

Court No. - 34

Case :- INCOME TAX REFERENCE No. - 11 of 2010

Applicant :- M/S Rama Medical Stores

Opposite Party :- The Commissioner Income Tax Lucknow

Counsel for Applicant :- R.R. Kapoor, S.D. Singh

Counsel for Opposite Party :- C.S.C., RK Upadhyay

with

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Opposite Party :- The Commissioner Income Tax Lucknow

Counsel for Applicant :- R.R. Kapoor, S.D. Singh

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Hon'ble Sudhir Agarwal, J.

Hon'ble Dr. Kaushal Jayendra Thaker, J.

1. At the instance of Assessee, Income Tax Appellate Tribunal, Allahabad (hereinafter referred to as “Tribunal”) under section 256(2) of Income Tax Act 1961 (hereinafter referred to as ‘Act 1961’) has referred following two questions, involved in both these cases, for opinion of this Court:

“(1) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in holding that for imposing penalty under section 271B of I.T Act, 1961, its initiation in the course of assessment proceedings, is not necessary within the meaning of Section 275(b)(c) of the above Act?

(2) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in holding that the penalty order passed by the learned Assessing Officer on 30.10.1990 was within the period of limitation laid down in Section 275 of I.T Act, 1961?”

2. Since both these cases relate to Assessment Years 1988-1989 and 1989-1990, involve similar questions, they have been heard together, and are being decided by this common judgment.

3. It is not disputed that notices dated 2.4.1990 and 26.6.1990 were issued to Assessee under section 271B of Act, 1961 requiring to show cause, why penalty be not imposed under the aforesaid provision, in

respect of above mentioned Assessment Years for failure of Assessee in getting its accounts audited under section 44AB of Act.

4. Assessee replied notices vide letter dated 30.7.1990. Explanation furnished by Assessee did not find favour with Assessing Officer and accordingly it passed penalty order imposing penalty of Rs.24,768/- and Rs.27,990/- vide order dated 30.10.1990.

5. In appeal, Commissioner of Income Tax(Appeals) (hereinafter referred to as 'CIT(A)') cancelled penalty for both the years on the ground that assessment for both years processed by Assessing Officer under section 143(1)(a) of Act, 1961 having been completed on 31.3.1989 and 31.3.1990, penalty under section 271B, could not have been levied, since Assessing Officer failed to initiate proceedings during the course of assessment proceedings.

6. The Order deleting penalty, passed by CIT(A) took recourse to provision of Limitation under section 275(1)(c) of Act, 1961.

7. When matter was brought before Tribunal at the instance of Revenue, it took the view that penalty proceedings were initiated well within the period of limitation and CIT(A) erred in law in holding otherwise and deleting penalty. Tribunal recorded its finding as under:

“The penalty proceedings having been initiated on 22nd of June, 1990 and 2nd of April, 1990, both the penalty orders passed on 30th October, 1990 are very much within the time frame i.e within 6 months from the end of the month in which action for imposition of penalty was initiated. “

8. Assessee came to this Court under section 256(2) for seeking a direction to Tribunal to make reference and vide order dated 19.8.2006, this Court required Tribunal to refer the above mentioned questions for our opinion.

9. Shri S.D.Singh, learned Senior Counsel appearing for Assessee at the outset stated that though in question 1, there is a reference of Section 275(b) but in fact the matter has to be considered in the light of Section 275(1)(c) and therefore, we have corrected question no.1 and proceed to

consider the aforesaid question in the context of limitation prescribed under section 275(1)(c) which reads as under:

“275.(1) No order imposing a penalty under this Chapter shall be passed-
(a)
(b).....
(c) in any other case, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later.”

10. The aforesaid provision contains two clauses: first is, after the expiry of financial year in which the proceedings, in the course of which action for imposition of penalty has been initiated, are completed, and, second is, within six months from the end of the month in which action for imposition of penalty is initiated. It further says that out of two, whichever is later shall apply.

11. Shri S.D.Singh, learned Senior Counsel submitted that both clauses in sub section (c) of Section 275(1) have to be read together and thus will be attracted to a case where penalty proceedings have been initiated during the process of assessment and limitation is end of financial year in which assessment proceeding is completed or six months whichever is later. This submission in our view is apparently misconceived and nothing but a complete misreading of Section 275(1)(c).

