IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

Present

Mr. Justice Khizir Ahmed Choudhury
And
Mr. Justice Sardar Md. Rashed Jahangir

Writ Petition No. 6085 of 2021

In the matter of:

An application under article 102 of the Constitution of the People's Republic of Bangladesh.

And

In the matter of :

Chevron Bangladesh Employees' Union and another

…. Petitioners

-Versus-

Government of the People's Republic of Bangladesh and others

…. Respondents

Mr. M.A. Noor, Advocate with
Mr. Omar Sadat, Advocate

…. For the petitioners

Mr. Sk. Md. Morshed, Additional Attorney General, with
Mr. Pratikar Chakma, D.A.G,
Mr. Md. Humayun Kabir and
Ms. Farzana R. Shampa, A.A.Gs.

…. For respondent Nos.1 and 2

Mr. Naim Ahmed, Advocate

…. For respondent Nos.4 and 5

Heard on : 02.11.2022, 16.11.2022, 23.11.2022, 06.12.2022 and 08.12.2022

Judgment on: 09.03.2023

Sardar Md. Rashed Jahangir, J:

Rule Nisi was issued on an application under article 102 of the Constitution of the People's Republic of Bangladesh calling upon the respondents to show cause as to why the failure or inaction of respondent No.2 in declaring that the income of the employees' entitlement to the Workers' Profit Participation Fund of respondent Nos. 4 and 5 companies that has already accrued for the period between 01.01.2006 to 31.12.2013 is exempt from tax as per sections 244-246 of the Bangladesh Labour Act, 2006 should not be declared to be without lawful authority and is of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of Rule Nisi, respondent No.2 was directed to dispose of the application dated 10.01.2021 filed by the petitioner No.1 (Annexure-'G') within 04(four) weeks in accordance with law from the date of receipt of the order.

On behalf of respondent No.2 an affidavit-in-compliance has been filed, sworn on 30.11.2021 apprising the Court that the respondent No.2 on 26.08.2021 got the application dated 10.01.2021 disposed of, refusing the contention of the petitioner No.1.

The petitioners did not take any initiative to obtain any supplementary Rule challenging the subsequent action of respondent No.2

taken through the aforesaid disposal dated 26.08.2021, rather they opted to proceed with the original Rule Nisi.

Facts, relevant for disposal of the Rule, are that petitioner No.1 is a registered employees' trade union, under the name and style of 'Chevron Bangladesh Employees' Union', working for the welfare of the employees of Chevron Bangladesh, Block Twelve, Thirteen and Fourteen Limited and having been registered under the Bangladesh Labour Act, 2006 bearing registration No.B-2186 and the petitioner No.2 is an employee working under respondent Nos.4 and 5 companies. The respondent Nos.4 and 5-companies (Chevron Bangladesh Block Twelve Ltd. and Chevron Bangladesh Block Thirteen and Fourteen Ltd., hereinafter referred to collectively as "Chevron Bangladesh") under their contractual commitment with the Government of the People's Republic of Bangladesh are engaged in exploration, development and production of natural gas for distribution among the public through Government operated institution, namely Petrobangla. Respondent Nos.4 and 5-companies are operating their functions within the territorial jurisdiction of Bangladesh.

Chapter XV of the Bangladesh Labour Act, 2006 ("shortly the Labour Act, 2006") deals with the provisions of participation of workers into the profit of the companies. Section 234(1)(ka) of the Labour Act, 2006 (under Chapter XV) provides that every company shall establish a Workers' Participation Fund and a Workers' Welfare Fund (hereinafter

collectively referred to as 'the Funds') and, as per section 234(1)(kha) of the Act, 2006 every company shall pay 05% (five percent) of its annual profit to the Workers' Participation Fund, Workers' Welfare Fund and Workers' Welfare Foundation Fund established under the Labour Act, 2006 in the ratio of 80:10:10 respectively. Respondent Nos.4 and 5-companies, falling within the ambit of Chapter XV of the Act, 2006 are duty bound to pay/distribute 05% (five percent) of its net profit to the aforementioned Funds; but the employees of respondent Nos.4 and 5 were deprived of their legal entitlement provided under Chapter XV of the Act, 2006 despite several demands. The employees of the respondent companies addressing their grievance brought the issue to the attention of the concerned authorities, but no positive response was made in this regard.

