

Santosh Kumar Kejriwal (Executor Vs. Acit

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Court : Income Tax Appellate Tribunal ITAT Kolkata

Decided On : Nov-25-2003

Reported in : (2004)89ITD172(Kol.)

Judge : M Bakshi, Vice, D Srivastava

Appellant : Santosh Kumar Kejriwal (Executor

Respondent : Acit

Judgement :

1. The appellant-assessee has filed the present appeal against the order dated 21/23.5.2002 passed by the Commissioner of Income-tax (Appeals) XXII, Kolkata (CIT(A) in short) on the following grounds: (a) THAT the Ld. CIT(A) erred in confirming the addition of Rs. 2,89,560/- on account of Long Term Capital Gain in sale of 1200 shares of ITC. He failed to appreciate that the bonus shares having been received on 17.11.94 merged with the value of original shares and therefore the average cost had to be taken while calculating the Long Term Capital Gain on sale of such shares." "(b) THAT the Ld. CIT(A) erred in holding that the amended law regarding valuation of bonus shares which came into effect from asstt Yr. 1996-97 was applicable to the Bonus shares received on 17.11.94 also." "2. (a) THAT the Ld. CIT(A) erred in not entertaining the addl.

Ground of appeal with regard to the sale price of 1400 shares of ITC Classic Finance which was wrongly taken at page-2 of the assessment order at Rs. 3,19,754/- in place of Rs. 2,41,606/- as per statement filed by the appellant. The

observation of the CIT(Appeals) in this respect reading as "It is a subsequent observation which is not very apparent from the assessment order filed by the appellant before me" is irrelevant and misleading. This mistake is apparent with reference to the sale figure shown in the statement filed by the appellant with the return and the figure adopted by the AO in the Asst. order." "(b) THAT in any case the unintended addition of Rs. 78,148/- by wrongly taking the sale price of ITC Classic Finance shares at Rs. 3,19,754/- is wrong and unjustified and the CIT(A) should have deleted such addition." "3. THAT the appellant craves leave to alter, amend, modify any of the grounds and/or tale additional ground/s before or at the time of this appeal." Ground No. 1: Cost of Acquisition of Bonus Shares for Computing the Capital Gains 2. Briefly stated, the facts of the case, as relevant to the first ground of appeal, are that the assessee had purchased 1200 shares of ITC Ltd. on 26.6.1992 for a consideration of Rs. 3,76,800/-. He was allotted and consequently received 1200 bonus shares on 17.11.1994 as a result of holding the said shares. The assessee did not make any payment for allotment and acquisition of the said bonus shares. Thus the total cost of 2400 shares of ITC Ltd. to the assessee remained the same as the cost of original shares, i.e., Rs. 3,76,800/-. The assessee sold ORIGINAL 1200 shares on 28.12.1994 for a consideration of Rs. 4,70,340/-. The capital gain on sale of the said original shares was computed at that time by taking the cost of the shares sold by the averaging method by spreading over the total cost over the 2400 shares and accordingly the cost of the shares sold was taken at Rs. 1,88,400/ - only. The assessee therefore claimed that the cost of the balance 1200 shares (bonus) to the assessee was Rs. 1,88,400/-. The aforesaid 1200 bonus shares were sold by the assessee during the previous year relevant to the assessment year under appeal for a consideration of Rs. 2,89,560/- on which he worked out the capital gain of Rs. 85,157/- as under: Sale value of 1200 shares of ITC Ltd. Rs. 2,89,560/- Less: Cost b/f.

Rs. 1,88,400/- Indexed cost of the above Rs. 2,04,403/- Long Term Capital Gain Rs. 85,157/- 3. The Assessing Officer, however, assessed the entire sale value of the aforesaid shares, i.e., Rs. 2,89,560/- as long term capital gain liable to tax in the hands of the assessee by taking the cost of acquisition as NIL in terms of the following provisions of Sub-clause (iiia) of Clause (aa) of Sub-section (2) of

Section 55 of the Income-tax Act, 1961 which has been inserted, by the Finance Act, 1995 with effect from the assessment year 1996-97 (Sub-clause (iiia) in short).

"Meaning of "adjusted", "cost of improvement" and "cost of acquisition".

(aa) in a case where, by virtue of holding a capital asset, being a share or any other security, within the meaning of Clause (h) of Section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) (hereinafter in this clause referred to as the financial asset), the assessee - (A) becomes entitled to subscribe to any additional financial asset; or then, subject to the provisions of sub-clauses (i) and (ii) of Clause (b) - (iiia) in relation to the financial asset allotted to the assessee without any payment and on the basis of holding of any other financial asset shall be taken to be nil in the case of such assessee, 5. Appearing for the appellant-assessee, Shri M P Thard, the learned Counsel for the assessee, submitted that the assessee had sold, in December 1994, all the 1200 original shares, which were acquired by him in June 1992 at the cost of Rs. 3,76,800/-. He pointed out that, in terms of the law then prevailing, i.e., AY 1995-96, the assessee, instead of claiming the entire cost of acquisition of the aforesaid original 1200 shares while working out the capital gains on them in AY 1995-96, followed the averaging method and spread over the aforesaid cost over 2400 shares (1200 original shares + 1200 bonus shares subsequently allotted) and thus claimed only half of the cost of the original shares which the Department also allowed. He claimed that the assessee, after having so claimed and adjusted only half of the cost against original shares, continued to show the remaining half of the cost of acquisition against the bonus shares, in his books which was liable to be allowed on the sale of bonus shares effected during the previous year relevant to the assessment year under appeal. He submitted that the provisions of Sub-clause (iiia), which are effective from AY 1996-97, are intended to apply where the assessee" is allowed full cost of acquisition of original shares against their sale proceeds and therefore they have no application on the facts of the case as the assessee was not allowed full cost of acquisition against the sale price of the original shares on which he worked out the capital gain in AY 1995-96. With this factual background, he has made three-fold submissions. One, Sub-clause (iiia) is applicable w.e.f.

