

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 12659 of 2014****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE KS JHAVERI****and****HONOURABLE MR.JUSTICE K.J.THAKER**

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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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KPT EMPLOYEES WELFARE TRUST....Petitioner(s)

Versus

COMMISSIONER OF INCOME TAX RAJKOT I....Respondent(s)

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Appearance:

MR TUSHAR P HEMANI, ADVOCATE for the Petitioner(s) No. 1

MR PRANAV G DESAI, ADVOCATE for the Respondent(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE KS JHAVERI
and
HONOURABLE MR.JUSTICE K.J.THAKER

Date : 22/12/2014

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE KS JHAVERI)

1. By way of this petition, the petitioner-Trust has challenged the order passed by the Office of Commissioner of Income-tax, Rajkot-1, Rajkot, whereby, the application of the petitioner-Trust for registration under section 10(23AAA) of the Income-Tax Act, has been rejected.

2. Learned advocate Mr. Hemani for the petitioner trust has submitted that while considering the application for the registration under section 10(23AAA) read with Rule 16C(5), the Commissioner has committed grave error in interpreting the provisions of Act and Rules. The petitioner has pointed out that the Trust, the Trust-deed, which is produced at Annexure-C, is constituted for the benefit of the employees of the Kandla Port Trust (for short 'KPT'). The words "contribution" and "Beneficiar(y/ies)" are interpreted as under:

"Contribution" means the amount contributed by the members periodically and shall include any amount allocated and contributed by KPT.

"Beneficiar(y/ies)" means member(s) of the Trust who are the serving and retired employee(s) of Kandla Port Trust and members of the family/dependents (as defined by Government of India in their rules for their employees) of serving/retired/deceased.

3. The learned advocate for the petitioner has submitted that clause 10, 11 and 46 of the trust deed of the Trust which are objected by the Commissioner of Income Tax. Contribution by employer is main ground to reject in addition to the following clauses, which read as under

10. To aid and promote educational and vocational learning facilities/activities for the serving employees and their children.

11. To advance as a loan or stipend or grants to the Beneficiaries for the purpose of education at approved institutions as per criteria laid down by the Board of Trustees.

46. The Trust is irrevocable. However, under the orders of Government of India, if the Trust is revoked, all property, funds and assets remaining after the payment of all debts and liabilities of Trust, shall be transferred to Kandla Port Trust.

4. Learned advocate for the petitioner has submitted that the provisions of section 23(AAA) and Rule 16(C) read as under:

"Sec. 23(AAA) any income received by any person on behalf of a fund established, for such purposes as may be notified by the Board in the Official Gazette, for the welfare of employees or their dependents and of which fund such employees are members if such fund fulfils the following conditions, namely:-

(a) the fund-

(i) applies its income or accumulates it for application, wholly and exclusively to the objects for which it is established; and

(ii) invests its funds and contributions and other sums received by it in the forms or

modes specified in sub-section(5) of section 11;

(b) the fund is approved by the [Principal Commissioner or] Commissioner in accordance with the rules made in this behalf.

Provided that any such approval shall at any one time have effect for such assessment year or years not exceeding three assessment years as may be specified in the order of approval;]

Rule 16(C).(1) The fund shall be formed under a trust and it shall be evidenced by a trust deed.

(2) The contributions to the fund are to be made by the employees by way of periodical subscription.

(3) The application for approval of any fund under clause (23AAA) of section 10 shall be made in Form No. 9 to the Commissioner having jurisdiction over the area or territory in which the accounts are kept and such application shall be accompanied by the documents mentioned therein.

(4) Where the Commissioner is satisfied that all the conditions laid down in clause (23AAA) of section 10

are fulfilled in the case of the fund, he shall record such satisfaction in writing and grant approval to the fund specifying the assessment year or years for which the approval is valid so however that such approval shall, at one time, have effect for such assessment year or years not exceeding three assessment years.

(5) Where the Commissioner is satisfied that one or more of the conditions laid down in clause (23AAA) of section 10 are not fulfilled, he shall reject the application for approval after recording the reasons for such rejection in writing."

