of an enlarged meaning the same concept might attract with the march of time and with the revolutionary changes brought about in social, economic, political and scientific and other fields of human activity. Indeed, unless a contrary intention appears, an interpretation should be given to the words used to take in new facts and situations, if the words are capable of comprehending them. We cannot, therefore, agree with the learned Judges of the High Court that the maxim *contemporanea expositio* could be invoked in construing the word "telegraph line" in the Act.

For the said reasons, we hold that the expression "telegraph line" is sufficiently comprehensive to take in the wires used for the purpose of the apparatus of the Post and Telegraph Wireless Station.

In the result, we set aside the order of the High Court and dismiss the petition filed by the first respondent. The appeal is allowed, but, in the circumstances of the case, without costs.

Appeal allowed.

THE DOOARS TEA CO., LTD.

v.

COMMISSIONER OF AGRICULTURAL INCOME-TAX, WEST BENGAL

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August 18.

(P. B. GAJENDRAGADKAR, K. SUBBA RAO and M. HIDAYATULLAH, JJ.)

Agricultural Income—Agricultural produce used for assessee's own business and not sold in the market—If by itself constitutes income—Market value—Mode of computation—Bengal Agricultural Income-tax Act, 1944 (IV of 1944), s. 2(1)(b)(I), Rule 4(2).

The appellant which carried on business of growing, manufacturing and selling tea held a large tract of land on which bamboos, thatching grass and fuel timber were grown

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by it by agricultural operations through its servants and labourers and the same were utilised for the purposes of its tea business and were not sold in the market or otherwise. In the relevant assessment year the Agricultural Income-tax Officer increased the appellant's return by a certain sum of money as representing the market value of its agricultural income from bamboos, thatching grass and fuel timber. The appellant contended *inter alia* that the agricultural produce in question did not constitute agricultural income under the Bengal Agricultural Income-tax Act because the same had not been sold or converted into money.

Held, that under cl.(I) of s.2(1)(b) of the Bengal Agricultural Income-tax Act the agricultural produce utilised by the assessee for its own business itself constituted income; no sale was contemplated thereunder and it was not required that the agricultural produce should be sold and profit or gain received from such sale.

Alexander Tennant v. *Robert Suiclair Smith*, (1892) A.C. 150, *In re MiCklethwait*, 11 Ex. 456 and *Sir Kikabhai Premchand* v. *Commissioner of Income-tax (Central) Bombay*, (1954) S.C.R. 219, referred to.

Commissioner of Income-tax v. *Shaw Wallace & Co.*, (1932) L.R. 59 I.A. 206, *Captain Maharaj Kumar Gopal Saran Singh* v. *Commissioner of Income-tax, Bihar and Orissa*, (1935) L.R. 62 I.A. 207, not applicable.

Rule 4(2) framed under the Act deals with cases where agricultural produce has been sold outside the market as well as cases where it has not been sold at all and the income from such agricultural produce may be computed in the manner prescribed thereunder.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 381 of 1960.

Appeal from the judgment and order dated September 11, 1957, of the Calcutta High Court in Reference No. 102/1952.

S. Mitra, S. N. Mukherjee and *B. N. Ghosh*, for Appellant.

R. B. Pal, Asoke Sen and *P. K. Bose*, for respondent.

1961. August 18. The Judgment of the Court was delivered by

Gajendragadkar J.

GAJENDRAGADKAR, J.—This appeal by a certificate arises out of a reference made to the High Court

at Calcutta under s. 63(1) of the Bengal Agricultural Income-tax Act IV of 1944 (hereafter called the Act). The appellant, the Dooars Tea Co., Ltd., is a public limited company and it carries on business of growing, manufacturing and selling tea. For the accounting year 1948 which corresponds to the assessment year 1949-50 a return was submitted by the appellant in respect of its agricultural income showing the said income at Rs. 3,45,702. The Agricultural Income-tax Officer, however, did not accept the correctness of the said return and increased the amount to Rs. 4,41,940. This increased amount included a sum of Rs. 39,849 and it represented the market value of the appellant's agricultural income from bamboos, thatching grass and fuel timber. It is this amount thus added by the Agricultural Income-tax Officer to the agricultural income of the appellant in the relevant year that has given rise to the present reference.

