M/S Fibre Boards (P) Ltd Bangaloare vs Cit Bangalore on 11 August, 2015

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Bench: R.F. Nariman, A.K. Sikri

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 5525-5526 OF 2005

M/S FIBRE BOARDS (P) LTD.
BANGALORE …APPELLANT

VERSUS

COMMISSIONER OF INCOME TAX,
BANGALORE ...RESPONDENT

J U D G M E N T

R.F. Nariman, J.

1. The assessee, a private limited company, had an industrial unit at Majiwada, Thane, which was a notified urban area. With a view to shift its industrial undertaking from an urban area to a non-urban area at Kurukumbh Village, Pune District, Maharashtra, it sold its land, building and plant and machinery situated at Majiwada, Thane to Shree Vardhman Trust for a consideration of Rs.1,20,00,000/-, and after deducting an amount of Rs.11,62,956/-, had earned a capital gain of Rs.1,08,33,044/-. Since it intended to shift its industrial undertaking from an urban area to a non-urban area, out of the capital gain so earned, the appellant paid by way of advances various amounts to different persons for purchase of land, plant and machinery, construction of factory building etc. Such advances amounted to Rs.1,11,42,973/- in the year 1991-1992. The appellant claimed exemption under Section 54G of the Income Tax Act on the entire capital gain earned from the sale proceeds of its erstwhile industrial undertaking situate in Thane in view of the advances so made being more than the capital gain made by it.

2. By an order dated 31.3.1994, the Assessing Officer imposed a tax on capital gains, refusing to grant exemption to the appellant under Section 54G. The reasons given were:

> "7. I have carefully considered the submission of the assessee. In this case, it is to be noted that the non urban area has not been declared to be so by any general or special order of the Central Govt. Therefore, the assessee cannot take the plea that it has shifted the undertaking to a non urban area. The second point is regarding utilization of capital gains. In this case, the assessee has given advances to different persons. However, such advance does not amount to utilization of capital gains. The assessee is required to acquire the plant and machinery within the time frame spelt out in sub-section (1) of Section 54G. However, if it fails to acquire the plant and machinery before one year of transfer or within the period of filing return, it is supposed to deposit the capital gains in the Capital Gains Deposit Scheme. It cannot be said that giving advance to different concerns means utilization of money for acquiring the assets. Therefore, the assessee was to deposit the capital gains in the specific account and file proof of such deposit. As the assessee had not done so, it is not entitled for deduction u/s 54G.
>
> To sum up, on both counts, i.e., due to non declaration of the area to be a non urban area by Central Govt. and its failure to deposit the capital gain in the Capital Gains Deposit Account, the assessee's claim is not applicable."

3. By its order dated 20.7.1995, the Commissioner, Income Tax (Appeals) dismissed the appellant's appeal. By its order dated 20.11.1995, the Income Tax Appellate Tribunal allowed the assessee's appeal stating that even an agreement to purchase is good enough and that the explanation to Section 54G being declaratory in nature would be retrospective.

4. By the impugned judgment dated 26.5.2005, the High Court reversed the judgment of the Income Tax Appellate Tribunal and held that as the notification declaring Thane to be an urban area stood repealed with the repeal of the Section under which it was made, the appellant did not satisfy the basic condition necessary to attract Section 54G, namely that a transfer had to be made from an urban area to a non urban area. Further, the expression "purchase" in Section 54G cannot be equated with the expression "towards purchase" and, therefore, admittedly as land, plant and machinery had not been purchased in the assessment year in question, the exemption contained in Section 54G had to be denied. It is the correctness of this judgment that is assailed before us.

5. Shri Dhruv Mehta, learned senior advocate appearing on behalf of the assessee argued before us and pointed out that Chapter XXII-B of the Income Tax Act, prior to 1.4.1988, contained Section 280ZA which when read with the definition of "urban area" in Section 280Y(d) gave to a person who shifted from an urban area to another area, a tax credit certificate with reference to the amount of tax payable by the Company on income tax chargeable under the Heading "Capital Gains" and would be given relief accordingly. He referred us to a notification dated 22.9.1967 by which Thane had been declared to be an urban area for the purpose of Chapter XXII- B. He further contended that Section 54G was inserted on 1.4.1988 at the same time that Section 280ZA was omitted and that

therefore Section 24 of the General Clauses Act would be attracted to the facts of this case. That being so, the notification dated 22.9.1967 would enure to the benefit of the appellant for the purpose of claiming exemption from capital gains under Section 54G. He also argued that Section 280Y(d), which was omitted with effect from 1990, had been so omitted because it had been rendered redundant with the omission of Section 280ZA. Further, according to learned counsel, on a correct interpretation of Section 54G, the assessee gets a period of three years after the date on which the transfer has taken place to purchase new machinery and plant, and acquire land or construct building. Further, in order to avail the benefit of Section 54G all that the assessee has to do in the assessment year in question is to "utilize" the amount of capital gain for the purposes aforesaid before the date of furnishing the return of income under Section 139. If that is done, it is not necessary for the assessee to deposit before furnishing such return, the amount in a Capital Gain Deposit Scheme and utilize such proceeds in accordance with the scheme which the Central Government may by notification frame in this behalf. His further contention was that in any case the explanation added to Section 54G(1) being in the same terms as Section 280Y(d) has repealed Section 280Y(d) by implication.