assessment year 1996-97 and hence would apply in respect of bonus shares allotted on or after 1.4.1995 (i.e., after the commencement of the previous year relevant to assessment year 1996-97). His submission, in other words, was that the said sub-clause would not apply in respect of bonus shares allotted before 1.4.1995. Two, the cost of shares, original as well as bonus, stood determined when the assessee received the bonus shares on the basis of the law then prevailing. It is on the basis of the cost so determined that the assessee had paid the tax on capital gains upon sale of original shares in AY" 1995-96 which, he contended, could not be disturbed now as it would cause double taxation. Three, the determination of cost of acquisition of bonus shares in terms of the law then prevailing, which the Department also accepted while determining the capital gain in AY 1995-96, had the effect of vesting a right in the assessee that the remaining half of the cost would be allowed to him against the sale of bonus shares. He further contended that a right which stood vested in him before Sub-clause (iiia) came into force could not be taken away as the said sub-clause has not been given retrospective effect to cover the transactions concluded before 1.4.1995. He has placed reliance on the decision reported in 242 ITR 159 (Mad.).

6. The learned Departmental Representative, on the other hand, relied on the orders of the authorities below.

7. We have heard the parties, considered their submissions and perused the materials placed before us. Issues, as raised by the learned counsel for the assessee, revolve around the following: (i) Whether Sub-clause (iiia) can be construed, as contended by the assessee, in a manner that excludes its applicability to the bonus shares allotted before the commencement of the previous year relevant to the assessment year 1996-97, i.e., 1.4.1995 in respect of which the cost of acquisition had also been determined and become final before the said date.

(ii) Whether the assessee is correct in his submission that a right which, according to him, stood vested in him before Sub-clause (iiia) came into force could not be impaired or abrogated unless the said sub-clause is given retrospective effect.

(iii) Whether the rule against retrospectivity hits the aforesaid existing right of the assessee merely because a part of the requisites (i.e., allotment of bonus shares) for taxing the capital gain is drawn from a date antecedent to the date of Sub-clause (iiia) coming into force.

8. Section 45 of the Act brings any profits or gains arising from the transfer of a capital asset, save as specifically provided, to the charge of income-tax under the head 'Capital gains'. Section 48 provides statutory mode of computation of the income chargeable under the head 'Capital gains'. Under Section 48, computation of capital gains resulting from the transfer of a capital asset is made by deducting the cost of acquisition, the cost of improvement and the expenditure incurred in connection with the transfer from the consideration received on such transfer. Section 55 defined, inter-alia, the term 'cost of acquisition.' Prior to insertion of Sub-clause (iiia), there was no statutory provision in the Act defining the 'cost of acquisition' in respect of bonus shares and hence the cost of acquisition of bonus shares was being calculated, in terms of the decision of the Hon'ble Supreme Court in CIT v. Dalmia Investment Co.

Ltd. 52 ITR 567, by the averaging method by spreading the total cost of the original shares over the original shares plus the bonus shares received thereon. Now, the Legislature has specifically provided, through Sub-clause (iiia), a statutory mode by which the cost of bonus shares allotted to a person without payment shall be taken to be nil while computing the capital gains with effect from assessment year 1996-97. Thus, under the pre-amended law, it was Section 48 that required the cost of acquisition of bonus shares to be adopted for determining the capital gain on bonus shares till AY 1995-96 while, under the amended law effective from AY 1996-97, the cost of acquisition of bonus shares is statutorily required, under Sub-clause (iiia), to be taken to be nil if they had been allotted to an assessee without payment. Thus, there is a paradigm shift in the statutory mode for the computation of capital gains in respect of bonus shares with effect from assessment year 1996-97. The cost of acquisition of bonus shares has to be statutorily taken to be nil if the conditions of Sub-clause (iiia) are fulfilled in cases involving computation of capital gains with effect from AY 1996-97.

9. Sub-clause (iiia) has been made specifically applicable with effect from the assessment year 1996-97 which means that the computation of capital gains in respect of securities including bonus shares transferred on or after 1.4.1995 (i.e., during the previous year relevant to the assessment year 1996-97) will have to be made in accordance with the provisions of the said sub-clause. Therefore, the crucial factor for applicability of Sub-clause (iiia) is not as to when the bonus shares were received by the assessee on allotment. Crucial factor that attracts the applicability of Sub-clause (iiia) is that the transfer of securities including bonus shares must have taken place during the previous year relevant to AY 1996-97, i.e., on or after 1.4.1995 giving rise to the computation of capital gains in AY 1996-97.

If they have been transferred on or after 1.4.1995, the provisions of Sub-clause (iiia) as also the legal effect created by it cannot be avoided. This aspect of the matter has also been clarified in para 30.4 of the Departmental Circular No. 717 dated 14th August 1995 issued by the Central Board of Direct Taxes (reproduced in paragraph 21 below) which provides: "These amendments will take effect from 1st April 1996 and will, accordingly, apply to the securities transferred on or after 1st April 1995." Following the ratio laid down in Karnataka Small Scale Industries Development Corporation Ltd. v. CIT (2003) 7 SCC 224, the said circular has the effect of explaining the provisions of Sub-clause (iiia). The legal effect mandated by the aforesaid Sub-clause cannot therefore be avoided .in AY 1996-97 if the bonus shares are transferred on or after 1.4.1995. The language of Sub-clause (iiia) is absolutely plain and clear that it is applicable from assessment year 1996-97 in respect of all the bonus shares that are transferred during the previous year relevant to the assessment year 1996-97. In the present case, the assessee transferred the bonus shares during the previous year relevant to the assessment year under consideration and therefore what is required to be seen is whether the case of the assessee falls within the ambit of Sub-clause (iiia). It is a cardinal principle of the tax law that the law to be applied is that in force in the assessment year unless otherwise provided expressly or by necessary implication (Reliance Jute and Industries Ltd. v. CIT AIR 1980 SC 252; 120 ITR 921). In the matter before us, the Department claims that both the AO and the CIT(A) have applied the law as in force as on the first day of the relevant assessment year, i.e., AY

1996-97 and hence their orders need not be interfered with.

