IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/TAX APPEAL NO. 783 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE J.B.PARDIWALA Sd/-
and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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THE COMMISSIONER OF INCOME TAX (EXEMPTIONS)
Versus
ADDOR FOUNDATION

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Appearance:
MRS MAUNA M BHATT(174) for the Appellant(s) No. 1
MR SUDHIR M MEHTA(2058) for the Opponent(s) No. 1
MS SHAILEE S MEHTA(5873) for the Opponent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE J.B.PARDIWALA**
and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 04/02/2020
ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. This Tax Appeal was ordered to be admitted on the following substantial questions of law :

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"(A) Whether the Appellate Tribunal is justified in allowing registration to the assessee disregarding the fact that the assessee trust is not a charitable organization, as the trust has not fulfilled the condition laid down for registration in section 12AA of the Income Tax Act, 1961 and Rule 17A of the Income Tax Rules, 1962 ?

(B) Whether the Appellate Tribunal is correct in holding that non-disposal of application for registration by granting or refusing registration before the expiry of six months as provided U/s.12AA(2) of the I.T.Act, 1961 would result in deemed grant of registration, particularly in view of the decision of Allahabad High Court in the case of CIT vs Muzafar Nagar Development Authority which has distinguished the decision of the Hon'ble Supreme Court in the case of Society for Promotion of Education (2016) in which the Supreme Court had not decided this question ?"

2. The short question that falls for our consideration is, whether the Tribunal could have allowed the Appeal filed by the respondent - assessee on the ground of not deciding the application for deemed registration filed under Section 12AA of the Income Tax Act, 1961 (for short 'the Act, 1961') within the stipulated period of time as specified in sub-section (2) of Section 12AA of the Act, 1961.

3. The brief facts of the present case are as under :

3.1 The respondent - assessee made an online application for registration under Section 12AA of the Act, 1961, on

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23.01.2017 in Form No.10A under Rule 11AA of the Income Tax Rules, 1961, along with the Registration Certificate issued by the Charity Commissioner.

3.2 The Commissioner of Income Tax (Exemption), Ahmedabad (for short, 'CIT(E)'), by letter dated 05.02.2018, called for the details of the various activities actually carried out by the respondent - assessee.

3.3 The CIT(E), after considering the details submitted by the respondent-Trust, rejected the application for registration.

3.4 Being aggrieved by such decision of rejecting the application for registration, the respondent - Trust preferred an appeal before the Income Tax Appellate Tribunal. The Tribunal took note of the fact that while passing the order rejecting the application for registration, the CIT(E) has wrongly mentioned the date of the receipt of the application for registration as 23.01.2018 instead of 23.01.2017. The Tribunal, relying on sub-section (2) of Section 12AA of the Act, 1961, has held that as the application for registration is not decided within a period of six months from the date of filing, the registration is deemed to have been granted. In this regard, the Tribunal placed reliance on the decision of the Supreme Court in the case of CIT vs. Society for Promotion of Education, (2016) 238 taxmann 0330 (SC). Accordingly, the Tribunal allowed the appeal filed by the respondent - assessee.

4. Ms.Bhatt, the learned counsel appearing for the Revenue, submitted that the dictum of law as laid down by the Supreme

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Court in the case of Society for Promotion of Education (supra) is of no avail to the respondent - assessee in the facts and circumstances of the present case. It is true that the issue raised before the Supreme Court in the case of Society for Promotion of Education (supra) was quite similar to the issue on hand, i.e. with regard to grant of deemed registration of an application under Section12AA of the Act. However, the Supreme Court has decided the said issue in favour of the assessee and against the Revenue only on the basis of the statement made by the learned Additional Solicitor General, keeping all the questions of law open. It is, therefore, submitted that on plain reading of sub-section (2) of Section 12AA of the Act, 1961, it cannot be said that merely not deciding the application by the Income Tax Commissioner within the stipulated period of six months, deemed registration is to be granted. In such circumstances, referred to above, Ms. Bhatt prays that there being merit in this Appeal, the same be allowed.

