerated assessment may at the option of the Income Tax Officer be made in respect of the income, profits

and gains of a discontinued business under sub-section (1) unless sub-section (3) is applicable. Is this assessment to be confined only to profits and

gains of the business in the restricted sense of section I0 or is the assessment to be on the aggregate income, profits and gains of he business, that

is, inclusive of income of the business from every source ? The answer must be that there can be one assessment and it can only be in respect of

the entire income, profits and gains of the business chargeable under sections 3 and 4. In my opinion sections 6 and 10. So much relied on by Mr.

Joshi, are no indicate to determine the meaning and import of the word ""income""; they only lay down a method of its computation. It is little use

dwelling on them. As my Lord the Chief Justice (Chagla, J., as he then was) observed in Kamdar''s case sections 6 to 12 do not in any way

control or limit the conditions of chargeability laid down in section 4 and merely provide a machinery for the purpose of computation for every

species of income, in my judgment, for identical reasons, they cannot be read as in any way controlling or limiting the conditions of exemption from

that chargeability unless the is a compelling reason for doing so.

70. In construing these words ""income, profits and gains"" in their context of a discontinued business, we must give them their ordinary legal

meaning. The rule of cogency requires that as far as possible these words in sub-section (3) of section 25 should have the same meaning

attributable to them in sub-section (1) and sub-section (4) and in other cognate sections. Section 26 and section 44 to which I have already made

reference are instances in point. I have also pointed out from the decisions of the Privy Council and the Supreme Court that sections 26 and 25

form part of a single scheme and how section 25(4) was said to be consequential on section 26(2). It would only be a compelling context which

could induce the court to impose upon these words ""income, profits and gains"" of a discontinued business a meaning which carves out a good deal

from their ordinary legal sense. The context supports the construction urged by the assessee and requires me to read the words in their legal sense

and not in any restricted manner. For all these reasons, I am of the opinion that on a true construction of section 25(3) interest on securities which

from part of the stock-in-trade of a business is part of the income, profits and gains of that business and entitled to exemption under that sub-

section.

71. So far, I have dealt with the matter on principle land in the light of judicial pronouncements instructive of the principle but without reference to

any authority on the construction of section 25(3) . I there any authority which compels me to refrain from giving effect to the conclusions at which

I have come ?

72. I can find none in those that have been cited to us. The one more relied upon by Mr. Joshi was Ambalal Himatlal v. Commissioner of Income

Tax. The headnote to the report is not accurate and does not going out the ratio disdained of that case. Mr. Joshi has relied on certain observation

from the judgment of my Lord the Chief Justice and my learned brother Tendolkar, J., in that case. Now the way I approach any Income Tax

matter is that it should be my endeavour to appreciate and respectfully follow any direct observation made by this court in another decision when I

see that it was the reason which induced the court to reach a conclusion. It is true that there is one observation made in that judgment which at first

blush may seem to lend some support to the contention urged on behalf of the Revenue. But when you read that observation in its context you find

that it was made only in refutation of an argument urged on behalf of the assessee who in that case had reference made to the High Court. When

you examine the facts of the case and the submissions there made it becomes declare that the observation was made in the limited context of those

facts and submissions. Before I refer to the same, it is necessary to state briefly the facts of that case. The assessee, a Hindu undivided family, was

in 1943, when it was disrupted, carrying on three distinct and separate businesses : (i) money lending business; (ii) running a ginning factory; (iii) a

share business. It was found, and this is important, that only the moneylending business had paid Income Tax under the Act of 1918, on these facts

the assessee claimed the exemption granted by section 25(4) not only in respect of the total income, profits and gains of the moneylending business

but curiously enough in respect of the total income, profits and gains of all the three business. There was only the moneylending business subsisting

in 1921-22 and in the statement of case the Tribunal stated that this fact was not disputed. The Tribunal held that the assessee was entitled to relief

only in respect of the moneylending business which was charged to Income Tax under the Act of 1918. At the hearing of the reference the

ingenious argument urged on behalf of the assessee by Sir Jamshedji Kanga was, that when you look at section 25(4) it is clear that the Legislature

intended to give relief not merely in respect of the particular business which ways assessed to tax under the Act of 1918, but the relief

contemplated was in respect of the total income of the assessee whose business was succeeded to. The argument was based on the language used

in sub-section (4) to the effect that ""no tax shall be payable by the first mentioned person in respect of the income, profits and gains for the period

between the end of the previous year and the date of sub succession."" And it was in support of this argument, that it was pointed out that when you

turn to section 10 speaks of ""any business"" and therefore the exemption given by section 25(4) should not be confined to the particular business

which was charged to tax under the Act of 1918 but ""any business"" - meaning all the three business-of the assessee which at the time of disruption

of the Hindu undivided family were being charged to Income Tax. Therefore, there was really an endeavour to introduce the concept and language

of Section 10 in the ambit of section 25(4). The contention was negatived as ingenious and the court declined to accept the interpretation of section

25(4) urged by the assessee which would have led to absurd results. In the course of his judgment the learned Chief Justice in examining the novel

contention of the assessee, that he was exempted from payment of tax in respect of all the three distinct and separate businesses even though two

of them did not even exist prior to 1922, observed at page 285 of the report :

If that was the policy of the Legislature it is difficult to understand why relief should be given to a person whose business is succeeded to in

respect of not only that business but also in respect of all sources of income.

73. Then in proceeding to examine the argument which sought to introduce the concept underlying the words ""any business"" in section I0 and in

section 25(4) the learned Chief Justice observed :

If we were satisfied that the Legislature intended to use the expression "income, profits and gains" not only for the purpose of indicating the profits

and gains of the business as contemplated by section 10but also for the purpose of indicating the total income of the assessee then no doubt we

would have to come to that conclusion, however reluctantly; but fortunately there is a clear indication in this sub-section itself. What the Legislature

intended by using the expression "income, profits and gains" was the profits and gains of the business or profession contemplated by section I0 and

not the total income of the assessee...