10. This brings us to the question as to what was the law in force in AY 1996-97 and whether the impugned assessment is in conformity with that law. Both the parties agree that Sub-clause (iiia) was undoubtedly in force in AY 1996-97. Sub-clause (iiia) mandates that, for the purposes of Section 48 and 49, the cost of acquisition of any additional financial asset as bonus shares or security or otherwise which is 'allotted to the assessee without any payment and on the basis of holding any other financial asset' shall be taken to be nil. The fact that the bonus shares were allotted to the assessee without payment and received by him on 17.11.1994 is not in dispute. It is also not in dispute that the bonus shares were allotted to the assessee on the basis of his holding the original shares. The assessee also admits that bonus shares giving rise to the capital gains were transferred during the previous year (i.e., on or after 1.4.1995 but on or before 31.3.1996) relevant to the assessment year under appeal.

11. The issue that arises for consideration is whether, on the facts and in the circumstances of the case, it can be said that bonus shares were 'allotted to the assessee without payment' and on the basis of his holding the original shares so as to bring the case of the assessee within the ambit of Sub-clause (iiia). At the outset, it may be mentioned that it has never been the case of the assessee, at any stage of the proceedings either before the authorities below or before us, that he has made any payment to the company for allotment of bonus shares. He has also not led any evidence or filed details to show that any payment as such was made to the company for allotment of bonus shares. The term 'payment' as occurring in Sub-clause (iiia) is not defined in the Act. However, it is defined at p.1150 in Black's Law Dictionary (Seventh Ed.) as follows: "Payment. 1. Performance of an obligation, usu. by the delivery of money. Performance may occur by delivery and acceptance of things other than money, but there is payment only if money or other valuable things are given and accepted in partial or full discharge of an obligation. 2. The money or valuable thing so delivered in satisfaction of an obligation." According to P Ramanatha Aiyer's 'The Law Lexicon' (Reprint 2002 - General Editor: Hon'ble Justice YV Chandrachud, p. 1426), 'payment', in legal contemplation, "is the discharge of an obligation by the delivery

of money or its equivalent, and is generally made with the assent of both parties to the contract". Thus, in order to constitute 'payment' within the meaning of Sub-clause (iiia) there should be an obligation to make the payment and that obligation should then be discharged by payment of money or other valuable things and further that the payment so made should be accepted by the payee in satisfaction of the obligation. A shareholder neither carries any obligation to make payment in lieu of the allotment of bonus shares nor does he make any payment to secure the allotment nor are the bonus shares issued against payment by the shareholders.

12. At this stage, it deserves to be mentioned that bonus shares represent capitalized profits which the company has accumulated over the years in the form of free reserves. Section 'M (iii)' of the Revised Guidelines issued by SEBI vide RMB (DIP Series) Circular No.2/94-95, dated 15.4.1994 provides: "The bonus issue is made out of free reserves built out of the genuine profits or share premium collected in cash only." The idea behind the issue of bonus shares is to bring the nominal share capital into line with the true excess of assets over liabilities. The necessary money is already available with the company in the form of free reserves. It is this money which is converted into bonus shares with the result that the undistributed profits lying with the company in the form of free reserves get permanently ploughed back into the business and converted into share capital. Neither the shareholders to whom the shares are allotted have to pay anything nor does anything go out of the coffers of the company upon allotment of bonus shares. Allotment of bonus shares is not dependent on payment by a shareholder to the company but accrues to him, as of right and by way of bonus, on the basis of his shareholding as and when the company decides to issue the bonus shares. Bonus shares are treated in commercial world as free distribution of shares on the basis of the shares already held. Please see "British Master Tax Guide" (1988-89) under the head "Bonus and Rights Issues" at p. 598, as quoted, with approval, in *Escorts Farm (Ramgarh) Ltd. v. CIT* 222 ITR 509 (SC), in which it is stated that "Bonus issues are free distribution of shares (e.g. two new shares for each share already held)". Thus, the issue as also the allotment of bonus shares does neither give rise to any obligation on the part of the shareholder to make payment therefor nor is any payment made by the shareholder to the company against such allotment. These aspects are in-built in the very nature of bonus issues. In the

Departmental Circular (reproduced in paragraph 21 of this order) also, the position is stated in the following words: "Bonus shares are issued to an existing shareholder without making a payment in cash. This also explains the rationale behind the emphasis in Sub-clause (iiia)- on bonus shares being 'allotted without any payment and on the basis of holding any other financial asset.

13. In view of the above, the requisite conditions envisaged by Clause (iiia) regarding bonus shares having been 'allotted to the assessee without any payment and on the basis of holding of any other financial asset are fulfilled in the present case. The case of the assessee thus falls squarely, within the ambit of Sub-clause (iiia).

14. However, the case of the assessee is that the provisions of Sub-clause (iiia) have not been given any retrospective effect and hence would not apply to him as he was allotted the bonus shares before 1.4.1995 and not after the Sub-clause (iiia) came into force. In other words, the assessee wants that the phrase "allotted" in Sub-clause (iiia) should be read as "allotted on or after 1.4.1995 without payment..." so that its applicability does not extend to the bonus shares allotted to the assessee before 1.4.1995. Therefore the issue that arises for consideration is whether there is any word or indication in Sub-clause (iiia) on the basis of which it can be held that its applicability is restricted to the bonus shares allotted on or after 1.4.1995.