6. Learned counsel for the revenue, Shri Arijit Prasad supported the judgment of the High Court and argued that Section 24 of the General Clauses Act had no application to the facts of the present case as it only applied to `repeals' and not 'omissions', and also that it saved rights that were given by subordinate legislation, and as the notification dated 22.9.1967 did not by itself confer any right on the appellant, Section 24 of the General Clauses Act would not be attracted. He further submitted that as no purchase of plant and machinery and/or acquisition of land or building or construction of building had actually taken place in the assessment year in question, in any event the conditions precedent for the applicability of Section 54G were not met. As was pointed out by the assessee itself by a letter dated 25.11.1993, even till that date land had not been acquired but only possession was taken and a factory building had not yet been constructed. This being so, according to him, the High Court's judgment needs no interference.

7. We have heard learned counsel for the parties. In order to appreciate the submissions made by both sides, it is necessary to first set out the statutory provisions. Section 280Y(d) as it stood prior to its omission in 1990 read thus:-

> 280Y. Definitions. – In this Chapter, -
>
> Xxx Xxx Xxx
>
> (d) "urban area" means any area which the Central Government may, having regard to the population, concentration of industries, need for proper planning of the area and other relevant factors, by general or special order declare to be an urban area for the purposes of this Chapter.

Section 280ZA as it stood before its amendment in 1988 read as follows:-

280ZA. Tax credit certificates for shifting of industrial undertaking from urban area.- (1) If any company owning an industrial undertaking situate in an urban area shifts, with the prior approval of the Board, such undertaking to any area (not being the area in which such undertaking is situate), it shall be granted a tax credit certificate.

(2) The tax credit certificate to be granted under sub-section (1) shall be for an amount computed in the following manner with reference to the amount of the tax payable by the company on its income chargeable under the head “Capital gains” arising from the transfer of capital assets, being machinery or plant or buildings or lands or any rights in buildings or lands used for the purposes of the business of the said undertaking in the urban area, effected in the course of or in consequence of the shifting of such industrial undertaking, namely:-

(a) the amount of expenditure incurred by the company in-

(i) purchasing new machinery or plant for the purposes of the business of the company in the area to which the undertaking is shifted;

(ii) acquiring lands or constructing buildings for the purposes of its business in the said area; and

(iii) shifting its machinery or plant and other effects and transferring its establishment to such area, within a period of three years, from the date of the approval referred to in sub-section (1), or such further period as the Board may allow, shall first be ascertained;

(b) the amount of the tax credit certificate shall bear to the amount of tax payable by the company on its income chargeable under the head “Capital gains” as aforesaid, the same proportion as the amount of expenditure ascertained under clause (a) bears to the amount of the said income:

Provided that the amount of the tax credit certificate shall in no case exceed the amount of the tax aforesaid.

(3) The amount shown on a tax credit certificate granted to a company under this section shall, on the certificate being produced before the Income-tax Officer, be adjusted against any liability of the company under the Indian Income-tax Act,1922 (11 of 1922), or this Act, existing on the date on which the certificate was produced before the Income-tax Officer and where the amount of such certificate exceeds such liability, or where there is no such liability, the excess or the whole of such amount, as the case may be, shall, notwithstanding anything contained in Chapter XIX, be deemed, on the said date, to be refund due to the company under that Chapter and the provisions of this Act shall apply accordingly.

(4) Where a capital asset, being machinery or plant purchased for the purposes of the business of the company in the area to which the undertaking is shifted or building or land, or any right in building or land, acquired, or as the case may be, constructed in the said area, is transferred by the company within a period of five years from the date of purchase, acquisition or, as the case may be, the date of completion of construction to any person other than the Government, a local authority, a corporation established, by a Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956), an amount equal to one-half of the amount for which a tax credit certificate has been granted to the company under sub-section (1) shall be deemed to be tax due from the company on the thirtieth day following the date of transfer under a notice of demand issued under Section 156, and all the provisions of this Act shall apply accordingly.

Explanation. - Any land or building used for the residence of persons employed in the business of the company or for the use of such persons as a hospital, crèche, school, canteen, library, recreational centre, shelter, rest-room or lunch-room shall, for the purposes of this section, be deemed to be land or building used for the purposes of the business of the company.

The notification dated 22.9.1967 issued under Section 280Y(d) reads as under:-

"In pursuance of clause (d) of section 280Y of the Income-tax Act, 1961 (43 of 1961) the Central Government hereby declares the areas shown in column (3) of the Schedule hereto annexed and forming part of the territory of the State or the Union territory, as the case may be, specified in the corresponding entry in column (2) thereof to be "urban areas" for the purposes of Chapter XXII-B of the said Act, namely:-

SCHEDULE Serial No. Name of the State or Details of the area the Union territory (2) (3)

....

6. Maharashtra (i) Bombay Thana Area.

(ii) Poona-Pimpri-Chinchwad area.

(iii) Khopoli area.

(iv) Areas within the limits of-

(a)Nagpur Municipal Corporation.

(b)Sholapur Municipal Corporation.