The facts leading to the reference are not in dispute. The appellant holds a large tract of land under lease from the local Government and it is common-ground that in a part of the said land it grows bamboos, thatching grass and fuel timber. During the relevant year it cut down some bamboos, some thatching grass and fuel timber and used the same for the purpose of its business. The bamboos, the thatching grass and fuel timber were grown by the appellant on its land by agricultural operations which were carried on by the servants and labourers employed by the appellant. After they were grown they were utilised by the appellant for the purpose of its tea business and were not sold either in the market or otherwise. It has been found that the appellant has been utilising the bamboos, thatching grass and fuel timber grown by it on its land in this way every year.

Before the tax authorities the appellant urged that the agricultural produce in question did not

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constitute agricultural income within the meaning of the Act because the same had not been sold. The appellant's case was that agricultural produce grown by it on its own land could not in law be treated as its income unless it was converted into its money equivalent or into something which was money's worth ; in other words, unless the said produce was sold. The department, on the other hand, has taken the view that the several varieties of agricultural produce grown by the appellant on its land and utilised by it for its business were themselves agricultural income and the tax on the said income cannot be avoided on the plea that the said varieties had not been sold. This dispute went up to the Tribunal ; but the Tribunal agreed with the conclusion of the tax authorities and held that the produce in question constituted agricultural income of the appellant for the relevant year, and so the addition of Rs. 39,849 made by the Agricultural Income-tax Officer in determining the total agricultural income of the appellant for the relevant year was affirmed.

It was also urged by the appellant in the assessment proceedings that even if the produce in question constituted the appellant's agricultural income its market value could not be computed in money because no rule had been framed for the computation of the market value of such income. The appellant urged that r. 4 of the Rules framed under the Act was inapplicable to the present case. This contention has also been rejected by the tax authorities as well as by the Tribunal. In the result the agricultural income found to have been earned by the appellant for the relevant year has been duly taxed.

Feeling aggrieved by the final order passed by the Tribunal in this matter the appellant required the Tribunal to refer two questions for the opinion of the High Court, and in due course the Tribunal made the reference as required. The two

questions referred for the opinion of the High Court have been thus framed by the Tribunal :

(1) Is bamboo, thatch, fuel, etc., grown by assessee company and utilised for its own benefits in its tea business, agricultural income within the meaning of the Bengal Agricultural Income-tax Act? ; and

(2) If the answer to question (1) be in the affirmative, can such income be computed under rule 4 of the rules framed under the Act?

The High Court has answered both these questions in the affirmative against the appellant. The appellant then applied for and obtained a certificate from the High Court under s.64(2) of the Act read with Art. 135 of the Constitution. The High Court has certified that the case is a fit case for appeal to this Court because it was conceded by both the parties before the High Court that this case had been chosen by the assessee and the department as a test case since all the tea companies are interested in the questions raised in the present reference. It is with this certificate that the appellant has come to this Court with its present appeal.

The answer to the first question would depend upon the construction of the definition of agricultural income contained in s. 2(1)(b) of the Act. The charging section is s.3. It provides that subject to its two provisos agricultural income-tax shall be charged for each financial year in accordance with and subject to the provisions of the Act at the rate or rates specified in the Schedule in respect of the total agricultural income of the previous year of every individual, Hindu undivided family, company, firm or other association of individuals and every Ruler of a Part B State. Section 7 provides for the computation of tax and allowances under the head "agricultural income from agriculture". Do the relevant and material words used

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in the definition of agricultural income by s. 2 reach the subject of taxation in the present case? That is the short question which falls for our decision.

Section 2(1)(a) deals with the agricultural income consisting of rent or revenue derived from land which is used for agricultural purposes and is either assessed to land revenue in a State or subject to local rate assessed or collected by officers of the Government as such. We are not concerned with this part of the definition. Section 2(1)(b) reads thus :

> "any income derived from such land by—
>
> (i) agriculture, or
>
> (ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market, or
>
> (iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in item (ii)."

The respondent, the Commissioner of Agricultural Income-tax, West Bengal, contends that the agricultural produce in the present case falls directly under s. 2(1)(b)(i). It is income derived from agricultural land by agriculture. It is not disputed by the appellant that in the context income may mean either cash or income in kind. It is also conceded by the appellant that the dictionary meaning of the word "income" includes "produce of a farm", and so if we were to construe the relevant clause in the light of the dictionary meaning of the word "income" it would take in agricultural produce with which we are concerned

in the present case. It is, however, urged that the word "income" necessarily denotes, and has reference to, profit or gain, and profit or gain cannot be made unless the produce is sold and realises its value. No person can trade with himself and so if the agricultural produce is used by the appellant for its own purposes there is no element of sale involved in the transaction and there can be no profit or gain which would justify the imposition of tax on the said produce.