In such circumstances, the employees of said companies being petitioners filed Writ Petition No.15758 of 2016 before the High Court Division, whereupon on 15.12.2016 a Rule Nisi was issued calling upon the respondents to show cause as to why respondent Nos.1 and 3 of the said writ petition (i.e. Ministry of Labour and Employment and Department of Inspection for Factories and Establishments) shall not be directed to take necessary action against the respondent Nos.4 and 5-companies in accordance with the provision of section 236 of the Labour Act, 2006 for violation of the provision of sections 232 and 234 of the said Act.

During pendency of the Rule an order of injunction was passed on 08.06.2017 by this Court at the instance of the petitioners directing the Secretary, Ministry of Power, Energy and Mineral Resources to instruct Petrobangla to block 05% (five percent) of respondent Nos.4 and 5-companies' annual net profit as mentioned in its Annual Audit Report till disposal of the Rule to ensure that the employees' entitlement to the amount cannot be taken out of Bangladesh. In the circumstances and to resolve the aforementioned dispute between the parties, respondent Nos.4 and 5-companies and their employees and the employees' trade union being the Chevron Bangladesh Employees' Union (the petitioner No.1) jointly signed a Memorandum of Settlement ("shortly the MOS") on 26.08.2019. Under the MOS dated 26.08.2019, respondent Nos.4 and 5-companies agreed to disburse a settled amount to the Funds that had fallen due under the provisions of Chapter XV of the Labour Act, 2006 for the period between 01.01.2006 to 31.12.2013 and at the same time, the employees of respondent Nos.4 and 5-companies also agreed to take steps to dispose of the Writ Petition No.15758 of 2016 and Industrial Dispute Case No. 1047 of 2017, pending in the High Court Division and before the Labour Court below respectively. The parties to the Writ Petition No.15758 filed a joint application seeking disposal of the Rule in terms of "the MOS" dated 26.08.2019 and this Court by the Order dated 04.11.2019 disposed of the Rule accordingly.

In order to give effect the terms and object of 'the MOS' dated 26.08.2019 a deed of trust was executed among the trustees and registered on 09.12.2020 to form a trust in accordance with the provisions of section 235 of the Labour Act, 2006 and after execution of the deed of trust and constituting the Board of Trustees, the members of the Board convened their first meeting; in which it was decided to give effect to the provisions of the Labour Act, 2006 as well as the terms of 'the MOS' dated 26.08.2019. It is stipulated in clause 9 of the said 'MOS' that until any written direction is obtained from the authority concerned as per clause 8 of the 'MOS' -

> "(a) the parties agreed that the Board of Trustees shall withhold the applicable Tax Amount from the disbursement of the Settlement Amount; and
>
> (b) The Board of Trustees shall not deposit the Applicable Tax Amount into the Government's exchequer."

It is stated that so far as the applicability of tax on the settled amount is concerned, the provisions of the Labour Act, 2006 exempts the income of the Workers' Profit Participation Fund ('WPPF') from taxation. The relevant provisions in this regard has been provided under sections 244-246 of the Labour Act, 2006, which categorically states that –

(i) Section 244 of the Act, 2006 provides that all the companies to which provisions of Chapter XV of the Act, 2006 applies shall the allocation made to the Funds be allowed, as a deduction from the taxable income. (ii) Section 245 of the Labour Act 2006 further provides that the income of the 'Funds' including capital gains shall be exempt from income-tax and (iii) Section 246 of the said Act 2006 provides that all sums paid out of the Funds to the workers shall be exempt from income-tax.