8. Section 54G of the Income Tax Act inserted by the Finance Act, 1987 with effect from 1.4.1988 reads as follows:

> "54G. Exemption of capital gains on transfer of assets in cases of shifting of industrial undertaking from urban area. (1) Subject to the provisions of sub-section (2), where the capital gain arises from the transfer of a capital asset, being machinery or plant or building or land or any rights in building or land used for the purposes of the business of an industrial undertaking situate in an urban area, effected in the course of, or in consequence of, the shifting of such industrial undertaking (hereafter in this section referred to as the original asset) to any area (other than an urban area) and the assessee has within a period of one year before or three years after the date on which the transfer took place,—
>
> (a) purchased new machinery or plant for the purposes of business of the industrial undertaking in the area to which the said undertaking is shifted;
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> (b) acquired building or land or constructed building for the purposes of his business in the said area;
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> (c) shifted the original asset and transferred the establishment of such undertaking to such area; and
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> (d) incurred expenses on such other purpose as may be specified in a scheme framed by the Central Government for the purposes of this section, then, instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—
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> (i) if the amount of the capital gain is greater than the cost and expenses incurred in relation to all or any of the purposes mentioned in clauses (a) to (d) (such cost and expenses being hereafter in this section referred to as the new asset), the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its being purchased, acquired, constructed or transferred, as the case may be, the cost shall be nil; or
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> (ii) if the amount of the capital gain is equal to, or less than, the cost of the new asset, the capital gain shall not be charged under section 45;

and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its being purchased, acquired, constructed or transferred, as the case may be, the cost shall be reduced by the amount of the capital gain. Explanation.—In this sub-section, "urban area" means any such area within the limits of a municipal corporation or municipality as the Central Government may, having regard to the population, concentration of industries, need for proper planning of the area and other relevant factors, by general or special order, declare to be an urban area for the purposes of this sub-section.

(2) The amount of capital gain which is not appropriated by the assessee towards the cost and expenses incurred in relation to all or any of the purposes mentioned in clauses (a) to (d) of sub-section (1) within one year before the date on which the transfer of the original asset took place, or which is not utilised by him for all or any of the purposes aforesaid before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139] in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for all or any of the purposes aforesaid together with the amount, so deposited shall be deemed to be the cost of the new asset:

> Provided that if the amount deposited under this sub-section is not utilised wholly or partly for all or any of the purposes mentioned in clauses (a) to (d) of sub-section (1) within the period specified in that sub-section, then,—
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> (i) the amount not so utilised shall be charged under section 45 as the income of the previous year in which the period of three years from the date of the transfer of the original asset expires; and
>
> (ii) the assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid."

9. On the same date, by the same Finance Act, Section 280ZA was omitted with effect from the same date i.e. 1.4.1988. We have been referred to the Budget Speech of the Minister of Finance when he introduced the Finance Act, 1987. Among other things, the learned Minister stated:-

> "83. Concentration of industries in many of our urban areas poses serious problems of congestion, pollution and hazards. In order to encourage industries to shift out of such areas, I propose to exempt capital gains made on the sale of land and buildings in such areas provided these are reinvested in approved relocation schemes."

10. Further, the notes on clauses for the Finance Bill, 1987 reads as under:-

> "Clause 24 seeks to insert two new sections 54G and 54H in the Income-tax Act.
>
> The new section 54G provides for exemption of capital gains on transfer of assets in cases of industrial undertaking shifting from urban area. Sub- section (1) provides that if an assessee transfers a long-term capital asset in the nature of machinery,

> plant, building or land used for the purposes of the business of the industrial undertaking situated in an urban area in connection with the shifting of such undertaking to a non-urban area, and within a period of one year before or three years after the date of transfer, purchases new machinery or plant and acquires land or building or constructs building for the purposes of his business in the area to which the undertaking is shifted or incurs expenses on shifting the original asset and transferring the establishment of the undertaking to such area and incurs expenses on such other purposes as may be specified in a scheme framed by the Central Government, the capital gain shall be exempt to the extent such gain has been utilized for the aforesaid purposes.
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> Explanation to sub-section (1) defines "urban area" on the lines of the definition in section 280Y."

11. The relevant part of the memorandum explaining the provisions in the Finance Bill, 1987 reads as under:

> "34. Under the existing provisions of section 280ZA of the Income-tax Act, any company owning an industrial undertaking situated in an urban area, is entitled for a tax credit certificate with reference to the amount of the tax payable on capital gains arising from the transfer of its machinery, plant, etc., to any other area. These provisions have not proved to be very effective.
>
> With a view to promoting decongestion of urban areas and balanced regional growth, the Bill seeks to exempt capital gains arising on transfer of long-term capital assets in the nature of machinery, plant, building or land used for the purposes of the business of the industrial undertaking situated in an urban area in connection with the shifting of such industrial undertaking from an urban area to a non-urban area. Accordingly, capital gains arising in such cases will be exempt to the extent they are utilized within a period of one year before or three years after the date of transfer, for the purchase of new machinery or plant or acquiring land and building, etc., for the purpose of the business in the area to which the undertaking is shifted or incurs expenses on shifting the original asset and transferring the establishment of the undertaking to such area and incurs expenses as may be specified.
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> As a consequential measure, section 280ZA of the Income-tax Act is proposed to be omitted.
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> These amendments will take effect from 1st April, 1988, and will, accordingly, apply in relation to the assessment year 1988-89 and subsequent years."

