



Reportable

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

ITR No. 332 OF 1991

% Date of Decision: 18 August 2010.

DIRECTOR OF INCOME TAX . . . **Applicant**
Through : Ms. P.L. Bansal, Advocate.

VERSUS

M/S SHREE VISHESHWAR NATH MEMORIAL . . . **Respondent**
PUBLIC CH. TRUST
Through: Mr. Ajay Vohra, Advocate with Ms. Kavita Jha, Akanksha Aggarwal and Mr. Shukla, Advocates

CORAM :-

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J. (ORAL)

1. The respondent-assessee is a Charitable Trust. It is the opinion of the Income Tax Officer that the aims and objectives of the assessee Trust would make it charitable within the meaning of Section 2 (15) of the Income Tax Act (hereinafter referred to as 'the Act'). However, notwithstanding the fact that the assessee fulfills these conditions, the Income Tax Officer refused to grant the benefit of Section 11 of the Act to the assessee on the ground that the assessee had infringed the provision



influenced by the act of the assessee in making investment in secured debentures of Indian Rayons, secured convertible Bonds of Voltas Ltd. and unsecured bonds of Telco. The view of the Assessing Officer was that the income derived from debentures was only examined and was not included as income of the Trust but this exemption would not extend to the income derived from investment in bonds. The case put up by the assessee was that the debentures include bonds but this plea was not accepted by the Assessing Officer. The matter was taken up in appeal by the assessee. The appellate authority relied upon the definition of 'debentures'. On that basis, the appellate authority opined that 'debentures' would include bond as well and, therefore, by making investment in bonds, the assessee had not contravened the provisions of Section 13 (1) (d) of the Act and was entitled to the exemption and the income from the bonds as well as debentures was not to be included as income for the purpose of tax as provided under Section 11 of the Act. The Tribunal concurred with this opinion of the appellate authority in the following manner:-

“The submissions have been carefully considered. The question is whether in terms of proviso 2 to Sec. 13(1) (d) the assets in question were debentures by or on behalf of company or corporation acquired by the trust or institution before 1.3.1983. The definitions referred to on behalf of 'assessee' clearly show that 'debentures' are actually bonds though sometimes the term 'debenture bond' is used. It is a written obligation or acknowledgement in an impersonal form, and with conditions more elaborate than those of a promissory note, given by or for a corporation or a company to secure a sum of money. The order of the learned Appellate Asstt. Commissioner was therefore, eminently justified”.



2. At this stage the department moved an application under Section 256 (1) of the Act seeking reference to this Court which was rejected by the Tribunal. After facing this rejection, the department approached this Court under Section 256 (2) of the Act and in that application, this Court directed the Tribunal to refer the following question of law for the opinion of this Court, alongwith statement of case:-

“Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in law in allowing the benefit of Section 11 of the Income-tax Act to the assessee when it had made investment in the bonds etc.?”

3. The word ‘debentures’ is nowhere defined under the Income Tax Act. However, the Indian Companies Act specifically defines this term and as per the definition provided in Section 2 (12) of the said statute, ‘bond’ is covered under the expression ‘debenture’. Therefore, the first question that arises for our consideration is as to whether the definition contained in the Companies Act can be referred to and relied upon for the purposes of understanding the meaning of ‘debenture’ under the Income Tax Act as well. This very aspect came up for consideration before Kerala High Court in **Commissioner of Income Tax, Kerala-I Vs. Cochin Refineries Ltd.** [1983]142ITR 441 (Ker). The issue was discussed with reference to Section 80J of the Income Tax Act. The question which arose before the Court was same as taken note of above. The court specifically defined the term ‘debenture’ and in the process referred to the aforesaid provision of the Companies Act. Since this aspect has been dealt with elaborately in the judgment passed by Kerala High Court, our purpose would be served by incorporating the extracted relevant discussion contained therein, which runs as follows:



"The short question that really arises for our consideration is what is a debenture. Are the loans in the real sense of the term debentures? The I.T. Act does not define a debenture. The Companies Act, 1956, in Section 2(12) gives an inclusive definition. It states that " debenture " includes debenture stock, bonds and any other securities of a company, whether constituting a charge on the assets of the company or not. The same is the meaning given in the English Companies Act of 1948 (Section 455). Palmer would state that the term securities in the definition clause is apparently used in a sense slightly in excess of its strict legal meaning.

. Lindley J. observed in an early case *British India Steam Navigation Co. v. IRC* [1881] 7 QBD 165 at pp. 172-173 :

"What the correct meaning of ' debenture ' is I do not know. I do not find anywhere any precise definition of it. We know that there are various kinds of instruments commonly called debentures. You may have mortgage debentures, which are charges of some kind on property. You may have debentures which are bonds;.....You may have a debenture which is nothing more than an acknowledgment of indebtedness. And you may have a thing like this, which is something more ; it is a statement by two directors that the company will pay a certain sum of money on a given day, and will also pay interest half-yearly at certain times and at a certain place, upon production of certain coupons by the holder of the instrument. "

Chitty J. said in *Levy v. Abercorris Slate and Slab Co.* [1888] 37 Ch D 260 at p. 264 :

"I cannot find any precise legal definition of the term, it is not either in law or commerce a strictly technical term, or what is called a term of art."

