IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 905 of 2012
With
TAX APPEAL NO. 709 of 2012
With
TAX APPEAL NO. 710 of 2012
With
TAX APPEAL NO. 333 of 2013
With
TAX APPEAL NO. 832 of 2012
With
TAX APPEAL NO. 857 of 2012
With
TAX APPEAL NO. 894 of 2012
With
TAX APPEAL NO. 928 of 2012
With
TAX APPEAL NO. 12 of 2013
With
TAX APPEAL NO. 51 of 2013
With
TAX APPEAL NO. 58 of 2013
With
TAX APPEAL NO. 218 of 2013

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THE HIGH COURT OF GUJARAT
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FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE AKIL KURESHI

and
HONOURABLE MS JUSTICE SONIA GOKANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX IV....Appellant(s)

Versus

SIKANDARKHAN N TUNVAR....Opponent(s)

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Appearance:

MS PAURAMI SHETH with MR VARUN PATEL, MR PRANAV DESAI, MR KETAN PARIKH and MR MANAV MEHTA, ADVOCATES for the Appellant(s) No. 1

MR TUSHAR P HEMANI with MS VAIBHAVI K PARIKH, MR MK KAJI and MR BANDISH SOPARKAR, ADVOCATES for the Opponent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE AKIL KURESHI**
and
HONOURABLE MS JUSTICE SONIA GOKANI

Date : 02/05/2013

ORAL JUDGMENT
(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. This group of appeals filed by the Revenue involve identical question concerning the interpretation of Section 40(a)(ia) of the Income-Tax Act, 1961 (“the Act” for short). Noticing that the question is recurring and would give rise to number of appeals before us, we had issued notice for final disposal in these appeals, consequent to which learned

counsel for the assessees have appeared. For the purpose of this judgment, we may record facts from Tax Appeal No.905 of 2012.

2. Respondent assessee is engaged in the business of Transport Contractor and Commission Agent. He provides the service of transportation through trucks. For the Assessment Year 2007-08 he filed his return of income declaring total income of Rs.3,82,290/-. His return was taken in scrutiny. The Assessing Officer scrutinized the expenditure in the nature of payments made by the assessee to its sub-contractors. The Assessing Officer called upon him to explain the total payment of Rs.8.74 crores (rounded off) made by him to the sub-contractors without deducting tax at source. The Assessing Officer in his order of assessment dated 30.11.2009 disallowed the entire expenditure on the ground that the assessee had admittedly not deducted the tax at source though payments were made to transporters which exceeded to Rs. 20,000/- in a single trip and aggregated above Rs.50,000/- in the year. He observed that the assessee had obtained Form No.15-I from such contractors. However, such forms were not furnished along with necessary particulars in Form-15J to the Commissioner of Income-Tax before due date.

3. The assessee carried the matter in appeal. Commissioner

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(Appeals) by his order dated 15.9.2010 confirmed the view of the Assessing Officer. In addition to holding that the disallowance was justified under Section 40(a)(ia) of the Act, he further observed that the genuineness of the expenditure was also not proved by the assessee. He observed that despite opportunities amount-wise break-up of the payments made was not furnished. He observed that photocopies filed by the assessee show not just the same name but also same address of the individuals owning several trucks. Complete addresses were not given. In several cases, vague addresses were supplied.

4. The assessee carried the matter further in appeal before the Tribunal. The Tribunal allowed the assessee's appeal. Relying on the decision of Special Bench of the Tribunal (Visakhapatnam) in the case of ***M/s. Merilyn Shipping & Transports vs. ACIT***, the Tribunal deleted the entire disallowance. The Tribunal believed that the word "payable" used in Section 40(a)(ia) of the Act would make the provision applicable only in respect of expenditure payable on 31st March of a particular year and that such provision cannot be invoked to disallow the amounts which had already been paid during such year even though tax may not have been deducted at source.

5. In all these appeals the Tribunal has followed the decision of the Special Bench in the case of **M/s. Merilyn Shipping & Transports vs. ACIT** (supra) and deleted the disallowance on this limited ground. As in the present case, other grounds of controversy between the parties with respect to allowability or otherwise of such expenditure was not examined by the Tribunal. For the purpose of these appeals, therefore, we frame following substantial questions of law:-

> "1. Whether disallowance under Section 40(a)(ia) of the Income Tax Act, 1961 could be made only in respect of such amounts which are payable as on 31st March of the year under consideration?
>
> 2. Whether decision of Special Bench of the Tribunal in the case of ***M/s. Merilyn Shipping & Transports vs. ACIT*** (supra) lays down correct law?"