12. As we have already said, words “whichever period expires later” contemplates two periods of limitation. According to us, one is when action for “imposition of penalty” is initiated, the end of financial year of such proceeding when completed, and, secondly, when action for “imposition of penalty is initiated”, it is six months there from, and, then whichever period expires later. For example, if penalty proceeding is initiated during the period of assessment, it is expiry of financial period in which the assesment proceedings are completed. Second, if notice

for penalty is not issued during the course of assessment proceedings, instead thereafter, then it is six months from the date of such notice. These are two different periods of limitation and “whichever is later” will govern limitation for penalty under section 271-B. If both these periods would have to be read conjunctively, the words 'whichever period expires later' not only would render redundant but in many a cases, it would create a situation where it will be difficult to find a reasonable period of limitation for completion of penalty proceedings. The language of statute is simple and clear. We thus find no justification to read both independent clauses, conjunctively or together, as suggested or argued by Shri Singh, learned Senior Counsel.

13. Learned Senior Advocate has relied on certain authorities but we find that some are inapplicable to the issue raised in this reference and some are against the proposition advanced by learned Senior Advocate on behalf of Assessee. We discuss the authorities cited at Bar in detail as under.

14. The earliest authority is ***Commissioner of Income-Tax, U.P versus Bankey Lal Hira Lal (1973) 92 ITR 587(All)***. Therein penalty proceedings were initiated under section 271(1)(c), that is concealment of income represented by cash credit entries in the accounts of four creditors during previous year, relevant to the assessment year 1963-64. Therein assessment had completed on 30.11.1963. A notice under section 271(1)(c) was issued on 25.4.1964 and thereafter order imposing penalty was passed. An objection was raised that penalty proceedings must have commenced before conclusion of assessment proceeding. It was argued that penalty proceedings were initiated by issue of a notice to show cause but since it was done after completion of assessment, hence illegal. Penalty for the purpose of Section 271(1)(c) is attracted where there is a case of concealment of particulars of income by Assessee or it has deliberately furnished inaccurate of such income. This Court relied on a pari materia provision contained in Section 28(1) Indian Income Tax Act

1922 considered in ***Commissioner of Income Tax versus S.V. Angidi Chettiar (1962) 44 I.T.R 739*** wherein Court held that proceedings to levy penalty are not to be commenced by Assessing Officer before completion of assessment proceedings. To attract penalty under section 271(1)(c) only satisfaction of Assessing Officer in the assessment proceedings that there existed a case where conditions specified in clauses (a), (b) or (c) are specified, have to exist, since that is a condition for exercise of jurisdiction. Referring to Section 275(1) of Act, 1961, Court in ***Commissioner of Income Tax, U.P versus Bankey Lal Hira Lal (Supra)***, held that Section in its essential content is a provision prescribing period of limitation for making a penalty order. It is not a provision prescribing point of commencement of penalty proceedings. It is concerned with the order which concludes penalty proceedings. It further held, when it refers to “completion of proceedings in the course of which the penalty proceeding is commenced”, in substance it identifies the former proceeding for the purpose of defining point of time from which period of limitation for making penalty order must be computed. This Court specifically noticed a Bombay High Court Judgement in ***Shakti Offset Works versus Inspecting Assistant Commissioner of Income Tax (1967) 64 I.T.R 637***, which took a similar view to what has been canvassed before us by Shri Singh, learned Senior Counsel but disagreed and dissented therewith. Bombay High Court took the view that initiation of penalty proceeding cannot be held over until after the completion of assessment and that section 271(1) and section 275 indicate that penalty proceeding has to be commenced before completion of assessment proceeding. This Court observed that Bombay High Court seems to have considered that satisfaction of Income Tax Officer in the course of assessment proceeding itself constitute commencement of penalty proceeding, which is not correct. Disagreeing with this view of Bombay High Court, this Court said:

“if these observations are capable of being understood to

mean that the Income Tax Officer must, besides recording his satisfaction, take further action by the issue of a notice to the Assessee before completing the assessment, we are unable with respect to agree with the proposition so laid down.”

15. Court clarified in ***Commissioner of Income Tax, U.P versus Bankey Lal Hira Lal (Supra)*** that penalty proceeding commenced when action under section 271 is taken and Section 275 does not deal with the question, when such proceeding can be considered to commence, hence for the purpose of determining commencement of penalty proceeding, there is no need to look into Section 275. For that purpose section 271 should be looked into and when action is commenced therein, then for the purpose of limitation Section 275 would come into picture.