5. It is very clear that word "contribution" is mandatory for contribution to be made by the employees. The interpretation put forward by the Commissioner that employer can't make any payment for corpus, is misconceived. Mr. Hemani learned advocate for the petitioner has relied upon the meaning of word "contribution". The meaning of word "contribution" in Black's Law Dictionary, reads as under:

Contribution. (14c)1. The right that gives one of several persons who are liable on a common debt the ability to

recover proportionately from each of the others when that one person discharges the debt for the benefit of all; the right to demand that another who is jointly responsible for a third party's injury supply part of what is required to compensate the third party.- Also termed right of contribution. [Cases: Contribution]. 2. One tortfeasor's right to collect from joint tortfeasors when- and to the extent that- the tortfeasor has has paid more than his or her proportionate share to the injured party, the shares being determined as percentages of casual fault. [Cases: Contribution]. 3. The actual payment by a joint tortfeasor of a proportionate share of what is due. Cf. INDEMNITY. 4. Maritime law. A share of the loss resulting from a ship's sacrifice of cargo, payable by each party whose property was spared to the party whose property was sacrificed. 5. WHAR CONTRIBUTION."

6. Mr. Hemani learned advocate for the petitioner has relied on the decision of the Hon'ble Supreme Court in the case of N.K. Jain and others v. C.K. Shah and others, reported in AIR 1991 SC 1289, to buttress the submission that word "contribution" is not restricted to only employers contribution and that the object of section be given proper interpretation, wherein, the Hon'ble Supreme Court has held in para-16 as under:

"16. After a careful consideration we are inclined to agree with the learned counsel for the respondents. In this context we may note a passage in *Knightsbridge Estates Trust Ltd. v. Byrne and Others*, [1940] 2 All ER 401 which reads thus:

"It is perhaps worth pointing out that the words "unless the context otherwise requires" which we find in the consolidating Act of 1929 are not to be found in the amending Act of 1928. I attribute little weight to this fact, for, in my opinion, some such words are to be implied in all statutes where the expressions which are interpreted by a definition clause are used in a number of sections with meanings sometimes of a wide, and sometimes of an obviously limited, character. On the other hand, I think due weight ought to be attributed to the words "otherwise requires" in the Companies Act, 1929, and it is incumbent on those who contend that the definition does not apply to sect. 74 to show with reasonable clearness that the context does in fact require a more limited interpretation of the word "debenture" than Sect. 380 has assigned to it."

The Apex Court has further held that;

In National Buildings Construction Corporation v. Pritam Singh Gill and Others, [1973] 1 SCR 40 this Court observed as under:

"As is usual with most of the definition sections, with the clause, "unless there is anything repugnant in the subject or context. " This clearly indicates that it is always a matter for argument whether or not this statutory definition is to apply to the word "workman" as used in the particular clause of the Act which is under consideration, for this word may both be restricted or expanded by its subject matter. The context and the subject matter in connection with which the word "workman" is used are accordingly important factors having a bearing on the question. The propriety or necessity of thus construing the word "workman" is obvious because all parts of the Act have to be in harmony with the statutory intent." (emphasis supplied)

In Bennett Coleman & Co. (P) Ltd. v. Punya Priya Das Gupta, [1970]I SCR 181 this Court observed thus:

"But assuming that there is such a conflict as contended, we do not have to resolve that conflict for the purposes of the problem before

us.

The definition of s. 2 of the present Act commences with the words "In this Act unless the context otherwise requires" and provides that the definitions of the various expressions will be those that are given there. Similar qualifying expressions are also to be found in the Industrial Disputes Act, 1947, the Minimum Wages Act, 1948, the C.P. & Berar Industrial Disputes Settlement Act, 1947 and certain other statutes dealing with industrial questions. It is, therefore, clear that the definitions of "a newspaper employee" and "a working journalist" have to be construed in the light of and subject to the context requiring otherwise."