6. Counsel for the Revenue contended that the Tribunal has committed serious error in holding that provision of Section 40(a)(ia) of the Act would apply only when the amount has remained payable till the end of the accounting year. They pointed out that the word "payable" has not been defined under the Act and the same would, in the context of the provision under consideration, include the expression "paid". Any other interpretation would lead to absurd results. They contended that the interpretation which advances the true meaning of the provision should be adopted and not one which

frustrates the provision.

7. In this respect reliance was placed on the following decisions:-

(1) In the case of ***K.P.Varghese vs. Income-Tax Officer, Ernakulam, and another*** reported in **[1981]131 ITR 597**, in which it was observed that "It is a well recognized rule of construction that the statutory provision must be so construed, if possible, that absurdity and mischief may be avoided."

(2) In the case of ***Commissioner of Income-Tax, Bangalore vs. J.H. Golta*** reported in **[1985]156 ITR 323**, in which it was observed that "Where the plain literal interpretation of a statutory provision produces a manifestly unjust result, which could never have been intended by the legislature, the Court might modify the language used by the legislature so as to achieve the intention of the legislature and produce rational construction."

(3) In the case of ***C.W.S.(India) Ltd. vs. Commissioner of Income-Tax*** reported in **[1994]208 ITR 649**, in which it was observed that "While we agree that literal construction may be the general rule in construing taxing enactments, it does not mean that it should be adopted even if it leads to a discriminatory or incongruous result. Interpretation of statutes cannot be a mechanical exercise."

8. Counsel also contended that interpretation made by the Tribunal leads to results wholly unintended by the legislature. If disallowance under Section 40(a)(ia) is applied only in case of amounts payable as on 31st March of the year under consideration, in large number of cases where the assessees might have actually paid the amounts but might not have either deducted tax at source though required under the Act or even after deduction not deposited with the Government, would escape the consequences envisaged under the said provision. It was further contended that Section 40(a)(ia) of the Act in its plain language does not permit such interpretation adopted by the Tribunal in the case of ***M/s. Merilyn Shipping & Transports vs. ACIT***(supra). Even on the premise of literal construction, the view adopted by the Tribunal should be rejected.

9. On the other hand, counsel appearing for the assessees supported the view of the Tribunal. They contended that in taxing statute there is no room for intendment. The provisions must be construed strictly on the basis of plain language used by the legislature. According to them only meaning that can be ascribed to Section 40(a)(ia) of the Act is that the disallowance can be made in respect of amounts, which are payable but not yet paid till 31st March of the year under consideration and no

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other.

10. It was contended that the provision in question is ex-proprietary since it disallows entire expenditure for not deducting a small portion of tax at source. It is thus in a nature of penalty. It was contended that in any case, Section 40(a)(ia) creates deeming fiction where the sum though not an income of the assessee is taxed as such. It was, therefore, contended that such provision should be interpreted strictly and narrowly. Even if the intention of the legislature may not have been to limit such provision, if the plain language of the section permits no other meaning, this Court cannot and would not expand the meaning of the section to cover any legislative imperfections or errors.

11. It was strongly contended that terms “payable” and “paid” are not synonymous. Section 40(a)(ia), therefore, when uses the expression “payable”, such term must be given its ordinary meaning and the expression “paid”, cannot be read into it. Counsel further submitted that the Finance Bill No.2 of 2004 under which Section 40 of the Act was proposed to be amended to include clause (a)(ia) originally used different language. In place of the word “payable” expression used was “amount credited or paid”. In the amendment, which was ultimately brought about, the said expression was consciously

dropped. Thus, there was conscious omission on the part of the legislature. They, therefore, contended with all the more force that the term "payable" used in Section 40(a)(ia) of the Act would not include expression "paid". They pointed out that term "paid" has been defined under section 43(2) of the Act whereas the word "payable" has not been defined in the Act.

