Union Of India vs M/S Exide Industries Ltd. on 24 April, 2020

Equivalent citations: AIRONLINE 2020 SC 485

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Bench: Dinesh Maheshwari, Hemant Gupta, A.M. Khanwilkar

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3545/2009

Union of India & Ors. ... Appellant(s)

VERSUS

Exide Industries Limited & Anr. ... Respondent(s)

JUDGMENT

A.M. Khanwilkar, J.

1. In this appeal, the constitutional validity of clause (f) of Section 43B of the Income Tax Act, 1961 1 arises for our consideration as a result of the decision of the High Court at Calcutta2 vide order dated 27.06.2007 in APO No. 301 of 2005, wherein it is held that the said clause is arbitrary and violative of Article 14 of the Constitution of India on various counts, as discussed hereinafter.

2. The stated clause (f) was inserted in the already existing Section 43B vide Finance Act, 2001 with effect from 1.4.2002, in Date: 2020.04.24 15:21:50 IST Reason:

> 1 For short, “the 1961 Act” 2 For short, “the High Court” order to provide for a tax disincentive in cases of deductions claimed by the assessee from income tax in lieu of liability accrued under the leave encashment scheme but not actually discharged by the employer. This clause made the actual payment of liability to the employees as a condition precedent for extending the benefit of deduction under the 1961 Act. With the application of clause (f), the eligibility for deduction arises in the previous year in which the abovesaid payment is actually made and not in which provision was made

in that regard, irrespective of the system of accounting followed by the assessee. Before we delve into further examination, we deem it apposite to reproduce the amended Section 43B of the 1961 Act as applicable to the present case, which reads thus:

"43□B. Certain deductions to be only on actual payment.□Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of □

(a) any sum payable by the assessee by way of tax, duty, cess or fee, by whatever name called, under any law for the time being in force, or

(b) any sum payable by the assessee as an employer by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees, or

(c) any sum referred to in clause (ii) of sub□section (1) of section 36, or

(d) any sum payable by the assessee as interest on any loan or borrowing from any public financial institution or a State financial corporation or a State industrial investment corporation, in accordance with the terms and conditions of the agreement governing such loan or borrowing, or

(e) any sum payable by the assessee as interest on any term loan from a scheduled bank in accordance with the terms and conditions of the agreement governing such loan, or

(f) any sum payable by the assessee as an employer in lieu of any leave at the credit of his employee, shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the income referred to in section 28 of that previous year in which such sum is actually paid by him:

Provided that nothing contained in this section shall apply in relation to any sum referred to in clause (a) or clause (c) or clause (d) or clause (e) or clause (f) which is actually paid by the assessee on or before the due date applicable in his case for furnishing the return of income under sub□section (1) of section 139 in respect of the previous year in which the liability to pay such sum was incurred as aforesaid and the evidence of such payment is furnished by the assessee along with such return:

Provided further that no deduction shall, in respect of any sum referred to in clause (b), be allowed unless such sum has actually been paid in cash or by issue of a cheque or draft or by any other mode on or before the due date as defined in the Explanation below clause (va) of sub□section (1) of Section 36, and where such payment has been

made otherwise than in cash, the sum has been realised within fifteen days from the due date. Explanation 1.—For the removal of doubts, it is hereby declared that where a deduction in respect of any sum referred to in clause (a) or clause (b) of this section is allowed in computing the income referred to in section 28 of the previous year (being a previous year relevant to the assessment year commencing on the 1st day of April, 1983, or any earlier assessment year) in which the liability to pay such sum was incurred by the assessee, the assessee shall not be entitled to any deduction under this section in respect of such sum in computing the income of the previous year in which the sum is actually paid by him.

Explanation 2.—For the purposes of clause (a), as in force at all material times, "any sum payable" means a sum for which the assessee incurred liability in the previous year even though such sum might not have been payable within that year under the relevant law. Explanation 3.—For the removal of doubts it is hereby declared that where a deduction in respect of any sum referred to in clause (c) or clause (d) of this section is allowed in computing the income referred to in section 28 of the previous year (being a previous year relevant to the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year) in which the liability to pay such sum was incurred by the assessee, the assessee shall not be entitled to any deduction under this section in respect of such sum in computing the income of the previous year in which the sum is actually paid by him.

Explanation 3A.—For the removal of doubts, it is hereby declared that where a deduction in respect of any sum referred to in clause (e) of this section is allowed in computing the income referred to in section 28 of the previous year (being a previous year relevant to the assessment year commencing on the 1st day of April, 1996, or any earlier assessment year) in which the liability to pay such sum was incurred by the assessee, the assessee shall not be entitled to any deduction under this section in respect of such sum in computing the income of the previous year in which the sum is actually paid by him.

Explanation 3B.—For the removal of doubts, it is hereby declared that where a deduction in respect of any sum referred to in clause (f) of this section is allowed in computing the income, referred to in section 28, of the previous year (being a previous year relevant to the assessment year commencing on the 1st day of April, 2001, or any earlier assessment year) in which the liability to pay such sum was incurred by the assessee, the assessee shall not be entitled to any deduction under this section in respect of such sum in computing the income of the previous year in which the sum is actually paid by him.

Explanation 4.—For the purposes of this section,—

(a) "public financial institutions" shall have the meaning assigned to it in section 4A of the Companies Act, 1956 (1 of 1956);

(aa) “scheduled bank” shall have the meaning assigned to it in the Explanation to clause (iii) of sub-section (5) of section 11;

(b) “State financial corporation” means a financial corporation established under section 3 or section 3A or an institution notified under section 46 of the State Financial Corporations Act, 1951 (63 of 1951);

(c) “State industrial investment corporation” means a Government company within the meaning of section 617 of the Companies Act, 1956 (1 of 1956), engaged in the business of providing long-term finance for industrial projects and eligible for deduction under clause (viii) of sub-section (1) of section 36.”