In support of this argument it has been urged before us that the definition of agricultural income prescribed by s. 2 of the Act is common to all the State enactments in respect of agricultural income and is the same as the definition of agricultural income prescribed by s. 2(1) of the Income-tax Act. The same definition has been adopted by the Constitution under Art. 366(1). That being so, it is contended that in interpreting the word "income" it would be relevant to rely on the decisions under the Income-tax Act. In *Alexander Tennant* v. *Robert Sinclair Smith* (1) Lord Halsbury has cited with approval Lord Wensleydale's observation in *In re Micklethwait* (2) that "it is a well-established rule, that the subject is not to be taxed without clear words for that purpose ; and also that every Act of Parliament must be read according to the natural construction of its words". In that case it was held that the benefit which the appellant assessee derived from having rent-free house provided for him by the Bank brought in nothing which can be reckoned up as receipt or properly be described as income. Mr. Mitra, for the appellant, contends that income obviously and necessarily denotes the coming in of profit or gain, and what is true about the house which the assessee Alexander Tennant was allowed to use is equally true about the agricultural land owned by the appellant. The appellant has received

(1) [1892] A.C. 150, 154. (2) 11 Ex. 456.

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no profit or gain from the agricultural produce derived from its land, and so the said produce cannot be said to constitute its income under s. 2(1)(b)(i).

The same argument is put in another form on the authority of the decision of this Court in *Sir Kikabhai Premchand* v. *Commissioner of Income-tax (Central), Bombay* (1). In that case Bose J., who spoke for the majority of the Court, stated that it was well recognised that in revenue cases regard must be had to the substance of the transaction rather than its mere form, and he proceeded to observe that in the case before the Court, disregarding technicalities, it was impossible to get away from the fact that the business was owned and run by the assessee himself; and if he was to be held liable for the tax "you reach the position that a man is supposed to be selling to himself and thereby making a profit out of himself which on the face of it is not only absurd but against all canons of mercantile and income-tax law". Mr. Mitra suggests that in taxing the agricultural produce utilised by the appellant for its own purpose the respondent is really taxing the appellant on the basis that it has traded with itself and made profits on the agricultural produce in question.

This argument is based on the assumption that income as defined by s. 2(1)(b)(i) must always be in the nature of profit or gain, and that inevitably postulates a sale transaction made at a profit or gain. Mr. Mitra seeks to derive assistance for this argument from the provisions of ss. 4 and 6 of the Income-tax Act where income, profits and gains are grouped together. What is true about the denotation of the word "income" under the Income-tax Act, says Mr. Mitra, must be equally true about the denotation of the word "income" under s. 2(1)(b)(i) of the Act.

(1) [1954] S.C.R. 219.

In dealing with this argument it is necessary to bear in mind that the word "income" even as it is used in the Income-tax Act has often been characterised by judicial decisions as formidably wide and vague in its scope. It is a word of elastic import and its extent and sweep are not controlled or limited by the use of the words "profits and gains" in ss. 4 and 6. As has been observed by Sir George Lowndes in *Commissioner of Income-tax* v. *Shaw Wallace & Co.*, (1) the object of Indian Income-tax is to tax income a term which it does not define. It is expanded, no doubt, into income, profits and gains, but the expansion is more a matter of words than of substance. Similar is the observation of Lord Russell in *Captain Maharaj Kumar Gopal Saran Narain Singh* v. *Commissioner of Income-tax, Bihar and Orissa* (2) where it has been observed that "the word "income" is not limited by the words "profits" and "gains". Anything which can be properly described as income is taxable under the Act unless expressly exempted". The diverse forms which income may assume cannot exhaustively be enumerated, and so in each case the decision of the question as to whether any particular receipt is income or not must depend upon the nature of the receipt and the true scope and effect of the relevant taxing provision. The receipt may be an income for the purpose of taxation though it may not amount to profit. The case of *Gopal Saran Narain Singh* (2) itself is an illustration in point. In that case the assessee aged 47 had transferred an estate worth two crores of rupees for a relatively small annuity of Rs. 2,40,000 for life. The said annuity could not constitute or provide a profit or gain to the assessee but all the same it was taxable as income. Thus the argument based on the emphasis on the use of the words "profits and gains" in ss.4 and 6 of the Income-tax Act cannot really assist the appellant

(1) (1932) L. R. 59 I.A. 206, 212. (2) (1935) L.R. 62 I.A. 207.