5. On the other hand, this Appeal has been vehemently opposed by Mr.Sudhir Mehta, the learned counsel appearing for the respondent - assessee. He placed reliance on the decision of the Kerala High Court in the case of Commissioner of Income Tax, Cochin vs. TBI Education Trust, reported in (2018) 96 taxmann.com 356 (Kerala), as well as the decision of the Rajasthan High Court in the case of Commissioner of Income Tax vs. Sahitya Sadawart Samiti jaipur, reported in (2017) 88 taxmann.com 703 (Rajasthan), to submit that an identical issue was raised before the Kerala High Court as well as the Rajasthan High Court, wherein both the Courts took the similar view that the registration is deemed to have been granted automatically

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on expiry of the period of six months as specified in sub-section (2) of Section 12AA of the Act, 1961.

6. With regard to grant of deemed registration, reliance is placed on the following decisions :

(i) In the case of Commissioner of Income Tax, Cochin vs. TBI Education Trust, (2018) 96 taxmann.com 356 (Kerala);

(ii) In the case of Commissioner of Income Tax vs. Sahitya Sadawart Samiti Jaipur, (2017) 88 taxmann.com 703 (Rajasthan);

(iii) In the case of Commissioner of Income Tax, Kanpur vs. Society for Promotion of Education, Allahabad, (2016) 67 taxmann.com 264 (SC).

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7. Having heard the learned counsel appearing for the parties and having gone through the orders passed by the CIT(A) as well as the Tribunal, we are of the view that in order to adjudicate the controversy involved in this Appeal, we must look into the provision of Section 12AA of the Act, 1961, which reads thus;

*"**12AA. Procedure for registration:** (1) The Principal Commissioner or Commissioner, on receipt of an application for registration of a trust or institution made under clause (a) or clause (aa) [or clause (ab)] of sub-section (1) of section 12A, shall—*

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(a) call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of activities of the trust or institution and may also make such inquiries as he may deem necessary in this behalf; and

(b) after satisfying himself about the objects of the trust or institution and the genuineness of its activities, he—

(i) shall pass an order in writing registering the trust or institution;

(ii) shall, if he is not so satisfied, pass an order in writing refusing to register the trust or institution,

and a copy of such order shall be sent to the applicant :

Provided that no order under sub-clause (ii) shall be passed unless the applicant has been given a reasonable opportunity of being heard.

(1A) All applications, pending before the Principal Chief Commissioner or Chief Commissioner on which no order has been passed under clause (b) of sub-section (1) before the 1st day of June, 1999, shall stand transferred on that day to the Principal Commissioner or Commissioner and the Principal Commissioner or Commissioner may proceed with such applications under that sub-section from the stage at which they were on that day.

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(2) Every order granting or refusing registration under clause (b) of sub-section (1) shall be passed before the expiry of six months from the end of the month in which the application was received under clause (a) or clause (aa) [or clause (ab)] of sub-section (1) of Section 12A.

(3) Where a trust or an institution has been granted registration under clause (b) of sub-section (1) or has obtained registration at any time under Section 12A as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996) and subsequently the Principal Commissioner or Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution:

Provided that no order under this sub-section shall be passed unless such trust or institution has been given a reasonable opportunity of being heard.

(4) Without prejudice to the provisions of sub-section (3), where a trust or an institution has been granted registration under clause (b) of sub-section (1) or has obtained registration at any time under Section 12A [as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996)] and subsequently it is noticed that the activities of the trust or the institution are being carried out in a manner that the provisions of Sections 11 and 12 do not apply to exclude either whole or any part of the income of such trust

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or institution due to operation of sub-section (1) of Section 13, then, the Principal Commissioner or the Commissioner may by an order in writing cancel the registration of such trust or institution:

Provided that the registration shall not be cancelled under this sub-section, if the trust or institution proves that there was a reasonable cause for the activities to be carried out in the said manner."

8. On perusal of the aforesaid provision, more particularly, sub-section (2) thereof provides the time limit for deciding the application filed for registration by any trust. Sub-section (2) further provides that every order, granting or refusing registration under clause (b) of sub-section (1) shall be passed before the expiry of six months from the end of the month in which the application was received under clause (a) or clause (aa) [or clause (ab)] of sub-section (1) of Section 12A. Thus, Section 12AA provides for the procedure for registration of the application filed under Section 12AA of the Act.

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9. The decision of the Division Bench of the Allahabad High Court in the case of Society for Promotion of Education (supra) is of no avail to the case on hand as the correctness of the said decision was questioned before the Full Bench of the Allahabad High Court in the case of CIT vs. Muzafar Nagar Development Authority, 372 ITR 209. The Full Bench of the Allahabad High Court relying on the decisions of the Madras High Court in the case of Commissioner of Income-tax-I Salem vs. Sheela Christian Charitable Trust, (2013) 214 Taxman 551 and CIT vs.