15. We have carefully gone through the provisions of Sub-clause (iiia).

We do not find any word used therein which can be said to be vague or ambiguous or failing to convey clearly the legislative intent. The legislative intent is clear that the capital gains arising on transfer of bonus shares on or after 1.4.1995 (i.e., AY 1996-97) should be computed by taking the cost of bonus shares to be nil if the conditions of Clause (iiia) are satisfied. It is not disputed by the assessee that bonus shares were allotted to him without payment and on the basis of original shares held by him. The plain and natural meaning of the term "allotted" (a past tense) as occurring in Sub-clause (iiia) is that the factum of allotment of bonus shares should have taken place in the past. The said term is neither restricted nor qualified nor followed by any date and hence we are not inclined to insert or read

any date after the aforesaid term, as contended by the assessee. We do not think that the plain words of Sub-clause (iiia) are capable of any such interpretation as suggested by the learned counsel for the assessee. In *CESC Ltd. v. DCIT* 263 ITR 402, p.416, the Hon'ble jurisdictional High Court has held: "In the absence of any restrictions provided within the scheme of Chapter XV, the court is not supposed to read something, which is otherwise not permissible. While interpreting a provision, the High Court is not supposed to legislate indirectly. xxxxxx The court has to read the statute, as it is when the statute is capable of conveying clear and unambiguous simple grammatical meaning." We are therefore unable to agree with the submission of the Ld. Counsel for the assessee that Sub-clause (iiia) would apply in those cases only where bonus shares are 'allotted on or after 1.4.1995' as such a construction requires for its support, addition of words or rejection of words which is not permissible in the face of clear provisions of Sub-clause (iiia). In taking this view, we are supported by several judicial authorities, some of which are cited below.

16. In *AV Fernandez v. State of Kerala*, 1957 AIR SC 657: 1957 (8) STC 561 (SC), the Hon'ble Supreme Court observed: "As Lord Cairns said many years ago in *Partington v. The Attorney General* [(1869) 4 H.L 100, 122] :- "As I understand the principle of all fiscal legislation it is this : if the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be." 17. In *Canadian Eagle Oil Co. v. R.* (1946) AC 119, 140, Viscount Simon, LC said: "In the words of Rowlatt J (in *Cape Brandy Sundicate v. IRC* (1921) 1 KB 64, 71) whose outstanding knowledge of this subject was coupled with a happy conciseness of the phrase "in a taxing Act one has to look at what is clearly said. There is no room for any intendment.

There is no equity about a tax. There is no presumption as to a tax.

Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used." 18. In *CWT v. Hashmatunissa Begum* 176 ITR 98 (SC); AIR 1989

SC 1024, the Court held: "One of the pillars of statutory interpretation viz., the literal rule, demands that if the meaning of the statutory interpretation is plain the courts must apply regardless of the result." 19. In *Orissa State Warehousing Corporation v. CIT* 237 ITR 589, the Hon'ble Supreme Court held: "A fiscal statute has to be interpreted on the basis of the language used therein and not de hors the same. No words ought to be added and only the language used ought to be considered so as to ascertain the proper meaning and intent of the legislation. The Court is to ascribe natural and ordinary meaning to the words used by the Legislature and ought not, under any circumstances, substitute its own impression and ideas in place of the Legislature's intent as is available from a plain reading of the statutory provisions.

Individual cases of hardship and injustice do not and cannot have any bearing for rejecting the natural construction." In *Shiv Shakti Co-op. Housing Society v. Swaraj Developers*, (2003) 6 SCC 659, pp. 669-70, the Hon'ble Supreme Court held: "19. It is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. Words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute is to ascertain the intention of the legislature enacting it (see *Institute of Chartered Accountants of India* (1997) 6 SCC 312; AIR 1998 SC 74). The intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided. As observed in *Crawford v. Spooner*, (1846) 7 Moo PCC 1: 4 MIA 179, courts cannot aid the legislatures defective phrasing of an Act, we cannot add or mend, and by construction make up deficiencies which are left there. (See *State of Gujarat v. Dilipbhai Nathjibhai Patel*, (1998) 3 SCC 234: 1998 SCC (Cri) 737: JT (1998) 2 SC 253). It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. (See *Stock v. Frank Jones (Tipton) Ltd.* (1978) 1 All ER 948: (1978) 1 WLR 231 (HL)). Rules of interpretation do not permit courts to do so, unless the provision as it stands is meaningless or of a doubtful meaning.

Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. (Per Lord Loreburn, LC in *Vickers Sons and Maxim Ltd. v. Evans*, 1910 AC 444: 1910 WN 161 (HL), quoted in *Jumma Masjid v. Kodimaniandra Deviah*, AIR 21. At this stage, reference may be made to the Departmental Circular No. 717 dated 14th August 1995 which reads as under: "Simplified procedure for computation of capital gain on transfer of bonus shares. - 30.1 Bonus shares are issued to an existing shareholder without making a payment in cash. Presently, cost of acquisition of these shares is taken on the basis of principles laid down by the Supreme Court. It has been held that after a bonus issue, the cost of each of the bonus shares as also each of the original shares is to be determined by spreading the cost of the original shares over the number of the original and bonus shares. There are no specific provisions under the Income-tax Act to deal with the computation of the cost of acquisition in such cases.

30.2 Computation of the cost of bonus shares on the principle of averaging, however, is not simple. It is very difficult to correlate bonus shares to corresponding original shares purchased on different dates and at different costs. Necessarily, separate streams of calculations have to follow for each set of original shares purchased on a particular date and every time a sale of shares takes place. In order to overcome the problem of complexity, a simple method has been laid down for computing the cost of acquisition of bonus shares. For the sake of clarity and simplicity, the cost of bonus shares is to be taken as nil while the cost of original shares is to be taken as the amount paid to acquire them. This procedure will also be applicable to any other security where a bonus issue has been made. Here the expression "security" will take its meaning from the definition in Clause (h) of Section 2 of the Securities Contracts (Regulation) Act, 1956.

