

Commissioner Of Income Tax Central-Ii vs Shambhubhai Mahadev Ahir on 25 March, 2014

Author: Bhaskar Bhattacharya

Bench: Chief Justice

0/TAXAP/2213/2010

CAV JUDGMENT

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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 2213 of 2010

FOR APPROVAL AND SIGNATURE:

HONOURABLE THE CHIEF JUSTICE Sd/-

MR. BHASKAR BHATTACHARYA

HONOURABLE MR.JUSTICE

Sd/-

J.B.PARDIWALA

HONOURABLE MR.JUSTICE

Sd/-

PARESH UPADHYAY

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

2 To be referred to the Reporter or not ?` Yes 3 Whether their Lordships wish to see the fair copy of the No judgment ?

4 Whether this case involves a substantial question of law No 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 ? No

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COMMISSIONER OF INCOME TAX CENTRAL-II Versus SHAMBHUBHAI MAHADEV AHIR

===== Appearance:

MR M.R. BHATT, SR. ADVOCATE with MS MAUNA M BHATT, ADVOCATE for the Appellant.

MR S N SOPARKAR, SR. ADVOCATE with MS SWATI SOPARKAR, ADVOCATE for the respondent.

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CORAM: HONOURABLE THE CHIEF JUSTICE MR. BHASKAR BHATTACHARYA and HONOURABLE MR. JUSTICE J.B. PARDIWALA and HONOURABLE MR. JUSTICE PARESH UPADHYAY Date : 25/03/2014 CAV ORDER (PER : HONOURABLE THE CHIEF JUSTICE MR. BHASKAR BHATTACHARYA)

1. The following question of law has been referred to the larger bench by a Division Bench of this Court [Coram: Akil Kureshi & Ms. Harsha Devani, JJ.] by order dated 12th September 2012:

"Whether the view taken by this Court in case of Sureshchandra Durgaprasad Khatod(HUF)(supra) that the instructions of 2011 of the Board providing for revised monetary limits for filing the appeals to the Tribunals, High Courts and Supreme Court, would apply to all pending cases irrespective of the date of filing of such appeals is correct, particularly, in view of express language used in paragraph 2 of the instructions which provides for revised monetary limits for filing of the appeals and paragraph 11 thereof which provides inter-alia that such instructions will apply to appeals filed on or after 9th February 2011?"

2. Consequently, the matter has been placed before this Bench.

3. The facts leading to the present Reference may be summed up thus:

3.1 A Tax Appeal under section 260A of the Income Tax Act [the Act, hereafter] was filed by the Revenue calling in question the judgment dated May 31, 2010 passed by the Income Tax Appellate Tribunal(the Tribunal, hereafter) raising various questions. The Appeal was filed on 13th October 2010. There is no dispute that the tax effect involved in this appeal exceeded Rs.4 lac which was the threshold limit permitting the Revenue to prefer appeal before the High Court as provided by Central Board of Direct Taxes (CBDT hereafter), in its instructions dated 15th May (the instructions of 2008, hereafter).

There is also no dispute that such tax effect, however, does not exceed Rs.10 lac, a revised limit provided by the CBDT in its later instructions dated 9th February 2011 (the instructions of 2011, hereafter).

3.2 In the above facts, the learned counsel appearing for the assessee/respondent raised a preliminary objection as to the maintainability of the appeal on the ground that the tax effect involved is less than the minimum threshold limit provided by the CBDT in its instructions of 2011, which was in force on the date when the appeal came up for hearing, i.e. 12th September 2012.

3.3 The learned counsel appearing on behalf of the assessee tried to convince the Division Bench that although at the time of filing of the appeal, the limits prescribed by the Board in its instructions of 2008 applied and in accordance with such provisions, the appeal was maintainable at the time of

filing of the appeal, the revised limits contained in the instructions of 2011 should be applied when the appeal is taken up for hearing after the passing of the revised instructions of 2011. In other words, according to the learned counsel appearing for the assessee, the revised limit contained in the instruction of 2011 would be applicable to all the pending appeals irrespective of the date of filing.

3.4 In support of such contention, the learned counsel appearing on behalf of the assessee relied upon a decision of the Division Bench of this Court dated 24th August 2012 in the case of the Commissioner of Income tax v. Sureshchandra Durgaprasad Khatod (HUF) in Tax Appeal No.1404/2010. In the said decision, the Division Bench, by relying upon a decision of the Bombay High Court in case of Commissioner of Income Tax vs. Madhukar K. Inamdar (HUF) reported in 318 ITR 149 and certain other decisions of Delhi High Court held that the instructions of 2011 would also apply to pending appeals which were filed prior to the issue of the instructions of 2011.

3.5 The referring Division Bench, however, did not accept the contention of the learned counsel for the assessee, but having regard to the fact that an earlier Division Bench of this Court having taken a different view in the case of Sureshchandra Durgaprasad Khatod (HUF) (supra), decided to refer the matter to a Larger Bench as indicated earlier.

4. Therefore, the only question that falls for determination in this Reference is whether the instructions of 2011 would apply to all the pending appeals irrespective of the fact whether those appeals were filed after the coming into operation of the instructions of 2011 or not, and whether the pending appeals at the instance of the Revenue shall be also not maintainable even if those appeals complied with the requirement of the instruction of 2008 which was the applicable instruction on the date of filing of the appeals simply because the minimum tax effect for filing an appeal at the instance of the Revenue has since been increased by virtue of the instructions of 2011.