Palmer quotes the same judge stating in another case, *Edmonds v. Blaina Furnaces Co.* [1887] 36 Ch D 215:



" The term itself imports a debt--an acknowledgment of a debt--and speaking of the numerous and various forms of instruments which have been called debentures without anyone being able to say the term is incorrectly used, I find that generally, if not always, the instrument imports an obligation or covenant to pay. This obligation or covenant is in most cases at the present day accompanied by some charge or security. "

After quoting these decisions the learned author states (Palmer's Company Law, 20th Edn., pp. 367-368) :

" In modern commercial usage a debenture denotes an instrument issued by the company, normally--but not necessarily--called on the face of it a debenture, and providing for the payment of, or acknowledging the indebtedness in, a specified sum--say, £100--at a fixed date, with interest thereon. It usually--but not necessarily--gives a charge by way of security, and is often--though not invariably--expressed to be one of a series of like debentures.

But the term, as used in modern commercial parlance, is of extremely elastic character, for

(1) it is sometimes used, both by lawyers and businessmen, to describe an instrument which is not called, on the face of it, a debenture, e.g., a bond ;

(2) it is used of an instrument which is not one of a series. A single debenture may be issued to one man;

(3) it is not the less a debenture because

(a) it is not under seal; or

(b) it does not contain a charge ; or

(c) it does not provide for payment at any fixed date but only in the event of



(d) there is no personal liability on the company to pay but the company charges its property as security for the debt of another person.

Although the modern meaning of the term 'debenture' is thus very wide, it would go too far to assert that every document creating or acknowledging an indebtedness of the company is a debenture. Commercial men and lawyers would certainly not use this term when referring to bills of exchange or other negotiable instruments, deeds of covenant and many other documents in which a company stipulates to pay a sum of money."

A debenture is certainly a document which either creates a debt or acknowledges it. While it may usually be one of a series, it need not necessarily be so. As Palmer has pointed out, a single debenture may be issued to one party. As Chitty J. in Edmond's case [1887] 36 Ch D 215 and a Division Bench of the Bombay High Court in Laxman Bharmaji v. Emperor, AIR 1946 Bom 18 : 16 Comp Cas 31 point out :

" In determining what is or is not a debenture within the section we are not bound to hold that an instrument is a debenture because it is called a debenture by the company issuing it, nor to hold it is not a debenture because it is not so called by the company. We must look at the substance of the instrument itself, and, without the assistance of any precise legal definition form the best opinion we can whether the instrument is or is not a debenture."

4. Thus, the Court was of the opinion that in absence of any definition of 'debenture' in the Income Tax Act, reliance could be placed upon the definition given in Section 2 (12) of the Companies Act and also the common parlance in which this term is understood. Even the Madras High Court in the case of **CIT Vs. Lakshmi Vilas Bank Ltd.** had an



occasion to deal with this very aspect and it also categorically held that as the Income Tax Act does not define “debenture”, to understand the meaning of this term, the Court would have to depend upon various other enactments.

5. We are in agreement with the aforesaid view taken by the Kerala as well as Madras High Courts and thus hold that it would be appropriate to rely upon the definition of ‘debenture’ as contained in Section 2 (12) of the Companies Act and, therefore, it cannot be held that the assessee contravened the provision of section 13 (1) (d) of the Act.

6. For the purposes of Section 13 (1) (d) of the Act, Mr. Sabharwal, learned counsel appearing for the Department, however, has sought to give an altogether different twist to the argument. His submission was that for the limited purpose, i.e. in the context of Section 11 (5) of the Act, the meaning to be assigned to the expression ‘debenture’; has to be restricted viz. exclude ‘bond’. In support of this submission, he referred to sub Section (5) of Section 11 which specifically deals with the investment in certain specific kinds of bonds. He, thus, argued that only those forms and modes of investments as prescribed under sub Section (5) of Section 11 of the Act, would be entitled for exemption for the purposes of Section 11 and the investment in other forms of bonds, by necessary implication of inference had to be excluded from the exemption list. Sub Section 5 of Section 11 deals with the investment in bonds of financial corporation, State Government or Central Government. No doubt, specific provision is made in respect of investment in these particular kinds of bonds, however, that would not mean that when we deal with the investment in ‘debentures’ which also clarifies for



exemption, we have to give restrictive meaning to the term 'debenture' more particularly when this term is not defined under the Act. It is a trite principle of interpretation that in the absence of any definition given to a particular term in a statute, the meaning which is to be given to the said term is the meaning which is understood in common parlance. The Supreme Court in the case of **Noorie Manure Mill, Sambhal Vs. Commissioner, Trade Tax, U.P.** (2007), 10 SCC 478 observed as under:-

“In absence of any definition of the term in the statute, the meaning there of as understood in common parlance for the purpose of imposition of tax should be assigned”

Even as per new Gem dictionary, the term 'debenture includes bond of a company or a corporation.

7. We, thus, concur with the opinion expressed by the Tribunal in the impugned judgment and answer the reference in affirmative i.e. against the revenue.

**(A.K. SIKRI)
JUDGE**

**(REVA KHETRAPAL)
JUDGE**

August 18, 2010.
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