12. In support of the contentions they relied on the following decision:-

In the case of ***Mugat Dyeing and Printing Mills vs. Assistant Commissioner of Income-Tax*** reported in **[2007] 290 ITR 282 (Guj)**, in which the Division Bench of this Court in the context of Section 43B of the Act observed that the expression employed in the said section is "actually paid" and in view of the non-obstante clause contained in the said Section, it would not be permissible to refer to the expression "paid" as defined under section 43(2) of the Act. This decision, however, was rendered in the background of Section 43B of the Act, which used the expression "actually paid".

Reliance was placed in the case of ***Commissioner of Income-Tax vs. Upnishad Investment P. Ltd and others*** reported in **[2003] 260 ITR 532**, wherein the Division Bench of this Court had an occasion to interpret expressions "receivable" and "due". It was observed that expressions

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"receivable" is used with reference to the recipient and the word "payable" is used with reference to the payer.

13. Our attention was drawn to the decision of the Supreme Court in the case of ***Commissioner of Income-Tax, Gujarat vs. Ashokbhai Chimanbhai*** reported in **[1965] 56 ITR 42**, wherein while explaining the concept of taxability of income, when it accrues, arises or is received, it was observed that the receipt is not the only test of chargeability to tax and if income accrues or arises, it may become liable to tax. In this context, it was observed that "Working of company from day to day would certainly not indicate any profit or loss, even working of the company from month to month could not be taken as a reliable guide for this purpose. If the profit or loss has to be ascertained by comparison of the assets at two stated points, the most businesslike way would be to do so at stated intervals of one year and that would be a reasonable period to be adopted for the purpose." On the basis of such observations it was canvassed that the payability of the sum as referred to in Section 40(a)(ia) of the Act must be judged as on 31st March of the particular year.

14. Counsel have also referred to various judgments in support of the contention that in the present case, strict interpretation is called for. It is not necessary to refer to such

decisions.

15. Chapter XVII-A of the Act pertains to collection and recovery of the tax. Part-A thereof is general. Part-B of Chapter XVII pertains to deduction at source. Several provisions have been made in the said Chapter fastening the liability on the payee to deduct tax at source and deposit with the Government. For example, sub-Section (1) of Section 194A of the Act provides that any person, not being an individual or an Hindu undivided family, who is responsible for paying to a resident any income by way of interest other than the income by way of interest on securities, shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode whichever is earlier, deduct income tax at the rates in force. Likewise Section 194C of the Act provides that any person responsible for paying any sum to any resident (referred to as a contractor) for carrying out any work including supply of labour in pursuance of a contract between the contractor and the specified person, shall at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct the amount specified in the said provision as income-tax on income

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comprised therein. Section 200 of the Act pertains to duty of person deducting tax. Sub-Section (1) thereof provides that any person deducting any sum in accordance with the foregoing provisions of the Chapter, shall pay within the prescribed time, the sum so deducted to the credit of the Central Government or as the Board directs. Section 201 provides for consequences of failure to deduct or pay tax at source. Sub-Section (1) thereof, in essence, provides that any person, who is required to deduct any sum in accordance with the provisions of the Act or referred to in sub-Section (1) of Section 192 being an employer but does not deduct or does not pay or after so deducting fails to pay whole or part of the tax as required under the Act, then such person shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of the said tax. Section 271C of the Act provides for penalty for failure to deduct tax at source.

16. In addition to such provisions already existing, the legislature introduced yet another provision for ensuring compliance with the requirement of deducing tax at source and depositing it with the Central Government. Section 40(a)(ia) relevant for our purpose reads as under:-

> "(ia) any interest, commission or brokerage, rent, royalty, fees for professional services or fees for technical services

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payable to a resident, or amounts payable to a contractor or sub-contractor, being resident, for carrying out any work (including supply of labour for carrying out any work), on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid on or before the due date specified in sub-section (1) of section 139:
Provided that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in sub-section(1) of section 139, such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid."

17. In plain terms Section 40(a)(ia) provides that in case of any interest, commission or brokerage, rent, royalty, fees for professional services or fees for technical services payable to a resident, or amounts payable to a contractor or sub-contractor for carrying out any work on which tax is deductible at source and such tax has not been deducted or after deduction has not been paid before the due date, such amounts shall not be deducted in computing the income chargeable under the head "Profits and Gains of Business or Profession" irrespective of the provisions contained in Sections 30 to 38 of the Act. Proviso to Section 40(a)(ia), however, enables the assessee to take such deduction in subsequent year, if tax is deducted in such year or though deducted during the previous year but paid after the due date specified in sub-Section(1) of Section 139 of the Act.