3. The respondents, being liable to pay income tax upon the profits and gains of their business, found themselves aggrieved with the inclusion of clause (f) in Section 43B and contended that Section 145 of the 1961 Act offers them the choice of method of accounting and accordingly, they computed their profits and gains of business in accordance with the mercantile system. As per the mercantile system, income and expenditure are determined on the basis of accrual or provision and not on the basis of actual receipt/payment. The respondents further contended that Section 43B has been carved out as an exception to the afore-stated general rule of accrual for determination of liability, as it subjects deductions in lieu of certain kinds of liabilities to actual payment. According to the respondents, the exception under Section 43B comes into operation only in a limited set of cases covering statutory liabilities like tax, duty, cess etc. and other liabilities created for the welfare of employees and therefore, the liability under the leave encashment scheme being a trading liability cannot be subjected to the exception under Section 43B of the 1961 Act.

4. It is the case of the respondents that the judgment of this Court in Bharat Earth Movers vs. Commissioner of Income Tax, Karnataka3 holds the field of law as far as the nature of the liability of leave encashment is concerned. The said judgment, while dealing with the principles of accounting under Section 37, conclusively holds that if a business liability has arisen definitely, deduction may be claimed against the same in the previous year in which such liability has accrued, even if it has not been finally discharged. The Court further held that the liability in lieu of leave encashment scheme is a present and definite liability and not a contingent liability. As regards the nature of the leave encashment liability, the respondents urge that this liability is carved in the nature of a beneficial provision and leave can only be encashed by the employees in accordance with the terms and conditions of employment. It is further 3 (2000) 6 SCC 645 contended that since the due date for encashment of leave does not arise in the same accounting year in which provision is made, there is no question of subjecting the deductions against such liability upon actual payment.

5. Having stated that all the clauses under Section 43B, barring clause (f), cover liabilities of a statutory nature and those driven by concerns of employees’ welfare, the respondents would urge that the liability covered by clause (f) is of a completely distinct nature and without specifying clear objects and reasons for the inclusion of this liability under Section 43B, it cannot be slipped into the main section. Further, the nature of this liability is neither in sync with the objects and reasons of the original section nor with those of other clauses enacted from time to time in different

assessment years.

6. The respondents also urge that the enactment of clause (f) was driven by the sole consideration of subjugating the legal position expounded by this Court in Bharat Earth Movers (supra) without removing the basis thereof. Such enactment would fall foul of the scheme of the Constitution. It would be an inroad into the sphere reserved exclusively for the judiciary and thereby violate the essential principles of separation of powers.

7. The validity of clause (f) faced judicial scrutiny first before the single Judge of the High Court. The clause passed the constitutional muster of the Court, which had observed thus:

> "Thus the position of law existing at the date of insertion of cl. (f) did not oblige the employer to actually pay the leave encashment benefit either to his employee or to any fund or to any third party, though the liability was an accrued one. If the employer, of his own accord, maintained a fund, he maintained it for his own convenience, and not because of any legal obligation. But in view of the mercantile system of accounting followed he was justified in showing the accrued liability and claiming deduction. There was nothing to prevent him from enjoying the benefit of deduction and at the same time from controlling and using the amount for his own benefit, till he was compelled to give the benefit of the leave in question to the employee concerned. It is evident that the clause was inserted to curb the abuse of existing law and protect the interests of the employee." Addressing the argument that the insertion of the said clause was solely intended to defeat the judgment of this Court in Bharat Earth Movers (supra), the learned single Judge stated thus:
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> "... It is true that the action neutralized the effect of the apex court decision in Bharat Earth Movers case, but I do not agree that it has amounted to encroachment upon the powers of the judiciary. Once the existing legal position was explained by their Lordships, I think, it was quite natural for the legislature to examine the situation and legislate according to the need. The binding decision of the highest court was not nullified in the process; only the position of law was changed prospectively."

8. The decision of the learned single Judge was appealed and came to be reversed by the Division Bench of the High Court. The Division Bench, while holding clause (f) as unconstitutional, observed thus:

> "... While inserting sub□section (f) no special reasons were disclosed. His Lordship held that such disclosure was not mandatory. We do not have any reason for disagreement on such issue provided the subject amendment could be termed as in furtherance to widen the scope of original section on the identical objects and reasons as disclosed at the time of enacting the original provision. As we find, the original section was incorporated to plug in deductions claimed by not discharging statutory liabilities. We also find that provision was subsequently made to restrict deductions on account of unpaid loan to the financial institutions. Leave encashment is neither

statutory liability nor a contingent liability. It was a provision to be made for the entitlement of an employee achieved in a particular financial year. An employee earns certain amount by not taking leave which he or she is otherwise entitled to in that particular year. Hence, the employer is obliged to make appropriate provision for the said amount. Once the employee retires he or she has to be paid such sum on cumulative basis which the employee earns throughout his or her service career [sic] unless he or she avails the leave earned [sic] by him or her. That, in our view, could not have any nexus with the original enactment. An employer is entitled to deduction for the expenditure he incurs for running his business which includes payment of salary and other perquisites to his employees. Hence, it is a trading liability. As such he is otherwise entitled to have deduction of such amount by showing the same as a provisional expenditure in his accounts. The legislature by way of amendment restricts such deduction in case of leave encashment unless it is actually paid in that particular financial year. The legislature is free to do so after they disclose reasons for that and such reasons are not inconsistent with the main object of the enactment. We are deprived of such reasons for our perusal ..." (emphasis supplied) It also held that the subject matter of clause (f) was inconsistent with the original Section 43B and observed as follows:

"... We also do not find such enactment consistent with the original provision being Section 43B which was originally inserted to plug in evasion of statutory liability. The Apex Court considered the situation in the case of Bharat Earth Movers (Supra) when sub□section (f) was not there. The Apex Court, considering all aspect as disclosed by us hereinbefore, rejected the contention of the Revenue and granted appropriate deduction to the concerned assessee. The legislature to get rid of the decision of the Apex Court brought out the amendment which would otherwise nullify the judge made law. The Apex Court decisions are judge made law and are applicable to all under the Constitution..." It is noteworthy that the High Court did not question the existence of power of the legislature to enact the subject clause, as can be discerned from the following observations:

"... We, not for a single moment, observe that legislature was not entitled to bring such amendment. They were within their power to bring such amendment. However, they must disclose reason which would be consistent with the provisions of the Constitution and the laws of the land and not for the sole object of nullifying the Apex Court decision."

9. We shall now examine clause (f) on the touchstone of the Constitution, to be followed by an analysis of the impugned judgment.

10. We have heard Ms. Chinmayee Chandra, learned counsel for the appellants and Dr. Aman Hingorani, learned counsel for the respondents.

Constitutional validity of clause (f)

11. The approach of the Court in testing the constitutional validity of a provision is well settled and the fundamental concern of the Court is to inspect the existence of enacting power and once such power is found to be present, the next examination is to ascertain whether the enacted provision impinges upon any right enshrined in Part III of the Constitution. Broadly speaking, the process of examining validity of a duly enacted provision, as envisaged under Article 13 of the Constitution, is premised on these two steps. No doubt, the second test of infringement of Part III is a deeper test undertaken in light of settled constitutional principles. In State of Madhya Pradesh vs. Rakesh Kohli & Anr.4, this Court observed thus:

> "17. This Court has repeatedly stated that legislative enactment can be struck down by Court only on two grounds, namely (i) that the appropriate legislature does not have competence to make the law, and (ii) that it does not take away or abridge any of the fundamental rights enumerated in Part III of the 4 (2012) 6 SCC 312 Constitution or any other constitutional provisions...." (emphasis supplied) The above exposition has been quoted by this Court with approval in a catena of other cases including Bhanumati & Ors.

vs. State of Uttar Pradesh & Ors.5, State of Andhra Pradesh & Ors. vs. Mcdowell & Co. & Ors. 6 and Kuldip Nayar & Ors. vs. Union of India & Ors.7, to state a few.

12. In furtherance of the two-fold approach stated above, the Court, in Rakesh Kohli (supra) also called for a prudent approach to the following principles while examining the validity of statutes on taxability:

> "32. While dealing with constitutional validity of a taxation law enacted by Parliament or State Legislature, the court must have regard to the following principles:
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> (i) there is always presumption in favour of constitutionality of a law made by Parliament or a State Legislature,
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> (ii) no enactment can be struck down by just saying that it is arbitrary or unreasonable or irrational but some constitutional infirmity has to be found,
>
> (iii) the court is not concerned with the wisdom or unwisdom, the justice or injustice of the law as Parliament and State Legislatures are supposed to be alive to the needs of the people whom they represent and they are the best judge of the 5 (2010) 12 SCC 1 6 (1996) 3 SCC 709 7 (2006) 7 SCC 1 community by whose suffrage they come into existence,
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> (iv) hardship is not relevant in pronouncing on the constitutional validity of a fiscal statute or economic law, and

(v) in the field of taxation, the legislature enjoys greater latitude for classification.....” (emphasis supplied)

13. In the present case, the legislative power of the Parliament to enact clause (f) in the light of Article 245 is not doubted at all. That brings us to the next step of examination i.e. whether the said clause contravenes any right enshrined in Part III of the Constitution, either in its form, substance or effect. It is no more res integra that the examination of the Court begins with a presumption in favour of constitutionality. This presumption is not just borne out of judicial discipline and prudence, but also out of the basic scheme of the Constitution wherein the power to legislate is the exclusive domain of the Legislature/Parliament. This power is clothed with power to decide when to legislate, what to legislate and how much to legislate. Thus, to decide the timing, content and extent of legislation is a function primarily entrusted to the legislature and in exercise of judicial review, the Court starts with a basic presumption in favour of the proper exercise of such power.

14. Generally, the heads of income to be subjected to taxability under the 1961 Act are enumerated in Section 14 which starts with a saving clause and expressly predicates that profits and gains of business or profession shall be chargeable to income tax. This general declaration of chargeability is followed by Section 145, which prescribes the method of accounting and reads thus:

“Method of accounting

145. (1) Income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" shall, subject to the provisions of sub-section (2), be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee.

(2) The Central Government may notify in the Official Gazette from time to time accounting standards to be followed by any class of assessees or in respect of any class of income.