The above passages throw a flood of light on the scope of interpretation of these opening words of Section 2 and it is clear that they must be examined in the light of the context, the title, the preamble and all the other enacting parts of the statute. Due weight ought to be given to the words "unless the context otherwise requires". The subject matter and the context in which a particular word is used are of great importance and it is axiomatic that the object underlying the Act must always be kept in view in construing the context in which a particular word is used. In the Statement of Object

and Reasons of Act No. 40 of 1973 by which Section 14(IA) was introduced, it is clearly mentioned that National Commission of Labour has recommended that in order to check the growth of arrears, penalties for defaults in payment of provident fund dues should be more stringent and the default should be made cognizable. The concept which prompted the Legislature to enact this welfare law should also be borne in mind in interpretation of the provisions. Chagla, C.J. in *Prakash Cotton Mill. (P) Ltd. v. State of Bombay*, [1957]2 LLJ 490 observed as under:

"No Labour legislation, no special legislation, no economic, legislation, can be considered by a court without applying the principles of social justice in interpreting the provisions of these laws. Social justice is an objective which is embodied and enshrined in our Constitution it would indeed be startling for anyone to suggest that the court should shut its eyes to social justice and consider and interpret a law as if our country had not pledged itself to bringing about social justice."

In *Kanwar Singh v. Delhi Administration*, [1965] 1 SCR 7 it was observed as under:

"It is the duty of the court in construing a statute to give

effect to the intention of the legislature. If, therefore, giving a literal meaning to a word used by the draftsman, particularly in a penal statute, would defeat the object of the legislature, which is to suppress a mischief, the court can depart from the dictionary meaning or even the popular meaning of the word and instead give it a meaning which will advance the remedy and suppress the mischief."

In Vanguard Fire & Gen. Ins. Co. v. Fraser & Ross, AIR 1960 SC 1971 it was held that "the Court has not only to look at words but also at the context, the collocation and the object of such words and interpret the meaning intended to be conveyed by the use of the words under the circumstances"

7. Mr. Hemani learned advocate for the petitioner has also relied on the decision of the Hon'ble Supreme Court, to bring home the submission that contribution by employer in case of authority created under Central or State Government legislation is not excluded and is inclusive, in the case of **Municipal Corporation of Delhi v. Children Book Trust, reported in AIR 1992 SC 1456**, wherein, the Hon'ble Supreme Court has held in para-81 as

under:

"81. The word "contribution" used in the proviso must also be given its due meaning. It cannot be understood as donations. If that be so, a voluntary contribution cannot amount to a compulsive donation. If the donor, in order to gain an advantage or benefit, if he apprehends that but for the contribution some adverse consequence would follow, makes a donation certainly it ceases to be voluntary."

8. Mr. Hemani learned advocate for the petitioner has further contended that the apprehension which has been put forward by the Commissioner is misconceived. He has taken us through the clauses as interpreted by the Commissioner, being as under and according to Mr. Hemani, it is arbitrary and without basis and contrary to the object of the Trust and Income Tax Act.

As per notification No. SO 672(E)
dated 27.7.1995-

(1) cash benefits to a member of the fund,-

(a) on superannuation, or

(b) in the event of his illness or illness of his spouse or dependent children, or

(c) to meet the cost of education of his dependent children; or

(2) cash benefits to the dependents of a member of the fund in the event of the death of such member."

As per notification no. 33/11 dated 3.6.2011-

In the said notification, in paragraph (1), after clause (c), the following clause shall be interested, namely:-

(d) to meet the cost of annual medical tests or medical checkups of the members, his spouse and dependent children."

9. Mr. Hemani learned advocate for the petitioner has also submitted that CBDT has itself given the guidelines and clauses, and the Trust is governed by both these clauses of CBDT instructions.

10. Learned advocate Mr. Pranav G. Desai

appearing for the respondent has pointed out from the trust deed that definition of beneficiaries includes all the members who are serving and retired employees and members of the family or dependents of serving and retired and deceased employees. The definition of member clearly provides that the members are serving and retired employees of the trust. From the provisions of creation and establishment of trust, it is clearly established that the amount of Rs. 10 lacs has been paid by the Kandla Port Trust to concerned petitioner trust. It also provides subsequent payment as deem fit. Further, it is stated that the amount shall be utilised for the purpose of managing, controlling, utilizing and disposing of the said fund/property for the benefits and welfare of the beneficiaries.