18. In such context, therefore, the question arises whether under Section 40(a)(ia) of the Act disallowance of the

expenditure payment of which, though required deduction of tax at source has not been made would be confined only to those cases where the amount remains payable till the end of the previous year or would include all amounts which became payable during the entire previous year.

19. Decision in the case of ***M/s. Merilyn Shipping & Transports vs. ACIT*** (supra) was rendered by the Special Bench by a split opinion. Learned Accountant Member who was in minority, placed heavy reliance on a decision of Madras High Court in the case of ***Tube Investments of India Ltd. and another vs. Assistant Commissioner of Income-Tax (TDS) and others*** reported in **[2010] 325 ITR 610 (Mad)**. Learned Judge did notice that the High Court in such case was concerned with the vires of the statutory provision but found some of the observations made by the Court in the process useful and applicable. Learned Judge rejected the theory of narrow interpretation of term “payable” and observed as under:

> “12.4 In our considered opinion, there is no ambiguity in the section and term ‘payable’ cannot be ascribed narrow interpretation as contended by assessee. Had the intentions of the legislature were to disallow only items outstanding as on 31st March, then the term ‘payable’ would have been qualified by the phrase as outstanding on 31st March. However, no such qualification is there in the section and, therefore, the same cannot be read into the section as contended by the assessee.”

20. On the other hand, learned Judicial Member speaking for majority adopted a stricter interpretation. Heavy reliance was placed on the Finance Bill of 2004, which included the draft of the amendment in Section 40 and the ultimate amendment which actually was passed by the Parliament. It was observed that from the comparison between the proposed and the enacted provision it can be seen that the legislature has replaced the words “amounts credited or paid” with the word “payable” in the enactment. On such basis, it was held that this is a case of conscious omission and when the language was clear the intention of the legislature had to be gathered from language used. In their opinion the provision would apply only to amounts which are payable at the end of the year. Having said so, curiously, it was observed that the proviso to Section 40(a)(ia) of the Act lays down that earlier year’s provision can be allowed in subsequent years only if TDS is deducted and deposited and, therefore, Revenue’s fear is unfounded as the provision of Section 40(a)(ia) of the Act covers the situation.

21. In the present case, we have no hesitation in accepting the contention that the provision must be construed strictly. This being a provision which creates an artificial charge on an amount which is otherwise not an income of the assessee,

cannot be liberally construed. Undoubtedly if the language of the section is plain, it must be given its true meaning irrespective of the consequences. We have noticed that the provision makes disallowance of an expenditure which has otherwise been incurred and is eligible for deduction, on the ground that though tax was required to be deducted at source it was not deducted or if deducted, had not been deposited before the due date. By any intendment or liberal construction of such provision, the liability cannot be fastened if the plain meaning of the section does not so permit.

22. For the purpose of the said section, we are also of the opinion that the terms “payable” and “paid” are not synonymous. Word “paid” has been defined in Section 43(2) of the Act to mean actually paid or incurred according to the method of accounting, upon the basis of which profits and gains are computed under the head “Profits and Gains of Business or Profession”. Such definition is applicable for the purpose of Sections 28 to 41 unless the context otherwise requires. In contrast, term “payable” has not been defined. The word “payable” has been described in Webster’s Third New International Unabridged Dictionary as requiring to be paid: capable of being paid: specifying payment to a particular payee at a specified time or occasion or any specified manner.

In the context of section 40(a)(ia), the word “payable” would not include “paid”. In other words, therefore, an amount which is already paid over ceases to be payable and conversely what is payable cannot be one that is already paid. When as rightly pointed out by Counsel Mr. Hemani, the Act uses terms “paid” and “payable” at different places in different context differently, for the purpose of Section 40(a)(ia) of the Act, term “payable” cannot be seen to be including the expression “paid”. The term “paid” and “payable” in the context of Section 40(a)(ia) are not used interchangably. In the case of ***Birla Cement Works and another vs. State of Rajasthan and another*** reported in **AIR 1994(SC) 2393**, the Apex Court observed that “the word payable is a descriptive word, which ordinarily means that which must be paid or is due or may be paid but its correct meaning can only be determined if the context in which it is used is kept in view. The word has been frequently understood to mean that which may, can or should be paid and is held equivalent to “due”.