74. It is the later part of these observations that are relied upon by Mr. Joshi. The ratio of the judgment is to be gathered from the following

observations at page 286 of the report :

Further when you look at sub-section (4) as a whole, apart from the use of the expression "income, profits and gains" it is clear that the conditions

required for obtaining of relief under this sub-section are firstly, carrying on any business, profession or vocation; secondly, tax being charged on

this business, profession or vocation under the Act of 1918; and, lastly, succession to any such business or vocation is such capacity by another

person. Therefore, such other person must not only succeed, he must also succeed in such capacity, which means, he must carry on the same

business, profession or vocation which had been carried on by the assessee to whom relief is to be given. If these conditions are satisfied then no

tax is payable by the first mentioned person who is the person to whom relief is intended to be given in respect of the income, profits and gains of

the period between the end of the previous year and the date of such succession.

75. It emerges, therefore, from the observations quoted immediately above that the ultima ratio of the decision is that the exemption is confined to

the income of the particular business and did not embraces the total income of the assessee. It is confined to the income of the particular business

which was charged to tax under the Act of 1918 and not to any other distinct and separate business which did not fulfill the conditions laid down in

section 25(4) and which conditions must be satisfied before the exemption could be attracted. I have already said the observation about section 10

was made only in the context of the facts of the case and to negative the submission made on behalf of the assessee.

76. Needless to state that I would have dutifully and respectfully founded myself on the above decision if the ration of it was as suggested on behalf

of the Revenue. But that ration clearly is different as I have pointed out above. If the observations are read in the context of the submission and the

line of argument followed on behalf of the assessee in that case, and they must be so read, if I may respectfully make the observation, there is

nothing in that decision from which the Revenue can derive any support. The case is clearly distinguishable.

77. The other decision relied upon by Mr. Joshi was Gopi Mohan and Sons v. Commissioner of Income Tax. The facts in the reference before the

Allahabad High Court were that a certain Hindu undivided family which was assessee in respect of its income from property became divided in the

previous year relevant to the assessment year 1941-42. It was held that there was a partition in the family as from January 31, 1942. An

application was made claiming relief u/s 25(3) and it was rejected. If was not in dispute that the Hindu undivided family was assessed under the

Act of 1918 but the assessment was made only in respect on income of the property and not any business. The Tribunal also rejected the second

appeal. That was on the ground (1) that section 25(3) applied only to a case where tax was charged under the Indian Income Tax Act, 1918, on

business, profession or vocation land did not apply to a case where tax was charged on income from property, and (2) that from the very nature of

the case, it could not be said that there was any discontinuance of a business charged to tax under the Act of 1918. The High Court on a reference

approved of the decision of the Tribunal as perfectly correct. It was, however, urged at the hearing of the reference that it was an anomaly position

that while relief was granted in respect of a business none was granted in case of income from property. The argument solely based on an anomaly

was rejected by the Court as ill-founded. Reliance was, however, placed on the following observations in the judgment at page 223d of the report

:

The method of computation of income from property has been laid down in section 9, while that for the computation of income from business,

profession or vocation has been described in section 10. From this it is clear that the expression "business Profession or vocation" used in section

25(3) relates to that head of income, which has been dealt with in section I0, and is quite distinct from the head of "income from property" which

has been mentioned in section 9.

78. It may be pointed out that there was no question of any income profits an gains of business in that case; nor any question of any property

owned on account of any such business. It is also clear that the learned Judges regarded sections 9 and 10 as dealing with the method of

capitation. True, the learned Judges have observed that ""the expression "business, profession or vocation" used in section 25(3) relates to that

heard of income, which had been dealt with in section I0"" and is quite distinct from the head of income mentioned in section 9. Now I agree that

exemption u/s 25(3) is in respect of income from business but with great respect I am unable to agree that section 25(3) relates to that head of

income which has been dealt with in section 10. On the facts which I have summarised the decision could not have been different, it will be seen

that the position there was quite different and the decision is clearly distinguishable.

79. For the reasons I have given I would answer the question in the affirmative.

Tendolkar, J.

80. As my learned brother and I are not agreed as to the correct answer to the issue which we have re-framed, the case would be heard by one or

more of the other Judges of the High Court as the Chief Justice may direct under the proviso to section 66A of the Income Tax Act. Costs of the

reference before us will be costs in the reference to be so tried.

81. [The reference came before K. T. DESAI, J., who delivered judgment on December 17, 18, 1958.]

K.T. Desai, J.

82. Messrs. Chugandas and Co., (Securities), Bombay, a registered firm, hereinafter referred to as ""the assessee"", was a dealer in securities.

Securities constituted the stock-in-trade of its business. It received a sum of Rs. 4,13,992 as and by way of interest on securities during the

accounting year 1946, the assessment year being 1947-48. The assessee firm was dissolved on June 30, 1947. It received a sum of Rs. 1,01,229

during the accounting period January 1, 1947, to June 30, 1947, the assessment year being 1948-49, as interest on securities. The business

carried on by the assessee was an old business. It had paid tax in connection with that business under the provisions of the Indian Income Tax Act,

1918. That business having been discontinued, the assessee became entitled to the benefit of the provisions contained in section 25(3) of the Indian

Income Tax Act, 1922. A question has arisen whether the benefit conferred by section 25(3) extended to interest on securities received by the

assessee as aforesaid. At the instance of the Commissioner of Income Tax, Bombay City I, the following question was referred to this court u/s

66(1) of the Indian Income Tax Act :