30.3 The period of holding of the bonus asset will be reckoned from the date of allotment of such an asset.

30.4 These amendments will take effect from 1st April 1996 and will, accordingly, apply to the securities transferred on or after 1st April 1995." 22. The Board's Circular (supra) highlights that Sub-clause (iiia) has been inserted with effect from

1.4.1996 in order to overcome certain difficulties and the problem of complexity in working out the cost of bonus shares and consequential computation of capital gain as a result of judicial decisions. The aforesaid amendment, therefore, is required to be construed in a manner so as to promote the purpose and object of the amendment. The Legislature wants to adopt a simple method for computation of capital gains with effect from the assessment year 1996-97 by providing that the cost of acquisition shall be taken to be nil in cases falling under Sub-clause (iiia). Sub-clause (iiia) has been made specifically applicable with effect from the assessment year 1996-97 requiring thereby that income from capital gains would be computed, with effect from AY 1996-97, by taking the cost of acquisition of bonus shares to be nil.

23. This brings us to the next submission of the learned counsel for the assessee that a right which has already vested in a person before the statute came into force cannot be impaired or taken away unless the statute is given retrospective effect. It is on this ground that he contended that the cost of bonus shares allotted before 1.4.1995 as adopted by the assessee on the basis of the law prevailing till assessment year 995-96 had the effect of conferring a vested right in him in that the said cost would be allowed in future against the sale of the said bonus shares and that the said right so vested in him could not be impaired or abrogated as Sub-clause (iiia) has no retrospective effect so as to cover the case of the assessee.

24. The proposition advanced by the learned counsel for the assessee that a retrospective operation cannot be given to a statute so as to impair an existing right or obligation requires consideration of the issue as to whether the application of Sub-clause (iiia) effective from AY 1996-97, is at all a case of retrospective operation of the said provision in relation to AY 1996-97 under appeal. In the case before us the AO has applied Sub-clause (iiia) prospectively on the basis that the assessee has transferred the bonus shares during the previous year relevant to AY 1996-97. He has not applied the provisions of Sub-clause (iiia) retrospectively, i.e., in respect of the bonus shares transferred in a previous year prior to assessment year 1996-97. Thus, it is a case where the provisions of Sub-clause (iiia) are being prospectively applied with effect from AY 1996-97 after Sub-clause

(iiia) has come into effect. It is not the case of the assessee that Parliament lacks the legislative competence to enact Sub-clause (iiia) to produce the aforesaid legal effect. Here is a case where Parliament has expressly legislated that the cost of bonus shares allotted to an assessee falling under Sub-clause (iiia) shall be taken to be nil and thus that legal effect is inevitable in cases involving transfer of bonus shares on or after 1.4.1995, i.e., during the previous year relevant to the assessment year 1996-97. In the face of such clear expression of legislative intent, it is not possible for us to hold, as contended by the learned counsel for the assessee, that the treatment given by the AO in AY 1996-97 is hit by the rule against retrospectivity. In our view, the AO, in the present case, has not applied the law retrospectively but only prospectively, i.e., in AY 1996-97 after the law had come into force and in respect of the assessment year for which it was made specifically applicable. In view of the above, the question of applying the rule against retrospectivity does not arise in the present case.

25. Besides, the rule against retrospectivity, one of the rules of interpretation of statutes, cannot hold the ground and defeat the express provisions of Sub-clause (iiia) when it is being prospectively applied after it has come into force and in accordance with the provisions contained therein. As already observed above, the provisions of Sub-clause (iiia) are clear and unambiguous and hence any other rule of construction including the rule against retrospectivity cannot be imported to alter the plain meaning of the said provisions. In *Pandian Chemicals Ltd. v. CIT*, (2003) 5 SCC 590; (2003) 262 ITR 278, p.281 (SC), the Hon'ble Supreme Court has held that there was no scope for importing any rule of interpretation when the words used in the provision were unequivocal. The Court held: "The rules of interpretation would come into play only if there is any doubt with regard to the express language used. Where the words are unequivocal, there is no scope for importing any rule of interpretation as submitted by the appellant." 26. It is well-settled that even existing rights can be impaired by express enactment or by necessary implication from the language employed in the statute. In the present case, Sub-clause (iiia) enacts that the cost of bonus shares would be taken to be nil if they were allotted to the assessee without payment and on the basis of his holding the original shares. Even if the assessee had any vested right existing before AY 1996-97 in the matter of allocation of cost to the bonus shares, the

same stood completely impaired and abrogated by the express provisions of Sub-clause (iiia) with effect from the assessment year 1996-97. Our view is supported by several ruling decisions. In *B Prabhakar Rao v. State of AP* (1985) SUP SCC 432, the Hon'ble Supreme Court has observed: "While it is a general rule of law that statutes are not to operate retrospectively, they may so operate by express enactment, by necessary implication from the language employed or where the statute is explanatory or declaratory or where the statute is passed for the purpose of protecting the public against some evil or abuse or where the statute engrafts itself upon existing situations etc., etc. But it would be incorrect to call a statute 'retrospective', "because a part of the requisites for its action is drawn from a time antecedent to its passing" [Vide *R. v. St. Mary, Whitechapel (Inhabitants)*].

27. It is equally well-established that a law need not be enacted with retrospective effect merely because it wants to draw a part of the requisite action (e.g., acquisition of bonus shares) from a date antecedent to the date of its coming into force. At this stage, it may be relevant to point out that while the liability to tax on capital gain arises at the time of the transfer of asset, the mode of its computation is linked with a past event, i.e., acquisition of the capital asset. In order to attract the tax on capital gains, the date on which asset is transferred must fall within the previous year relevant to the assessment year. But it is neither possible nor otherwise necessary that the other part of the requisite action i.e., acquisition of the asset being transferred should also take place within the same assessment year. Thus, the other part of the action requisite for computation of capital gains (i.e., acquisition) is necessarily drawn from a time antecedent to the transfer of the asset.