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Karimangalam Annya Pangal Semipu Amaipur Ltd., (2013) 354 ITR 483 (Mad) has held as under :

> *“The mere fact that in sub-section (1) of Section 12AA, the legislature has used the expression 'may' while providing that the Commissioner may make such inquiry as he may deem necessary to satisfy himself about the genuineness of the activities of the trust or institution, is not by itself reason enough to hold that the use of the expression 'shall' in sub-section(2) must, as a necessary consequence or corollary, be regarded as mandatory in nature. In Ganesh Prasad Sah Kesari and another vs. Lakshmi Narayan Gupta5, the Supreme Court held as follows :*
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> > *“....Obviously where the legislature uses two words 'may' and 'shall' in two different parts of the same provision prima facie it would appear that the legislature manifested its intention to make one part directory and another mandatory. But that by itself is not decisive. The power of the court still to ascertain the real intention of the Legislature by carefully examining the scope of the statute to find out whether the provision is directory or mandatory remains unimpaired even where both the words are used in the same provision. In Govindlal Chagganlal Patel v. Agricultural Produce Market Committee Godhra (1976) 1 SCR 451: (AIR 1976 SC 263) Chandrachud, C.J., speaking for the Court approved the following passage in Crawford on 'Statutory Construction' (Ed. 1940 Art. 261, p. 516):*

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> *"The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also while considering its nature, its design and the consequences which would follow from construing it the one way or the other."*

> *Applying this well-recognised canon of construction the conclusion is inescapable that the word 'shall' used in the provision is directory and not mandatory and must be read as 'may'."*

In that case, the Supreme Court was construing the provisions of Section 11A of the Bihar Buildings (Lease, Rent and Eviction) Control Act 1947 relating to the deposit of rent by a tenant in a suit for ejectment. The Supreme Court observed that the expression 'shall' must be construed as being directory and not mandatory having due regard to the legislative intent.

We are unable to accept the line of reasoning which weighed with the Division Bench of this Court in Society for the Promotion of Education Adventure Sport & Conservation of Environment (supra). The Division Bench, in holding that the

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consequence of the non-consideration of an application for registration within the time fixed by Section 12AA(2), would be a deemed grant of registration, placed reliance on the following considerations:

> *(i) Unlike the decision of the Supreme Court in Chet Ram Vashist (supra) which dealt with the sanctioning of a lay-out plan where an element of public interest is involved, no such public element or public interest is involved and reading a breach of Section 12AA(2) as leading to a deemed grant of registration may, "at the worst", cause some loss of revenue to the department;*
>
> *(ii) On the other hand, taking a contrary view and, if a deemed grant of registration is not read into the statute, the assessee would be left at the mercy of the income tax authorities since no remedy has been provided in the Act against a failure to decide;*
>
> *(iii) An irreversible situation is not created by the grant of a deemed registration because it is always open to the revenue to cancel the registration under sub-section (3) of Section 12AA prospectively. The only adverse consequence is a loss of revenue if the deemed registration is cancelled subsequently with prospective effect; and*
>
> *(iv) a purposive interpretation of the statute should be adopted.*

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We are not inclined to accept this line of reasoning which has found favour with the Division Bench. For one thing, it would be inappropriate for the Court to accept, as a first principle of law, a proposition that there is no public element involved in the collection of revenue as legislated upon by Parliament or by the State Legislature. Proper collection of the revenues of the State is a matter of public interest since public revenues are utilized for public purposes. But such general considerations cannot override the duty of the Court to give plain meaning and effect to the language used in a taxing statute. The duty of the Court first and foremost is to construe the words of the taxing statute in question as they stand and the intention of the legislature has to be construed with reference to the language of the words used. While interpreting the provision, the Court cannot legislate a new provision or introduce a deeming fiction where none has been provided. Similarly, even as a matter of first principle, a casus omissus cannot be supplied by the Court unless there is a case of clear necessity and when reason is found within the statute itself (Padmasundara Rao (Dead) and others vs. State of T.N. and others, Union of India vs. Rajiv Kumar and Unique Butyle Tube Industries (P) Ltd. vs. U.P. Financial Corporation and others) A similar view to that of the Division Bench was adopted in a judgement of the Delhi Bench of the Income Tax Appellate Tribunal in Bhgwad Swarup Shri Shri Devraha Baba Memorial Shri Hari Parmarth Dham Trust vs. Commissioner of Income-tax, Dehradun. The Tribunal, as indeed the Division Bench of this Court, in the earlier decision, observed that on the