Whether on the facts and circumstances of the case interest received on securities held by the assessee formed part of the assessee''s business

income for the purpose of claiming relief u/s 25(3) of the Indian Income Tax Act

83. After the reference was made, the Supreme Court gave its judgment in the case of United Commercial Bank Limited v. Commissioner of

Income Tax. In that case the Supreme Court held that where securities are held by a banker as part of his trading assets in the course of his

business. Income from interest on securities was required to be shown under the head ""Interest on securities"" falling u/s 8 of the Income Tax Act,

1922, and not under the head ""Profits and gains of business, profession or vocation"" falling u/s 10thereof. Having regard to the decision of the

Supreme Court, when the matter came up for hearing before Mr. Justice Tendolkar and Mr. Justice S. T. Desai, the question was re-framed in

order to bring out the real point in controversy between the parties. The re-framed question is as follows :

Whether the assessee is entitled to the benefit of section 25(3) in respect of the interest on securities ?

84. There was a difference of opinion between Mr. Justice Tendolkar and Mr. Justice S. T. Desai, as regards the answer to be given to the

aforesaid question. Mr. Justice Tendolkar was of the opinion that the assessee was not entitled to the benefit of section 25(3) in respect of the

interest on securities while Mr. Justice S. T. Desai was of the opinion that the assessee was entitled to such benefit. The matter has now come up

for hearing on that question before me under the provisions contained in section 66A of the Indian Income Tax Act, 1922.

85. The provisions of section 25(3), which have given rise to the controversy, run as follows :

Where any business, profession or vocation on which tax was at any time charged under the provisions of the Indian Income Tax Act, 1918(VII

of 1918), is discontinued, then, unless there has been a succession by virtue of which the provisions of sub-section (4) have been rendered

applicable no tax shall be payable in respect of the income, profit and gains of the period between the end of the previous year and the date of

such discontinuance, and the assessee may further claim that the income, profits and gains of the previous year shall be deemed to have been the

income, profits and gains of the said period. Where any such claim is made, an assessment shall be made on the basis of the income, profits and

gains of the said period, and if an amount of tax has already been paid in respect of the income, profits and gains of the previous year exceeding

the amount payable on the basis on such assessment, a refund shall be given of the difference.

86. The applicant contends that when the Legislature used the words ""any business, profession or vocation on high tax was at any time charged

under the provisions of the Indian Income Tax Act, 1918"" it referred to tax only on income under the head ""income derived from business"" falling

u/s 9 of the Indian Income Tax, 1918, and on income under the head ""Professional earnings"" falling u/s 10 of the said Act. It is further contended

that when the Legislature in the year 1922 used the words ""no tax shall be payable in respect of the income, profits and gains of the period

between the end of the previous year and the date of such discontinuance"" it intended to refer only to income, profits and gains liable to be shown

under the head ""Business"" u/s I-of the Indian Income Tax Act, 1922, as originally enacted and under the head ""Professional earnings"" under the

repealed section 11 of, the said Act, and that these words now refer to the income, profits and gains liable to be shown under the head ""Profits and

gains of business, profession or vocation"" under the present section I0 of the said Act. It is further urged that when the Legislature used the words

and the assessee may further claim that the income, profits and gains of the previous year shall be deemed to have been the income, profits and

gains of the said period,"" The Legislature was only referring to what was liable to be shown under the heads ""Business"" and ""Professional earnings

referred to in sections I0 and II of the said Act as first enacted and that those words now refer to what is liable to be shown under the head

Profits and gains of business, profession and or vocation"" under the present section I0 of the said Act. It is further contended that when the

Legislature used the words ""the income, profits and gains"" in the sentence ""Where any such claim is made, an assessment shall be made on the

basis of the income, profits land gains of the said period and if an amount of tax has already been paid in respect of the income, profits and gains of

the previous year exceeding the amount payable on the basis of such assessment a refund shall be given on the difference"", the Legislature was

referring only to the income, profits and gains liable to be shown under the sections I0 and II of the said Act as first enacted in the year 1922 and

that those words now refer to what is liable to be whose under the present section 10.

87. Having regard to the decision of the Supreme Court in the case of United Commercial Bank Limited v. Commissioner of Income Tax the

present position in law is that where an assessee derives income, profits and gains from a business carried on by him, such income, profits and

gains may have to be shown under the various heads. If securities constitute the stock-in-trade of his business, interest received in connection with

those securities would have to be shown separately under the head ""Interest on securities"" covered by section 8 of the Act of 1922. If the business

consisted of purchase and sale of houses, the income derived from such houses would have to be shown separately under the head ""Income from

property"" u/s 9 of the Act of 1922. If shares of joint stock companies constitute the stock-in-trade of such business, the dividend income derived

therefrom would have to be shown separately under the head ""Income from other sources"" u/s 12 as it now stands after the amendment made in

the year 1955 and it is only the residue which may remain thereafter which would have to be shown under the head ""Profits and gain of business,

profession or vocation"" covered by section 10. Even under the Indian Income Tax Act of 1918, if an assessee derived income, profits and gains

from a business carried on by him, he was under an obligation to show the interest received by him from securities which constituted the stock-in-

trade of his business under the head ""Interest on securities"" covered by section 7 of the Act of 1918. If purchase and sale of house property

constituted the business of such assessee, then the income derived form house property was liable to be shown separately under the head ""Income

derived from hour property"" u/s 8 of the Act of 1918. Only the balance of income, profits and gains of such business remaining thereafter was

liable to be shown under the head ""income derived from business"" u/s 9 of the Act of 1918. It is contended on behalf of the assessee that where

the Legislature used the words ""where any business.... on which tax was at any time charged under the provisions of the Indian Income Tax Act,