5. In order to appreciate the question involved in this Reference, it will be profitable to refer to the provisions contained in Section 268A of the Income Tax Act which has been enacted through Finance Act of 2008 with retrospective effect from 1st April 1999. The same is quoted below:

"268A. (1) The Board may, from time to time, issue orders, instructions or directions to other income-tax authorities, fixing such monetary limits as it may deem fit, for the purpose of regulating filing of appeal or application for reference by any income-tax authority under the provisions of this Chapter.

(2) Where, in pursuance of the orders, instructions or directions issued under subsection (1), an income-tax authority has not filed any appeal or application for reference on any issue in the case of an assessee for any assessment year, it shall not preclude such authority from filing an appeal or application for reference on the same issue in the case of-

(a) the same assessee for any other assessment year; or

b) any other assessee for the same or any other assessment year.

(3) Notwithstanding that no appeal or application for reference has been filed by an income-tax authority pursuant to the orders or instructions or directions issued under sub-

section(1), it shall not be lawful for an assessee, being a party in any appeal or reference, to contend that the income-tax authority has acquiesced in the decision on the disputed issue by not filing an appeal or application for reference in any case.

(4) The Appellate Tribunal or Court, hearing such appeal or reference, shall have regard to the orders, instructions or directions issued under sub-section(1) and the circumstances under which such appeal or application for reference was filed or not filed in respect of any case.

(5) Every order, instruction or direction which has been issued by the Board fixing monetary limits for filing an appeal or application for reference shall be deemed to have been issued under sub-section(1) and the provisions of subsections (2),(3) and (4) shall apply accordingly."

5.1 We also quote below the CBDT instructions of 2008 and 2011 respectively:-

Instructions of 2008 reads as under:-

"Instruction No. 05/2008 F. No.279/Misc.142/2007-ITJ Government of India
Ministry of Finance Department of Revenue Central Board of Direct Taxes *****
New Delhi, the 15th of May 2008 To All Chief Commissioners of Income-Tax and All
Directors General of Income- Tax.

Subject : Revision of Monetary limits for filing appeals by the
Department before Income Tax Appellate

Tribunals, High Courts and Supreme Court -

measures for reducing litigation - reg.

Sir/Madam, Reference is invited to Board's instructions No.1979 dated 27.3.2000, No.1985 dated 29.6.2000, No.6 of 2003 dated 17.7.2003, No.19 of 2003 dated 23.12.2003, No.5/2004 dated 27.5.2004, No.2/2005 dated 24.10.2005 and No.5/2007 dated 16.7.2007, wherein monetary limits for filing departmental appeals (in Income-tax matters) and other conditions were specified, for filing appeals before Appellate Tribunals, High Courts and Supreme Court.

2. In supersession of the above instructions, it has been decided by the Board that departmental appeals will be filed before Appellate Tribunals, High Courts and

Supreme Court as per monetary limits and conditions specified below.

3. Appeals will henceforth be filed only in cases where the tax effect exceeds monetary limits given here under:-

Sl.No. Appeals in Income-tax matters Monetary Limit (In Rs.) 1 Appeal before Appellate 2,00,000/-

Tribunal 2 Appeal under section 260A 4,00,000/-

before High Court 3 Appeal before Supreme Court 10,00,000/-

4. For this purpose, "tax effect" means the difference between the tax on the total income assessed and the tax that would have been chargeable had such total income been reduced by the amount of income in respect of the issue against which appeal is intended to be filed (hereafter referred to as "disputed issues"). However, the tax will not include any interest thereon. Similarly, in loss cases notional tax effect should be taken into account. In the cases of penalty orders, the tax effect will mean quantum of penalty deleted or reduced in the order to be appealed against.

5. The Assessing Officer shall calculate the tax effect separately for every assessment year in respect of the disputed issues in the case of every assessee. If, in the case of an assessee, the disputed issues arise in more than one assessment year, appeal shall be filed in respect of such assessment year or years in which the tax effect, in respect of the disputed issues exceeds the monetary limit specified in para 3. No appeal shall be filed in respect of an assessment year or years in which the tax effect is less than the monetary limit specified in para 3. In other words, henceforth, appeals will be filed only with reference to the tax effect in the relevant assessment year. However, in case of a composite order of any High Court or appellate authority, which involves more than one year, appeal shall be filed in respect of all assessment years even if the "tax effect" is less than the prescribed monetary limits in any of the year(s), if it is decided to file appeal in respect of the year(s) in which 'tax effect' exceeds the monetary limit prescribed.

6. In a case where appeal before a Tribunal or a Court is not filed only on account of the tax effect being less than the monetary limit specified above, the Commissioner of Income-tax shall specifically record that "even though the decision is not acceptable, appeal is not being filed only on the consideration that the tax effect is less than the monetary limit specified in this instruction". Further, in such cases, there will be no presumption that the Income - Tax Department has acquiesced in the decision on the disputed issues. The Income-tax Department shall not be precluded from filing an appeal against the disputed issues in the case of the same assessee for any other assessment year, or in the case of any other assessee for the same or any other assessment year, if the tax effect exceeds the specified monetary limits.