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balance and though the questions presented some difficulty, it was inclined to take the view supporting the plea of deemed registration, otherwise the assessee would be left without a remedy. The assessee, in our view, is not without a remedy since a delay on the part of the Commissioner to consider an application can be remedied by recourse to the jurisdiction under Article 226 of the Constitution. If the Commissioner has delayed in passing an order on an application for registration under Section 12AA, recourse to the remedy under Article 226 is always available to order an expeditious decision thereon.

A considerable amount of reliance was placed on behalf of the assessee in the present case on a judgement of the Supreme Court in Commissioner of Income-Tax vs. Ajanta Electricals. In that case, the Supreme Court construed the provisions of Section 139(2) of the Act prior to its deletion with effect from 1989. The proviso to Section 139(2) conferred a discretion on the Income Tax Officer to extend the date for the furnishing of a return. The revenue had relied upon a judgement of the Andhra Pradesh High Court in which it had been held that there was no provision in the Act or the Rules requiring an Income Tax Officer to pass an order on an application filed by the assessee subsequent to the time given to him for filing his return pursuant to a notice under sub-section (2) of Section 139. The Supreme Court held that merely because a specific provision was absent for authorising an Income Tax Officer to entertain an application made beyond time, it was not proper to hold that it was not open to the assessee to make an application under Section

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139(2) for extension of time, after the time allowed had expired. In consequence, the Supreme Court held that the application made by the assessee under Section 139(2) for extension of time after the expiry of the time allowed was maintainable and therefore valid. That was the point which was decided by the Supreme Court. This decision would be of no assistance to the assessee.

We may also note at this stage, that the provisions of sub-section (2) of Section 12AA of the Act have been construed in a judgment of a Division Bench of the Madras High Court in Commissioner of Income-tax-I Salem vs. Sheela Christian Charitable Trust. The Division Bench in that case has held that the Tribunal was not right in holding that the failure to pass an order in an application under Section 12AA within the stipulated period of six months would automatically result in granting registration to the trust. The same view has been reiterated by a Division Bench of the Madras High Court in Commissioner of Income-tax vs. Karimangalam Onriya Pengal Semipu Amaipu Ltd..

There can be no dispute about the basic principle of law that where a legal fiction has been created, it must be given full force and effect. As Lord Asquith,J observed in East End Dwellings Co. Ltd. vs. Finsbury Borough Council, "where the statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs". The point,

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however, in this matter is that Section 12AA(2) does not provide for a legal fiction at all. Parliament has carefully and advisedly not provided for a deeming fiction to the effect that an application for registration would be deemed to have been granted, if it is not disposed of within six months. Legislative fictions are what they purport to be : acts of the legislating body. The Court cannot create one, where the legislature has not provided a deeming fiction.

In Bhavnagar University vs. Palitana Sugar Mill (P) Ltd. and others, the Apex Court held as follows:

> *"We are not oblivious of the law that when a public functionary is required to do a certain thing within a specified time, the same is ordinarily directory but it is equally when settled that when consequence for inaction on the part of the statutory authorities within such specified time is expressly provided, it must be held to be imperative."*

Significantly, in the present case, Parliament has not legislated a consequence of a failure to decide an application within a period of six months.

In the circumstances, we answer the questions referred to the Full Bench for reference in the following terms:

> *(i) Non disposal of an application for registration, by granting or refusing registration, before the expiry of*

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six months as provided under Section 12AA (2) of the Income Tax Act 1961 would not result in a deemed grant of registration; and

(ii) the judgment of the Division Bench of this Court in Society for the Promotion of Education Adventure Sport & Conservation of Environment (supra) does not lay down the correct position of law.

The reference is, accordingly, answered. The appeal shall now be placed before the regular bench in accordance with the roster for final disposal in terms of the questions so answered."

10. The principles discernible from the above referred Full Bench decision of the Allahabad High Court may be summarised thus :

(1) The court should first construe the words of the taxing statute as they stand and the intention of the legislature should be construed with reference to the language of the words used.