1918, "" in section 25(3) it referred to the tax which might at any time have been charged under the Act of 1918 under any of the three heads

referred to by me above in respect of the income, profits and gains of the business carried on by the assessee. It is further contended on behalf of

the assessee that where such business is discontinued, no tax is payable in respect of the income, profits and gains of such business for the period

between the end of the previous year and the date of such discontinuance which may have to be shown under each of the forum heads referred to

by me above under the Indian Income Tax Act, 1922. It is further contended by the assessee that the words ""and the assessee many further claim

that the income, profit and gains of the previous year shall be deemed to have been the income, profits and gins of the said period"" also refer to the

income, profits and gains of such business which are required to be shown under each of he aforesaid four heads under the Act of 1922. It is also

contended that when the Legislature used the words ""Where any such claim is made, an assessment shall be made on the basis of state income,

profits and gains of the said period and if an amount of tax has already been paid in respect of the income, profits and gains of the previous year

exceeding the amount payable on the basis of such assessment, a refund shall be given on the difference"", the Legislature was referring to the

income, profits and gains of such business liable to be shown under each one of the aforesaid four heads under the Act of 1922.

88. In order to adjudge which of these rival contentions is correct, it is necessary to look fairly at the language used by the Legislature in section

25(3) itself. That section speaks of ""any business... on which tax was at any time charged under the provision of the Indian Income Tax Act,

1918."" It is common ground that a business was not a unit of assessment under the Indian Income Tax Act of 1918. What the Legislature intended

to convey was any business, on the income, profits and gains thereof tax was at any time charged under the Indian Income Tax Act of 1918.

Section 2(4) of the Indian Income Tax Act of 1922, lays down that unless there is anything repugnant in the subject or context, the expression

business"" includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture. The

expression ""business"" in section 25(3) can only refer to the activity which is styled business. What has to be discontinued is that activity before the

section can apply. If what is to be discontinued is that activity business, the tax which is referred to in connection with that activity business must of

necessity refer to the tax payable in connection with the income, profits and gains derived from that activity business irrespective of the head or

heads under which such income. Profits and gains are required to be shown under the provisions contained in the Indian Income Tax Act, 1918.

The expression ""business... on which tax was at any time charged"" on a plain reading of the section must refer to the tax charged under any of the

heads under which the income, profits and gain made as a result of such activity may have been entered. If such income, profits and gains included

interest on securities which constituted the stock-in-trace of that business, the tax paid under the head ""Interest on securities"" would be covered.

There is on warrant for confining the tax to only one head. When the Legislature thereafter uses the words ""no tax shall be payable in respect of the

income, profits and gains"", the Legislature is referring to the tax otherwise payable in respect of the income, profits and gain derived from the

activity business referred to earlier. The income, profits and gains of business here refereed to do not refer exclusively to income, profits and gains

liable to be shown under the head refereed to in section 10 of the Act of 1922. The intention of the Legislature is to completely exempt the income,

profits and gains resulting from the activity styled ""business"" for the period referred to in the section. When the Legislature uses the words ""and the

assessee may further claim that the income, profits and gains of the previous year shall be deemed to have been the income, profits and gains of the

said period"", the Legislature is referring to the totality of income, profits and gains in connection with the activity styled ""business"" under that sub-

section and not merely to the income, profits and gains liable to be shown u/s 10. When the Legislature uses the further words ""where any such

claim is made, an assessment shall be made on the basis of the income, profits and gains of the said period"", it refers to all the income, profits and

gains made in connection with the activity styled business in that section. When the Legislature uses the further words ""if an amount of tax has

already been paid in respect of the income, profits and gains of the previous year exceeding the amount payable on the basis of such assessment, a

refund shall be given of he differences"", the Legislature there again is referring to all the income, profits and gains of the activity termed business in

that section. It seems to be a far-fetched construction of that section to say that what the Legislature intended was not the totality of the income,

profits and gains of the activity termed business but was intending what was liable only to be entered under the provisions contained in section 10.

The term ""business"" for he purpose of discontinuance cannot have one meaning and the same term ""business"" for the purpose of tax cannot have

another meaning.

89. Sub-section (3) of section 25 was enacted in order to mitigate the effect of double taxation levied in respect of the income, profits and gains of

one accounting year having regard to the changes made in the Income Tax law by the Act of 1922. Section 14(2) of the Act of 1918 provided as

follows :

Subject to the conditions herein before set out, there shall be levied in respect of the year beginning with the first day of April, 1918, and in

respect of each subsequent year, by collection in that year and subsequent adjustment as hereinafter provided Income Tax upon every assessee in

respect of his taxable income in that year at the rate specified in Schedule 1.

90. Under the aforesaid provisions the income, profits and gains for the accounting year 1921-22 were liable to be charged to tax in the

assessment year 1921-22 under the Act of 1918.

91. There was a material alteration in the aforesaid scheme of taxation made by the consolidating and amending Indian Income Tax (XI) of

assessment year in respect of the income, profits and gains of the previous year, with to result that during the assessment year 1922-23 tax was

liable to be paid once again under the Indian Income Tax Act, 1922, in respect of the income, profits and gains for the accounting year 1921-22.

92. The question that I have to consider relates to the extent of the relief granted by the Legislature. There appears to me to be no warrant for

giving a very truncated and artificial meaning to the expression ""income, profits and gains"" used in that section in connection with ""business"". When

the Legislature says that no tax shall be payable in respect of the income, profits and gains of the period between the end of the previous year and

the date of such discontinuance, the Legislature intended to exempt from tax all income, profits and gains derived from the activity ""business"".