7. In the past, a number of instances have come to the notice of the Board, whereby an assessee has claimed relief from the Tribunal or the Court only on the ground that the Department has implicitly accepted the decision of the Tribunal or Court in the case of the assessee for any other assessment year or in the case of any other assessee for the same or any other assessment year, by not filing an appeal on the same disputed issues. The Departmental representatives/counsel must make every effort to bring to the notice of the Tribunal or the Court that the appeal in such cases was not filed or not admitted only by reason of the tax effect being less than the specified monetary limit and therefore, no inference should be drawn that the decisions rendered therein were acceptable to the Department. Accordingly, they should impress upon the Tribunal or the Court that such cases do not have any precedent value.

8. Adverse judgments relating to the following should be contested irrespective of the tax effect.

(a) Where the Constitutional validity of the provisions of an Act or Rule are under challenge.

(b) Where Board's order, Notification, Instruction or Circular has been held to be illegal or ultra vires.

(c) Where Revenue Audit objection in the case has been accepted by the Department.

9. The proposal for filing Special Leave Petition under Article 136 of the Constitution before the Supreme Court should, in all cases, be sent to the Directorate of Income-tax (Legal & Research) New Delhi and the decision to file Special Leave Petition shall be in consultation with the Ministry of Law and Justice.

10. The monetary limits specified in para 3 above will not apply to writ matters.

11. This instruction will apply to appeals filed on or after 15th of May 2008. However, the cases where appeals have been filed before 15th of May 2008 will be governed by the instructions on this subject, operative at the time when such appeal was filed.

12. This issues under Section 268 A(1) of the Income-tax Act 1961.

Yours faithfully, sd/-

(Madhukar Kumar Bhagat) Deputy Secretary to the Govt. of India."

Instructions of 2011 are quoted below:

"Instruction No. 3/2011 F. No.279/Misc.142/2007-ITJ Government of India Ministry of Finance Department of Revenue Central Board of Direct Taxes ***** New Delhi, the 9th of February 2011 To All Chief Commissioners of Income-Tax and All Directors General of Income- Tax.

Subject : Revision of Monetary limits for filing appeals by the

Department before Income Tax Appellate

Tribunal, High Courts and Supreme Court -

measures for reducing litigation - Reg.

Sir/Madam, Reference is invited to Board's instruction No.5/2008 dated 15/05/2008, wherein monetary limits and other conditions for filing departmental appeals (in Income-tax matters) before Appellate Tribunal, High Courts and Supreme Court were specified.

2. In supersession of the above instruction, it has been decided by the Board that departmental appeals may be filed on merits before Appellate Tribunal, High Courts and Supreme Court keeping in view the monetary limits and conditions specified below.

3. Hence forth appeals shall not be filed in cases where the tax effect does not exceed monetary limits given here under:-

Sl.No. Appeals in Income-tax matters Monetary Limit (In Rs.) 1 Appeal before Appellate 3,00,000/-

Tribunal 2 Appeal under section 260A 10,00,000/-

before High Court 3 Appeal before Supreme Court 25,00,000/-

It is clarified that an appeal should not be filed merely because the tax effect in a case exceeds the monetary limits prescribed above. Filing of appeal in such cases is to be decided on merits of the case.

4. For this purpose, "tax effect" means the difference between the tax on the total income assessed and the tax that would have been chargeable had such total income been reduced by the amount of income in respect of the issue against which appeal is intended to be filed (hereinafter referred to as "disputed issues"). However, the tax will not include any interest thereon, except where chargeability of interest itself is in dispute. In case the chargeability of interest is the issue under dispute, the amount of interest shall be the tax effect. In cases where returned loss is reduced or assessed as income, the tax effect would include notional tax on disputed additions. In case of penalty orders, the tax effect will mean quantum of penalty deleted or reduced in the order to be appealed against.

5. The Assessing Officer shall calculate the tax effect separately for every assessment year in respect of the disputed issues in the case of every assessee. If, in the case of an assessee, the disputed issues arise in more than one assessment year, appeal, can be filed in respect of such assessment year or years in which the tax effect, in respect of the disputed issues exceeds the monetary limit specified in para 3. No appeal shall be filed in respect of an assessment year or years in which the tax effect is less than the monetary limit specified in para 3. In other words, henceforth, appeals can be filed only with reference to the tax effect in the relevant assessment year. However, in case of a composite order of any High Court or appellate authority, which involves more than one assessment year and common issues in more than one assessment year, appeal shall be filed in respect of all assessment years even if the "tax effect" is less than the prescribed monetary limits in any of the year(s), if it is decided to file appeal in respect of the year(s) in which 'tax effect' exceeds the monetary limit prescribed. In case where a composite order/judgment involves more than one assessee, each assessee shall be dealt with separately.

6. In a case where appeal before a Tribunal or a Court is not filed only on account of the tax effect being less than the monetary limit specified above, the Commissioner of Income- tax shall specifically record that "even though the decision is not acceptable, appeal is not being filed only on the consideration that the tax effect is less than the monetary limit specified in this instruction". Further, in such cases, there will be no presumption that the Income - Tax Department has acquiesced in the decision on the disputed issues. The Income-tax Department shall not be precluded from filing an appeal against the disputed issues in the case of the same assessee for any other assessment year, or in the case of any other assessee for the same or any other assessment year, if the tax effect exceeds the specified monetary limits.