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in construing s. 2(1)(b)(i) of the Act with which we are concerned. What the word "income" denotes has to be determined in the context of the said section itself.

Going back to s.2(1)(b) it refers to income derived from land which means arising from land and denotes income the immediate and effective source of which is land. Section 2(1)(b) consists of three clauses. Let us first construe cls. (ii) and (iii). Clause (ii) includes cases of income derived from the performance of any process therein specified. The process must be one which is usually employed by the cultivator or receiver of rent-in-kind ; it may be simple manual process or it may involve the use and assistance of machinery. That is the first requirement of this proviso. The second requirement is that the said process must have been employed with the object of making the produce marketable. It is, however, clear that the employment of the process contemplated by the second clause must not alter the character of the produce. The produce must retain its original character and the only change that may have been brought about in the produce is to make it marketable. The said change in the condition of the produce is only intended to make the produce a saleable commodity in the market. Thus cl. (ii) includes within the categories of income, income derived from the employment of the process falling under that clause. As we have just observed the object of employing the requisite process is to make the produce marketable but in terms the clause does not refer to sale and does not require that the income should be obtained from sale as such though in a sense it contemplates the sale of the produce.

That takes us to cl. (iii). This clause in terms and expressly refers to the income derived from sale. It refers to the sale price realised either by the cultivator or the receiver of rent-in-kind by the sale of the produce in respect

of which the process as contemplated by cl. (ii) has been performed. It is significant that the sale to which cl. (iii) refers must be the sale of produce which has not been subject to any process other than that contemplated by cl. (ii). Thus it may be stated that reading cls. (ii) and (iii) together they contemplate the sale of the produce—cl.(ii) indirectly inasmuch as it refers to the process employed for making the produce marketable and cl. (iii) directly inasmuch as it refers to the price realised by sale of produce which has been subjected to the process contemplated by cl. (ii). Therefore, it is clear that income derived from sale of agricultural produce has been provided for by cls. (ii) and (iii) and *prima facie* that would show that cl. (i) which does not refer to sale even indirectly cannot be intended to cover cases of income derived from the sale of agricultural produce.

Considered in the light of cls. (ii) and (iii) of s.2(1)(b) what is the true scope and effect of the income contemplated by cl. (i)? In terms the clause takes in income derived from agricultural land by agriculture; and as we have already pointed out giving the material words their plan grammatical meaning there is no doubt that agricultural produce constitutes income under this clause. Is there anything in the context which requires the introduction of the concept of sale in interpreting this clause as suggested by the appellant? In our opinion this question must be answered in the negative. Not only is there no indication in the context which would justify the importing of the concept of sale in the relevant clause, but as we have just indicated the indication provided by cls. (ii) and (iii) is all to the contrary. What this clause seems clearly to have in view is agricultural produce itself which has been used by the assessee. In the present case it is common-ground that the appellant has utilised for its business the agricultural produce in question and we feel no difficulty in agreeing with the High Court when it held that

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the agricultural produce utilised by the appellant for its business constitutes income under s. 2(1)(b)(i). If the agricultural produce used by the appellant was not intended to be included within the definition of income under s. 2(1)(b) we apprehend that the whole clause would have been very differently worded. Where income derived from sale was intended to be prescribed the Legislature has done so in terms by cl. (iii) of s. 2(1)(b). Where the marketable condition of the produce resulting from the employment of the specified processes and income derived from the adoption of such processes was intended to be included in the income the Legislature has done so by cl. (ii); and so those two cases having been specifically provided for by the two respective clauses there would be no justification for introducing the concept of sale in construing cl. (i) of s. 2(1)(b). The words in s. 2(1)(b)(i) are, in our opinion, wide, plain and unambiguous and they cannot be construed to exclude agricultural produce used by the appellant for its business. In this connection we may incidentally refer to the provisions of sub-cls. (i), (ii) and (iii) of s.7(1) of the Act which provide for the computation of tax and allowances under the head "agricultural income from agriculture". These three sub-clauses in terms correspond to the three sub-clauses of s. 2(1)(b) and lend some support to the conclusion that cl. (i) in s.2(1)(b) does not require that the agricultural produce should be sold and profit or gain received from such sale before it is included in the said clause. Therefore, we do not think that Mr. Mitra is justified in contending that the answer made by the High Court in reference to question 1 is wrong.