When giving the exemption the Legislature, in my view, did not contemplate or intend that the assessee would nevertheless have to pay tax

connection with that part of the income, profits and gains made in connection with the activity ""business"" which may consist of income from

securities in a case where securities constituted the stock-in-trade of that businesses It could not possibly be the intention of the Legislature in

giving the exemption that tax was intended to be charged by the Legislature under three out of the four different heads under which the income,

profits and gains derived from business is liable to be shown under the provision of the Indian Income Tax Act, 1922. When the Legislature

enacted that ""the assessee may further claim that the income, profits and gains of the provision year shall be deemed to have been the income,

profits and gains of the said period"", the Legislature did not intend that the income, profits and gains of that business for the previous year should

remain unaltered to the extent that the same are shown under the head ""Interest on securities"", ""Income from properties"" and ""Income from other

sources"" and that only the residue thereof shown under the head referred to in section 10 alone should be substituted. When the Legislature

provided for an assessment in connection with such business to be made on the basis of the income, profits and gains of the period refereed to in

that sub-section, the Legislature did not contemplate to assessment to be made only under the head referred to in section 10.

93. Section 25(3) being part of section 25, it would not be out of place to consider the sense in which the Legislature has used similar words in

other parts of the same section. As the marginal note to that section show, it deals with assessment in case of discontinued business. Section 25(1)

of the Act of 1922 runs as follows :

25. (1) Where any business, profession or vocation to which sub-section (3) is not applicable, is discontinued in any year, an assessment may be

made in that year on the basis of the income, profits or gains of the period between the end of the previous year and the date of such

discontinuance in addition to the assessment, if any, made on the basis of the income, profits or gains of the previous years.

94. When the Indian Income Tax Act, 1922, was first passed in 1922 the words were ""Where any business, profession or vocation commenced

after day of March 31, 1922, is discontented etc.

95. By Act XI of 1924 for the words ""commenced after the day March 31, 1922, ""the words"" on which Income Tax was not at any time charged

under the provision of the Indian Income Tax Act, 1918"" were substituted. By Act XI of 1944 these newly added words were substituted by

words ""to which sub-section (3) is not applicable"" which now appear. This sub-section provides for assessment being made in the year of

discontinuance itself on the basis of the income, profits or gains of the period between the end of the previous year and the date of such

discontinuance. Mr. Joshi, the learned counsel of the applicant, at first argued that it seemed as if the expression ""assessment"" in this sub-section

referred to the assessment being made in respect of the totality of the income, profits and gains made in connection with the discontinued business

during the period referred to therein. He, however, stated that the language of section 25(3) was different, and that in the context of the language

used in sub-section (3) of section 25 the expression ""income, profits and gains"" bore a different meaning. He stated that such difference arose by

reason of the use by the Legislature of the words ""assessment may be made"" contained in section 25(1).In answer to that argument it was pointed

out that the Legislature in sub-section (3) also refers to the making of an assessment when the option given thereby is exercised by the assessee

and that a difference in result is not warranted. Mr. Joshi then in the alternative argued that even so far as section 25(1) is concerned, it refers when

dealing with discontinued business to the assessment being made only under the head referred to in section I0 of the Act of 1922. In my view it

would not be proper to give a truncated meaning to the expression ""assessment"" when the Legislature says that assessment may be made on the

basis of the income, profits and gains of the period referred to in that section. When assessment has to be made in connection with the income,

profits and gains of a business, you have to assess the totality of the income, profits and gains made in connection with that business under

whatever head the same may be liable to be entered having regard to the provisions contained in the Income Tax Act, 1922.

96. Section 25(1) of the Indian Income Tax Act, 1922, merely authorises an accelerated assessment in the year of assessment itself. The Supreme

court in the case of Commissioner of Income Tax v. K. Srinivasan and K. Gopalan, has observed at page 97 that all that the section authorises the

Income Tax Officer to do is that it gives him an option to make a premature assessment on the profits earned up to the date of discontinuance in

the year of discontinuance itself instead of in the usual financial year. This section does not authorise the splitting up of the assessment in two

different years. It was never intended to provide that in the case of a discontinued business, the income, profits and gains in connection with that

business have to be assessed to the extent that the income, profits land gains are liable to be shown under the head referred to in section I0 of the

Act in the year of discountenance itself, and that if there is any interest on securities earns in connection with that business in a case where securities

constituted the stock-in-trade of that business, that interest on securities is to be assessed separately in a subsequent assessment year. In my view,

such splitting up was never intended or contemplated by the farmers of the Act, and it is not possible to say that when the Legislature was

considering the question of assessment u/s 25(1) a part of the income of the discontinued business was to be assessed in one year and another part

in another year. In my view, the alternative argument advanced by Mr. Joshi in connection with section 25(1), viz., that it refers only to an

assessment in connection with the head referred to in section 10, is without any merit and without any foundation.

97. I shall now turn to section 25(2). That section provides :

25. (2) Any person discontinuing any such business, profession or vocation shall give to the Income Tax Officer notice of such discontinuance

within fifteen days thereof, and, where any person fails to give the notice required by this sub-section, the Income Tax Officer may direct that a

sum shall be recovered from him by way of penalty not exceeding the amount of tax subsequently assessed on him in respect of any income, profits

or gains of the business, profession vocation up to the date of its discontinuance.

98. This sub-section deals with the question of the imposition of the penalty, and the words ""not exceeding the amount of tax subsequently

assessed on him in respect of any income, profits or gains of the business, profession or vacation up to the date of its discontinuance"" refer to the

assessment made in respect of the totality of the income, profits or gains made in connection with the discontinued business, and not to in section

10.

99. I will now turn to section 25(4) as it was enacted originally by the Act of 1922. That sub-section provided as under :

25. (4) Where an assessment is to be made under sub-section (1) or sub-section (3), the Income Tax Officer may serve on the person whose

income, profits and gains are to be assessed, or, in the case of a firm, on any person who was member of such firm at the time of its

discontinuance, or, in the case of company, on the principal officer thereof, a notice containing all or any of the requirements which may be

included in a notice under sub-section (2) of section 22, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice

were a notice issued under that sub-section.