11. It is further borne out that for purpose of trust, it clearly provides that the trust is formed to provide better health care and educational aid to the serving and retired employees of the trust and to the members of the family/dependents of serving/retired/deceased needing such help, and therefore, he supported the order of Commissioner. Even perusal of the aims and object of the trust, it clearly provides for all the benefits to the beneficiaries and creates class among

equals. It is clear from reading that certain clause of aims and object of the trust is not in consonance with the purpose of Income Tax Act for claiming benefit under section 10(23AAA), particularly, clause 10 of the aims and object of the trust in order Annexure-A passed under Rule 16C(5) of the Income Tax Rules, 1962 read with section 10 (23AAA) of the Income Tax Act. In para 2, the provisions of trust deed has been duly gone into and after considering the provisions of trust deed, the relevant aspects were duly noted and show cause notice for explanation was sent, however, the petitioner failed to satisfy the same, particularly, with regard to the contribution, the defence and manner of accepting the contribution, but the aims and objectives of the trust are not in consonance with the objects notified under the said Section, even clause for revocation of trust i.e. clause 46 is also considered in order Annexure A. Said clause in the beginning indicates that the trust is irrevocable, however, later part of it provides that the trust if revoked and after the payment of all debts and liabilities of the trust, shall be transferred to Kandla Port Trust. Even clause 46 is also not in consonance with the creation/establishment of the trust, which is stated in the clause 1 where it is specifically provided that all the property

fund etc. completely vest into the trust and same should only be utilized and applied for the purpose of benefits and welfare of the beneficiaries only. Mr. Desai further contended that the very object of the Trust is frustrated. He further pointed out that section 23AAA will exempt them from income tax and word "contribution" as interpreted by the learned advocate for the petitioner is not accepted since the employer cannot contribute. He further contended that there is discrimination between the retired employees and the employees working. IN that view of the matter, he submitted that the Commissioner has rightly rejected the application of the petitioner. He has relied upon the word "beneficiaries" which is reproduced hereinabove. He has also relied upon clause 14 which reads as under:

14. The Trust shall have periodic contributions from its members to its fund. It can also receive and accept gifts, grants, aids, donations, benefactions of any nature and kind whatsoever for the purpose of fulfilling its objects besides contributions from KPT.

12. Mr. Desai learned advocate for the respondent-authority has contended that the

order passed by the Commissioner is right and the petition deserves to be dismissed.

13. While appreciating the facts and interpreting the law on point, it is clear that the very object of the trust is to see that the employees may not have to lend their hands before any person for money at a higher rate of interest from outsider, and for that, the trust is created. If we go through the clauses no. 7 and 10, as referred to hereinabove, they are in consonance with the guidelines issued by the CBDT. On close scrutiny of word "contribution", it presupposes the contribution of employee is mandatory and other contribution by the employer in any form is acceptable. The finding of Commissioner is bad in law and against the provision. In that view of the matter, in our view, the Commissioner has wrongly interpreted Rule 16(C) of the Income Tax Rules. In that view of the matter, the interpretation put forward by the Commissioner is required to be rejected.

14. The apprehension which has been emphasized by Mr. Desai learned advocate for the respondent that the fund, on dissolution of Trust, will go to Kandla Port Trust, in our view, till the last beneficiary of the Trust remain in existence. However, only with the

order Central Government, the Trust can be dissolved and the amount remained with the Trust will go back to the Statutory Authority i.e. Kandla Port Trust. Therefore, in the facts and circumstances of the case, the clauses are not objectionable.

13. In the premise, the present petition is allowed. The impugned order dated 26.3.2014 passed by the Commissioner of Income Tax, Rajkot-1, Rajkot, Annexure-A to the present petition, is quashed and set aside. The Commissioner of Income-Tax, Rajkot-1, Rajkot is directed to grant approval to the petitioner-Trust on or before 31.1.2015, from the date on which they made application. Rule is made absolute. No order as to costs.

(K.S.JHAVERI, J.)

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THE HIGH COURT
OF GUJARAT

(K.J.THAKER, J)

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