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

+ W.P.(C) 10827/2022

MISS INDIRA UPPAL Petitioner
Through: Mr. Harish Uppal, Advocate and
Mr. Tileshwar Prasad, Advocate

versus

UNION OF INDIA & ANR. Respondents
Through: Mr. Subhash Tanwar, CGSC with
Mr. Sandeep Mishra, Advocate for
UOI.
Mr. Zoheb Hossain, Sr. Standing
Counsel with Mr. Vipul Agarwa and
Mr. Parth Semwal, Advocates for
respondents No.2 and 3.

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Date of Decision: 28th July, 2022

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, J (Oral):

1. Present writ petition has been filed seeking a direction that a 'relative' under Section 2(g) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 ['The Senior Citizens Act'] be treated at par with 'relative' under Section 2(41) and Section 56 of the Income Tax Act, 1961 ['the IT Act'] for grant of exemption from income tax on gifts received.

Petitioner also challenges the provisos and explanation in Section 56 of the IT Act granting exemption to the relatives while excluding relatives as defined under Section 2(g) of the Senior Citizens Act.

SUBMISSIONS ON BEHALF OF THE PETITIONER

2. Learned counsel for the petitioner states that Section 2(g) of the Senior Citizens Act defines the term 'relative' as 'any legal heir of the childless senior citizen who is not a minor and is in possession of or would inherit his property after his death'. Consequently, he submits that Section 2(g) of the Senior Citizens Act considers non-blood related persons to be relatives equivalent to children in case of childless senior citizens. He points out that Section 2(41) of the IT Act defines 'relative' as 'the husband, wife, brother or sister or any lineal ascendant or descendant of that individual' and thus does not include the individuals who are defined as 'relatives' in the Senior Citizens Act. He submits that Section 56 of the IT Act which provides for exemption of tax on gifts received from relatives, in explanation to Provisos of Sections 56(2)(vii)(e) and 56(2)(x)(b) of the IT Act, does not include those persons in the definition of relative as provided under Section 2(g) of the Senior Citizens Act thereby creating an anomaly.

3. Learned counsel for the petitioner states that the petitioner, who is a person with 100% disability, gifted 10% of 9A/50, WEA, Karol Bagh, New Delhi vide gift deed dated 1st May, 2012 and her share of basement at 20, Todarmal Road, New Delhi valued at about Rs. 63,32,040/- vide a registered gift deed dated 15th June, 2021 to her nephew Naresh i.e. her 'relative' in accordance with Section 2(g) of the Senior Citizens Act. He states that the petitioner's last registered will dated 17th May, 2015, registered on 19th May, 2015 is also in favour of her 'relative' Naresh. He states that in case the gift

executed by the Petitioner in favour of Naresh is not exempt, neither the Petitioner nor Naresh has any money to pay the Income Tax on the Gift.

4. Learned counsel for the petitioner states that the Senior Citizens Act is a welfare legislation and has overriding effect over other Acts by virtue of Sections 3 & 4 of the Senior Citizens Act. He further submits that Sections 2(41) and 56 of the IT Act negate the rights and benefits for welfare of childless Senior Citizens, thus making two classes of Senior Citizens, one who are parents and their children get benefits; and the second category of Senior Citizens who are childless, whose relatives under Section 2(g) of the Senior Citizens Act are deprived of benefits of tax exemption on Gifts.

5. Consequently, he prays that gifts given to 'relatives' as defined under Section 2(g) of the Senior Citizens Act, 2007 be considered to be exempt from tax under Section 56 of the IT Act.

6. Learned counsel for the petitioner further states that since a coordinate Division Bench of this Court has issued notice in a writ petition being *Ms. X vs. The Principal Secretary Health and Family Welfare Department Govt. Of NCT of Delhi, W.P.(C) 10602/2022* challenging Rule 3B of the Medical Termination of Pregnancy Rules, 2003 as ultra vires the Medical Termination of Pregnancy Act, 1971, this Court must issue notice in the present matter.

7. In the alternative, he prays that the gift deed may be cancelled and declared *void ab-initio*, so that it may not be taxed by the Income Tax Department (now faceless assessment and appeal) to save the said liability which may arise, against relative under Section 2(g) as the Donee/relative at threshold of life, does not have funds to pay such income tax. He states that this relief can be granted by a Writ Court alone as the jurisdiction of the civil

Courts is barred under Section 27 of the Senior Citizens Act and the grounds for setting aside a transfer under Section 23 of the Senior Citizens Act are restricted.

COURT'S REASONING

IT IS CLEAR FROM THE OBJECT OF BOTH THE ACTS THAT THE SAME EXPRESSION 'RELATIVE' IS NOT USED IN SIMILAR CONTEXT. FURTHER A STATUTORY DEFINITION IN ONE CONTEXT CANNOT BE IMPORTED IN ANOTHER ACT ESPECIALLY WHEN THE TWO ACTS DEFINE THE SAME TERM DIFFERENTLY.

8. This Court is of the view that the intent and object of the Senior Citizens Act and the IT Act are entirely different. While the object of the Senior Citizens Act is to provide for more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognised under the Constitution, the intent of the IT Act is to consolidate and amend the law relating to income-tax and super-tax. Gift of property was brought under the purview of tax with effect from 1st October, 2010 vide the Finance Act, 2010. To avoid misuse of gift of properties, the expression 'relative' was defined in a narrow and restricted manner in the IT Act. In the explanatory notes to the provisions of the Finance Act, 2010 it is stated that the "The provisions of Section 56(2) (vii) were introduced as a counter evasion mechanism to prevent laundering of unaccounted income. The provisions were intended to extend the tax net to such transactions in kind." This means that the legislature deliberately left out the gifts received from people other than those specified in the provisions from being exempted from getting taxed.