It is also stated that apart from the provisions of the Labour Act, 2006, the sum payable to the employees of the companies from the WPPF was also exempted from income-tax until 2016 under the Income-tax Ordinance, 1984 and since there was no provision for imposition of income-tax on the payment from WPPF under the Ordinance, 1984 until 2016, the settled amount payable to the employees of respondent Nos.4 and 5-companies from the WPPF, accrued between the period 01.01.2006-31.12.2013 is totally exempted from payment of income-tax. It is further stated that the Legislature for the first time in the year 2016 through enactment of section 30 of the Finance Act, 2016 imposed income-tax on the WPPF and/or on it's accrued interest/income by introducing new provisions being sections 52D and 52DD, substituting section 52D of the Income-tax Ordinance, 1984.

Respondent Nos.4 and 5-companies and their employees under the 'MOS' dated 26.08.2019 have agreed that they will jointly obtain/manage/procure a final and binding written direction from the National Board of Revenue (respondent No.2) or from a Court of competent jurisdiction of Bangladesh regarding confirmation as to the exemption from taxation on the settled amount of the Funds, i.e. established (settled) Fund for the period between 01.01.2006-31.12.2013. Taking such circumstances into account the petitioner No.1 by a letter dated 10.01.2021 requested respondent No.2 to have a direction/ confirmation as to the exemption from income-tax on the employees' entitled amount from the 'WPPF' of respondent nos.4 and 5-companies those had accrued for the period between 01.01.2006 to 31.12.2013 under section 234 of the Act, 2006. Challenging inaction of respondent No.2 the petitioners filed this writ petition.

Mr. M.A. Noor, learned advocate appearing with Mr. Omar Sadat, learned advocate for the petitioners submits that Bangladesh Labour Act, 2006 mandates for establishment of Workers Profit Participation Fund (WPPF) and Workers Welfare Fund under section 234 and which also contemplates to establish a 'Board of Trustee' to manage and control the said established funds under section 235 of the Labour Act. He next submits that under section 245 of the Labour Act, 2006 any income derives from the funds including capital gain shall be exempted from income-tax;

he continues that section 246 also provides that any income or payment made out from the funds to the employees shall also be exempted from the ambit of income-tax. He further submits that until the enactment of the Finance Act, 2016, the sum payable to the employees from the 'WPPF' was exempted under the Income-tax Ordinance, 1984. He further submits that statutory provisions of law under the Labour Act, 2006 as well as the Income-tax Ordinance, 1984 clearly exempts the 'WPPF' established under the 'MOU' dated 26.08.2019 for the period between 01.01.2006 to 31.12.2013 from payment of income-tax. He continues to submit that the income which was not chargeable to income-tax during the period 2006 to 2013, cannot be subjected to income-tax in the year or after 2016. Because, the cardinal principle of construction of statutory provision is that every statute is prima facie prospective, unless it is expressly or by implication given any retrospective effect. He finally submits that the respondent No.2 under the memo dated 26.08.2021 (Annexure-'2' to the affidavit-in-compliance dated 30.11.2021) acted beyond its jurisdiction in denying the exemption provided to the workers of Chevron Bangladesh Limited under the Bangladesh Labour Act, 2006, stating that the provision of section 52DD provides the procedure to deduct tax at source from the payment made to any employee from the Workers Profit Participation Fund (WPPF) and as such the memo dated 26.08.2021 is liable to be declared to have been issued without lawful authority and is of no legal effect. In support of

his submissions he filed a series of written arguments which includes several judgments.