7. In the past, a number of instances have come to the notice of the Board, whereby an assessee has claimed relief from the Tribunal or the Court only on the ground that the Department has implicitly accepted the decision of the Tribunal or Court in the case of the assessee for any other assessment year or in the case of any other assessee for the same or any other assessment year, by not filing an appeal on the same disputed issues. The Departmental representatives/counsels must make every effort to bring to the notice of the Tribunal or the Court that the appeal in such cases was not filed or not admitted only for the reason of the tax effect being less than the specified monetary limit and therefore, no inference should be drawn that the decisions rendered therein were acceptable to the Department. Accordingly, they should impress upon the Tribunal or the Court that such cases do not have any precedent value. As the evidence of not filing appeal due to this instruction may have to

be produced in courts, the judicial folders in the office of CsIT must be maintained in a systemic manner for easy retrieval.

8. Adverse judgments relating to the following issues should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 above or there is no tax effect.

- (a) Where the Constitutional validity of the provisions of an Act or Rule are under challenge, or
- (b) Where Board's order, Notification, Instruction or Circular has been held to be illegal or ultra vires, or
- (c) Where Revenue Audit objection in the case has been accepted by the Department.

9. The proposal for filing Special Leave Petition under Article 136 of the Constitution before the Supreme Court should, in all cases, be sent to the Directorate of Income-tax (Legal & Research) New Delhi and the decision to file Special Leave Petition shall be in consultation with the Ministry of Law and Justice.

10. The monetary limits specified in para 3 above shall not apply to writ matters and direct tax matters other than Income tax. Filing of appeals in other Direct tax matters shall continue to be governed by relevant provisions of statute & rules. Further, filing of appeal in cases of Income Tax, where the tax effect is not quantifiable or not involved, such as the case of registration of trusts or institutions under section 12 A of the IT Act, 1961, shall not be governed by the limits specified in para 3 above and decision to file appeal in such cases may be taken on merits of a particular case.

11. This instruction will apply to appeals filed on or after 9th February 2011. However, the cases where appeals have been filed before 9th of February 2011 will be governed by the instructions on this subject, operative at the time when such appeal was filed.

12. This issues under Section 268 A (1) of the Income-tax Act 1961.

Yours faithfully, sd/-

(A.K. Bharadwaj) Under Secretary to the Government of India (ITJ-II), CBDT (Emphasis supplied by us).

6. After hearing Mr. Bhatt, the learned Senior Advocate appearing on behalf of the Revenue and Mr. Soparkar, the learned Senior Advocate, appearing on behalf of the Assessee and after going through the aforesaid provisions of Section 268A of the Income Tax Act as well as the instructions of 2008 and instructions of 2011, we find that those two instructions having been issued by the CBDT in exercise of powers conferred under section 268A of the IT Act, those instructions are really pieces of delegated legislation and consequently, have the force of law.

7. It is now well-settled law that if the language employed in a piece of legislation is clear and unambiguous, it is not for the Court to interpret the same in a different way simply because the Court thinks that it would be wiser to adopt another reasonable view instead of the one specifically mandated in the statutory provisions. In this connection, we may refer to the following observations of the Supreme Court in the case of B. PREMCHAND VS. MOHAN KOIKAL reported in AIR 2011 SC 1925 where detailed discussions were made on the scope of deviation from the literal rule of interpretation of a Statute after taking into consideration a large number of decisions:-

"13. In our opinion, Rule 27(c) of the Rules is plain and clear. Hence, the literal rule of interpretation will apply to it. No doubt, equity may be in favour of the respondents because they were selected earlier, but as observed earlier, if there is a conflict between equity and the law, it is the law which must prevail. The law, which is contained in Rule 27(c), is clearly in favour of the appellants.

14. Hence, we cannot accept the submission of the learned senior counsel for the private respondents. The language of Rule 27(c) of the Rules is clear and hence we have to follow that language.

15. In M/s. Hiralal Ratanlal v. STO, AIR 1973 SC 1034, this Court observed:

"In construing a statutory provision the first and foremost rule of construction is the literal construction. All that the Court has to see at the very outset is what does the provision say. If the provision is unambiguous and if from the provision the legislative intent is clear, the Court need not call into aid the other rules of construction of statutes. The other rules of construction are called into aid only when the legislative intent is not clear."

(Emphasis supplied)

16. It may be mentioned in this connection that the first and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. The other rules of interpretation e.g. the mischief rule, purposive interpretation etc. can only be resorted to when the plain words of a statute are ambiguous or lead to no intelligible results or if read literally would nullify the very object of the statute. Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule, vide *Swedish Match AB v. Securities and Exchange Board, India*, AIR 2004 SC 4219: (2004 AIR SCW 4853). As held in *Prakash Nath Khanna v. C.I.T.* 2004 (9) SCC 686 : (AIR 2004 SC 4552 : 2004 AIR SCW 3692), the language employed in a statute is the determinative factor of the legislative intent. The legislature is presumed to have made no mistake. The presumption is that it intended to say what it has said. Assuming there is a defect or an omission in the words used by the legislature, the Court cannot correct or make up the deficiency, vide *Delhi Financial Corporation v. Rajiv Anand*, 2004 (11) SCC 625. Where the legislative intent is clear from the language, the Court should give effect to it, vide *Government of Andhra Pradesh v. Road Rollers Owners Welfare Association*, 2004(6) SCC 210, and the Court should not seek to amend the law in the garb of

interpretation.