The second question relates to the computation of agricultural income for the purposes of the Act. Rule 4 with the construction of which the second question is concerned reads thus :

"4. For the purposes of the Act the market value of any agricultural produce shall, except in the case referred to in clause (a) of the proviso to sub-section (1) of section 8, be determined in the following manner, namely :—

(1) if the agricultural produce was sold in the market, the market value shall be deemed to be the price for which such produce was sold ;

(2) if the agricultural produce has not been sold in the market, the market value shall be deemed to be—

(a) where such produce is ordinarily sold in the market in its raw state, or after the performance of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render it fit to be taken to market, the value calculated according to the average price at which such produce has been so sold in the locality during the previous year in respect of which the assessment is made ;

(b) where such produce is not ordinarily sold in the market in the manner referred to in sub-clause (a), the aggregate of—

(i) the expenses of cultivation ;

(ii) the land revenue or rent, paid for the area in which it was grown ; and

(iii) such amount as the Agricultural Income-tax Officer finds, having regard to all the circumstances in each case, to represent a reasonable rate of profit on the sale of produce in question as agricultural produce."

It is clear that r. 4(1) cannot apply to the appellant's case for the agricultural produce in question has not been sold in the market but has been used by the appellant for its own business. The appellant contends that r. 4(2) cannot also be invoked against it, and so there is no rule under

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which the agricultural income in question can be computed. Incidentally the appellant suggested that if its construction of r. 4(2) is right it indirectly supports its case as to the true scope and effect of s. 2(1)(b)(i). The Legislature knew that agricultural produce is not taxable unless it is sold, and so it has not made any rule for the computation of agricultural income alleged to have been received by the assessee from agricultural produce used by the assessee for its own purpose. On the other hand, the respondent contends that r. 4(2) covers the present case, and if that is so, according to the respondent, that would incidentally support his construction of s. 2(1)(b)(i).

The argument urged by the appellant assumes that the two rules are based on a kind of basic dichotomy. Rule 1 deals with agricultural produce sold in the market, and r. 2 with the agricultural produce which has been sold but not in the market. In other words, according to the appellant, both the rules assume that the agricultural produce has in fact been sold, r. (1) deals with cases where it has been sold in the market and r. (2) with cases where it has been sold but not in the market. If this argument is right then of course cases where agricultural produce has not been sold would remain outside the purview of both the rules ; but is this argument right ? We have no hesitation in holding that it is not. In our opinion, r. (2) deals with cases where agricultural produce has been sold outside the market as well as cases where agricultural produce has not been sold at all. The effect of reading the two sub-rules together is that the cases of market sales are covered by r. (1) and all other cases are covered by r. (2). Rule (2) is a residuary rule which applies to all cases not falling under r. (1). Therefore, we must hold that the answer given by the High Court to question 2 is also right. It is obvious that the rules framed in exercise of the power conferred by s. 57 of the

Act cannot legitimately be pressed into service for the purpose of construing the relevant provisions of the Act ; even so, incidentally it may be permissible to observe that the construction of r. 4(2) which we are inclined to adopt is consistent with the respondent's case that s.2 (1)(b)(i) includes agricultural produce utilised by the appellant for its own business.

In the result the appeal fails and is dismissed with costs.

Appeal dismissed.

SHRI AMBALAL M. SHAH AND ANOTHER

v.

HATHISINGH MANUFACTURING CO., LTD.

(K. N. WANCHOO, K. C. DAS GUPTA, J.C. SHAH and RAGHUBAR DAYAL, JJ.)

Industrial Undertaking—Investigation into its affairs by Central Government—Taking over of management by officer appointed by Government on the basis of report—Legality—Industries (Development and Regulation) Act. 1951 (65 of 1951), ss. 15, 18 A(1)(b).

Being of the opinion that there had been a substantial fall in the volume of production in respect of cotton textiles manufactured in the respondent company, an industrial undertaking, for which having regard to the economic conditions prevailing there was no justification, the Central Government made an order under s.15 of the Industries (Development and Regulation) Act, 1951, appointing a committee of three persons for the purpose of making a full and complete investigation into the circumstances of the case. After the committee madeits report, the Central Government being of the opinion thereupon that the company was being managed in a manner highly detrimental to public interest, made an order under s. 18 A of the Act authorising the first appellant to take over the management of the whole of the said undertaking. The respondents challenged the legality of the order on the ground, *inter alia*, that on the proper construction of s.18 A the Central Government had the right to make the order under that section on the ground