23. Despite this narrow interpretation of section 40(a)(ia), the question still survives if the Tribunal in case of ***M/s. Merilyn Shipping & Transports vs. ACIT*** (supra) was accurate in its opinion. In this context, we would like to examine two aspects. Firstly, what would be the correct interpretation of the said

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provision. Secondly, whether our such understanding of the language used by the legislature should waver on the premise that as propounded by the Tribunal, this was a case of conscious omission on part of the Parliament. Both these aspects we would address one after another. If one looks closely to the provision, in question, adverse consequences of not being able to claim deduction on certain payments irrespective of the provisions contained in Sections 30 to 38 of the Act would flow if the following requirements are satisfied:-

(a) There is interest, commission or brokerage, rent, royalty, fees for professional services or fees for technical services payable to resident or amounts payable to a contractor or sub-contractor being resident for carrying out any work.

(b) These amounts are such on which tax is deductible at source under Chapter XVII-B.

(c) Such tax has not been deducted or after deduction has not been paid on or before due date specified in sub-Section (1) of Section 39.

For the purpose of current discussion reference to the proviso is not necessary.

24. What this Sub-Section, therefore, requires is that there should be an amount payable in the nature described above, which is such on which tax is deductible at source under

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Chapter XVII-B but such tax has not been deducted or if deducted not paid before the due date. This provision no-where requires that the amount which is payable must remain so payable throughout during the year. To reiterate the provision has certain strict and stringent requirements before the unpleasant consequences envisaged therein can be applied. We are prepared to and we are duty bound to interpret such requirements strictly. Such requirements, however, cannot be enlarged by any addition or subtraction of words not used by the legislature. The term used is interest, commission, brokerage etc. **is payable** to a resident or amounts payable to a contractor or sub-contractor for carrying out any work. The language used is not that such amount must continue to remain payable till the end of the accounting year. Any such interpretation would require reading words which the legislature has not used. No such interpretation would even otherwise be justified because in our opinion, the legislature could not have intended to bring about any such distinction nor the language used in the section brings about any such meaning. If the interpretation as advanced by the assessees is accepted, it would lead to a situation where the assessee who though was required to deduct the tax at source but no such deduction was made or more flagrantly deduction

though made is not paid to the Government, would escape the consequence only because the amount was already paid over before the end of the year in contrast to another assessee who would otherwise be in similar situation but in whose case the amount remained payable till the end of the year. We simply do not see any logic why the legislature would have desired to bring about such irreconcilable and diverse consequences. We hasten to add that this is not the prime basis on which we have adopted the interpretation which we have given. If the language used by the Parliament conveyed such a meaning, we would not have hesitated in adopting such an interpretation. We only highlight that we would not readily accept that the legislature desired to bring about an incongruous and seemingly irreconcilable consequences. The decision of the Supreme Court in the case of ***Commissioner of Income-Tax, Gujarat vs. Ashokbhai Chimanbhai*** (supra), would not alter this situation. The said decision, of course, recognizes the concept of ascertaining the profit and loss from the business or profession with reference to a certain period i.e. the accounting year. In this context, last date of such accounting period would assume considerable significance. However, this decision nowhere indicates that the events which take place during the accounting period should

be ignored and the ascertainment of fulfilling a certain condition provided under the statute must be judged with reference to last date of the accounting period. Particularly, in the context of requirements of Section 40(a)(ia) of the Act, we see no warrant in the said decision of the Supreme Court to apply the test of payability only as on 31st March of the year under consideration. Merely because, accounts are closed on that date and the computation of profit and loss is to be judged with reference to such date, does not mean that whether an amount is payable or not must be ascertained on the strength of the position emerging on 31st March.

25. This brings us to the second aspect of this discussion, namely, whether this is a case of conscious omission and therefore, the legislature must be seen to have deliberately brought about a certain situation which does not require any further interpretation. This is the fundamental argument of the Tribunal in the case of ***M/s. Merilyn Shipping & Transports vs. ACIT*(supra)** to adopt a particular view.