17. As stated by Justice Frankfurter of the U.S. Supreme Court (see 'Of Law and Men: Papers and Addresses of Felix Frankfurter'):

"Even within their area of choice the courts are not at large. They are confined by the nature and scope of the judicial function in its particular exercise in the field of interpretation. They are under the constraints imposed by the judicial function in our democratic society. As a matter of verbal recognition certainly, no one will gainsay that the function in construing a statute is to ascertain the meaning of words used by the legislature. To go beyond it is to usurp a power which our democracy has lodged in its elected legislature. The great judges have constantly admonished their brethren of the need for discipline in observing the limitations. A judge must not rewrite a statute, neither to enlarge nor to contract it. Whatever temptations the statesmanship of policy-making might wisely suggest, construction must eschew interpolation and evisceration. He must not read in by way of creation. He must not read out except to avoid patent nonsense or internal contradiction."

18. As observed by Lord Granworth in *Grundy v. Pinniger*, (1852) 1 LJ Ch 405:

"To adhere as closely as possible to the literal meaning of the words used, is a cardinal rule from which if we depart we launch into a sea of difficulties which it is not easy to fathom."

19. In other words, once we depart from the literal rule, then any number of interpretations can be put to a statutory provision, each Judge having a free play to put his own interpretation as he likes. This would be destructive of judicial discipline, and also the basic principle in a democracy that it is not for the Judge to legislate as that is the task of the elected representatives of the people. Even if the literal interpretation results in hardship or inconvenience, it has to be followed (see G.P. Singh's *Principles of Statutory Interpretations*, 9th Edn. pp 45-49). Hence departure from the literal rule should only be done in very rare cases, and ordinarily there should be judicial restraint in this connection.

20. As the Privy Council observed (per Viscount Simonds, L.C.) :

"Again and again, this Board has insisted that in construing enacted words we are not concerned with the policy involved or with the results, injurious or otherwise, which may follow from giving effect to the language used." (see *Emperor v. Benoarilal Sarma*, AIR 1945 PC 48, pg. 53).

21. As observed by this Court in *CIT v. Keshab Chandra Mandal*, AIR 1950 SC 265:

"Hardship or inconvenience cannot alter the meaning of the language employed by the Legislature if such meaning is clear on the face of the statute".

22. Where the words are unequivocal, there is no scope for importing any rule of interpretation vide *Pandian Chemicals Ltd. v. C.I.T.*, 2003(5) SCC 590.

23. It is only where the provisions of a statute are ambiguous that the Court can depart from a literal or strict construction vide *Narsiruddin v. Sita Ram Agarwal*, AIR 2003 SC 1543 : (2003 AIR SCW 908). Where the words of a statute are plain and unambiguous effect must be given to them vide *Bhaiji v. Sub-Divisional Officer, Thandla*, 2003(1) SCC 692.

24. No doubt in some exceptional cases departure can be made from the literal rule of the interpretation, e.g. by adopting a purposive construction, Heydon's mischief rule, etc. but that should only be done in very exceptional cases. Ordinarily, it is not proper for the Court to depart from the literal rule as that would really be amending the law in the garb of interpretation, which is not permissible vide *J.P. Bansal v. State of Rajasthan and Anr.*, AIR 2003 SC 1405 : (2003 AIR SCW 1848), *State of Jharkhand and Anr. v. Govind Singh*, JT 2004 (10) SC 349 : (AIR 2005 SC 294 : 2004 AIR SCW 6799) etc.. It is for the legislature to amend the law and not the Court vide *State of Jharkhand and Anr. v. Govind Singh*, JT 2004(10) SC 349. In *Jinia Keotin v. K.S. Manjhi*, 2003 (1) SCC 730, this Court observed:

"The Court cannot legislate.....under the garb of interpretation.....".

25. Hence, there should be judicial restraint in this connection, and the temptation to do judicial legislation should be eschewed by the Courts. In fact, judicial legislation is an oxymoron.

26. In *Shiv Shakti Co-operative Housing Society v. Swaraj Developers*, AIR 2003 SC 2434, this Court observed:

"It is a well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent."

27. Where the language is clear, the intention of the legislature has to be gathered from the language used vide *Grasim Industries Limited v. Collector of Customs*, 2002 (4) SCC 297 : (AIR 2002 SC 1706 : 2002 AIR SCW 1646) and *Union of India v. Hamsoli Devi*, 2002 (7) SCC 273 : (AIR 2002 SC 3240 : 2002 AIR SCW 3755).

28. In *Union of India and another v. Hansoli Devi and others*, 2002 (7) SCC 404: (AIR 2001 SC 2184: 2001 AIR SCW 1925) (vide para 9), this Court observed:

"It is a cardinal principle of construction of a statute that when the language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the grounds that such construction is more consistent with the alleged object and policy of the Act."

29. The function of the Court is only to expound the law and not to legislate vide *District Mining Officer v. Tata Iron and Steel Company*, 2002 (7) SCC 358. If we accept the interpretation canvassed by the learned counsel for the private respondents, we will really be legislating because in the guise of interpretation we will be really amending Rule 27(c) of the Rules.

30. In *Gurudevdatla VKSSS Maryadit v. State of Maharashtra*, AIR 2001 SC 1980 : (2001 AIR SCW 1380), this Court observed :

"It is a cardinal principle of interpretation of statute that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must prima facie be given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, then the Courts are bound to give effect to that meaning, irrespective of the consequences. It is said that the words themselves best declare the intention of the law-giver. The Courts are adhered to the principle that efforts should be made to give meaning to each and every word used by the legislature and it is not a sound principle of construction to brush aside words in a statute as being inapposite surpluses, if they can have a proper application in circumstances conceivable within the contemplation of the statute".