100. The assessment referred to in sub-section (4) is the assessment which is required to be made under sub-section (1) or sub-section (3). If

assessment which is required to be made under sub-section (1) or sub-section (3) is the assessment in respect of the totality of the income, profits

or gains made in connection with the activity business. The original sub-section (4) of section 25 has been re-numbered as sub-section (6) of

section 25, and the words ""sub-section (1) or sub-section (3)"" therein have been substituted by the words ""sub-section (1), sub-section (3) or sub-

section (4)."" I may also refer to section 26 of the Act of 1922. Section 26 is a section which is correlated to section 25 and it forms an integral part

of the scheme of the Act. The Privy Council recognised this fact in the case of Commissioner of Income Tax v. P. E. Polson The Privy Council

there observed as follows :

Sections 25 and 26 no doubt from part of a single scheme and their interaction must not be ignored.

101. Section 26 as enacted in the year 1922 ran as follows :

Where any change occurs in the constitution of a firm or where any person has succeeded to any business, profession or vocation, the assessment

shall be made on the firm as constituted, or on the reason engaged in the business, profession or vocation, as the case may be, at the time of the

making of the assessment.

102. The part material for the purpose of the present case is as follows :

Where any person has succeeded to any business, the assessment shall be made on the person engaged in the business, at the time of the making

of the assessment.

103. Now, the word ""assessment"" here clearly refers to the assessment made in connection with the totality of the income, profits and gains made

in connection with such business. It does not refer merely to the head referred to in section 10. Mr. Joshi submitted that the expression

assessment"" even here in connection with business referred only to the assessment that may be made under the head refereed to in section 10. In

my view, it was never the intention of the Legislature in exacting section 26 that where there is a case of succession, the person who succeeds

should be made liable only in respect of that part of the income, profits and gains of the business which is liable to be included under the head

referred to in section I0 and that as regards the rest the person who has been succeeded would be assessed. In my view, this theory of assessment

in compartments sought to be imported in the provisions of sections 15 and 16 is without any basis or foundation. As regards sections 26 it has

been observed by the Privy Council in the case of Indian Iron land Steel Co. Ltd. v. Commissioner of Income Tax that section 26 is not concerned

with the computation of tax, but with the person upon whom the liability is imposed. In my view, reading section 25 as a whole the words ""income,

profits and gains"" appearing in sub-section (3) refer to the income, profits and gains made in connection with business under whatever head the

same may have to be shown.

104. There is another aspect of the matter to which I will now advert. Under the Act of 1918 as well as under the act of 1922, various heads of

income, profits land gains are mentioned. Section 5 of the Act of 1918 provided as follows :

Save as otherwise provided by this Act, the following classes of income shall be chargeable to Income Tax in the manner hereinafter appearing

namely,

(i) Salaries;

(ii) Interest on securities;

(iii) Income derived from house property;

(iv) Income derived from business;

(v) Professional earnings;

(vi) Income derived from other sources.

105. Section 6 of the Act of 1922 when first enacted provided as follows :

Save as otherwise provided by this Act, the following heads of income, profits and gains shall be chargeable to Income Tax in the manner

hereinafter appearing, namely :-

(i) Salaries.

(ii) Interest on securities.

(iii) Property.

(iv) Business.

(v) Professional earnings.

(vi) Other sources.

106. Section 6 of the Indian Income Tax Act, 1922, as it now stands provides as under :

Save as otherwise provided by this Act, the following heads of income, profits and gains, shall be chargeable to Income Tax in the manner

hereinafter appearing, namely :-

(i) Salaries.

(ii) Interest on securities.

(iii) Income from property.

(iv) Profits and gains of business, profession or vocation.

(v) Income from other sources.

(vi) Capital gains.

107. It is clear from the above that the nomenclature of some of the heads has changed from time to time and that the Legislature by legislation has

amalgamated two heads into one. A scrutiny of some of the sections of the Act as they existed from time to time will show that what was included

in some of the heads has changed. By an amendment made by section 9 of the Finance Act, 1955, with effect from April 1, 1955, the head

Income from other sources"" covered by section 12 is to include dividends. The result is that in the case of a business where shares of joint stock

companies constituted the stock-in-trade of the business, dividends received in respect of those shares, which were at one time liable to be shown

under the head ""Profits and gains of business, profession or vocation"" referred to in section 10 would now, after the amendment, have to be shown

under the head ""Income from other sources"" referred to in section 12. In this connection, I may refer to decision of a Division Bench of this court in

Commissioner of Income Tax v. Ahmuty & Co. Ltd. In that case, Chagla, C.J., and Tendolkar, J., held that in the case of an assessee company

which was a dealer in shares which constituted the stock-in-trade of the business of the company, the dividend income received by the company

was given before the amendment of 1955. In view of the amendment made in the year 1955, this dividend income would now have to be shown

under the head ""other sources"" covered by section 12. Section 8 of the Act of 1917 provided that under the head ""Income derived from house

property"" the bona fide annual value of any house property of which the assessee was the owner was required to be shown subject to certain

allowances.

108. When we come to the Act of 1922 as first enacted section 9(1) provided as follows :

9. (1) The tax shall be payable by an assessee under the head ''Property'' in respect of the bona fide annual value of property consisting of any

buildings or lands appurtenant thereto of which he is the owner, other that such portions of such property as he may occupy for the purpose of his

business....

109. The present section 9 provides as follows :

9. (1) The tax shall be payable by an assessee under the head ''Income from property'' in respect of the bona fide annual value of property

consisting of any buildings or lands appurtenant thereto of which he is the owner, other than such portions of such property as he may occupy for

the purposes of any business, profession or vocation carried on by him the profits of which are assessable to tax...