26. While interpreting a statutory provision the Courts have often applied Hyden's rule or the mischief rule and ascertained what was the position before the amendment, what the amendment sought to remedy and what was the effect of the changes.

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27. In the case of ***Bengal Immunity Co. Ltd. vs. State of Bihar and others*** reported in **AIR 1955 SC 661**, the Apex Court referred to the famous english decision in Hyden's case wherein while adopting restrictive or enlarging interpretation, it was observed that four things are to be considered, (1) what was the common law before making of the act (2) what was the mischief and defect in which the common law did not provide. (3) what remedy the Parliament had resolved and adopted to cure the disease and (4) true reason of the remedy.

28. In such context, the position prevailing prior to the amendment introduced in Section 40(a) would certainly be a relevant factor. However, the proceedings in the Parliament, its debates and even the speeches made by the proposer of a bill are ordinarily not considered as relevant or safe tools for interpretation of a statute. In the case of ***Aswini Kumar Ghose and another vs. Arabinda Bose and another*** reported in **A.I.R. 1952 SC 369** in a Constitution Bench decision of **(Coram: Patanjali Sastri, C.J.)**, observed that:-

> "33. .....It was urged that acceptance or rejection of amendments to a Bill in the course of Parliamentary proceedings forms part of the pre-enactment history of a statute and as such might throw valuable light on the intention of the Legislature when the language used in the statue admitted of more than one construction. We are unable to assent to this preposition.
>
> **The reason why a particular amendment was proposed or accepted or rejected is often a matter of controversy, as it happened to be in this case, and**

> **without the speeches bearing upon the motion, it cannot be ascertained with any reasonable degree of certainty. And where the Legislature happens to be bicameral, the second Chamber may or may not have known of such reason when it dealt with the measure. We hold accordingly that all the three forms of extrinsic aid sought to be resorted to by the parties in the case mus be excluded from consideration in ascertaining the true object and intention of the Legislature."**

29. In yet another Constitution Bench judgment in the case of ***A.K.Gopalan vs. State of Madras*** reported in **AIR 1950 SC 27**, it was observed as under:-

> "17.....The result appears to be that while it is not proper to take into consideration the individual opinions of members of Parliament or Convention to construe the meaning of the particular clause, when a question is raised whether a certain phrase or expression was up for consideration at all or not, a reference to the debates may be permitted."

30. ***In the case of Express Newspaper (Private) Ltd. and another vs. The Union of India and others*** reported in **AIR 1958 SC 578**, N.H.Bhagwati, J., observed as under:-

> "173. We do not propose to enter into any elaborate discussion on the question whether it would be competent to us in arriving at a proper construction of the expression "fixing rates of wages" to look into the Statement of Objects and Reasons attached to the Bill No.13 of 1955 as introduced in the Rajya Sabha or the circumstances under which the word "minimum" came to be deleted from the provisions of the Bill relating to rates of wages and the Wage Board and the fact of such deletion when the act came to be passed in its present form. There is a consensus of opinion that these are not aids to the construction of the terms of the Statute which have of course to be given their plain and grammatical meaning (See: Ashvini Kumar ghosh v. Arabinda Bose, 1953 SC R 1:(AIR 1952 SC 369) (Z24) and Provat Kumar Kar v. William Trevelyan Curtiez Parker, AIR 1950 Cal 116 (Z25). It is only when the terms of the statute are ambiguous or vague that resort may be had to them for the purpose of arriving at the true intention of the

Legislature."

31. It can thus be seen that the debates in the Parliament are ordinarily not considered as the aids for interpretation of the ultimate provision which may be brought into the statute. The debates at best indicate the opinion of the individual members and are ordinarily not relied upon for interpreting the provisions, particularly when the provisions are plain. We are conscious that departure is made in two exceptional cases, namely, the debates in the Constituent Assembly and in case of Finance Minister's speech explaining the reason for introduction of a certain provision. The reason why a certain language was used in a draft bill and why the provision ultimately enacted carried a different expression cannot be gathered from mere comparison of the two sets of provisions. There may be variety of reasons why the ultimate provision may vary from the original draft. In the Parliamentary system, two Houses separately debate the legislations under consideration. It would all the more be unsafe to refer to or rely upon the drafts, amendments, debates etc for interpretation of a statutory provision when the language used is not capable of several meanings. In the present case the Tribunal in case of ***M/s. Merilyn Shipping & Transports vs. ACIT*** (supra) fell in a serious error in merely comparing the

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language used in the draft bill and final enactment to assign a particular meaning to the statutory provision.