16. Karnataka High Court in ***Shanbhag Restaurant versus Deputy Commissioner of Income Tax (2004) 266 ITR 393 (Kar)*** has considered Section 275(1)(c) holding that it comprises of two parts. First part provides that no order imposing penalty under Chapter XXI could be made, in cases, which do not fall under section 275(1)(a) and (b) after the expiry of financial year in which proceedings in the course of which action for imposition of penalty, has been initiated, are completed. Second part relates to cases which prohibit passing of an order imposing penalty after expiry of six months from the end of the month in which action for imposition of penalty is initiated. It further says that out of the two parts, whichever period would expires later, would enure to the benefit of Revenue, and would apply. Having said so Court said that for the purpose of first part, financial year in which proceedings in the course of which action for imposition of penalty, is required to be understood as the proceedings relating to assessment order. The financial year in which proceedings in the course of which action for imposition of penalty has been initiated can be understood as the proceedings relating to imposition of penalty. It said that financial year in the first part of Section 275(1)(c) must be understood as the financial year where assessment order is made

in the course of which proceedings for penalty could be initiated. Therein assessment order was made on 25.2.1994, hence, Court held that limitation contemplated in the first part expired on 31.3.1994. If the first part is not applied, then comes the second part, Court said that a notice for imposition of penalty if issued under section 271, it would be period of six months there from which will cover the second part. In that case, notice was issued under section 271, for imposition of penalty on 8.6.1994 and penalty order was passed on 31.12.1994. Court held that order of penalty is within the period of six months under second part, hence within limitation, and upheld the same.

17. We are in respectful agreement with the aforesaid view which is clearly applicable in the case in hand also.

18. Similar view has been taken by Delhi High Court also in ***Subodh Kumar Bhargava versus Commissioner of Income Tax (2009) 309 ITR 31 (Del)***. Court has explained conditions by giving illustrations in paragraph 13 and 14 and we are reproducing the same as under:

“13. There may be cases which fall under section 275(1) (c) in which action for the imposition of penalty is initiated in the course of some other proceedings. There may also be cases under section 275(1)(c) in which the action for imposition of penalty is initiated, but not in the course of some proceedings. In the former category of cases, both the periods of limitation may be applicable, whereas in the latter category, only the second period of limitation of six months from the end of the month in which action for imposition of penalty is initiated, would apply. To illustrate this, let us take the first category of cases. This is that category where the action for imposition of penalty is initiated in the course of some other proceeding. In such a situation, it is obvious that both the period of limitation would come into play. One would be reckoned from the date on which the other proceedings are completed upto and including the end of the financial year in which that date occurs. The other period of limitation would be that which applies irrespective of the date of completion of the “ other proceedings” and which is relatable simply to the date on which action for imposition of penalty is initiated. The period of limitation in such a case would be six months from the

end of the month in which the action for imposition of penalty is initiated. It is clear that where penalty proceedings are initiated in the course of some other proceedings, the Legislature has provided for two different periods of limitation. However, so that there is no confusion with regard to which of the two would apply, the Legislature has added the expression “whichever period expires later” at the end. To explain this, let us take two examples:

Example 1:

Assumes that the action for imposition of penalty is initiated on March 15, 2007, in the course of some proceedings which are completed on March 25, 2007. On the basis of the first part of section 275(1)(c), the period of limitation would end on March 31, 2007, being the end of the financial year in which the proceedings in the course of which action for the imposition of penalty was initiated, is completed. However, taking recourse to the provisions of the second part of section 275(1) (c), the end of the period of limitation would be September 30, 2007. This would be so because the action for imposition of penalty was initiated on March 15, 2007, implying thereby that the end of the month would be on March 31, 2007. The period of six months from such date would end on September 30, 2007. Thus, in this example, we are faced with two dates on which limitation would end. But, because of the expression “whichever period expires later”, the period of limitation would have to be taken as September 30, 2007, which is relatable to the date on which action for imposition of penalty was initiated and not to the date on which the proceedings, in the course of which action was initiated, are completed.

Example 2:

Let us assume that action for imposition of penalty is initiated on April 15, 2007, in the course of proceedings which are completed on May 25, 2007. Under the first part of section 275(1)(c), the period of limitation for passing an order imposing penalty would end on March 31, 2008, being the end of the financial year in which the proceedings, in the course of which action for imposition of the penalty had been initiated, are completed. However, in terms of the second part of section 275(1) (c), the period of limitation would end on October 31, 2007. This is because, the period of six months would have to be reckoned from the end of the month in which action for imposition of penalty was initiated. Action for penalty in this example was initiated on April 15, 2007. The end of the month would be April 30, 2007.