(2) The court, while interpreting the provision, should not legislate a new provision or introduce a deeming fiction where none has been provided.

(3) The *casus omissus* cannot be supplied by the court unless there is a case of clear necessity and when reason is

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found within the statute itself. If the statutory mandate as laid in Section 12AA of the Act is flouted, then the assessee cannot be said to be without a remedy. The delay on the part of the Commissioner to consider an application can be remedied by recourse to the jurisdiction under Article 226 of the Constitution of India.

(4) Section 12AA(2) of the Act does not provide for a legal fiction. The Parliament has carefully and advisably not provided for a deeming fiction to the effect that an application for registration would be deemed to have been granted, if it is not disposed of within six months.

(5) The non-disposal of an application for registration by granting or refusing registration before the expiry of six months as provided under Section 12AA(2) of the Act would not result in a deemed grant of registration.

11. Mr.Mehta, the learned counsel appearing for the respondent, would submit that although the legislature has thought fit not to incorporate the word 'deemed' in Section 12AA(2) of the Act, yet having regard to the language and the intention, it can be said that legal fiction has been created. As such, it is not necessary for us to deal with such submission canvassed by Mr.Mehta on behalf of the respondent. However, as this is the principal argument of Mr.Mehta, we propose to answer the same. We, for the purpose of answering the submission of Mr.Mehta, proceed on the footing that the legislature has used the word 'deemed' in Section 12AA(2) of the Act. Whether that by itself would make any difference or whether

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that by itself would create a legal fiction having regard to the provision of law we are dealing with.

12. The word 'deemed' is used in various senses. Sometimes, it means 'generally regarded'. At other time, it signifies 'taken prima facie to be', while in other case, it means, 'taken conclusively'. Its various meanings are, - 'to deem' is 'to hold in belief, estimation or opinion'; to judge; adjudge; decide; considered to be; to have or to be of an opinion; to esteem; to suppose, to think, decide or believe on considerations; to account, to regard; to adjudge or decide; to conclude upon consideration. (see Major Law Lexicon by P.Ramanatha Aiyar, 4th Edition 2010 Vol.2)

13. A deeming fiction is a supposition of law that the thing is true without inquiring whether it be so or not, that it may have the effect of truth so far as it is consistent with justice. A deeming provision is made to include what is obvious or what is uncertain or to impose, for the purpose of statute, an ordinary construction of a word or phrase that would not otherwise prevail but, in each case, it would be a separate question as to that what object the Legislature has made on such a deeming fiction.

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14. Ruth Sullivan (Sullivan on the Construction of Statutes, 5th ed.) classifies deeming rules into four broad categories according to their purpose :

(1) To create a legal fiction by declaring that something exists or has occurred regardless of the truth of the matter;

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(2) To declare the law;

(3) To create a legal presumption by declaring that certain facts are to be taken as established; and

(4) To confer discretion.

15. In Consolidated Coffee Ltd. v. Coffee Board, Bangalore, reported in AIR 1980 SC 1468, the purpose of the word 'deemed' occurring in Section 5(3) of the Central Sales Tax Act, 1956, came for consideration. The issue that emanated was whether a legal fiction had been created by use of the word 'deemed'. It is fruitful to reproduce what has been exposited by Their Lordships:

"A deeming provision might be made to include what is obvious or what is uncertain or to impose for the purpose of a statute an artificial construction of a word or phrase that would not otherwise prevail, but in each case it would be a question as to with what object the legislature has made such a deeming provision. In St. Aubyn and Ors. v/s. Attorney General, 1952 A.C. 15 at p.53 Lord Radcliffe observed thus:

"The word 'deemed' is used a great deal in modern legislation. Sometimes it is used to impose for the purposes of a statute an artificial construction of a word or phrase that would not otherwise prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be uncertain.

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Sometimes it is used to give a comprehensive description that includes what is obvious, what is uncertain and what is, in the ordinary sense, impossible.""