32. It is, of course, true that the Courts in India have been applying the principle of deliberate or conscious omission. Such principle is applied mainly when an existing provision is amended and a change is brought about. While interpreting such an amended provision, the Courts would immediately inquire what was the statutory provision before and what changes the legislature brought about and compare the effect of the two. The other occasion for applying the principle, we notice from various decisions of the Supreme Court, has been when the language of the legislature is compared with some other analogous statute or other provisions of the same statute or with expression which could apparently or obviously been used if the legislature had different intention in mind, while framing the provision. We may refer to some of such decisions presently. In the case of ***Bhuwalka Steel Industries Ltd. vs. Bombay Iron and Steel Labour Board*** reported in **AIR 2010 (Suppl.) 122**, the Apex Court observed as under:-

> "The omission of the words as proposed earlier from the final definition is a deliberate and conscious act on the part of the legislature, only with the objective to provide protection to all the labourers or workers, who were the manual workers and were engaged or to be engaged in any scheduled employment. Therefore, there was a specific act on the part of the legislature to enlarge the scope of the definition and once we accept this, all the arguments

> regarding the objects and reasons, the Committee Reports, the legislative history being contrary to the express language, are relegated to the background and are liable to be ignored."

33. In the case of ***Agricultural Produce Market Committee, Narela, Delhi vs. Commissioner of Income Tax and anr.*** reported in **AIR 2008 SC(Supplement) 566**, the Supreme Court noticed that prior to Finance Act, 2002, the Income Tax Act did not contain the definition of words "Local Authority". The word came to be defined for the first time by the Finance Act of 2002 by explanation/ definition clause to Section 10(20) of the Act. It was further noticed that there were significant difference in the definition of term "local authority" contained under Section 3(31) of the General Clauses Act, 1987 as compared to the definition clause inserted in Section 10(20) of the Income Tax Act, 1961 vide Finance Act, of 2002. In this context it was observed that:-

> "27. Certain glaring features can be deciphered from the above comparative chart. Under Section 3(31) of the General Clauses Act, 1897, "local authority" was defined to mean " a municipal committee, district board, body of port commissioners or other authority legally entitled to the control or management of a municipal or local fund. The words " other authority" in Section 3(31) of the 1897 Act has been omitted by Parliament in the Explanation/ definition clause inserted in Section 10(20) of the 1961 Act vide Finance Act, 2002. Therefore, in our view, it would not be correct to say that the entire definition of the word "local authority" is bodily lifted from Section 3(31) of the 1897 Act and incorporated, by Parliament, in the said Explanation to Section 10(20) of the 1961 Act. This deliberate omission is important."

34. The Apex Court in the case of ***Greater Bombay CO-operative Bank Ltd. vs. M/s. United Yarn Tex.Pvt.Ltd & Ors.*** reported in **AIR 2007 SC 1584**, in the context of question whether the Cooperative Banks transacting business of banking fall within the meaning of 'banking company' defined in the Banking Regulation Act, 1949, observed as under:-

> "59. The RDB Act was passed in 1993 when Parliament had before it the provisions of the BR Act as amended by Act No.23 of 1965 by addition of some more clauses in Section 56 of the Act. The Parliament was fully aware that the provisions of the BR Act apply to co-operative societies as they apply to banking companies. The Parliament was also aware that the definition of 'banking company' in Section 5(c) had not been altered by Act No.23 of 1965 and it was kept intact, and in fact additional definitions were added by Section 56(c)."Co-operative bank" was separately defined by the newly inserted clause (cci) and "primary co-operative bank" was similarly separately defined by clause (ccv). The Parliament was simply assigning a meaning to words; it was not incorporating or even referring to the substantive provisions of the BR Act. **The meaning of 'banking company' must, therefore, necessarily be strictly confined to the words used in Section 5(c) of the BR Act. It would have been the easiest thing for Parliament to say that 'banking company' shall mean 'banking company' as defined in Section 5(c) and shall include 'co-operative bank' as defined in Section 5(cci) and 'primary co-operative bank' as defined in Section 5(ccv). However, the Parliament did not do so. There was thus a conscious exclusion and deliberate commission of co-operative banks from the purview of the RDB Act.** The reason for excluding co-operative banks seems to be that co-operative banks have comprehensive, self-contained and less expensive remedies available to them under the State Co-operative Societies Acts of the States concerned, while other banks and financial institutions did not have such speedy remedies and they had to file suits in civil courts."