Both the requisite actions may not necessarily take place within the same assessment year. However, the law to be applied is the one in force in the assessment year in which capital gain and tax thereon is required to be computed. Can it then be said that Sub-clause (iiia) becomes retrospective only because a part of the requisites (i.e., allotment of bonus shares without payment) for its action (i.e., computation of capital gains) is drawn from a time antecedent to its passing? In our view, the answer is No. And, in this view we are supported by innumerable judicial authorities, some of which are cited below. In *Dena Bank v. Prabhudas*

Bhikhabhai Prabhudas Parekh (2000) 5 SCC 694 the Hon'ble Supreme Court has quoted, with approval, the following passage from the "Principles of Statutory Interpretation (by Hon'ble Justice G. P. Singh, 7th Edn., 1999, at p. 369): "The rule against retrospective construction is not applicable to a statute merely 'because a part of the requisites for its action is drawn from a time antecedent to its passing'. If that were not so, every statute will be presumed to apply only to persons born and things come into existence after its operation and the rule may well result in virtual nullification of most of the statutes. An amending Act is, therefore, not retrospective merely because it applies also to those to whom pre amended Act was applicable if the amended Act has operation from the date of its amendment and not from an anterior date," 29. On general grounds of public policy, the legislature has declared, by Sub-clause (iiia), that the cost of acquisition of bonus shares allotted without payment shall be taken to be nil. However, as stated above, the event of taxability is not the allotment of bonus shares but the transfer of bonus shares which gives rise to capital gains. In this sense, Sub-clause (iiia) is prospective in as much as it has application only in future when the asset is transferred on which capital gain is to be worked out in AY 1996-97 onwards. The use of the word 'allotted' shows that the allotment of bonus shares should have been made in the past. On the ratio laid down in Kapur Chand Jain v. B S Grewal AIR 1965 SC 1491, the necessary condition (i.e., allotment of bonus shares without payment) for the application of Sub-clause (iiia) may commence even before Sub-clause (iiia) came into force but that would not make the said sub-clause retrospective so long as the action authorized by law (i.e., computation of capital gains) is taken on or after the law comes into force (i.e., AY 1996-97 onwards). In this view of the matter, Sub-clause (iiia) cannot be properly called retrospective merely because a part of the requisites for its action is drawn 'from a time antecedent to its passing. Following authorities also support the aforesaid view. In Sree Bank Ltd. v. Sarkar Dutt Roy and Co., 1965 3 SCR 708 (SC), the Hon'ble Supreme Court has observed: "The object of s. 44-B was to define and enlarge the grounds on which the inams could be resumed and to devise a proper procedure for the resumptions. On general grounds of public policy, the legislature has declared that the inam may be resumed on any of the three grounds mentioned therein. The first ground is that the holder of the inam has made an

alienation. The words "has made" in Sub-section (2)(a)(i) take in all alienations past and future and not only future alienations or alienations made after the Section came into force. If there has been any alienation at any time the first ground exists and the inam may be resumed under s. 44-B. The words "has failed" in Sub-section (2)(a)(ii) and the words "has ceased" and "has become" in Sub-section (2)(a)(iii) similarly authorise resumption of the inam if the other ground exist though they may have arisen earlier. Section 44-B(2) is in its direct operation prospective as it authorises only future resumption after it came into force. It is not properly called retrospective "because a part of the requisites for its action is drawn from a time antecedent to its passing" See Maxwell on Interpretation of Statutes, 11th ed, p. 211."In Kapur Chand Jain v. B S Grewal AIR 1965 SC 1491, the apex Court observed: "Mr. Iyengar argues that Section 9(1)(ii) applies prospectively and the conduct of the tenant prior to the enactment of Section 14-A cannot be taken into account. In our opinion, the conduct of the tenant prior to the coming into force of the new section can be taken into account. No doubt a statute must be applied prospectively. But a statute is not applied retrospectively because a part of the requisites for its action is drawn from a moment of time prior to its passing. The clause in question makes a particular conduct the ground for an application for eviction. The necessary condition for the application of Section 9(1)(ii) may commence even before the Act came into force and past conduct which is as relevant for the clause as conduct after the coming into force of the Act, cannot be overlooked." 32. In Ahmedabad Mfg and Calico Printing Co. Ltd. v. S C Mehta ITO 48 ITR 154 (SC), the Hon'ble apex Court has observed: "This language which creates the legal fiction is clearly prospective and shows that what was correct at the time when the rebate was granted is rendered incorrect on the happening of the crucial event after the coming into force of the sub-section, and by the express terms of s. 28 of the Finance Act, 1956, the sub-section comes into force on April 1, 1956. We are unable, therefore, to agree with the learned counsel for the respondent that the language of Sub-section (10) by necessary implication takes the legal fiction back to a period earlier than April 1, 1956. In coming to this conclusion, we have kept in mind the principle that a statute does not necessarily become retrospective because a part of the requisites for its action is drawn from a time antecedent to its passing."In Union of India v. Madan Gopal Kabra 25 ITR 58

(SC), the Hon'ble Court held: "Nor can it be said, in strictness, that the Finance Act, 1950, is retroactive legislation. That Act, as already noticed, purports by Section 2 to charge Income-tax and super-tax at specified rates "for the year beginning on the 1st day of April, 1950". The case is thus one where the statute purports to operate only prospectively, but such operation has, under the scheme of the Indian Income-tax, to take into account income earned before the statute came into force.