12. On a conjoint reading of the aforesaid Budget Speech, notes on clauses and memorandum explaining the Finance Bill of 1987, it becomes clear that the idea of omitting Section 280ZA and introducing on the same date Section 54G was to do away with the tax credit certificate scheme

together with the prior approval required by the Board and to substitute the repealed provision with the new scheme contained in Section 54G. It is true that Section 280Y(d) was only omitted by the Finance Act, 1990 and was not omitted together with Section 280ZA. However, we agree with learned counsel for the appellant that this would make no material difference inasmuch as Section 280Y(d) is a definition Section defining "urban area" for the purpose of Section 280ZA only and for no other purpose. It is clear that once Section 280ZA is omitted from the statute book, Section 280Y(d) having no independent existence would for all practical purposes also be "dead". Quite apart from this, Section 54G(1) by its explanation introduces the very definition contained in Section 280Y(d) in the same terms. Obviously, both provisions are not expected to be applied simultaneously and it is clear that the explanation to Section 54G(1) repeals by implication Section 280Y(d).

13. Repeal by implication has been dealt with by at least two judgments of this Court. In State of Orissa and another v. M/s M.A. Tulloch and Co., (1964) 4 SCR 461, this Court considered the question as to whether the expression "repeal" in Section 6 of the General Clauses Act would be of sufficient amplitude to cover cases of implied repeal. This Court stated:

> "The next question is whether the application of that principle could or ought to be limited to cases where a particular form of words is used to indicate that the earlier law has been repealed. The entire theory underlying implied repeals is that there is no need for the later enactment to state in express terms that an earlier enactment has been repealed by using any particular set of words or form of drafting but that if the legislative intent to supersede the earlier law is manifested by the enactment of provisions as to effect such supersession, then there is in law a repeal notwithstanding the absence of the word 'repeal' in the later statute." (at page 483) Similarly in Ratan Lal Adukia v. Union of India, (1989) 3 SCC 537, this Court held that the substituted Section 80 of the Code of Civil Procedure repealed by implication, insofar as the railways are concerned, Section 20 of the self-same code. In so holding, this Court stated:-
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> "The doctrine of implied repeal is based on the postulate that the legislature which is presumed to know the existing state of the law did not intend to create any confusion by retaining conflicting provisions. Courts, in applying this doctrine, are supposed merely to give effect to the legislative intent by examining the object and scope of the two enactments. But in a conceivable case, the very existence of two provisions may by itself, and without more, lead to an inference of mutual irreconcilability if the later set of provisions is by itself a complete code with respect to the same matter. In such a case the actual detailed comparison of the two sets of provisions may not be necessary. It is a matter of legislative intent that the two sets of provisions were not expected to be applied simultaneously. Section 80 is a special provision. It deals with certain class of suits distinguishable on the basis of their particular subject matters." (at para 18)

14. Further, the Finance Act which omitted the whole of Chapter XXII-B of which Section 280Y(d) is a part, in its notes on clauses stated:

> "Clause 46 seeks to omit Chapter XXII-B of the Income-tax Act relating to tax credit certificates.
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> Under the provisions of this Chapter, which was introduced with effect from 1st April, 1965, tax credit certificates were granted to assessees fulfilling certain conditions. These certificates were to be utilized for the adjustment of the tax liability or for refund or both. This Chapter has now become virtually redundant and is, therefore, being omitted. However, if a person still possesses any tax credit certificates granted under section 280Z or section 280ZC, he shall be allowed to utilize the same up to 31st March, 1991.
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> This amendment will take effect from 1st April, 1990." Equally, the Memorandum explaining the provisions in the Finance Bill also stated:-
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> "40. Chapter XXII-B of the Income-tax Act, contains provisions relating to tax credit certificates. This was introduced with effect from 1st April, 1965, with various objects, viz., providing an incentive to individuals and Hindu undivided families for investing in newly-floated equity shares of certain companies (section 280Z), facilitating the shifting of industrial undertakings of public companies from urban areas to new areas with a view to relieving congestion in urban areas (section 280ZA), providing resources for purposes relevant to the expansion of industry to companies engaged in important industries and earning profits higher than in a "base year" (section 280ZB), stimulating exports (section 280ZC) and encouraging the production of certain goods liable to central excise duty (section 280ZB). The provisions dealing with tax credit certificates for shifting of industrial undertakings from urban areas to new areas have already been omitted with effect from 1st April, 1988. No tax credit certificates can be granted at present under the remaining provisions of this Chapter. Thus, the provisions contained in Chapter XXII-B, have become virtually redundant. Therefore, as a measure of rationalization, it is proposed to delete the Chapter containing these provisions with effect from the 1st day of April, 1990.
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> The tax credit certificates granted under section 280Z or section 280ZC and not presented so far for payment or adjustment of tax liability can, however, be presented before the Assessing Officer up to 31st day of March, 1991, for the said purposes."

15. From a reading of the notes on clauses and the Memorandum of the Finance Bill, 1990, it is clear that Section 280Y(d) which was omitted with effect from 1.4.1990 was so omitted because it had become "redundant". It was redundant because it had no independent existence, apart from providing a definition of "urban area" for the purpose of Section 280ZA which had been omitted with effect from the very date that Section 54G was inserted, namely, 1.4.1988. We are, therefore, of the view that the High Court in not referring to Section 24 of the General Clauses Act has fallen into

error. Section 24 states:

> "24. Continuation of orders, etc., issued under enactments repealed and re- enacted. —Where any 44[Central Act] or Regulation, is, after the commencement of this Act, repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided any 45 [appointment notification,] order, scheme, rule, form or bye- law, 45 [made or] issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been 45 [made or] issued under the provisions so re-enacted, unless and until it is superseded by any 45 [appointment notification,] order, scheme, rule, form or bye-law, 45[made or] issued under the provisions so re-enacted 46 [and when any 44 [Central Act] or Regulation, which, by a notification under section 5 or 5A of the Scheduled Districts Act, 1874, (14 of 1874) or any like law, has been extended to any local area, has, by a subsequent notification, been withdrawn from the re-extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re-enacted in such area or part within the meaning of this section]"

16. In Poonjabhai Vanmalidas v. Commissioner of Income Tax, Ahmedabad, 1992 Supp. (1) SCC 182, this Court in construing Section 24 of the General Clauses Act held:-

> "7. The effect of Section 24 of the General Clauses Act, 1897, insofar as it is material, is that where the repealed and re-enacted provisions are not inconsistent with each other, any order made under the repealed provisions is deemed to be an order made under the re-enacted provisions. The question, therefore, is whether the provisions of the repealed Section 10(2)(xi), under which the bad debts were written off as irrecoverable in the books of the assessee, are in terms re-enacted by the repealing Act. A comparative table furnished in The Law and Practice of Income Tax, Kanga and Palkhivala (7th edn., volume II) shows that Section 10(2)(xi) of the 1922 Act is equivalent to Sections 36(1)(vii), 36(2) and 41(4) of the 1961 Act. The repealed Section 10(2)(xi) is thus a composite section containing the ingredients of the re-enacted Sections 36(1)(vii), 36(2) and 41(4). Consequently when a debt is written off by an order in terms of Section 10(2)(xi) of the 1922 Act, the Income Tax Officer exercises the same power as he would have exercised on the enactment of Section 36(1)(vii) of the 1961 Act. These two provisions are, therefore, consistent with each other. Section 36(1)(vii) is subject to the provisions of sub-section (2) of that section. Therefore, both Sections 36(1)(vii) and 36(2) of the 1961 Act, being two of the ingredients of Section 10(2)(xi) of the 1922 Act, must be read together with reference to an order under which debts had been written off. Accordingly, in the light of Section 24 of the General Clauses Act, 1897, the relevant order made under Section 10(2)(xi) of the 1922 Act with reference to which the debt in question had been written off, is deemed to be an order made under Section 36(1)(vii) of the 1961 Act and such order is what is contemplated under Section 41(4) of that Act. Any amount which is recovered on any such debt is attracted by the provisions of Section 41(4) of

> the 1961 Act and is, therefore, chargeable to tax in terms of that sub- section to the extent of the 'excess' specified therein." (at para 7).

17. In State of Punjab v. Harnek Singh, (2002) 3 SCC 481, this Court held:-

> "17. Section 24 of the General Clauses Act deals with the effect of repeal and re-enactment of an Act and the object of the section is to preserve the continuity of the notifications, orders, schemes, rules or bye-laws made or issued under the repealed Act unless they are shown to be inconsistent with the provisions of the re-enacted statute.
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> 23. We do not find any force in the submission of the learned counsel appearing for the respondents that as reference made in sub-section (2) of Section 30 of the 1988 Act is only to Section 6 of the General Clauses Act, the other provisions of the said Act are not applicable for the purposes of deciding the controversy with respect to the notifications issued under the 1947 Act. We are further of the opinion that the High Court committed a mistake of law by holding that as notifications have not expressly been saved by Section 30 of the Act, those would not enure or survive to govern any investigation done or legal proceedings instituted in respect of the cases registered under the 1988 Act. There is no dispute that the 1988 Act is both repealing and re-enacting the law relating to prevention of corruption to which the provisions of Section 24 of the General Clauses Act are specifically applicable. It appears that as Section 6 of the General Clauses Act applies to repealed enactments, the legislature in its wisdom thought it proper to make the same specifically applicable in the 1988 Act also which is a repealing and re-enacted statute. Reference to Section 6 of the General Clauses Act in sub-section (1) of Section 30 has been made to avoid any confusion or misunderstanding regarding the effect of repeal with regard to actions taken under the repealed Act. If the legislature had intended not to apply the provisions of Section 24 of the General Clauses Act to the 1988 Act, it would have specifically so provided under the enacted law. In the light of the fact that Section 24 of the General Clauses Act is specifically applicable to the repealing and re-enacting statute, its exclusion has to be specific and cannot be inferred by twisting the language of the enactments. Accepting the contention of the learned counsel for the respondents would render the provisions of the 1988 Act redundant inasmuch as appointments, notifications, orders, schemes, rules, bye-laws made or issued under the repealed Act would be deemed to be non-existent making impossible the working of the re-enacted law impossible. The provisions of the 1988 Act are required to be understood and interpreted in the light of the provisions of the General Clauses Act including Sections 6 and 24 thereof." (at paras 7 and 23).

18. On a reading of Section 24 together with what has been stated by this Court above, it becomes difficult to accept Shri Arijit Prasad's contention that Section 24 would only apply to notifications which themselves gave rights to persons like the appellant. Unlike Section 6 of the General Clauses Act, which saves certain rights, Section 24 merely continues notifications, orders, schemes, rules etc.

that are made under a Central Act which is repealed and re-enacted with or without modification. The idea of Section 24 of the General Clauses Act is, as its marginal note shows, to continue uninterrupted subordinate legislation that may be made under a Central Act that is repealed and re-enacted with or without modification. It being clear in the present case that Section 280ZA which was repealed by omission and re-enacted with modification in section 54G, the notification declaring Thane to be an urban area dated 22.9.1967 would continue under and for the purposes of Section 54G. It is clear, therefore, that the impugned judgment in not referring to section 24 of the General Clauses Act at all has thus fallen into error.