31. The same view has been taken by this Court in *S. Mehta v. State of Maharashtra*, 2001 (8) SCC 257: (AIR 2001 SC 3774: 2001 AIR SCW 3492) (vide para 34) and *Patangrao Kaddam v. Prithviraj Sajirao Yadav Deshmugh*, AIR 2001 SC 1121: (2001 AIR SCW 871).

32. The literal rule of interpretation really means that there should be no interpretation. In other words, we should read the statute as it is, without distorting or twisting its language.

33. We may mention here that the literal rule of interpretation is not only followed by Judges and lawyers, but it is also followed by the layman in his ordinary life. To give an illustration, if a person says "this is a pencil", then he means that it is a pencil; and it is not that when he says that the object is a pencil, he means that it is a horse, donkey or an elephant. In other words, the literal rule of interpretation simply means that we mean what we say and we say what we mean. If we do not follow the literal rule of interpretation, social life will become impossible, and we will not understand each other. If we say that a certain object is a book, then we mean it is a book. If we say it is a book, but we mean it is a horse, table or an elephant, then we will not be able to communicate with each other. Life will become impossible. Hence, the meaning of the literal rule of interpretation is simply that we mean what we say and we say what we mean."

8. By applying the above principles to the facts of the present case, we find that clause 11 of the Instructions of 2011 specifically states that "this instruction will apply to appeals filed on or after 9 th February 2011. However, the cases where appeals have been filed before 9th of February 2011 will be governed by the instructions on this subject, operative at the time when such appeal was filed."

9. Similarly, clause 11 of the instructions of 2008 specifically provides that "this instruction will apply to appeals filed on or after 15th of May 2008. However, the cases where appeals have been filed before 15th of May 2008 will be governed by the instructions on this subject, operative at the time when such appeal was filed.", meaning thereby, the earlier instructions.

10. There is, thus, no ambiguity in the instructions of either 2011 or 2008 as regards the applicability of those instructions in respect of the appeals, and, at the same time, it has also been made clear that if those appeals are not filed after the given dates mentioned in those instructions, the fate of the appeals will be governed in accordance with the instructions prevailing on the date of presentation of such appeals.

11. In view of such clear legislative intention, we are unable to hold that even if an appeal is filed prior to 9th February 2011, the same would be barred notwithstanding the fact that at the time of filing such appeal, the same was not barred by the then instructions of the CBDT.

12. As regards the decision of a Division Bench of this Court dated 24th August 2012 in the case of Sureshchandra Durgaprasad Khatod (HUF) (supra) (Tax Appeal No. 1404 of 2010), it appears that the said Division Bench, in arriving at a different conclusion solely relied upon a Division Bench decision dated 29th July 2011 of the Aurangabad Bench of the Bombay High Court in Tax Appeal No. 78 of 2007 in the case of the Commissioner of Income Tax v. Smt. Vijaya V. Kavekar. In the said case, the said Division Bench, after considering the earlier instructions and relying upon a decision of the Bombay High Court in the case of Commissioner of Income Tax v.

Madhukar K. Inamdar [HUF] reported in (2010) 229 CTR (Bom) 77, arrived at the following conclusion, which was relied upon by the Division Bench of this Court:-

6. The question about applicability of Instruction No.3 of 2011 had been considered and decided by the Aurangabad Bench of the Bombay High Court in Tax Appeal No. 78 of 2007, The Commissioner of Income Tax v. Smt. Vijaya V. Kavekar decided on 29.7.2011. The Division Bench, after considering earlier Instructions and various decisions of the Courts on Instructions, relying on the decision in Commissioner of Income Tax vs. Madhukar K. Inamdar (HUF) reported in (2010) 229 CTR (Bom) 77, has held in paragraphs 9, 10, 11, 14 and 17 as under:

"9. As stated earlier, the Income Tax Act was amended and Section 268A has been introduced on the Statute book with retrospective effect. Section 268A carves out an exception for filing of appeals and References under Section 260 A of the Act. The legislature has prescribed that the CBDT is empowered to issue circulars and instructions from time to time, with regard to filing of appeals depending on the tax effect involved. Thereafter, in 2008, CBDT Instruction No. 5 of 2008 dated 15th May, 2008 was issued. This Court in the case of "Commissioner of Income Tax V/s Madhukar K. Inamdar (HUF) reported in "(2010) 229 CTR (Bom) 77, interpreted the aforesaid Circular. The Circular was issued in supersession of all earlier instructions issued by the Board. The monetary limit was increased and appeals were to be filed

under Section 260A, thereafter, only in cases where the tax effect exceeded Rs. 4 Lacs. Paragraph 11 of that instruction stipulated that it was applicable to appeals filed on or after 15th May, 2008. It was further provided that in cases, where appeals were filed before 15th May, 2008, they would be governed by the instructions on this subject which were operative at the time when such appeals were filed. The instruction was issued under Section 268A (1) of the Act. The argument of the learned Counsel for the revenue in that case was, that the instruction issued on 15th May, 2008 did not preclude the department from continuing with the appeals and/or Petitions filed prior to 15th May, 2008, if they involved a substantial question of law of a recurring nature, notwithstanding the fact that the total cumulative tax effect involved in the appeals was less than Rs. 4 Lacs. It was submitted, such appeals which were filed prior to the issuance of Instruction and where substantial questions of law were raised, were required to be decided on merits. The Court, while considering the issue observed that paragraph 5 of the Circular made it clear that no appeals would be filed in the cases involving tax effect less than Rs. 4 Lacs notwithstanding the issue being of recurring nature. Relying on the judgement in CIT V/s Polycott Corporation, the Court observed as follows:

"6 The aforesaid judicial verdict makes it clear that the circular dt. 15th may, 2008 in general and para (5) thereof in particular lay down that even if the same issue, in respect of same assessee, for other assessment years is involved, even then the Department should not file appeal, if the tax effect is less than Rs. 4 Lakhs. In other words, even if the question of law is of recurring nature even then, the Revenue is not expected to file appeals in such cases, if the tax impact is less than the monetary limit fixed by the CBDT."

7. One fails to understand how the Revenue, on the face of the above clear instructions of the CBDT, can contend that the circular dt. 15th May, 2008 issued by the CBDT is applicable to the cases filed after 15th May, 2008 and in compliance thereof, they do not file appeals, if the tax effect is less than Rs. 4 Lakhs; but the said circular is not applicable to the cases filed prior to 15th May, 2008 i.e. to the old pending appeals, even if the tax effect is less than Rs. 4 Lakhs. In our view, there is no logic behind this belief entertained by the Revenue."

The Court has further held that the prevailing instructions fixing the monetary limit for the tax effect would hold good even for pending cases. Accordingly, the Court dismissed all the appeals having a tax effect of less than Rs. 4 Lacs.

10. The new CBDT instructions have been issued on 9th February, 2011, being Instruction no. 3 of 2011. The monetary limit has been raised again and clause 3 of the instructions provides that appeals shall not be filed in cases where the tax effect does not exceed the monetary limits prescribed, henceforth. The monetary limits prescribed for filing an appeal under Section 260A before the High Court has been raised to Rs. 10 Lacs. This instruction is identical to the CBDT Instruction no. 5 of 2008. Clause 10 of this circular indicates that monetary limits would not apply to writ matters and direct tax matters other than income tax. It further provides that where the tax

effect is not quantifiable, the Department should take a decision to file appeals on merits of each case. Clause 11, again provides that the instruction would apply to appeals filed on or after2011 and appeals filed before 2011 would be governed by the instructions on this subject, operative at the time when such appeals were filed.

11. In our opinion, when a similar clause has been interpreted by the Division Bench of this Court in CIT vs. Madhukar Inamdar (Supra), the same principles must apply in the present cases also, as we have found that the instructions of 15th May, 2008 is para- material with the instruction of 9th February, 2011.

14. Similarly, the Delhi High Court in the case of "Commissioner of Income Tax V/s Delhi Race Club Ltd.", decided on March 03, 2011, by relying on its earlier Judgement "Commissioner Income Tax Delhi-III V/s M/s P.S. Jain and Co. decided on 2nd August, 2010 has held that the CBDT circular raising the monetary limit of the tax effect to Rs. 10 Lacs would be applicable to pending cases also.

17. It is true that this judgement in Chhajer's case (supra) was not brought to the notice of the Division Bench, while deciding either Madhukar's case (supra) or the case of Polycot Corporation (supra). However, the instruction of 2005 which was considered in Chhajer's case has also been interpreted in Polycot Corporation (supra). The consistent view of the Court has been that the CBDT instruction would apply to pending cases as well. The main objective of such instructions is to reduce the pending litigation where the tax effect is considerably small. Therefore, in our opinion, the tax appeals are required to be dismissed, as they are not maintainable in view of the provisions of Section 268A of the Income Tax, and the CBDT Instruction No. 3 of 2011."

13. With great respect to the Division Bench of this Court in the case of The Commissioner of Income Tax vs. Sureshchandra Durgaprasad Kathod [HUF] (Tax Appeal No. 1404 of 2010) as well as of the Division Bench of the Bombay High Court and other High Courts quoted above, we are unable to agree with the view taken therein because in those decisions, the well-settled principle laid down by the Supreme Court relating to literal construction, as reiterated in the case of B. Premchand vs. Mohan Koikal reported in AIR 2011 SC 1925, extensively quoted by us, was not followed.

14. In our opinion, in the absence of any ambiguity, there is no scope of interpreting the said provision in a different way by ignoring the literal meaning of the words used in the said delegated statutory provisions. As pointed out by the Supreme Court, where the language is clear, the intention of the legislature has to be gathered from the language used. In other words, we should read the statute as it is without distorting or twisting its language.

15. Moreover, from the provisions contained in Section 268A of the Act, which confers power upon CBDT to issue instruction, it appears that it simply enables CBDT from time to time, to issue orders, instructions or directions to other income-tax authorities, fixing such monetary limits as it may deem fit, for the purpose of regulating filing of appeal or application for reference by any income-tax authority under the provisions of the concerned Chapter. From the language of the enabling provisions of the statute, it is clear that no power has been conferred to the CBDT to make the

pending appeals or references filed in accordance with the then existing law infructuous by issuing any such direction or instruction with retrospective effect.