16. In State of Tamil Nadu v. M/s. Arooran Sugars Ltd., reported in AIR 1997 SC 1815, a Constitution Bench, while dealing with the deeming provision in a statute, opined that the role of a provision in a statute creating legal fiction is well settled. Their Lordships referred to the decisions in East End Dwellings Co. Ltd. v. Finsbury Borough Council, 1952 AC 109, Chief Inspector of Mines v. Karam Chand Thapar, AIR 1961 SC 838, J.K. Cotton Spinning and Weaving Mills Ltd. v. Union of India, AIR 1988 SC 191, M.Venugopal v. Divisional Manager, Life Insurance Corporation of India, AIR 1994 SC 1343 and Harish Tandon v. Addl. District Magistrate, Allahabad, AIR 1995 SC 676, and came to hold that when a statute creates a legal fiction saying that something shall be deemed to have been done which in fact and truth has not been done, the Court has to examine and ascertain as to for what purpose and between which persons such a statutory fiction is to be resorted to and thereafter the courts have to give full effect :

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"6. ... It is a well known principle of construction that in interpreting a provision creating a legal fiction, the Court is to ascertain for what purpose the fiction is created, and after ascertaining this, the Court is to assume all those facts and consequences which are incidental or inevitable corollaries to giving effect to the fiction. But in so construing the fiction it is not to be extended beyond the purpose for which it is

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created, or beyond the language of the Section by which it is created....”

17. From the aforesaid pronouncements, the principle discernible is that, it is the bounden duty of the court to ascertain for what purpose the legal fiction has been created. It is also the duty of the Court to imagine the fiction with all real consequences and instances unless prohibited from doing so. That apart, the use of the term deemed has to be read in its context and further the fullest logical purpose and import are to be understood. It is because in modern legislation, the term deemed has been used for manifold purposes. The object of the Legislature has to be kept in mind. (See Andaleeb Sehgal v. Union of India and another, AIR 2011 Delhi 29 (FB))

18. In Lt. Col. Prithi Pal Singh Bedi v. Union of India and Ors., reported in AIR 1982 SC 1413, the Supreme Court has expressed the view as follows:

“The dominant purpose in construing a statute is to ascertain the intention of the Parliament. One of the well recognised canons of construction is that the legislature speaks its mind by use of correct expression and unless there is any ambiguity in the language of the provision the Court should adopt literal construction if it does not lead to an absurdity. The first question to be posed is whether there is any ambiguity in the language used in Rule 40. If there is none, it would mean the language used speaks the mind of Parliament and there is no need to look somewhere else to discover the intention or meaning. If the literal construction

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leads to an absurdity, external aids to construction can be resorted to. To ascertain the literal meaning it is equally necessary first to ascertain the juxtaposition in which the rule is placed, the purpose for which it is enacted and the object which it is required to subserve and the authority by which the rule is framed. This necessitates examination of the broad features of the Act."

19. In Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. and others, reported in AIR 1987 SC 1023, Their Lordships have ruled thus:

"Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute- maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can

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be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place..."

20. The Supreme Court in Kalidas Umedram and others v. State of Gujarat and another, (1996)7 SCC 635, took the view that a deemed provision would not be a free licence to make use of the same defeating the object with which such provision is made. The Supreme Court made the following observations as under :

"It is true that the proviso envisages deemed permission if the Collector does not grant permission within three months from the date of the receipt of the application excluding the time as specified taken thereunder. But the condition is that land should be used for raising commercial crops but not for industrial purposes or for building purposes. Deemed permission would not be a free licence to use the land for any other purpose defeating the object of the grant. The public policy behind the grant is to augment agricultural production so as to enable the tiller of the soil economic empowerment and social and economic justice assured in the Preamble to the Constitution of India and Articles 38 and 46 to minimise inequalities in income and status. The State distributes under Article 39(b), its material resources to subserve the said purpose. Having obtained the grant or permission, the grantee-appellants cannot convert the land into non-agricultural use as well as for building houses. The sale of government land for nominal amount was for the avowed constitutional purposes. After the conversion, sale of the lands for building purposes would be a windfall.

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Obviously, the public purpose of the grant and the constitutional goals would be defeated by this method of circumvention. The Government, therefore, is justified in cancelling the grant. Under the above circumstances, the Government was entitled to revoke the grant in respect of the entire extent of land."