Consequently, the period of six months from this date would end on October 31, 2007. Thus, in this example, we are once again faced with two periods of limitation; the period ending on March 31, 2008 being the end of the financial year relatable to May 25, 2007, the date on which the proceedings were completed and October 31, 2007, being the date relatable to the initiation of the penalty proceedings. Once again, applying the expression “ whichever period expires later”, the period of limitation for this example would be March 31, 2008.

14. The above two examples illustrates cases where the applicable period of limitation would be relatable either to the date of initiation of the penalty proceedings or to the date of completion of the proceedings in the course of which action for the imposition of penalty has been initiated. But there is a third / residuary category of cases where the initiation of action for imposition of penalty is not in the course of some proceedings. In such cases, the first part of section 275(1) (c) would have no application and it is only the period of limitation prescribed in the second part which would apply. Since only one period of limitation would be applicable, the expression “ whichever period expires later” would have to be read as that very period of limitation. The present case undoubtedly falls under section 275(1)(c) and, that too, under the second part thereof. Therefore, on a plain reading and on a logical analysis of the relevant provisions of the said Act, the period of limitation during which an order imposing a penalty could have been passed in the present case would be a period of six months beginning from the end of the month in which the action for imposition of penalty was initiated. We have already noticed above that the show -cause notice under section 274 read with section 271B of the said Act was issued on July 31, 2003. Since that happened to be the end of the month also, the period of six months would have to be reckoned from that date. That would take us to January 31, 2004. Thus, the penalty order could have been passed on any date up to and including January 31, 2004. The penalty order came to be passed on February 17, 2004, which would be hit by the bar of limitation.”

19. The next decision cited at the Bar is **Karan Vir Singh Gossal versus Commissioner of Income Tax & Another (2012) 349 ITR 692(SC)**.

There the question up for consideration before Court was, whether levy of interest under section 234-A/234B of Act 1961 is mandatory or not. Relying on five Judges Bench decision of this court in ***Commissioner of Income Tax versus Anjum M.H.Ghaswala (2001) 252 ITR 1***, Court held that interest under aforesaid provision is mandatory. Having said so, Court further proceeded to hold that there was no need for Assessing Officer to specifically recite in the order of assessment that penalty proceedings should be initiated as contended by Assessee. It further said as under:

“ The recitation by Assessing Officer directing institution of penal proceedings is not obligatory and penal proceedings could be initiated for such default without a specific direction from the Assessing Officer.”

20. The aforesaid judgment does not help us for interpretation of period of limitation under section 275(1)(c).

21. In ***Madan Roller Flour Mills versus Commissioner of Income Tax (2008) 301 ITR 1 (P&H)***, a Division Bench of Punjab and Haryana High Court had also an occasion to consider limitation under section 275(1)(c) in respect of penalty notice issued under section 271B. In reference thereto Court held that firstly so far as 271B is concerned, it does not require that initiation can only be during the course of some proceedings as no such phraseology is used therein. Chapter XXI of Act 1961 deals with penalty. Penalties under sections 271(1) and 273(1) are required to be initiated during the course of any proceedings in view of phrase “in the course of any proceedings” used in these sections. All other penalties in Chapter XXI can be initiated independently of any other proceedings. Something which is not required under section 271B cannot be super imposed by referring to Section 275. Having said so, Court therein found that assessment therein was completed on 31.3.1989 while Clause(c) was inserted in Section 275 with effect from 1.4.1989 and therefore had no application in that case. The aforesaid judgment

which has been relied by Shri Agrawal, learned counsel for Revenue, therefore, does not help him for the purpose of construction of period of limitation under section 275(1)(c) of Act, 1961.

22. Looking to the facts of the present case, we find that assessments were completed on 31.3.1989 and 30.3.1990 in respect to assessment years 1988-89 and 1989-90. Notices for penalty in respect of assessment year 1988-89 was issued on 2.4.1990 and for assessment year 1989-90, issued on 20.6.1990. Penalty orders were passed in both the cases on 30.10.1990. In our view, penalty orders are within the period of limitation.