110. These different provisions in connection with property also indicate that what was liable to be included under a head has varied. Some of the

heads do not include all that would ordinarily be covered by the words used in describing the head. For instance, under the head ""Salaries

referred to in the present section 7 of the Act of 1922 the salary received by a servant of a foreign Government is not liable to be shown under this

head. Similarly as regards the head ""Interest on securities, "" the interest on securities issued by a foreign Government is not liable to be shown

under that head. In my view, when the Legislature enacted section 25 and legislated in connection with the discontinuance of a business and

provided for certain reliefs in connection with the income, profits and gains of such business, the Legislature was not contemplating any one

particular head of income, profits and gains with its varying nomenclature and varying content. In this connection it would be pertinent to note that

where the Legislature intended to refer to a particular head of income, it has been careful enough to refer to the same by describing it as the ""head,

by using the specific words by which the head is known with the first letter thereof in capital land by putting those words into inverted commas so

that no confusion may arise as regards the intention of the Legislature.

111. I will refer in this connection to the provisions contained in the Act of 1922 as first enacted. Section 18 as first enacted provided as follows :

18. (1) Income Tax shall, unless otherwise prescribed in the case of any security of the Government of India, be liable in advance by deduction at

the time of payment in respect of income chargeable under the following heads :

(i) "Salaries" and

(ii) "Interest on securities."

(2) Any person responsible for paying any income chargeable under the head "Salaries" shall, at the time of payment, deduct Income Tax on the

amount payable at the rate applicable to the estimated income of the assessee under this head...

112. Section 21(a) provided as follows :

the name and, so far as it is known, the address of every person who was receiving on the said 31st day of March, or has received during the

year ending on that date, from the authority, company, body, association or private employer, as the case may be, any income chargeable under

the head "salaries" of such amount as may be prescribed;..

113. Sub-section (5) of section 46 provided as follows :

46. (5) If any assessee is in receipt of any income chargeable under the head "Salaries", the Income Tax Officer may require any person paying

the same etc.

114. A reference may also be made in this connection to section 7 to 12 of the Act of 1922. Numerous such instances can be cited from the Act

as it now stands. If we examine the provisions contained in section 25(3) we have the words ""business"" by itself did not describe any head. The

head u/s 9 of the Act of 11918 was ""Income derived from business"". The words ""profession or vocation"" appearing in sub-section (3) did not

constitute the language of the head u/s 10 of the Act of 1918. The head u/s 10 of the Act of 1918 was ""Professional earnings"", though it included

profits of any vocation. when we come to the Act of 1922 as first enacted the word ""Business"" represented the exact nomenclature of the head

covered by section 10. As regards the words ""profession or vocation"" they did not represent any head under the Act of 1923 as first enacted. The

head u/s II as originally enacted was ""professional earnings."" As a result of the legislative amendments the head ""Professional earnings."" As a result

of the legislative amendments the head ""Professional earnings"" has now been completely abolished. By the amending Act VII of 1939 the head u/s

10 has been altered to ""Profits and gains of business, profession or vocation"". There is a temptation to equate the words ""business, profession of

vocation"" with the head ""Profits and gains of business, profession or vocation"" now appearing in section 10 of the Indian Income Tax Act, 1922,

after the amendment made in 1939, because the words ""business, profession or vocation"" appear in juxtaposition. But when these words were

used in the Act of 1922 at the time when that sections as first enacted, there was no such head like ""profits and gains of business, profession or

vocation."" In my view, when the Legislature used the words ""business, profession or vocation"" in section 25(3) and referred to the income. Profits

and gains thereof, it was not referring to any particular head of income. If the Legislate intended in section 25(3) to refer to any particular head or

heads, it would have done so and used apt language for the purpose as it has done in various other provisions of the Act.

115. In order to visualise the effect of what Mr. Joshi contends for, I will take up the case of company whose sole business was to deal in

securities which constituted its stock-in-trade. If whilst the Act of 1918 was in operation that company''s assessable income for any year was

computed at Rs. 15 lakhs and tax had been paid thereon and if the said sum of Rs. 15 lakhs had been computed by showing Rs. 24 lakhs under

the head ""interest on securities"" and by showing Rs. 9 lakhs as loss under the head ""Income derived from business,"" would it be possible to say that

in respect of the business of the company no tax has been charged under the Act of 1918 within the meaning of section 25(3) of the Act of 1922 ?

It would be an unrealistic and far-fetched construction to say that the company carried on bossiness on which no tax was charged. In may view it

could not have been the intention of the Legislature not to give relief to such an assessee merely because its profits have been entered under a head

other than that covered by section 9 of the Act of 1918. To take another illustration : If the business of an assessee company consisted of sale and

purchase of shares of joint stock companies which constituted its stock-in-trade, under the present section 12 the income from the dividends

would have to be shown under the head ""Income from other source"". That income prior to the amendment was liable to be shown under the head

Profits and gains of business, profession or vocation"" referred to in section 10. If the assessee had paid tax in connection with such business under

the Act of 1918 and discontinues the said business, could it be said that the assessee is not entitled to relief u/s 25(3) in respect of income from

dividends merely because it is now required to be shown u/s 12 instead of u/s 10 ? In my view, the Legislature when it referred to income, profits

and gains in section 25 (3) in connection with business which has been discontinued, did not refer to any particular head of income with its varying

content.