(3) Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub-section (1) or accounting standards as notified under sub-section (2), have not been regularly followed by the assessee, the Assessing Officer may make an assessment in the manner provided in section 144.” (emphasis supplied)

15. Sub-section (1) of Section 145 explicitly provides that the method of accounting is a prerogative falling in the domain of the assessee and an assessee is well within its rights to follow the mercantile system of accounting. Be it noted that as per the mercantile system of accounting, the assessment of income is made on the basis of accrual of liability and not on the basis of actual expenditure in lieu thereof. The expression “either cash or mercantile system of accounting” offers guidance on the nature of this accounting system. Be that as it may, it is noteworthy that the right flowing from sub-section (1) is “subject to the provisions of sub-section (2)”, which unambiguously empowers the Central Government to prescribe income computation and disclosure standards for accounting. Concededly, sub-section (2) is an enabling provision. It signifies that the general principle of

autonomy of the assessee in adopting a system of accounting, is controlled by the regulation notified by the Central Government and must be adhered to by the class of assessee governed thereunder.

16. Section 43B, however, is enacted to provide for deductions to be availed by the assessee in lieu of liabilities accruing in previous year without making actual payment to discharge the same. It is not a provision to place any embargo upon the autonomy of the assessee in adopting a particular method of accounting, nor deprives the assessee of any lawful deduction. Instead, it merely operates as an additional condition for the availment of deduction qua the specified head.

17. Section 43B bears heading "certain deductions to be only on actual payment". It opens with a non□obstante clause. As per settled principles of interpretation, a non obstante clause assumes an overriding character against any other provision of general application. It declares that within the sphere allotted to it by the Parliament, it shall not be controlled or overridden by any other provision unless specifically provided for. Out of the allowable deductions, the legislature consciously earmarked certain deductions from time to time and included them in the ambit of Section 43B so as to subject such deductions to conditionality of actual payment. Such conditionality may have the inevitable effect of being different from the theme of mercantile system of accounting on accrual of liability basis qua the specific head of deduction covered therein and not to other heads. But that is a matter for the legislature and its wisdom in doing so.

18. The existence of Section 43B traces back to 1983 when the legislature conceptualised the idea of such a provision in the 1961 Act. Initially, the provision included deductions in respect of sum payable by assessee by way of tax or duty or any sum payable by the employer by way of contribution to any provident fund or superannuation fund. It is noteworthy that the legislature explained the inclusion of these deductions by citing certain practices of evasion of statutory liabilities and other liabilities for the welfare of employees. The scope and effect of the newly inserted provision was explained in paragraph 60 of the Memorandum explaining the provisions of the Finance Bill, 1983 as under:

> "60. ... To curb this practice, it is proposed to provide that deduction for any sum payable by the assessee by way of tax or duty under any law for the time being in force (irrespective of whether such tax or duty is disputed or not) or any sum payable by the assessee as an employer by way of contribution to any provident fund, or superannuation fund or gratuity fund or any other fund for the welfare of employees shall be allowed only in computing the income of that previous year in which such sum is actually paid by him." With the passage of time, the legislature inserted more deductions to Section 43B including cess, bonus or commission payable by employer, interest on loans payable to financial institutions, scheduled banks etc., payment in lieu of leave encashment by the employer and repayment of dues to the railways. Thus understood, there is no oneness or uniformity in the nature of deductions included in Section 43B. It holds no merit to urge that this section only provides for deductions concerning statutory liabilities. Section 43B is a mix bag and new and dissimilar entries have been inserted therein from time to time to cater to different fiscal scenarios, which are best determined by the government of the day. It is not

> unusual or abnormal for the legislature to create a new liability, exempt an existing liability, create a deduction or subject an existing deduction to override regulations or conditions.

19. The leave encashment scheme envisages the payment of a certain amount to the employees in lieu of their unused paid leaves in a year. The nature of this payment is beneficial and pro□ employee. However, it is not in the form of a bounty and forms a part of the conditions of service of the employee. An employer seeking deduction from tax liability in advance, in the name of discharging the liability of leave encashment, without actually extending such payment to the employee as and when the time for payment arises may lead to abhorrent consequences. When time for such payment arises upon retirement (or otherwise) of the employee, an employer may simply refuse to pay. Consequently, the innocent employee will be entangled in litigation in the evening of his/her life for claiming a hard□earned right without any fault on his part. Concomitantly, it would entail in double benefit to the employer – advance deduction from tax liability without any burden of actual payment and refusal to pay as and when occasion arises. It is this mischief clause (f) seeks to subjugate.

20. The argument advanced by the respondents that the nature of leave encashment liability is such that it is impossible to make the actual payment in the same year, adds no weight to the claim of invalidity of the clause. We say so because the thrust of the provision is not to control the timing of payment, rather, it is strictly targeted to control the timing of claiming deduction in the name of such liability. The mischief sought to be remedied by this clause, as discussed above, clarifies the position.

21. Be it noted that the interpretation of a statute cannot be unrelated to the nature of the statute. In line with other clauses under Section 43B, clause (f) was enacted to remedy a particular mischief and the concerns of public good, employees' welfare and prevention of fraud upon revenue is writ large in the said clause. In our view, such statutes are to be viewed through the prism of the mischief they seek to suppress, that is, the Heydon's case8 principle. In CRAWFORD, Statutory Construction9, it has been gainfully delineated that "an enactment designed to prevent fraud upon the revenue is more properly a statute against fraud rather than a taxing statute, and hence should receive a liberal construction in the government's favour."