Such an enactment cannot, strictly speaking, be said to be retroactive legislation, though its operation may affect acts done in the past." 34. In *Saharanpur Electric Supply Co. Ltd v. CIT* 194 ITR 294 (SC), the Hon'ble apex Court held: In *R L Marwaha v. Union of India* (1987) 4 SCC 31, 37, 38), the Hon'ble Court has observed: "We do not also find much substance in the plea that this concession being a new one it can only be prospective in operation and cannot be extended to employees who have already retired. It is true that it is prospective in operation in the sense that the extra benefit can be claimed only after August 29, 1984, that is the date of issue of the government order. But it certainly looks backward and takes into consideration the past event that is the period of service under the Central Government for purposes of computing qualifying service because such additional service can only be the service rendered prior to the date of issue of the government order. By doing so that government order will not become an order having retrospective effect. It still continues to be prospective in operation. Whoever has rendered service during any past period would be entitled to claim the additional financial benefit of that service if he is alive on September 29, 1984 under the government order but with effect from August 29, 1984. " 36. The learned Counsel for the assessee has placed heavy reliance on the judgment reported in 242 ITR 159. In *CIT v. Kumudam Endowments* 242 ITR 159 (Mad.), the opening sentence of the judgment states that the Revenue, in that case, wanted that "the assessee should be penalised in anticipation of a likely violation" which the Court said it is "unable to appreciate this argument or subscribe to the same." The facts of the aforesaid case are that the provisions of Section 11(5) of the Act were, amended with retrospective effect from 1st April, 1983, by the amending Act of 1991 and the time for disinvestment was extended up to 31st March, 1993. During the assessment year 1986-87 with which the Court was

concerned, the law was that the charitable trust could hold investments contrary to the provisions of Section 11(5) of the Act, but, was under an obligation to disinvest on or before 31st March, 1993, and; thereafter, hold the investments in the modes permitted by law. During the asst. yr. 1986-87, the assessee held investments contrary to Section 11(5) of the Act, but, by virtue of Section 13(1)(d), proviso (iia) of the Act, it had time till 31st March, 1993, to disinvest. The assessee, therefore, could not have been denied the benefit of the exemption for assessment year 1986-87 on the ground that as on the date the Tribunal heard the appeal which was subsequent to 31st March, 1993, the assessee had not disinvested. That question will be relevant for the years subsequent to 31st March, 1993, and not for earlier years. On the aforesaid facts, the Hon'ble High Court held: "It is well settled law that a person, who has complied with the law as it exists, cannot be penalised by reason of the amendment to the law effected subsequently, unless such intention is expressly stated and the imposition of such penalty is not contrary to any of the provisions of the Constitution." "The rule as to the prospective application of statutes is well-settled. It is sufficient here to refer to some basic rules enunciated by prominent authors on construction of statutes. To start with, the position has been explained in Craies on Statute Law (7th Edition) at page 389. The learned author first discusses the meaning of the word "retrospective" and points out : "a statute is to be deemed to be retrospective which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect of transactions or considerations already past". But a statute "is not properly called a retrospective statute because, a part of the requisites for its action is drawn from a time antecedent to its passing", A little later, it is explained that/ while Parliament has competence to make the provisions of an Act of Parliament retrospective, "...no rule of construction is more firmly established than this - that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation otherwise than as regards a matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in a language which is fairly capable of either interpretation, it ought to be construed as prospective only". Maxwell on the Interpretation of Statutes (12th Edition) contains a passage to like effect at pages

215 to 219. We may also refer to a passage from the Principles of Interpretation of Statutes by G. P. Singh (Fourth Edition) where the learned author warns against a departure from the ordinary meaning of the words used in a statute merely on grounds of hardship, injustice or absurdity. At page 81, he points out: "... considerations of hardship, injustice or absurdity as avoiding a particular construction is a rule which must be applied with great care. The argument be inconvenient' said Lord Moulton, 'is one which requires to be used with great caution'. Explaining why great caution is necessary, Lord Moulton further observed: There is a danger that it may degenerate into a mere judicial criticism of the propriety of the Acts of Legislature. We have to interpret statutes according to the language used therein, and though occasionally the respective consequences of two rival interpretations may guide us in our choice between them, it can only be where, taking the Act a whole and viewing it in connection with existing state of the law at the time of the passing of the Act, we can satisfy ourselves that the words cannot have been used in the sense to which the argument points', According to Brett L.J., 'the inconvenience necessitating a departure from the ordinary sense of the words should not only be great but should also be what he calls an. 'absurd inconvenience'.

Moreover, individual cases of hardship or injustice and some other construction leads to some genera! hardship or injustice and some other construction is reasonably open that the natural construction may be departed from." "Examining the provisions with which we are concerned in the light of the principles succinctly summarised above, it will be apparent that what we are concerned with here is not at all a case of retrospective operation of the statute. It is not the case of the Revenue that the actual cost as determined in the assessment year 1962-63 should be applied to revise the computations for earlier years. All that the Department says that, though in respect of these particular assets, the assessee might have obtained depreciation for earlier assessment years on the basis of a higher figure, that will no longer be available in future and that the figure of actual cost should be taken not as was originally calculated but only at a lower figure for the assessment years 1962-63 and onwards. It is just the case of a provision a part of the requisites for the operation of which is drawn from a time antecedent to its passing." "The argument that the assessee should be denied the exemption for