On the other hand, Mr. Sk. Md. Morshed, learned Additional Attorney General appearing for respondent Nos.1 and 2 submits that the entitlement of the employees of respondent Nos.4 and 5 to get benefit of exemption or not is subject to the provisions of section 44 read with paragraph 21, clause-(d) of Part-A of the Sixth Schedule of the Income-tax Ordinance, 1984 and the provision of section 52DD of the Ordinance, 1984. Accordingly, the respondent No.2 under memo dated 26.08.2021 justifiably and legally clarified the question of entitlement of the beneficiaries from the Workers Profit Participation Fund (WPPF) established under the Labour Act, 2006. He next submits that the intention of the Legislature is to be perceived from a combined reading of the provisions of section 44 read with paragraph 21 clause-(d) of Part-A of the Sixth Schedule of the Income-tax Ordinance, 1984, which clearly contemplates to provide the benefit of exemption to any payment made to a beneficiary (worker) from the Workers Participation Fund established under the Labour Act, 2006 but the said provision is to be read together with section 52DD of the Ordinance, accordingly he prayed for a harmonious interpretation to give effect of all the provisions relating to the subject matter taking the context as a whole into the notice.

Mr. Naim Ahmed, learned Advocate appearing for the respondent Nos.4 and 5 by filing an affidavit-in-opposition submits that under the 'MOS' dated 26.08.2019, the respondent Nos.4 and 5 are duty bound to assist the writ petitioners as far as practicable in getting legal remedies so far the exemption is concerned from the competent authority, i.e. respondent No.2 or from the Court of law.

Heard learned Advocates for all the contending parties, perused the writ petition alongwith the annexures; having gone through the affidavit-in oppositions, supplementary affidavit, affidavit-in-reply and a series of written arguments filed on behalf of the petitioners. We have carefully examined the rival contentions, cited judgments and relevant provisions of law.

It appears that, the petitioners are claiming exemption from income-tax, stating interalia that the provisions of the Income-tax Ordinance, 1984 as well as the provisions of the Bangladesh Labour Act, 2006 provides exemption from taxation to the payment made to the employees of respondent Nos.4 and 5 companies from the established Workers Profit Participation Fund (WPPF).

Before dealing with merit of the case, let us first examine the provisions of exemption having been provided under the Income-tax Ordinance, 1984. The parent provision of the entitlement of exemption

under the Ordinance, 1984 is section 44, the relevant portion of which is as follows:

"44. Exemption-

(1) Notwithstanding anything contained in this Ordinance, any income or class of income or the income of any person or class of persons specified in Part A of the Sixth Schedule shall be exempt from the tax payable under this Ordinance, subject to the limits, conditions and qualifications laid down therein and shall be excluded from the computation of total income under this Ordinance.

(2) .....

(3) .....

(4) .....

(5) ....."

Sub-section (1) of section 44 provides that any income of a person specified in Part A of the Sixth Schedule shall be exempted from the tax payable under the Ordinance, subject to the limits, conditions and qualifications specified therein, i.e. subject to the provisions of the Sixth Schedule and in the present case, in particular, the limitations, conditions and qualifications to qualify for the exemption provided to the workers has been specified in paragraph-21, clause(d), Part-A of the Sixth Schedule to the Ordinance, which runs as follows (as amended through F.Act, 2016):

"21. Any Payment from-

(a).....

(b).....

(c).....

(d) a workers participation fund established under বাংলা-দশ শ্রম আইন, ২০০৬ (২০০৬ স-নর ৪২ নং আইন) to any person not exceeding fifty thousand taka, notwithstanding anything contained in any other law for the time being in force regarding tax exemption of such payment;"

Evidently, provisions of paragraph-21 of Part A of the Sixth Schedule read with section 44 of the Ordinance are exemption provisions and it is to be construed and interpreted in a particular manner.

Let us now turn to examine the various rules and authorities regarding method of construction or interpretation of the provisions of exemption from taxation.

Mr. Mahmudul Islam in his Interpretation of Statutes and Documents (1st Edition), under Chapter-V, at page 142/144 states as under:

"*A provision of exemption from tax in a fiscal statute is to be strictly construed. It is a well known principle that a person who claims an exemption or concession has to establish it*……. . . .

An exemption provision cannot be unduly extended to produce unintended results in derogation of it's plain language."

Earl T. Crawford in his book 'The Construction of Statutes' under Chapter-XXIII at page-506/507, states as under:

"Provisions providing for an exemption may be properly construed strictly against the person who makes the claim of an exemption. In other words, before an exemption can be recognized, the person or property claimed to be exempt must come clearly within the language apparently granting the exemption."