16. As pointed out by the Supreme Court in the case of *Hukam Chand v. Union of India* and others reported in AIR 1972 SC 2427, while dealing with the question of extent of power of a delegated authority, such authority in the absence of specific power so conferred cannot make any delegated legislation with retrospective effect. The following observations of the Supreme Court are relevant and are quoted below:-

"The extent and amplitude of the rule making power would depend upon and be governed by the language of the section. If a particular rule were not to fall within the ambit and purview of the section, the Central Government in such an event would have no power to make that rule. Likewise, if there was nothing in the language of S. 40 to empower the Central Government either expressly or by necessary implication, to make a rule retroactively, the Central Government would be acting in excess of its power if it gave retrospective effect to any rule. The underlying principle is that unlike Sovereign Legislature which has power to enact laws with retrospective operation, authority vested with the power of making subordinate legislation has to act within the limits of its power and cannot transgress the same. The initial difference between subordinate legislation and the statute laws lies in the fact that a subordinate law making body is bound by the terms of its delegated or derived authority and that Court of law, as a general rule, will not give effect to the rules, thus made, unless satisfied that all the conditions precedent to the validity of the rules have been fulfilled (see Craies on Statute Law, p. 297 (Sixth Edition))."

(Emphasis supplied by us).

17. Similar observations have been made by the Supreme Court in the case of *The Income-tax Officer, Alleppey, v. 1. M. C. Ponnoose and others*, (In C. A. No. 942 of 1966), 2. *Excel Productions Alleppey and others*, (In C. A. No. 943 of 1966) reported in AIR 1970 SC 385 as quoted below:

"Now it is open to a sovereign legislature to enact laws which have retrospective operation. Even when the Parliament enacts retrospective laws such laws are-in the words of Willes, J. in *Phillips v. Eyre*, (1870) 40 LJ QB 28 at p. 37-"no doubt prima facie of questionable policy, and contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought, when introduced for the first time, to deal with future acts, and ought not to change the character of past transactions carried on upon the faith of the then existing law." The courts will not, therefore, ascribed retrospectively to new laws affecting rights unless by express words or necessary implication it appears that such was the intention of the legislature. The Parliament can delegate its legislative power within the recognised limits. Where any rule or regulation is made by any person or authority to whom such powers have been delegated by the legislature it may or may not be possible to make the same so as to give retrospective operation. It will depend on the language

employed in the statutory provision which may in express terms or by necessary implication empower the authority concerned to make a rule or regulation with retrospective effect. But where no such language is to be found it has been held by the Courts that the person or authority exercising subordinate legislative functions cannot make a rule, regulation or bye-law which can operate with retrospective effect: (See Subba Rao J., in *Dr. Indramani Pyarelal Gupta v. W. R. Nathu*, (1963) 1 SCR 721 = (AIR 1963 SC 274)-the majority not having expressed any different opinion on the point; *Modi Food Products Ltd. v. Commr. of Sales Tax, U. P.*, AIR 1956 All 35; *India Sugar Refineries Ltd. v. State of Mysore*, AIR 1960 Mys 326 and *General S. Shivdev Singh v. State of Punjab*, (1959) 61 Pun LR 514 = (AIR 1959 Punj 453) (FB).

(Emphasis supplied by us).

18. For the above reasons, the CBDT being fully conscious of its limitation, decided to give clear prospective effect to those instructions in paragraph 11 of the instructions. Thus, there is no scope of interpreting the instructions mentioned above as done by the Division Bench of this court in the case of *THE COMMISSIONER OF INCOME TAX vs. SURESHCHANDRA DURGAPRASAD KATHOD [HUF]*.

19. Mr. Soparkar, in this connection, placed before us the following decisions of different High Court in support of his contention that the Circular in question also applies to the pending appeals:

- 1) *CIT vs. Ranka and Ranka* ((2012) 19 taxman.com 65(Karnataka).
- 2) *CIT vs. Smt. Vijaya V. Kavekar* reported in (2013) taxman.com 412(Bombay).
- 3) *CIT III vs. Madhukar K. Inamdar HUF* reported in (2009) taxman.com 101(Bombay).
- 4) *CIT vs. Polycott Corporation* reported in 2009 178 Taxman 255 (Bombay).
- 5) *CIT vs. Pithwa Engg. Works* reported in (2005) 276 ITR 519 (Bombay).

19.1 We have gone through the above decisions. We find that in none of those decisions, the High Court considered the above proposition of law laid down by the Supreme Court. Thus, the ultimate conclusion arrived at by the different High Court was in conflict with the existing law of the land as pointed out above. We are thus unable to follow those decisions.

20. Mr. Bhatt, the learned Senior Advocate appearing for the Revenue, on the other hand, also placed some decisions of the other High Courts including the Full Bench decision of the Punjab and Haryana High Court in the case of *CIT III Ludhiana vs. M/S Varindera Construction Co.* reported in (2011) 331 ITR 449 (P&H) taking the view that the said circular is not applicable to the pending appeals. We follow the above conclusion, however, based on the reason assigned by us in this

judgment.

21. On consideration of the submissions of the learned counsel for the parties, we, therefore, answer the reference in the negative. Let the appeal be placed before the referring Bench for deciding it in accordance with law.

Sd/-

(BHASKAR BHATTACHARYA, CJ.) Sd/-

(J.B.PARDIWALA, J.) Sd/-

(PARESH UPADHYAY, J.) mathew