the earlier assessment year when it had not contravened the law, because it had been found to have contravened the law in a subsequent assessment year cannot be accepted. It is the assessment year with which the assessment is concerned, and it is the eligibility of the assessee with reference to the law applicable in that year that is required to be looked into." "The Tribunal has rightly stated in para 3 of its order, while rejecting the Revenue's application for reference that it had recorded a categorical finding that till 31st March, 1993, it could not be said that the trust had invested its funds contrary to the provisions of Section 11(5) of the Act, since the legislature had allowed time till 31st March, 1993, to reinvest such investments in accordance with the provisions of Section 11(5) of the Act by inserting the proviso (iia)." 37. As evident from the above, the facts before the Hon'ble Madras High Court in the aforesaid case were materially different from those in the assessee's case before us. However, the observation of the Hon'ble Court that "it is the assessment year with which the assessment is concerned, and it is the eligibility of the assessee with reference to the law applicable in that year that is required to be looked into "assists the Revenue more than the assessee because, in the present case, this is exactly what the AO has done. Another observation of the Hon'ble Court that a person, "who has complied with the law as it exists, cannot be penalised by reason of the amendment to the law effected subsequently, unless such intention is expressly stated and the imposition of such penalty is not contrary to any of the provisions of the Constitution" also makes it abundantly clear that even a vested right can be impaired or abrogated if intention to that effect is expressly stated in the statute. In the present case, Sub-clause (iiia) expressly states that the cost of acquisition of bonus shares shall be taken to be nil while computing the capital gains in AY 1996-97. Thus, the aforesaid judgment cited by the learned Counsel for the assessee helps the Revenue more than the assessee.

38. There is no doubt that Sub-clause (iiia), as enacted, looks backward and takes into consideration a past event that is the allotment of bonus shares made before 1.4.1995 for the purposes of computing capital gains in assessment year 1996-97 as a result of transfer of bonus shares on or after 1,4.1995. By doing so, Sub-clause (iiia) does not become retrospective in nature. It still continues to be prospective in operation in as much as it applies to the future transfer of securities

taking place on or after 1.4.1995. In this view of the matter, rule against retrospectivity cannot be invoked to avoid the legal effect of Sub-clause (iiia). What has to be seen, in the ultimate analysis, is whether the Legislature has expressed its will in clear and unambiguous terms to produce the intended legal effect. If it has done so, legal effect to the provision as intended has to be given even if it causes hardship, inconvenience or impairs or abrogates the existing rights of a person. In so far as Sub-clause (iiia) is concerned, we are of the considered view that the Legislature has expressed its intent in clear and unambiguous terms that the cost of acquisition of bonus shares should be taken to be nil while computing the capital gains with effect from AY 96-97 and that the case of the assessee squarely falls within the parameters of the said sub-clause.

39. Though we have held above that legal effect to the provisions of Sub-clause (iiia) has to be given even if it causes hardship, inconvenience or impairs or abrogates the existing right of a person, we are not oblivious of the fact that the legislative amendments through Sub-clause (iiia) has put the assessee in a disadvantageous position inasmuch as he was not allowed the full cost of acquisition against original shares while computing the capital gains thereon in assessment year 1995-96 on the premises that he would be allowed the remaining cost of acquisition against the sale of bonus shares. This may be so as it is not possible for the Legislature to envisage all the situations that may arise in future. We cannot, however, fill the legislative gaps.

40. We are, therefore, unable to agree with the learned Counsel for the assessee that Sub-clause (iiia) should be interpreted in a manner that excludes its applicability to the cases where the bonus shares were allotted before 1.4.1995 as such a construction would be contrary to the plain and unambiguous words of Sub-clause (iiia) as also to the expressed object of the statute which seeks to provide for a simple method of computation of capital gains in the case of bonus shares w.e.f. assessment year 1996-97 in order to overcome certain difficulties and complexities arising out of the judicial decisions.

We, therefore, hold that the computation of capital gains as done by the AO and upheld by the CIT(A) on the basis of Sub-clause (iiia) is in order. Consequently

first ground of appeal is dismissed.

41. Facts as they transpire from the order of the CIT(A) are that the assessee sought admission of additional ground before, the CIT (A) claiming that the AO wrongly took the figure of sale price of 14.00 shares of ITC Classic Finance at Rs. 3,19,754/- in place of Rs. 2,41,606/- in computing the long term capital gain Which resulted in an unintended addition Of Rs. 78,148/-. Instead of admitting and adjudicating upon the said additional ground the CIT(A) held that the assessee was free to approach the AO for rectification of the mistake.

42. The learned counsel for the assessee submitted that the aforesaid additional ground was taken before the CIT(A) to seek correction of error committed by the AO in taking the sale price of 1400 shares of ITC Classic Finance at Rs. 3,19,754/- in place of Rs. 2,41,606/- as per statement filed by the assessee. The Ld. Counsel contended that this is a sheer mistake committed by the AO which the assessee wanted to have corrected through the additional ground of appeal. He further submitted that the CIT(A) ought to have admitted and adjudicated upon the additional ground. He placed reliance on the judgment reported in 229 ITR 383 (SC). The learned Counsel further submitted that the assessee has filed an application dated 30.8.2000 before the AO but he has not disposed of the said application as yet. In these circumstances, he requests that the CIT(A) should be directed to admit the additional ground and adjudicate upon the same as per law.

43. The learned DR, on the other hand, submits that the mistake as pointed out by the assessee is rectifiable Under Section. 154 and hence the CIT(A) is justified in asking the assessee to approach the AO for rectification of the mistake.

44. After hearing both the parties and perusing the material on record, we are of the view that, on the facts and in the circumstances of the case, the CIT(A) ought to have admitted and adjudicated upon the additional ground instead of prolonging the litigation which is evident from the fact that the AO had not disposed of the application filed by the assessee in 2000 even when the appeal was being heard by the CIT(A) in 2002. The learned DR also could not state whether the application reported by the assessee to have been filed before the AO in 2000 has been disposed of now by the AO. The situation is all the more deplorable when we

consider the statement made at the Bar that the said application has not yet been disposed of by the AO even after the observations of the CIT(A). Under these circumstances, we direct the CIT(A) to admit the additional ground as taken before him and dispose of the same in accordance with law after giving the opportunity of hearing to the assessee and the AO. Consequently, second ground of appeal is allowed to the extent that the matter is restored to the CIT(A) with the direction to admit the additional ground and dispose of the same as per law.

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