In the case of Novopan India Limited -Vs- Collector of Central Excise and Customs, Reported in 1994 (Supp) (3) SCC-606 Supreme Court of India, held as under:

" Shri Narasimhamurty again relied on certain observation in CCE -VS- Parle Exports (P) Limited, in support of strict construction of a provision concerning exemption. There is support of judicial opinion to the view that exemptions from taxation have a tendency to increase burden on the other un-exempted class of tax payers and should be construed against the subject in case of ambiguity. It is an equally well known principle that a person who claims an exemption has to establish his case."

The question of choice between a strict and a liberal construction, even in a fiscal statute, arises only in a case of doubt regarding the intention of the Legislature manifests on the statutory language. Thus, the need to resort to any

interpretative process arises only where the meaning is not manifested clearly from the plain words of the statute. If the words are plain and unambiguous and directly convey the intended meaning, there is no need for any interpretation.

From the premise above, it can safely be held that claim of exemption is to be construed strictly, against the person who claims it and the exemption must come clearly within the language spelt out from the text of legislation. No implication is recognized for the purpose of construing the language of exemption provision of a fiscal statute and in case of doubt or ambiguity, benefit goes to the Revenue or State.

It is contended by the petitioner that the provisions of section 245 and 246 of the Bangladesh Labour Act, 2006 as well as the provisions of Part A of the Sixth Schedule of the Income-tax Ordinance, 1984 is a beneficial legislation and under the provisions of the said laws the Workers' Profit Participation Fund and Workers Welfare Fund were wholly exempted and the income of the employees of respondent Nos.4 and 5 companies derived from the aforesaid Funds was also exempted until enactment of the Finance Act, 2016 and in the instant case the established Workers' Profit Participation Fund of respondent Nos.4 and 5 was established for the benefit of the period 2006-2013 and through the Finance Act, 2016 the said benefit has been curtailed by introducing the provision of section 52DD in the Income-tax Ordinance without having any retrospective effect. Thus, the said provision is not applicable in case of the employees of respondent Nos.4 and 5, i.e. the established fund as a whole was entitled to get exemption for the period of 2006-2013.

At this juncture, we may again turn to examine the provisions of the Bangladesh Labour Act, 2006 as well as the exemption provision under the Income-tax Ordinance available for the employees of respondent Nos.4 and 5 companies.

Sections 245 and 246 of the Bangladesh Labour Act, 2006 (বাংলা-দশ শ্রম আইন, ২০০৬), runs as follows ঃ

> "245 তহবিলদ্ব-য়র আয় আয়কর হই-ত রেহাই- তহবিলদ্ব-য়র আয়, উহার মূলধনী মুনাফাসহ, আয়কর হই-ত -রহাই পাই-ব।
>
> 246। শ্রমিকগ-ণর আয় আয়কর হই-ত রেহাই।- তহবিলদ্বয় হই-ত যে অর্থ শ্রমিক-ক দেওয়া হয়, ইহার জন্য তাহা-ক কোন আয়কর দি-ত হই-ব না।"

From plain reading of section 245, it appears that any income from the funds including capital gains shall not be subjected to income-tax and under section 246, it is provided that the payment made to any worker from the funds shall be exempted from the income-tax.

The Income-tax Ordinance was first promulgated in the year, 1984 and in the unamended Ordinance, any payment from the workers participation fund having been exempted in the following language under paragraph 21(d) of Part A of the Sixth Schedule ঃ

"21. any payment from-

(a) .....

(b) .....

(c) .....

> (d) a workers participation fund established under the Companies Profit (Workers Participation) Act, 1968 (XII of 1968), subject to any such conditions and limits as may be prescribed."