116. I shall now deal with the two cases referred to by Mr. Joshi one Gopi Mohan and Sons v. Commissioner of Income Tax and the other

Ambala Himatlal v. Commissioner of Income Tax. The first is a judgment of a Division bench of the Allahabad High Court and the second is a

judgment of a Division Bench of this Court. In none of these cases the points which have been canvassed before Judges who delivered those

judgments. The facts in the case Gopi Mohan and Sons v. Commissioner of Income Tax were that a Hindu undivided family which had been

assessed in respect of its income from property became divided in the previous year relevant to the assessment year 1941-42. That partition was

recognised by the Income Tax Officer. An application was made by one of the separated members of the family claiming relief u/s 25(3). From the

facts it is clear that there was no business, profession or vocation that had at any time been carried on by the Hindu undivided family. It is stated in

the course of the judgment that it was not disputed that the Hindu undivided family was assessed under the Indian Income Tax Act, 1918, but the

assessment was made only in respect of income form property. On the facts of that case section 25(3) could not possibly apply. In that case an

argument was advanced that a landlord who lives merely on rental income should be deemed to be exercising a vocation. In dealing with that

argument the learned Judges observed that the method of computation of income from property had been laid down in section 9, while that for the

computation of income from business, profession or vocation had been described in section 10. They further observed as follows at page 223 :

From this it is clear that the expression ''business, profession or vocation'' used in section 25(3) relates to that head of income, which has been

east with in section 10, and is quite distinct from the head of ''income from property'' which has been mentioned in section 9.

117. To the extent that the judgment contains observations which are contrary to the view I have taken, with respect, I do not agree with the same.

118. The facts in respect of the case Ambalal Himatlal v. Commissioner of Income Tax were the following : the assessee, a Hindu undivided

family, carried on three separate business, viz., (1) money-lending, (2) running a ginning factory and (3) a share business. That family was disrupted

in 1943 and the businesses were divided among its members. It was found that only in respect of the money-lending business the Hindu undivided

family had paid tax under the act of 1918. The assessee claimed the benefit of section 25(4) in respect of all the businesses carried on by it up to

the date of partition. The learned Judges held that the benefit accured only in respect of the business in connection were with tax had been paid,

viz., the money-lending business. In the course of his judgment Chagla, C.J., observes as follows :

Therefore, the whole emphasis in sub-section (4) is not upon the assessee so much as upon the particular business. Profession or vocation which

was carried on and which was subjected to tax under the Act of 1918. One might almost say that the relief contemplated to be given was not the

assessee so much as to the particular business...

119. There are observations in that case which go to show that the learned Judges considered that the Legislature in section 25(4) contemplated

profits and gains of business, profession or vocation contemplated by section 10. Mr. Joshi very strongly relied upon the words in that judgment

which appear at page 285 where Chagla, C.J., observes :

''What the Legislature intended by using the expression "income, profits and gains" was the profits and gains of the business or profession

contemplated by section 10 and not the total income of the assessee because when we come to the proviso to section 25, sub-section (3) and (4),

it provides as follows :....

120. Mr. Joshi further railed upon the following passage from that judgment :

Therefore, here we have the expression "income, profits and gains" used in juxtaposition with "business, profession or vocation" and there can be

no doubt as far as this provision is concerned that what the Legislature was providing for was the profits and gains of the business, profession or

vocation contemplated by section 10.

121. At the time when the aforesaid decision was given, the provision relating to the inclusion of income form dividends under the head ""income

from other sources"" in section 12 had not been enacted. Ordinarily speaking, in connection with a large majority of business, the profits and gains

of such businesses would be liable to be included under the head ""profits and gains of business, profession or vocation"" covered by section 10. It is

only in those cases where securities constitute the stock-in-trade of a business that the question arises of including the interest on securities which

forms part of the profits of such business under the head ""Interest on securities"" referred to in section 8, and it is only in cases where the business

consists of purchases and sale of houses that the question would arise of including the income from such houses which forms part of the profits of

such business under the head ""Income from property"" referred to in section 9 of the Act. The learned Judges without any argument might well have

though that all profits and gains of business were liable to be shown u/s 10. In the absence of any argument as to the heads under which profits and

gains of a business may have to be shown, this judgment cannot be regarded as an authority for the proposition for which Mr. Joshi is contending. I

cannot regard that judgment as a considered expression of an opinion on the matter with which I have to deal and I cannot regard it as having any

binding authority on me, on the point which I have decide.

122. In the course of the arguments advanced before me, there was a controversy between counsel as regards the section or sections which

constituted the charging section or sections under the Act of 1917 and under the Act of 1922 as first enacted. There is no necessity for me to give

any decision on that question in the present references. Mr. Joshi had argued that in section 25(3) the use of the cords ""on which tax was at any

time charged"" when read along with the provisions contained in the Indian Income Tax Act, 1918, indicated that what the Legislature was referring

to was the class of income specified in section 9 of the Indian Income Tax Act of 1918. He urged that section 5 of the Act of 1918 provided for

various classes of income therein set out which were chargeable to Income Tax and that the words ""tax....charged under the provisions of the

Indian Income Tax Act, 1918"" referred to the class of income that was chargeable to Income Tax under the provisions contained in the aforesaid

section 5. Mr. Joshi therefrom sought to deduce that the tax charged that is referred to in section 25(3) is the one charged in respect of the classes

of income falling only under the heads ""Income derived from business"" and ""Professional earnings."" There is no reason why the tax charged should

not refer to other classes of income referred to in the aforesaid section 5, if such income was derived form the activity business.

123. In the result, I answer the question as reaffirmed in the affirmative. Out of the three judges including myself, who have dealt with this

reference, Mr. Justice S. T. Desai and myself have answered the question in the affirmative whilst Mr. Justice Tendolkar has answered the question

in the negative. The decision of the court, having regard to the provision of section 66A of the Indian Income Tax Act, 1922, is that the question is

answered in the affirmative.

124. The applicant to pay the costs. Costs to include the costs of the hearing before Mr. Justice Tendolkar and Mr. Justice S. T. Desai.

125. Reference answered in the affirmative.