23. Now we may refer to some authorities cited by learned Senior Counsel on behalf of Assessee which in our opinion would not help him for answering the questions which are up for consideration in this reference.

24. Shri S.D.Singh, learned Senior Counsel has relied on a judgment in ***Commissioner of Income Tax versus E.C.C Project Pvt.Ltd. (2015) 374 ITR 44(All)*** which was decided on the question that no penalty would be leviable under section 271B of Act, 1961 where Assessing Officer has failed to record its satisfaction in the assessment order for levy of penalty. We find that even on this aspect, there is an authority of Supreme Court in ***Karan Vir Singh Gossal versus Commisisoner of Income Tax and another (Supra)*** which appears to have gone unnoticed noticed by this Court in the above case. It has proceeded to observe something which is contrary to law laid down by Supreme Court in ***Karan Vir Singh Gossal versus Commisisoner of Income Tax and another (Supra)***. Even otherwise, we find that the question of point of limitation under section 275(1)(c) has not been specifically considered ***Commissioner of Income Tax versus E.C.C. Project Pvt. Ltd.(Supra)*** therefore, that judgment would have no application for the issue to be considered in this Reference.

25. Next is a Division Bench of this Court in ***Bhola Nath Carpets***

Pvt.Ltd. versus Commissioner of Income Tax (2008) 299 ITR 413(All) but therein Court has considered applicability of Section 275(1)(b) and not 275(1)(c) as it has specifically said:

“we are not concerned herein with Clause-c of sub section (1) of Section 275 of Act”.

26. Shri Singh, learned Senior Counsel has also placed reliance on Supreme Court judgment in **M/s Frick India Ltd. versus Union of India (1990) 1 SCC 400** which was a case under Central Excise Act and has no application to the question raised in present reference. Similary there is another decision in **Dipak Babaria and another versus State of Gujrat (2014) 3 SCC 502** which is relied in support of the proposition, when a particular thing should be done in a particular manner, it must be done in that way. The exposition of law is well established but we find no application thereof to the case in hand.

27. In view of above discussions, we are of the view that there are two independent periods of limitation prescribed under section 275(1)(c). If what argued by Shri Singh, learned Senior Counsel, that both period should be read conjunctively, it would not only render the words “whichever is later” redundant but also do violence to simple phrase used by legislature in the aforesaid provision. It is a well settled principle of interpretation that plain reading of a statute must be preferred if it is clear. It must be read as it is and neither anything should be added nor ignored or omitted. We should not assume that legislature has left any scope of imagination or a provision must be read by applying casus omissus.

28. With respect to principles of interpretation of statutes in such matters, a Division Bench of this Court in **Surendra Vs. State of U.P. and others 2007 (6) AWC 6229** observed as under:

"Where the language of statute is clear and unambiguous there is no room for reading or interpreting statute in a manner, which may add a few words therein on the assumption that the legislature has left a vacuum need to be bridged by judicial interpretation. It is not the function of the Court to read something in the provision of law, which is

not there, or find out a way of obviating the difficulties in enforcing the law howsoever meritorious the intention of the legislature might be."

29. A Constitution Bench in **Behram Khurshed Pesikaka Vs. State of Bombay AIR 1955 SC 123** rejecting to interpret a law on the supposed difficulty of prosecution in improving the case, observed as under:

"The difficulty in the way of the prosecution proving its case need not deflect the Court from arriving at a correct conclusion. If these difficulties are genuinely felt it would be for the legislature to step in and amend the law. It would not be the function of the Court to read something in the provisions of the law, which is not there, or to find out a way of obviating the difficulties in enforcing the law howsoever meritorious the intentions of the Legislature might be. (Para-17)

30. It is settled principle of interpretation, where the words used are clear and unambiguous, Court is bound to construe them in their ordinary sense and it is not the function of Court to add words or expression for supposed assumption of what would have been the intention of the legislature. Court is not entitled to go beyond so as to supply an omission as if to play the role of a political reformer or counsel to the legislature.

31. A Constitution Bench in **Dadi Jagannadham Vs. Jammulu Ramulu and others AIR 2001 SC 2699**, in para 13, observed as under:

"The settled principles of interpretation are that the Court must proceed on the assumption that the legislature did not make a mistake and that it did what it intended to do. The Court must, as far as possible, adopt a construction which will carry out the obvious intention of the legislature. Undoubtedly if there is a defect or an omission in the words used by the legislature, the Court would not go to its aid to correct or make up the deficiency. The Court could not add words to a statute or read words into it which are not there, especially when the literal reading produces an intelligible result. The Court cannot aid the legislature's defective phrasing of an Act, or add and mend, and, by construction, make up deficiencies which are there."