From a combined reading of the original unamended provisions of paragraph 21(d) with section 44(1) of the Income-tax Ordinance, it appears that any payment from the workers participation fund established under the Companies Profit (Workers Participation) Act, 1968 (underlined has been given emphasis) shall be exempted from income-tax or shall be excluded from the total income of the beneficiary(worker), subject to the limits, conditions and qualifications as may be prescribed; it is to be mentioned here that although the provisions of sections 245 and 246 of the Bangladesh Labour Act, 2006 provides that income of both the Funds including capital gains shall be exempted from the income-tax under section 245 and any sums paid out of the Funds to the worker(s) shall also be exempted from the ambit of income-tax under section 246. But untill 1st July, 2014 the said provisions of section 245 and 246 of the Labour Act, 2006 do not seen to have any reflection or implication in the Income-tax Ordinance, 1984 and by the Finance Act, 2014 the words "বাংলা-দশ শ্রম আইন, ২০০৬" having been introduced by way of substitution in paragraph 21(d) of Part A of the Sixth Schedule And the provisions of exemption of section 245 (তহবিলদ্ব-য়র আয়) having not been approved (by way of enactment in the income-tax Ordinance) consciously as a whole by way of giving effect in

the Income-tax Ordinance, 1984 adopting the similar language like the Labour Act, 2006. That is, although in section 245 of the Labour Act the income including capital gains of the Funds as a whole has been provided exemption from the income-tax; but under the Income-tax Ordinance only a limited exemption or benefit has been given effect providing specific language that any payment (to the worker) from the Workers Participation Fund shall be exempted or shall be excluded from the total income of the beneficiary (untill enactment of the Finance Act, 2016). Meaning thereby, the Funds as a whole was not exempted under the Income-tax Ordinance, 1984 even upto 30th June, 2016. Only the payment made to any worker from the Funds having been exempted. It is statutory presumption that the Legislature is presumed to have been aware of the existing laws and thus, being conscious about the existing provision of sections 245 and 246 of the Bangladesh Labour Act, 2006, the Legislature willfully omits to incorporate exemption to the Funds as a whole in the Income-tax Ordinance, 1984 providing exemption only to the payment from the Workers Profit Participation Fund.

Admittedly no payment has been made to any worker till filing of the writ petition from the Workers Participation Fund established under the Labour Act, 2006 and it is also not the case of the petitioners that the entitlement of getting payment of any particular worker or workers having been created before enactment of the Finance Act, 2016. Thus, no vested

right having been created, in fact, in favour of any employee of respondent nos.4 and 5 companies under the Income-tax Ordinance, 1984.

Section 52DD has been introduced in the Income-tax Ordinance through the Finance Act, 2016 which is as follows :

> *"52DD-Deduction at source from payment to beneficiary of workers' participation fund.-*
>
> *Notwithstanding anything contained in any other provision of this Ordinance or any other law being in force in respect of exemption from tax on payments from workers' participation fund, any person responsible for making any payment from such fund to a beneficiary shall, at the time of such payment, deduct income tax at the rate of five percent (5%) on such payment."*

From a plain reading of the aforesaid provision, it appears that the provision containing a non-obstante clause providing that the person responsible for making payment from the workers participation fund shall at the time of making payment deduct tax at the rate of 5%. Meaning thereby, 5% is to be deducted from any payment out of the Fund. Whereas provision of paragraph-21(d) of Part A of the Sixth Scheduled read with section 44(1) provides that any payment up to fifty thousands taka shall be exempted from the ambit of income-tax. The parent provision of exemption provided under section 44(1) of the Income-tax Ordinance also containing a non-obstante clause and the substituted provision of

paragraph 21(d) of Part A of the Sixth Schedule of the Ordinance also brought into through the Finance Act, 2016 also. Under such scenario, in giving effect the language of section 52DD, the exemption provided under paragraph 21(d) of Part A of the Sixth Schedule shall be curtailed and consequently the amended provision of paragraph-21(d) of Part A of the Sixth Schedule of the Ordinance providing exemption shall be nugatory.

At this Juncture, we are of the view that both the provisions should be interpreted harmoniously and that is one of the primary obligation of this Court.