22. In State of Tamil Nadu vs. MK Kandaswamy10, this Court expounded on the interpretation of remedial statutes thus:

> "26. It may be remembered that Section 7□A is at once a charging as well as a remedial provision. Its main object is to plug leakage and prevent evasion of tax. In inter□preting such a provision, a construction which would defeat its purpose and, in effect, obliterate it from the statute book, should be eschewed. If more than one construction is possible, that which preserves its worka□bility, and efficacy is to be preferred to the one which would render it otiose or sterile. The view taken by the High Court is repugnant to this cardinal canon of inter□pretation." (emphasis supplied)

23. Having ruled upon the constitutional validity of clause (f), we shall now examine the grounds on which the High Court ruled against its validity. We may note that the respondents' challenge to the constitutional validity of the said clause has primarily been accepted on three grounds:

> 8 (1584) 3 Co Rep 7 9 CRAWFORD, Statutory Construction p. 508 10 (1975) 4 SCC 745
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> (i) Non-disclosure of objects and reasons behind its enactment and insertion into section 43B;

(ii) Inconsistency of clause (f) with other clauses of Section 43B and absence of nexus of the clause with the original enactment;

(iii) Enactment has been triggered solely to nullify the dicta of this Court in Bharat Earth Movers (supra).

Non-disclosure of objects and reasons

24. The objects and reasons behind the enactment of a statute signify the intention of the legislature behind the enactment of a statutory provision. Indubitably, the purpose or underlying aim of a law can be discerned when interpreted in the light of stated objects and reasons. Inasmuch as, the settled canon of interpretation is to deduce the true intent of the legislature, as the will of the people is constitutionally bestowed in the legislature. It is true that an express objects and reasons would be useful in understanding the import of an enacted provision as and when the Court is called upon to interpret the same. This Court, in State of Tamil Nadu & Ors. vs. K. Shyam Sunder and Ors.11, laid emphasis upon the usefulness of objects and reasons in the process of interpretation and observed thus:

> "66. The Statement of Objects and Reasons appended to the Bill is not admissible as an aid to the construction of the Act to be passed, but it can be used for limited pur- pose of ascertaining the conditions which prevailed at that time which necessitated the making of the law, and the extent and urgency of the evil, which it sought to rem- edy. The Statement of Objects and Reasons may be rele-vant to find out what is the objective of any given statute passed by the legislature. It may provide for the reasons which induced the legislature to enact the statute. "For the purpose of deciphering the object and purport of the Act, ... the court can look to the Statement of Objects and Reasons thereof." (emphasis supplied) (Vide Kavalappara Kottarathil Kochuni v. States of Madras and Kerala [AIR 1960 SC 1080] and Tata Power Co. Ltd. v. Reliance En-ergy Ltd. [(2009) 16 SCC 659], SCC p. 686, para 79)
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> 67. In A. Manjula Bhashini (2009) 8 SCC 431 this Court held as under: (SCC p. 459, para 40) "40. The proposition which can be culled out from the aforementioned judgments is that although the Statement of Objects and Reasons contained in the Bill leading to enactment of the particular Act cannot be made the sole basis for

construing the provisions contained therein, the same can be referred to for un□ derstanding the background, the antecedent state of affairs and the mischief sought to be remedied by the statute. The Statement of Objects and Reasons can also be looked into as an external aid for appreciating the true intent of the legislature and/or the object sought to be achieved by enactment of the particular Act or for judging reasonableness of the classification made by such Act." (emphasis added)

68. Thus, in view of the above, the Statement of Objects and Reasons of any enactment spells out the core reason for which the enactment is brought and it can be looked into for appreciating the true intent of the legislature or to find out the object sought to be achieved by enactment of the particular Act or even for judging the reasonableness of the classifications made by such Act." 11 (2011) 8 SCC 737

25. Whereas, when there is no ambiguity about the legislative competence and of the import of the enactment, no rule, authority or convention to support the view that publication of objects and reasons is quintessence for the sustenance of a duly enacted provision has been brought to our notice. In fact, objects and reasons feature in the list of external aids to interpretation and can be looked into for the limited purpose in the process of interpretation. Regard may be had to State of West Bengal vs. Union of India12, wherein the Court expounded the legal position thus:

"13. ... It is however well□ settled that the Statement of Objects and Reasons accompanying a bill, when introduced in Parliament, cannot be used to determine the true meaning and effect of the substantive provisions of the statute. They cannot be used except for the limited purpose of understanding the background and the antecedent state of affairs leading up to the legislation. But we cannot use this statement as an aid to the construction of the enactment or to show that the legislature did not intend to acquire the proprietary rights vested in the State or in any way to affect the State Governments' rights as owners of minerals. A statute, as passed by Parliament, is the expression of the collective intention of the legislature as a whole, and any statement made by an individual, albeit a Minister, of the intention and objects of the Act cannot be used to cut down the generality of the words used in the statute." 12 AIR 1963 SC 1241 The Court was more categorical in restating the position in Sanjeev Coke Manufacturing Company vs. Bharat Coking Coal Limited and Anr.13, where it noted:

"25. .....No one may speak for the Parliament and Parliament is never before the court. After Parliament has said what it intends to say, only the court may say what the Parliament meant to say. None else. Once a statute leaves Parliament House, the Court is the only authentic voice which may echo (interpret) the Parliament. This the court will do with reference to the language of the statute and other permissible aids....." The express objects and reasons, therefore, serves a limited purpose of assisting the Court in examining the validity of a provision, especially when the Court is sitting over the interpretation of an ambiguous provision.