32. The Cardinal rule of construction is to find out intention of legislature in the words used by legislature itself. Court, in order to find out intention of the statute framing authority must look into the statute itself without any assistance from any other external factor unless there is some doubt or ambiguity in the construction of statute itself. It would be

appropriate to remind, in the words of Lord Brougham, in **Robert Wigram Crawford Vs. Richard Spooner, 4 MIA 179 (187) (PC):**

"..if the legislature did intend that which it has not expressed clearly; much more, if the Legislature intended some thing very different; if the Legislature intended pretty nearly the opposite of what is said, it is not for judges to invent something, which they do not meet within the words of the text (aiding their construction of the text always, of course, by the context)."

33. Court in **S. Gurmej Singh Vs. sardar Pratap Singh Kairon AIR 1960 SC 122** also held that Courts are not to keep busy themselves with "supposed intention" or "with the policy underlying the statue" but must construe statute from plain meaning of the words used therein.

34. In **Aron Soloman Vs. A. Soloman & Co. Ltd. (1897) AC 22 (38) (HL)** 5 Lord Watson observed- *"In a court of law or equity, what the Legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication."* The aforesaid passage has been quoted with approval in **R.L.Arora Vs. State of Uttar Pradesh, AIR 1964 SC 1230 (1244)**, **Shahdara (Delhi) Saharanpur Light Railway Co. Ltd. Vs. Workers Union AIR 1969 SC 513 (759)**, **Hansraj Gordhandas Vs. H.H.Dave AIR 1970 SC 755 (759)**, **Sri Umed Vs. Raj Singh AIR 1975 SC 43 (63/64)**, **Commissioner of Sales Tax, U.P. Vs. Super Cotton Bowl Refilling Works AIR 1989 SC 922 (930)**, **State of Madhya Pradesh Vs. G.S.Ball and Flour Mills AIR 1991 SC 772 (785)** and **Harbhajan Singh Vs. Press Council of India AIR 2002 SC 1351 (1356)**.

35. We are aware that the rules of the interpretation are not rules of written or codified law and are not to be followed like rules enacted by legislature in Interpretation Act as observed in **Superintendent and Remembrance of Legal Affairs, West Bengal Vs. Corporation of Calcutta AIR 1967 SC 997**. The principles of interpretation serve only as a guide. A casus omissus cannot be supplied by Court. There is no

presumption that a casus omissus exists. Court should avoid creating a casus omissus where there is none. It would be appropriate to recollect observations of Devlin, L.J. in **Gladstone Vs. Bower (1960) 3 All ER 353 (CA)**, *"The Court will always allow the intention of a statute to override the defects of working but the Court's ability to do so is limited by recognized canons of interpretation. The Court may, for example, prefer an alternative construction, which is less well fitted to the words but better fitted to the intention of the Act. But here, there is no alternative construction; it is simply a case of something being overlooked. We cannot legislate for casus omissus."*

(emphasis added)

36. Court in **Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and others, AIR 1978 SC 548 (561)** quoted with approval, following observation of Lord Simonds in **Magor & St. Mellons R.D.C. Vs. Newport Corporation, (1951) 2 All ER 839 (841)**:

"The duty of the Court is to interpret the words that the Legislature has used. Those words may be ambiguous, but, even if they are, the power and duty of the Court to travel outside them on a voyage of discovery are strictly limited."

37. It would be appropriate at this stage to remind another principle that though a Court cannot supply a real casus omissus, it is equally evident that it should not interpret a statute so as to create casus omissus when there is really none. In **Vemareddy Kumaraswamy Reddy and another Vs. State of Andhra Pradesh 2006(2) SCC 670** Court reiterated that while interpreting a provision, Court only interprets the law and cannot legislate. If a provision of law is misused and subject to the abuse of process of law, it is for the legislature to amend, modify or repeal it if deemed necessary. The legislative casus omissus cannot be supplied by judicial interpretative process.

38. In the present case, Section 275(1)(c) is very clear. In the light of above discussions, we answer both the questions in favour of Revenue

and against Assessee.

39. The reference stands *disposed of* accordingly.

Order Date:26.9.2016

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