Mr. Mahmudul Islam in his Interpretation of Statutes and Documents (1st Edition), under Chapter II, at page 22 stated as under:

> *"when the language of the statute is plain and unambiguous, the Court must give effect to the words used in the statute irrespective of consequences and it would not be open to the Court to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act.*

Mr. Islam in his aforementioned book under Chapter V, at page 131 also stated that-

> *"if two section of the same statute appears to be inconsistent with each other, the Court will be required to harmonise the two provisions so that both can be operative. An Act has to be read as a whole and its*

provisions should be interpreted in a manner to avoid any disharmony. An effort should be made to give effect to all the provisions of a statute and for that a provision of the statute should be interpreted with reference to other provisions as to make the statute workable. A particular provision cannot be interpreted to defeat another provision made in that behalf under the statute."

It also stated (under the same Chapter, same page) that-

"The principle of reading the statute as whole is the principle that the legislature is not supposed to have intended to contradict itself by making contradictory provisions in the same statute and in case of inconsistency between different provisions of a statute, the Court should give harmonious interpretation."

In the case of CIT Vs. M/s Hoosen Kasam Dada reported in 12 DLR 161 (para 14) was held that ঃ

"In interpreting the statute, one is to see whether a reasonable meaning can be given after reconciling the various provisions contained in the different sections and not to read one section independently of all other section and give any unreasonable interpretation."

In the case India -Vs- Hansoli Devi, reported in AIR, 2002 (SC) 3240, the Indian Supreme Court observed that-

> *"it is not permissible to add words to a statute which are not there unless on a literal construction being given a part of the statute become meaningless."*

Mr. Mahmudul Islam, in his aforementioned book under Chapter III at page 57 referring to a judgment of Lord Denning states that-

> *"if the legislature has by mistake overlooked something, the judges should do their best to smooth it out."* [See (1950)2 All ER 1226]

In a subsequent case (Seaford Court Estates Ltd. Vs. Asher, [1949] 2 All ER 155(165), Lord Denning also observed-

> *"When a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social condition which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of the legislature."*

In the case of Nasiruddin -Vs- Sita Ram, reported in AIR, 2003 (SC) 1543, the Indian Supreme Court also observed that-

"the Court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric.

Keeping in mind the above settled principle and thereby if we read the provisions of section 52DD and section 44 alongwith paragraph-21(d) of Part A of the Sixth Schedule of the Ordinance, 1984 separately and thereafter attempt to give one of those separate effect, independently from all other sections, then section 52DD will appear to contradict with the provision of paragraph 21(d) of part-A of the Sixth Schedule of the Ordinance and makes the exemption provided under paragraph 21(d) of Part A of Sixth Schedule read with section 44(1) of the Ordinance nugatory and in interpreting aforesaid provisions we should bear in mind that the Legislature supposed to have no intention to contradict itself by making contradictory provisions. Thus, an effort is required to be made by the Court to adopt harmonious interpretation and to provide a reasonable meaning upon a combined reading and reconciliation of the aforementioned provisions, construing that "subject to the provisions of paragraph 21(d) Part A of the Sixth Schedule, the provision of section 52DD shall be applicable," otherwise the intention of the Legislature providing exemption under the provision of paragraph 21(d) of Part A to the Sixth Schedule shall be defeated.

In the premise above, we may safely conclude that since no payment has yet been made or entitlement of getting payment of any particular

worker or workers from the Fund having been created before the amendment brought into the Income-tax Ordinance, 1984 through the Finance Act, 2016; thus, the amended provisions of the Income-tax Ordinance, through the Finance Act, 2016, i.e. 52DD and amended version of paragraph 21(d) of Part A shall be applicable in respect of any payment made to the workers of respondent No.4 and 5 companies from the established Fund and both the provisions are to be interpreted in the manner as observed herein above.

Accordingly, the Rule is disposed of with the above observation.

No order as to cost.

Communicate the judgment at once.

Khizir Ahmed Choudhury, J:

I agree.