19. But then Shri Arijit Prasad put before us two roadblocks in the form of two Constitution Bench decisions. He cited Rayala Corporation (P) Ltd. and M.R. Pratap v. Director of Enforcement, New Delhi, (1969) 2 SCC 412 which was followed in Kolhapur Canesugar Works Ltd. & Anr. v. Union of India & Ors., (2000) 2 SCC 536. He argued based upon these two judgments that an “omission” would not amount to “repeal” and that since the present case was concerned with the omission of Section 280ZA, Section 24 would have no application.

20. Shri Prasad is correct in relying upon these two Constitution Bench judgments for they do indeed say that in Section 6 of the General Clauses Act, the word “repeal” would not take within its ken an “omission”.

21. In Rayala Corporation (P) Ltd., what fell for decision was whether proceedings could be validly continued on a complaint in respect of a charge made under Rule 132A of the Defence of India Rules, which ceased to be in existence before the accused were convicted in respect of the charge made under the said rule. The said Rule 132A was omitted by a notification dated 30th March, 1966. What was decided in that case is set out by paragraph 17 of the said judgment, which is as follows:

> “17. Reference was next made to a decision of the Madhya Pradesh High Court in State of Madhya Pradesh v. Hiralal Sutwala [AIR 1959 MP 93] but, there again, the accused was sought to be prosecuted for an offence punishable under an Act on the repeal of which Section 6 of the General Clauses Act had been made applicable. In the case before us, Section 6 of the General Clauses Act cannot obviously apply on the omission of Rule 132-A of the DIRs for the two obvious reasons that Section 6 only applies to repeals and not to omissions, and applies when the repeal is of a Central Act or Regulation and not of a rule. If Section 6 of the General Clauses Act had been applied, no doubt this complaint against the two accused for the offence punishable under Rule 132-A of the DIRs could have been instituted even after the repeal of that rule.”

22. It will be clear from a reading of this paragraph that a Madhya Pradesh High Court judgment was distinguished by the Constitution Bench on two grounds. One being that Section 6 of the General Clauses Act does not apply to a rule but only applies to a Central Act or Regulation, and secondly, that Section 6 itself would apply only to a “repeal” not to “an omission”. This statement of law was followed by another Constitution Bench in the Kolhapur Canesugar Works Ltd. case. After setting out paragraph 17 of the earlier judgment, the second constitution bench judgment states as

follows:

> "33. In para 21 of the judgment the Full Bench has noted the decision of a Constitution Bench of this Court in Chief Inspector of Mines v. Karam Chand Thapar [AIR 1961 SC 838] and has relied upon the principles laid down therein. The Full Bench overlooked the position that that was a case under Section 24 of the General Clauses Act which makes provision for continuation of orders, notification, scheme, rule, form or bye-law, issued under the repealed Act or regulation under an Act after its repeal and re- enactment. In that case Section 6 did not come up for consideration. Therefore the ratio of that case is not applicable to the present case. With respect we agree with the principles laid down by the Constitution Bench in Rayala Corpn. Case [(1969) 2 SCC 412 : (1970) 1 SCR 639] . In our considered view the ratio of the said decision squarely applies to the case on hand."

23. The Kolhapur Canesugar Works Ltd. judgment also concerned itself with the applicability of Section 6 of the General Clauses Act to the deletion of Rule 10 and 10A of the Central Excise Rules on 6th August, 1977.

24. An attempt was made in General Finance Company & Anr. v. Assistant Commissioner of Income Tax, Punjab, (2002) 7 SCC 1 to refer these two judgments to a larger bench on the point that an omission would not amount to a repeal for the purpose of Section 6 of the General Clauses Act. Though the Court found substance in the argument favouring the reference to a larger bench, ultimately it decided that the prosecution in cases of non- compliance of the provision therein contained was only transitional and cases covered by it were few and far between, and hence found on facts that it was not an appropriate case for reference to a larger bench.

25. We may also point out that in G.P. Singh's Principles of Statutory Interpretation, 12th Edition, the learned author has criticized the aforesaid judgments in the following terms:

> "Section 6 of the General Clauses Act applies to all types of repeals. The section applies whether the repeal be express or implied, entire or partial or whether it be repeal simpliciter or repeal accompanied by fresh legislation. The section also applies when a temporary statute is repealed before its expiry, but it has no application when such a statute is not repealed but comes to an end by expiry. The section on its own terms is limited to a repeal brought about by a Central Act or Regulation. A rule made under an Act is not a Central Act or regulation and if a rule be repealed by another rule, section 6 of the General Clauses Act will not be attracted. It has been so held in two Constitution Bench decisions. The passing observation in these cases that "section 6 only applies to repeals and not to omissions" needs reconsideration for omission of a provision results in abrogation or obliteration of that provision in the same way as it happens in repeal. The stress in these cases was on the question that a 'rule' not being a Central Act or Regulation, as defined in the General Clauses Act, omission or repeal of a 'rule' by another 'rule' does not attract section 6 of the Act and proceedings initiated under the omitted rule cannot continue unless the new rule

contains a saving clause to that effect...."(At pages 697 and 698)

26. In view of what has been stated hereinabove, perhaps the appropriate course in the present case would have been to refer the aforesaid judgment to a larger bench. But we do not find the need to do so in view of what is stated by us hereinbelow.