26. Indubitably, when the Court examines the validity of a provision, its primary concern is the literal text of the provision. It is so because the legislature speaks through the text and as long as it is not speaking in an equivocal manner, there is limited space for the Court to venture beyond the text. This constitutes the first test of interpretation, often termed as the literal interpretation. If the text of the provision is unambiguous, the legislative intent gets coalesced and is epitomised therefrom. 13 (1983) 1 SCC 147

27. In other words, when the textual element of the provision reeks of ambiguity and is susceptible to multiple meanings, the Court enters into a proactive examination to find out the real meaning of the provision. This proactive examination by the Court offers multiple avenues and methods to achieve the ultimate purpose of interpretation. Adverting to the express objects and reasons may be useful for limited purpose to understand the surrounding circumstances at the time of enactment. The Court is not bound by such external elements, as discussed above. Therefore, the presence or absence of objects and reasons has no impact upon the constitutional validity of a provision as long as the literal features of the provision enable the Court to comprehend its true meaning with sufficient clarity.

28. The Division Bench of the High Court, in the present case, plainly glossed over the fundamental presumption of constitutionality in favour of clause (f) and based its judgment upon the absence of objects and reasons as striking at the root of its validity. In our view, this approach is flawed for at least three reasons. First, it steers clear from the necessary attempt to discover any constitutional infirmities in the enacted provision. Second, it makes no attempt to dissect the text of the provision so as to display the need to go beyond the text. Third, it goes into the background of the enactment and ventures into a sphere which is out of bounds for the Court as long as the need for interpretation borne out of any ambiguity arises.

29. The process of testing validity is not to sneak into the prudence or proprieties of the legislature in enacting the impugned provision. Nor, is it to examine the culpable conduct of the legislature as an appellate authority over the legislature. The only examination of the Court is restricted to the finding of a constitutional infirmity in the provision, as is placed before the Court. Thus, the non□ disclosure of objects and reasons per se would not impinge upon the constitutionality of a provision unless the provision is ambiguous and the possible interpretation violate Part III of the Constitution. In the absence of any finding of any constitutional infirmity in a provision, the Court is not empowered to invalidate a provision.

30. To hold a provision as violative of the Constitution on account of failure of the legislature to state the objects and reasons would amount to an indirect scrutiny of the motives of the legislature behind the enactment. Such a course of action, in our view, is unwarranted. The raison d'etre behind this self□imposed restriction is because of the fundamental reason that different organs of the State do not scrutinise each other's wisdom in the exercise of their duties. In other words, the time□tested principle of checks and balances does not empower the Court to question the motives or wisdom of the legislature, except in circumstances when the same is demonstrated from the enacted law. The following instructive passage from United States vs. Butler et al.14 offers guidance on the above proposition, wherein Justice Stone observed thus:

"The power of courts to declare a statute unconstitutional is subject to two guiding principles of decision which ought never to be absent from judicial consciousness. One is that courts are concerned only with the power to enact statutes, not with their wisdom. The other is that while unconstitutional exercise of the power by the executive is subject to judicial restraint, the only check upon our own exercise of power by the executive is subject to judicial restraint. For the removal of unwise laws from the statute books appeal lies not to the courts but to the ballot and to the processes of democratic government..." In the Indian constitutional jurisprudence, the above principle has been reckoned by this Court in its early years in 1954 in 14 297 US 1 (1936) K.C. Gajapati Narayan Deo & Ors. vs. The State of Orissa15, wherein the Court observed thus:

"... If the Legislature is competent to pass a particular law, the motives which impelled it to act are really irrelevant. On the other hand, if the legislature lacks competency, the question of motive does not arise at all. Whether a statute is constitutional or not is thus always a question of power.... If the Constitution of a State distributes the legislative powers amongst different bodies, which have to act within their respective spheres marked out by specific legislature entries, or if there are limitations on the legislative authority in the shape of fundamental rights, questions do arise as to whether the legislature in a particular case has or has not, in respect to the subject□matter of the statute or in the method of enacting it, transgressed the limits of its constitutional powers...." We have noted that the High Court has characterised clause (f) as "arbitrary" and "unconscionable" while imputing it with unconstitutionality. It is pertinent to note that the High Court reaches this conclusion without undertaking an actual examination of clause (f). Instead, the declaration is preceded by an enquiry into the circumstances leading upto the enactment.

As discussed above, the constitutional power of judicial review contemplates a review of the provision, as it stands, and not a review of the circumstances in which the enactment was made.

Be it noted that merely holding an enacted provision as unconscionable or arbitrary is not sufficient to hold it as 15 (1954) SCR 1 unconstitutional unless such infirmities are sufficiently shown to exist in the form, substance or functioning of the impugned provision. No such infirmity has been exhibited and adverted to in the impugned judgment.

Inconsistency of clause (f) and absence of nexus with Section 43B

31. The High Court has supported its finding of invalidity by recording two observations vis□a□vis the previously existing (unamended) clauses of Section 43B – first, that clause (f) is inconsistent with other clauses and nature of deduction targeted in clause (f) is distinct from other deductions. Second, that clause

(f) has no nexus with the objects and reasons behind the enactment of original Section 43B and therefore, the objects and reasons attributed to Section 43B cannot be used to deduce the object and purpose of clause (f).

32. At the outset, we observe that both the grounds are ill□founded. In the basic scheme of Section 43B, there is no direct or indirect limitation upon the power of legislature to include only particular type of deductions in the ambit of Section 43B. To say that Section 43B is restricted to deductions of a statutory nature would be nothing short of reading the provision in a purely imaginative manner. As already discussed above, from 1983 onwards, Section 43B had taken within its fold diverse nature of deductions, ranging from tax, duty to bonus, commission, railway fee, interest on loans and general provisions for welfare of employees. An external examination of this journey of Section 43B reveals that the legislature never restricted it to a particular category of deduction and that intent cannot be read into the main Section by the Court, while sitting in judicial review. Concededly, it is a provision to attach conditionality on deductions otherwise allowable under the Act in respect of specified heads, in that previous year in which the sum is actually paid irrespective of method of accounting.