35. In the case of ***National Mineral Development Corporation Ltd. vs. State of M.P and another*** reported in **AIR 2004 SC 2456**, the Apex Court observed as under:-

> "29. The Parliament knowing it full well that the iron ore shall have to undergo a process leading to emergence of lumps, fines, concentrates and slimes chose to make provision for quantification of royalty only by reference to the quantity of lumps, fines and concentrates. It left slimes out of consideration. Nothing prevented the Parliament from either providing for the quantity of iron ore as such as the basis for quantification of royalty. It chose to make provision for the quantification being awaited until the emergence of lumps, fines and concentrates. **Having done so the Parliament has not said "fines including slimes". Though 'slimes' are not 'fines' the Parliament could have assigned an artificial or extended meaning to 'fines' for the purpose of levy of Royalty which it has chosen not to do. It is clearly suggestive of its intention not to take into consideration 'slimes' for quantifying the amount of royalty. This deliberate omission of Parliament cannot be made good by interpretative process so as to charge royalty on 'slimes' by reading Section 9 of the Act divorced from the provisions of the Second Schedule.** Even if slimes were to be held liable to charge of royalty, the question would still have remained at what rate and on what quantity which questions cannot be answered by Section 9."

36. In the case of **Gopal Sardar, vs. Karuna Sardar** reported in **AIR 2004 SC 3068**, the Apex Court in the the context of limitation within which right of preemption must be exercised and whether in the context of the relevant provisions contained in West Bengal Land Reforms and Limitation Act, 1963 applied or not, observed as under:-

> "8....Prior to 15-2-1971, an application under Section 8 was required to be made to the "Revenue Officer specifically empowered by the State Government in this behalf." This phrase was substituted by the phrase "Munsif having territorial jurisdiction" by the aforementioned amendment.

Even after this amendment when an application is required to be made to Section 8 of the Act either to apply Section 5 of the Limitation act or its principles so as to enable a party to make an application after the expiry of the period of limitation prescribed on showing sufficient cause for not making an application within time. **The Act is of 1955 and for all these years, no provision is made under Section 8 of the Act providing for condonation of delay. Thus, when Section 5 of the Limitation Act is not made applicable to the proceedings under Section 8 of the Act unlike to the other proceedings under the Act, as already stated above, it is appropriate to construe that the period of limitation prescribed under Section 8 of the Act specifically and expressly governs an application to be made under the said section and not the period prescribed under Article 137 of the Limitation Act**."

37. In our opinion, the Tribunal committed an error in applying the principle of conscious omission in the present case. Firstly, as already observed, we have serious doubt whether such principle can be applied by comparing the draft presented in Parliament and ultimate legislation which may be passed. Secondly, the statutory provision is amply clear.

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38. In the result, we are of the opinion that Section 40(a)(ia) would cover not only to the amounts which are payable as on 31st March of a particular year but also which are payable at any time during the year. Of course, as long as the other requirements of the said provision exist. In that context, in our opinion the decision of the Special Bench of the Tribunal in the case of ***M/s. Merilyn Shipping &***

Transports vs. ACIT(surpa), does not lay down correct law.

39. We answer the questions as under:-

Question (1) in the negative i.e. in favour of the Revenue and against the assessees.

Question (2) also in the negative i.e. in favour of the Revenue and against the assessees.

40. All Tax Appeals are allowed. Decisions of the Tribunal under challenge are reversed. In the earlier portion of the judgment, we had recorded that the Tribunal in all cases had proceeded only on this short basis without addressing other issues. We, therefore, place all these matters back before the Tribunal for fresh consideration of other issues, if any, regarding disallowance under Section 40(a)(ia) of the Act. All appeals are disposed of accordingly.

(AKIL KURESHI, J.)

(MS SONIA GOKANI, J.)

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