21. In Mansingbhai Kahalsingbhai v. Surat Municipal Corporation, AIR 2001 Guj. 44, the issue before the Division Bench of this Court was, whether the construction work carried out by the petitioners of that case was in accordance with the law or not. In the said case also, it was pleaded that the application for permission to construct was submitted on 7th August 1999 and since there was no communication in that regard within a period of one month, the application can be said to have been granted by a deeming fiction. In the said background, the Bench made the following observations :

"Thus even after a period of one month as stated by the petitioner is over, it is necessary that unless and until notice is given to the City Engineer, the proposed date of commencement to erect a new building, the petitioners could not have commenced construction work. Section 263 and Rule 3 of Chapter XII refers to deeming provision. Reading the aforesaid provision assuming that the deeming provision is applicable for construction which is otherwise legal even then one has to give notice of commencement of work and only thereafter the work of erection of a building can be commenced. After completion of building within one month thereafter notice is required to be given in writing of

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completion accompanied by a certificate. Law also prohibits occupying the building in absence of any permit or occupation certificate issued to use the building. In the instant case, there is a flagrant violation of these provisions. No notice has been given and yet we find that persons have occupied the building. This speaks volume about the intention of the petitioners. The Court while exercising jurisdiction under Article 226 of the Constitution of India has to bear in mind that persons who are coming to the Court with clean hands and those who have acted in accordance with law are required to be assisted and not the persons who are committing breach of provisions of law."

"Thus, it goes without saying that deemed permission means that a person is erecting building after the expiry of the period mentioned in Rule 3 strictly in accordance with Rules, bye-laws etc. It is required to be emphasised here that when a person moves the Commissioner for permission of erection of a building, the person concerned knows the Rules and Regulations and Bye-laws with regard to Building Regulations. It is for him to carry out the construction as per the Building Regulations and Bye-laws and particularly keeping in mind the FSI. The person who constructs the building as per the Rules and Regulations can say that he has constructed the building as per the requirement of law but not otherwise. The deemed permission can be said to have been attracted in case where a person has carried out construction in accordance with the existing Rules, Bye-laws and Building Regulations and not otherwise. It is required to be noted that likewise the case of

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Calcutta Municipal Corporation before the Apex Court, Rule 3 of Chapter XII of Appendix IV of the Act provides that if within 30 days there is no disapproval, subject to the Rules one may commence the work of erection of a building but not so as to contravene any provisions of the Act or any Rule or bye-laws. Under the Act before the commencement, notice is required to be given as contemplated in Chapter XII of Appendix IV. In our opinion, therefore, one has to submit a plan for erection of a building keeping in mind all the Building Regulations and if any one constructs contrary to that, the same being illegal must be demolished. The suggestion made by the petitioners that whatever type of the plan is submitted and for which no intimation is given within thirty days then the person is deemed to have been granted permission has no merit. If such a view is taken, it will be for the benefit of wrong doers only who will carry out the construction and will transfer the building/flats and innocent purchasers would be in difficulty. Under the circumstances, if one constructs building in contravention of the Rules and Regulations and Bye-Laws then he is a wrong doer and even if permission is not granted because of connivance or negligence of the Officer, shelter of deeming provision cannot be made available to him. Learned single Judge was justified in arriving at the conclusion that the deemed permission cannot be inconsistent with the Rules and Regulations and no deemed permission can be against the relevant Rules and Regulations."

22. We are in complete agreement with the view taken by the Full Bench of the Allahabad High Court in view of the fact that

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the Supreme Court, in the case of Society for Promotion of Education (supra), has not laid down any ratio with regard to the questions raised before us, and on the contrary, kept the questions of law open to be considered.

23. In that view of the matter, we find it difficult to subscribe to the views expressed by the Kerala High Court in the case of TBI Education Trust (supra), wherein the court has relied upon the decision of the Supreme Court in the case of Kunhayammed v. State of Kerala, 245 ITR 360 (SC). The Supreme Court decision does not lay down any principle of law. In such circumstances, deemed registration cannot be granted on the ground that the application filed by the Trust under Section 12AA is not decided, for any good reason, within a period of six months from the date of filing.

24. In the result, the Appeal is allowed. The impugned order passed by the Tribunal is hereby quashed and set aside and the matter is remitted to the Tribunal for the purpose of deciding the same on merits after giving an opportunity of hearing to the respondent - assessee. We answer the questions in favour of the Revenue and against the assessee.

THE HIGH COURT OF GUJARAT WEB COPY

(J. B. PARDIWALA, J.)

(BHARGAV D. KARIA, J.)

/VAHID /MOINUDDIN

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