9. Further, the Senior Citizens Act defines the term ‘relative’ under the said Act and that too with a stipulation “*unless the context otherwise requires*”.

10. This Court is of the opinion that it is clear from the object of both the Acts that the same expression ‘relative’ is not used in similar context. In fact, the term ‘relative’ being wholly context-specific, there is no reason to assume that the criteria used in defining it in one context will provide even a useful starting point in another context. The Courts have long rejected any attempt to force them to regard cross-contextual applications of definitions as binding. Lord Loreburn LC way back in *Machbeth v. Chislett [1910] A.C. 220, 223, HL* held, “*The statute we are concerned with does not say that you are to apply the Act of 1854; and it would be a new terror in the construction of Acts of Parliament if we were required to limit a word to an unnatural sense because in some Act which is not incorporated or referred to such an interpretation is given to it for the purposes of that Act alone*”.

11. Consequently, a statutory definition in one context cannot be imported in another Act especially when the two Acts define the same term differently.

GENERAL APPROACH OF THE COURTS IS TO ENSURE THAT THEY DO NOT STRAY INTO USURPING THE LEGISLATIVE FUNCTION.

12. The general approach of the Courts is to ensure that they do not stray into usurping the legislative function. A specific instance of this approach is the rule that a *casus omissus* is not to be created or supplied, so that a statute may not be extended to meet a case for which provision has clearly and undoubtedly not been made. The Supreme Court in *Babita Lila & Anr. Vs. Union of India, (2016) 9 SCC 647* has held as under:-

“63. It is a trite law that there is no presumption that a casus omissus exists and a court should avoid creating a casus omissus where there is none. It is a fundamental rule of interpretation that courts would not fill the gaps in statute, their functions being jus discre non facere i.e. to declare or decide the law. In reiteration of this well-settled exposition, this Court in Union of India v. Dharamendra Textile Processors [Union of India v. Dharamendra Textile Processors, (2008) 13 SCC 369 : (2008) 306 ITR 277] had ruled that it is a well-settled principle in law that a court cannot read anything in the statutory provision or a stipulated provision which is plain and unambiguous. It was held that a statute being in edict of the legislature, the language employed therein is determinative of the legislative intent. It recorded with approval the observation in Stock v. Frank Jones (Tipton) Ltd. [Stock v. Frank Jones (Tipton) Ltd., (1978) 1 All ER 948 : (1978) 1 WLR 231 (HL)] that it is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. The observation therein that rules of interpretation do not permit the courts to do so unless the provision as it stands is meaningless or doubtful and that the 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 statute, was underlined. It was proclaimed that a casus omissus cannot be supplied by the court except in the case of clear necessity and that reason for, is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose, all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute.

64. More recently, this Court amongst others in Petroleum and Natural Gas Regulatory Board v. Indraprastha Gas Ltd. [Petroleum and Natural Gas Regulatory Board v. Indraprastha Gas Ltd., (2015) 9 SCC 209] had propounded that when the legislative intention is absolutely clear and simple and any omission inter alia either in conferment of

power or in the ambit or expanse of any expression used is deliberate and not accidental, filling up of the lacuna as perceived by a judicial interpretative process is impermissible. This was in reiteration of the proposition in Sree Balaji Nagar Residential Assn. v. State of T.N. to the effect that casus omissus cannot be supplied by the court in situations where omissions otherwise noticed in a statute or in a provision thereof had been a conscious legislative intendment.

13. The Supreme Court in *Saregama India Limited v. Next Radio Limited (2022) 1 SCC 701* while referring to the Constitution Bench decision *In re: Expeditious Trial of Cases under Section 138 of NI Act, 1881 (2021) 16 SCC 116* emphasised that “the judiciary cannot transgress into the domain of policy making by rewriting a statute, however strong the temptations may be.” The Supreme Court in *In Re: Expeditious Trial of Cases under Section 138 of NI Act (Supra)* has observed as under:-

“20. ... Conferring power on the court by reading certain words into provisions is impermissible. A Judge must not rewrite a statute, neither to enlarge nor to contract it. Whatever temptations the statesmanship of policy-making might wisely suggest, construction must eschew interpolation and evisceration. He must not read in by way of creation. The Judge's duty is to interpret and apply the law, not to change it to meet the Judge's idea of what justice requires. The court cannot add words to a statute or read words into it which are not there.”

REAL INTENT OF THE WRIT PETITION IS TO ENSURE THAT GIFT TAX IS NOT LEVIED ON DONEE. THE PRESENT PETITION IN NO MANNER PROMOTES THE MAINTENANCE AND WELFARE OF SENIOR CITIZENS.

14. Moreover, upon a reading of the entire petition, this Court is of the view that its real intent is to ensure that gift tax is not levied on Donee. The

present petition in no manner promotes the maintenance and welfare of senior citizens. Consequently, the reliance of learned counsel for the petitioner on Sections 3 and 4 of the Senior Citizens Act is untenable in law and the argument that the IT Act makes two classes of Senior Citizens Act is contrary to facts. The order issuing notice in *Ms. X vs. The Principal Secretary Health and Family Welfare Department Govt. of NCT of Delhi, W.P.(C) 10602/2022* also offers no assistance to the petitioner.

15. This Court is of the opinion that Section 23 of the Senior Citizens Act confers additional remedy upon senior citizens in certain circumstances. However, the said Section does not restrict the right of the Donee to challenge the gift/transfer made by a senior citizen in accordance with law.

RELIEF

16. Consequently, the present writ petition is dismissed. However, it is clarified that the present order shall not prejudice the right of the Donee to file any proceeding in accordance with law.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

JULY 28, 2022
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