33. Further, it be noted that the broad objective of enacting Section 43B concerning specified deductions referred to therein was to protect larger public interest primarily of revenue including welfare of the employees. Clause (f) fits into that scheme and shares sufficient nexus with the broad objective, as already discussed hitherto.

34. Before stepping into the next ground, we are inclined to observe that the approach of constitutional courts ought to be different while dealing with fiscal statutes. It is trite that the legislature is the best forum to weigh different problems in the fiscal domain and form policies to address the same including to create a new liability, exempt an existing liability, create a deduction or subject an existing deduction to new regulatory measures. In the very nature of taxing statutes, legislature holds the power to frame laws to plug in specific leakages. Such laws are always pin□ pointed in nature and are only meant to target a specific avenue of taxability depending upon the experiences of tax evasion and tax avoidance at the ground level. The general principles of exclusion and inclusion do not apply to taxing statutes with the same vigour unless the law reeks of constitutional infirmities. No doubt, fiscal statutes must comply with the tenets of Article 14. However, a larger discretion is given to the legislature in taxing statutes than in other spheres. In Anant Mills Co. Ltd. vs. State of Gujarat & Ors. 16, this Court noted thus:

> "25. ...But, in the application of the principles, the courts, in view of the inherent complexity of fiscal adjustment of diverse elements, permit a larger discretion to the 16 (1975) 2 SCC 175 Legislature in the matter of classification so long as it adheres to the fundamental principles underlying the said doctrine. The power of the Legislature to classify is of wide range and flexibility so that it can adjust its system of taxation in all proper and reasonable ways..." Viewed thus, the reason weighed with the Division Bench of the High Court in the impugned judgment is untenable.

Defeating the dictum in Bharat Earth Movers case

35. We shall now examine clause (f) on the ground that it defeats the judgment of this Court in Bharat Earth Movers (supra). We have carefully analysed the decision in Bharat Earth Movers (supra) and note that the Court was sitting in appeal over the nature of liability under the leave encashment scheme and held such liability to be a present liability. Resultantly, it became deductible from the profit and loss account of the assessee in the same accounting year in which provision against the same is made. The Court rejected that leave encashment liability is a contingent one and observed thus:

> "7. Applying the abovesaid settled principles to the facts of the case at hand we are satisfied that provision made by the appellant Company for meeting the liability incurred by it under the leave encashment scheme proportionate with the entitlement earned by employees of the Company, inclusive of the officers and the staff, subject to the ceiling on accumulation as applicable on the relevant date, is entitled to deduction out of the gross receipts for the accounting year during which the provision is made for the liability. The liability is not a contingent liability. The High Court was not right in taking the view to the contrary."

36. Before the judgment in Bharat Earth Movers (supra), various tribunals and High Courts across the country were treating the liability in lieu of leave encashment as a contingent liability. This did not go down well with the assessees following the mercantile accounting system, as they were not able to avail deductions upon mere creation of a provision against such liability without making the actual payment. A challenge to this legal position reached before this Court in Bharat Earth Movers (supra), wherein the Court reversed the position.

37. It is no doubt true that the legislature cannot sit over a judgment of this Court or so to speak overrule it. There cannot be any declaration of invalidating a judgment of the Court without altering the legal basis of the judgment □as a judgment is delivered with strict regard to the enactment as applicable at the relevant time. However, once the enactment itself stands corrected, the basic cause of adjudication stands altered and necessary effect follows the same. A legislative body is not supposed to be in possession of a heavenly wisdom so as to contemplate all possible exigencies of their enactment. As and when the legislature decides to solve a problem, it has multiple solutions on the table. At this stage, the Parliament exercises its legislative wisdom to shortlist the most desirable solution and enacts a law to that effect. It is in the nature of a 'trial and error' exercise and we must note that a law□making body, particularly in statutes of fiscal nature, is duly empowered to undertake such an exercise as long as the concern of legislative competence does not come into doubt. Upon the law coming into force, it becomes operative in the public domain and opens itself to any review under Part III as and when it is found to be plagued with infirmities. Upon being invalidated by the Court, the legislature is free to diagnose such law and alter the invalid elements thereof. In doing so, the legislature is not declaring the opinion of the Court to be invalid.

38. In Welfare Association. A.R.P., Maharashtra and Anr. vs. Ranjit P. Gohil and Ors.17, this Court relied upon Indian Aluminium Co. and Ors. vs. State of Kerala and Ors. 18 and upon elaborate analysis, laid down certain principles to preserve the delicate balance of separation of powers and observed thus:

17 (2003) 9 SCC 358 18 (1996) 7 SCC 637 "47. ...(v) in exercising legislative power, the legislature by mere declaration, without anything more, cannot directly overrule, revise or override a judicial decision. It can render judicial decision ineffective by enacting valid law on the topic within its legislative field fundamentally altering or changing its character retrospectively. The changed or altered conditions are such that the previous decision would not have been rendered by the court, if those conditions had existed at the time of declaring the law as invalid.... It is competent for the legislature to enact the law with retrospective effect;

(vi) the consistent thread that runs through all the decisions of this Court is that the legislature cannot directly overrule the decision or make a direction as not binding on it but has power to make the decision ineffective by removing the base on which the decision was rendered, consistent with the law of the Constitution and the legislature must have competence to do the same." The Court then relied upon State of T.N. vs. Arooran Sugars Ltd.19 to reaffirm the point and noted thus:

"48. In State of Tamil Nadu v. Arooran Sugars Ltd., the Constitution Bench made an exhaustive review of all the available decisions on the point and summed up the law by holding: □"It is open to the legislature to remove the defect pointed out by the court or to amend the definition or any other provision of the Act in question retrospectively. In this process it cannot be said that there has been an encroachment by the legislature over the power of the judiciary. A court's directive must always bind unless the conditions on which it is based are so fundamentally altered that under altered circumstances such decisions could not have been given. This will include removal of the defect in a statute pointed out in the judgment in question, as well as alteration or substitution of provisions of the enactment on which such judgment is based, with retrospective effect."" 19 (1997) 1 SCC 326 In Indian Aluminium Co. (supra), the Court relied upon a set of authorities and extended its approval to the above stated position of law thus:

"41. ... A Constitution Bench of this Court had held that the distinction between legislative act and judicial act is well□known. The adjudication of the rights of the parties is a judicial function. The legislature has to lay down the law prescribing the norms or conduct which will govern the parties and transactions to require the court to give effect to that law. Validating legislation which removes the norms of invalidity of action or providing remedy is not an encroachment on judicial power. Statutory rule made under the proviso to Article 309 was upheld. The legislature cannot by a bare declaration without anything more, directly overrule, reverse or override a judicial decision at any time in exercise of the plenary power conferred on the legislature by Articles 245 and 246 of the Constitution. It can render a judicial decision ineffective by enacting a valid law on a topic within its legislative field, fundamentally altering or changing with retrospective, curative or nullifying effect, the conditions on which such a decision is based. In Hari Singh and Ors. v. The Military Estate Officer, (1973) 1 SCR 515, prior to 1958 two alternative modes of eviction under Public Premises Act were available. When the eviction was sought of

> an unauthorised occupant by summary procedure the constitutionality thereof was challenged and upheld. The Act was subsequently amended in 1958 with retrospective operation from September 16, 1958. Thereunder only one procedure for eviction was available. It was contended to be a legislative encroachment of judicial power. A Bench of three Judges held that the legislature possessed competence over the subject matter and the Validation Act could remove the defect which the court had found in the previous case. It was not the legislative encroachment of judicial power but one of removing the defect which the court had pointed out with a deeming date." (emphasis supplied)

39. Reverting to the true effect of the reported judgment under consideration, it was rendered in light of general dispensation of autonomy of the assessee to follow cash or mercantile system of accounting prevailing at the relevant time, in absence of an express statutory provision to do so differently. It is an authority on the nature of the liability of leave encashment in terms of the earlier dispensation. In absence of any such provision, the sole operative provision was Section 145(1) of the 1961 Act that allowed complete autonomy to the assessee to follow the mercantile system. Now a limited change has been brought about by the insertion of clause (f) in Section 43B and nothing more. It applies prospectively. Merely because a liability has been held to be a present liability qualifying for instant deduction in terms of the applicable provisions at the relevant time does not ipso facto signify that deduction against such liability cannot be regulated by a law made by Parliament prospectively. In matter of statutory deductions, it is open to the legislature to withdraw the same prospectively. In other words, once the Finance Act, 2001 was duly passed by the Parliament inserting clause (f) in Section 43B with prospective effect, the deduction against the liability of leave encashment stood regulated in the manner so prescribed. Be it noted that the amendment does not reverse the nature of the liability nor has it taken away the deduction as such. The liability of leave encashment continues to be a present liability as per the mercantile system of accounting. Further, the insertion of clause (f) has not extinguished the autonomy of the assessee to follow the mercantile system. It merely defers the benefit of deduction to be availed by the assessee for the purpose of computing his taxable income and links it to the date of actual payment thereof to the employee concerned. Thus, the only effect of the insertion of clause (f) is to regulate the stated deduction by putting it in a special provision.

40. Notably, this regulatory measure is in sync with other deductions specified in Section 43B, which are also present and accrued liabilities. To wit, the liability in lieu of tax, duty, cess, bonus, commission etc. also arise in the present as per the mercantile system, but assessees used to defer payment thereof despite claiming deductions thereagainst under the guise of mercantile system of accounting. Resultantly, irrespective of the category of liability, such deductions were regulated by law under the aegis of Section 43B, keeping in mind the peculiar exigencies of fiscal affairs and underlying concerns of public revenue. A priori, merely because a certain liability has been declared to be a present liability by the Court as per the prevailing enactment, it does not follow that legislature is denuded of its power to correct the mischief with prospective effect, including to create a new liability, exempt an existing liability, create a deduction or subject an existing deduction to new regulatory measures. Strictly speaking, the Court cannot venture into hypothetical spheres while adjudging constitutionality of a duly enacted provision and unfounded limitations cannot be

read into the process of judicial review. A priori, the plea that clause (f) has been enacted with the sole purpose to defeat the judgment of this Court is misconceived.

41. The position of law discussed above leaves no manner of doubt as regards the legitimacy of enacting clause (f). The respondents have neither made a case of non-existence of competence nor demonstrated any constitutional infirmity in clause (f).

42. In view of the clear legal position explicated above, this appeal deserves to be allowed. Accordingly, the impugned judgment of the Division Bench of the High Court is reversed and clause (f) in Section 43B of the 1961 Act is held to be constitutionally valid and operative for all purposes. No order as to costs. Pending interlocutory applications, if any, shall stand disposed of.

.....J. (A.M. Khanwilkar) .....J. (Hemant Gupta) .....J. (Dinesh Maheshwari) New Delhi;

April 24, 2020.