27. First and foremost, it will be noticed that two reasons were given in Rayala Corporation (P) Ltd. for distinguishing the Madhya Pradesh High Court judgment. Ordinarily, both reasons would form the ratio decidendi for the said decision and both reasons would be binding upon us. But we find that once it is held that Section 6 of the General Clauses Act would itself not apply to a rule which is subordinate legislation as it applies only to a Central Act or Regulation, it would be wholly unnecessary to state that on a construction of the word "repeal" in Section 6 of the General Clauses Act, "omissions" made by the legislature would not be included. Assume, on the other hand, that the Constitution Bench had given two reasons for the non-applicability of Section 6 of the General Clauses Act. In such a situation, obviously both reasons would be ratio decidendi and would be binding upon a subsequent bench. However, once it is found that Section 6 itself would not apply, it would be wholly superfluous to further state that on an interpretation of the word "repeal", an "omission" would not be included. We are, therefore, of the view that the second so- called ratio of the Constitution Bench in Rayala Corporation (P) Ltd. cannot be said to be a ratio decidendi at all and is really in the nature of obiter dicta.

28. Secondly, we find no reference to Section 6A of the General Clauses Act in either of these Constitution Bench judgments. Section 6A reads as follows:

> "6A. Repeal of Act making textual amendment in Act or Regulation - Where any Central Act or Regulation made after the commencement of this Act repeals any enactment by which the text of any Central Act or Regulation was amended by the express omission, insertion or substitution of any matter, then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal."

29. A reading of this Section would show that a repeal can be by way of an express omission. This being the case, obviously the word "repeal" in both Section 6 and Section 24 would, therefore, include repeals by express omission. The absence of any reference to Section 6A, therefore, again undoes the binding effect of these two judgments on an application of the 'per incuriam' principle.[1]

30. Thirdly, an earlier Constitution Bench judgment referred to earlier in this judgment, namely, State of Orissa v. M.A. Tulloch & Co., (1964) 4 SCR 461 has also been missed. The Court there stated:

> "....Now, if the legislative intent to supersede the earlier law is the basis upon which the doctrine of implied repeal is founded could there be any incongruity in attributing to the later legislation the same intent which Section 6 presumes where the word

> 'repeal' is expressly used. So far as statutory construction is concerned, it is one of the cardinal principles of the law that there is no distinction or difference between an express provision and a provision which is necessarily implied, for it is only the form that differs in the two cases and there is no difference in intention or in substance. A repeal may be brought about by repugnant legislation, without even any reference to the Act intended to be repealed, for once legislative competence to effect a repeal is posited, it matters little whether this is done expressly or inferentially or by the enactment of repugnant legislation. If such is the basis upon which repeals and implied repeals are brought about it appears to us to be both logical as well as in accordance with the principles upon which the rule as to implied repeal rests to attribute to that legislature which effects a repeal by necessary implication the same intention as that which would attend the case of an express repeal. Where an intention to effect a repeal is attributed to a legislature then the same would, in our opinion, attract the incident of the saving found in Section 6 for the rules of construction embodied in the General Clauses Act are, so to speak, the basic assumptions on which statutes are drafted......." (At page 484)

31. The two later Constitution Bench judgments also did not have the benefit of the aforesaid exposition of the law. It is clear that even an implied repeal of a statute would fall within the expression "repeal" in Section 6 of the General Clauses Act. This is for the reason given by the Constitution Bench in M.A. Tulloch & Co. that only the form of repeal differs but there is no difference in intent or substance. If even an implied repeal is covered by the expression "repeal", it is clear that repeals may take any form and so long as a statute or part of it is obliterated, such obliteration would be covered by the expression "repeal" in Section 6 of the General Clauses Act.

32. In fact in Halsbury's Laws of England Fourth Edition, it is stated that:

> "So far as express repeal is concerned, it is not necessary that any particular form of words should be used. (R v. Longmead, (1795) 2 Leach 694 at 696). All that is required is that an intention to abrogate the enactment or portion in question should be clearly shown. (Thus, whilst the formula "is hereby repealed" is frequently used, it is equally common for it to be provided that an enactment "shall cease to have effect" (or, If not yet in operation, "shall not have effect") or that a particular portion of an enactment "shall be omitted)."

33. At this stage, it is important to note that a temporary statute does not attract the provision of Section 6 of the General Clauses Act only for the reason that the said statute expires by itself after the period for which it has been promulgated ends. In such cases, there is no repeal for the reason that the legislature has not applied its mind to a live statute and obliterated it. In all cases where a temporary statute expires, the statute expires of its own force without being obliterated by a subsequent legislative enactment. But even in this area, if a temporary statute is in fact repealed at a point of time earlier than its expiry, it has been held that Section 6 of the General Clauses Act would apply. – See: State of Punjab v. Mohar Singh, (1955) 1 SCR 893 at page 898.

34. In CIT v. Venkateswara Hatcheries (P) Ltd., (1999) 3 SCC 632, this Court was faced with an omission and re-enactment of two Sections of the Income Tax Act. This Court found that Section 24 of the General Clauses Act would apply to such omission and re-enactment. The Court has stated as follows:

> "As noticed earlier, the omission of Section 2(27) and re-enactment of Section 80-JJ was done simultaneously. It is a very well-recognized rule of interpretation of statutes that where a provision of an Act is omitted by an Act and the said Act simultaneously re-enacts a new provision which substantially covers the field occupied by the repealed provision with certain modification, in that event such re-enactment is regarded having force continuously and the modification or changes are treated as amendment coming into force with effect from the date of enforcement of the re-enacted provision. Viewed in this background, the effect of the re-enacted provision of Section 80-JJ was that profit from the business of livestock and poultry which enjoyed total exemption under Section 10(27) of the Act from Assessment Years 1964-65 to 1975-76 became partially exempt by way of deduction on fulfilment of certain conditions." (At para 12)

35. For all the aforesaid reasons, we are therefore of the view that on omission of Section 280ZA and its re-enactment with modification in Section 54G, Section 24 of the General Clauses Act would apply, and the notification of 1967, declaring Thane to be an urban area, would be continued under and for the purposes of Section 54A.

36. A reading of Section 54G makes it clear that the assessee is given a window of three years after the date on which transfer has taken place to "purchase" new machinery or plant or "acquire" building or land. We find that the High Court has completely missed the window of three years given to the assessee to purchase or acquire machinery and building or land. This is why the expression used in 54G(2) is "which is not utilized by him for all or any of the purposes aforesaid....". It is clear that for the assessment year in question all that is required for the assessee to avail of the exemption contained in the Section is to "utilize" the amount of capital gains for purchase and acquisition of new machinery or plant and building or land. It is undisputed that the entire amount claimed in the assessment year in question has been so "utilized" for purchase and/or acquisition of new machinery or plant and land or building.

37. The High Court is not correct when it states:-

> "31. The word 'purchase' is not defined under the Act and therefore, has to be construed in the commercial sense. In many dictionaries, the word 'purchase' means the acquisition of property by party's own act as distinguished from acquisition by act of law. In the context in which the expression issued by the Legislature requires first to be understood and interpretation that suits the context requires to be adopted. Exemption of capital gains under Section 54G of the Act can be claimed on transfer of assets in cases of shifting of industrial undertaking from urban area to any other non-urban area. This exemption may be claimed if the capital gains arising on

> transfer of any of assets of existing industrial unit is utilized within one year or three years after the date on which the transfer took place for purchase of new machinery or plant for the purposes of the business of the industrial undertaking in the area to which the said undertaking is shifted. The Legislature consciously has not used the expression 'towards the purchase of plant and machinery' as in Section 54(4) of the Act in contrast to Section 54(2) of the Act wherein the words 'towards' is used before the word 'purchase'. The expression 'purchased' used in sub-clause (a) of section 54G of the Act requires to be understood as the domain and control given to the assessee. In the present case, it is not in dispute that the assessee has paid advance amount for acquisition of land, plant, building and machinery, etc., within the time stipulated in the Section, but it is not the case of the assessee that after such payment of advance amount, it has taken possession of land and building, plant and machinery. In our view, if the argument of the learned Senior Counsel for the assessee is accepted, it would defeat the very purpose and object of the Section itself. By merely paying some amount by way of advance towards the cost of acquisition of land for shifting its industrial unit from urban area to non-urban area, an assessee cannot claim exemption from payment of tax on capital gains. This cannot be the intention of the Legislature and an interpretation, which would defeat the very purpose, and the object of the Act requires to be avoided." (at para 31 of the impugned judgment)

38. We are of the view that the aforesaid construction of Section 54G would render nugatory a vital part of the said Section so far as the assessee is concerned. Under sub-section (1), the assessee is given a period of three years after the date on which the transfer takes place to purchase new machinery or plant and acquire building or land or construct building for the purpose of his business in the said area. If the High Court is right, the assessee has to purchase and/or acquire machinery, plant, land and building within the same assessment year in which the transfer takes place. Further, the High Court has missed the key words "not utilized" in sub-section (2) which would show that it is enough that the capital gain made by the assessee should only be "utilized" by him in the assessment year in question for all or any of the purposes aforesaid, that is towards purchase and acquisition of plant and machinery, and land and building. Advances paid for the purpose of purchase and/or acquisition of the aforesaid assets would certainly amount to utilization by the assessee of the capital gains made by him for the purpose of purchasing and/or acquiring the aforesaid assets. We find therefore that on this ground also, the assessee is liable to succeed. The appeals are, accordingly, allowed and the judgment of the High Court is set aside.

……………………….J. (A.K. Sikri) ……………………….J. (R.F. Nariman) New Delhi;

August 11, 2015

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[1] In Mamleshwar Prasad & Anr. v. Kanahaiya Lal (dead) through LRs., (1975) 3 SCR 834, Krishna Iyer, J., succinctly laid down what is meant by the "per incuriam" principle. He stated:

“We do not intend to detract from the rule that, in exceptional instances, whereby obvious inadvertence or oversight a judgment fails to notice a plain statutory provision or obligatory authority running counter to the reasoning and result reached, it may not have sway of binding precedents. It should be a glaring case, an obtrusive omission. No such situation presents itself here and we do not embark on the principle of judgment per incuriam.” (At page 837) An interesting application of the said principle is contained in State of U.P. & Anr. v. Synthetics and Chemicals Ltd. & Anr., (1991) 3 SCR 64, where a Division Bench of this Court held that one particular conclusion of a Bench of seven Judges was per incuriam – see: the discussion at pages 80, 81 and 91 of the said judgment.