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OXFORD UNIVERSITY PRESS  
v.  
COMMISSIONER OF INCOME TAX

JANUARY 24, 2001

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[S.P. BHARUCHA, D.P. MOHAPATRA AND  
Y.K. SABHARWAL, JJ.]

*Income Tax :*

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*Income Tax Act, 1961—Section 10(22)—Assessee, a part of foreign University, engaged in business of printing, publishing and selling books—Entitlement for exemption—Held, exemption available for foreign Universities if it carries on educational activities in India—However on facts of the case, assessee not entitled for exemption since it was not imparting education in India.*

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*Interpretation of Statutes:*

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*Literal Interpretation —Held, strict literal interpretation should be avoided if it leads to absurdity and mischief which was not the intention of the Legislature.*

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Appellant-assessee is a part of a foreign University engaged in the business of printing, publishing and selling books in India. The assessee, treating itself to be a branch of the foreign University, claimed exemption from income tax under Section 10 (22) of the Income Tax Act, 1961 for the assessment year 1976-77. Income Tax Officer rejected the claim of exemption of the assessee and brought the income to tax. Commissioner (Appeals) and Tribunal held in favour of the assessee. On a reference under Section 256(1) of the Act, High Court held in favour of the Revenue.

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In appeal to this Court, the assessee contended that Oxford University Press is a part of the Oxford University of U.K., that the income earned by it is the income of the University and therefore, entitled to exemption from tax under Section 10(22) of the Act, that to qualify for the exemption, it is not necessary that the University should be incorporated in India or should be engaged in any activity relating to education or concerning the field of education in India; that 'University' under Section 10 (22) of the Act includes

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a foreign University; and that Parliament had not intended to limit exemption for University stated in India. A

Revenue contended that the word 'University' used in Section 10(22) of the Act means University as defined in University Grants Commission Act, 1956; that the Section applies only to Universities and educational institutions which existed in India or imparted education in India; that Parliament never intended to forego tax revenue for the purpose of education people outside India; that even though the assessee is a part of the Oxford University, it does not qualify for exemption since the Oxford University does not exist solely for educational purposes in India; and that purposive and meaningful interpretation should be given to the Section to avoid absurd position. B C

Dismissing the appeals by majority, the Court

HELD : Per D.P. Mohapatra, J.

1.1. A University or other educational institution established or incorporated outside India can be eligible for the exemption from tax under Section 10(22) of the Income Tax Act, 1961 provided, it exists solely for educational purposes and not for purposes of profit. On examination of the expression 'existing solely for educational purposes and not for purposes of profit' in the provision, the Legislature has made it clear that it intends to exempt the income of institutions established solely for educational purposes had not for commercial activities. Such a provision is meant to encourage institutions, including Universities, engaged in educational activities and it is not intended to benefit institutions engaged in commercial activities with the intention of earning profit. [582-C-D] D E

1.2. The assessee is nothing more than a commercial establishment/business enterprise engaged in the business of printing, publishing and selling of books in this country. The label "University Press" is not sufficient to establish that it is engaged in any educational activity. The purpose of the existence of the assessee in this country is possibly to earn profit. [583-G] F

*State of Tamil Nadu v. Kodaikanal Motor Union, (P) Ltd.* [1986] 3 SCC 91; *K.P. Varghese v. I.T.O.*, [1981] 4 SCC 173; *Luke v. Inland Revenue Commissioners*, [1964] 54 ITR 692 (III) and *Keshuji Ravji & Co & Ors. v. Commissioner of Income Tax*, [1990] 2 SCC 231, referred to. G

*Law of Taxation by Thomas M. Cooley*, [Vol. 2 Page 243], referred to. H

A 2. If establishments/institutions, which are engaged solely in commercial activities are included in the expression 'University' and are treated at par for the purpose of granting exemption from tax, then it will amount to treating unequals as equals and, therefore, discriminatory. A provision of exemption from tax in a fiscal statute is to be strictly construed. Interpretation of such a statutory provision which does not stand the test of rationality and will lead to absurd results cannot be accepted. [585-D]

*Per Y.K. Sabharwal, J. (concurring)*

C 1.1. Section 10(22) of the Income Tax Act *per se* does not stipulate that a university or other educational institution should be an Indian University. The definition of 'University' in University Grants Commission Act, 1956 cannot be read in Section 10(22) of the Income Tax Act. [588-B]

D 1.2. Under Section 10(22) of the Income Tax Act, 1961 the establishment, constitution or setting up of 'a university or other educational institution' in India was not intended by the Legislature. It applies to all universities subject to fulfilment of other requirements of the section. The absence of the words 'in India' in Section 10(22) only leads to conclusion that 'a university or other educational institutional, need not be constituted, set up or established in India to claim the benefit of exemption. The constitution, setting up or establishment of a university in India to claim benefit of exemption under E Section 10(22) is not necessary but that does not lead to the conclusion that imparting of education or providing any educational facilities in India is also not necessary for such a university to claim the benefit of exemption. A foreign university would also be entitled to claim exemption so long as it is imparting education in India. A university established in a foreign country is not excluded from the ambit of Section 10(22) in case it is imparting F education in India or has some educational activity in India. In this view, the assessee is not entitled to claim exemption. [600-C-E]

G *Orissa State Warehousing Corporation v. Commissioner of Income-tax*, (1999) 237 ITR 589; *Commissioner of Income-Tax v. Gujarat State Warehousing Corporation Ltd.*, (2000) 245 ITR 1 and *K.P. Varghese v. Income Tax Officer, Ernakulam & Anr.*, [1981] 4 SCC 173, referred to.

H 2. It is well recognised rule of construction that a statutory provision must be so construed as to avoid absurdity and mischief, if possible; where the plain literal interpretation of a statutory provision produces a manifestly absurd and unjust result which could never have been intended by the

legislature, Court may modify the language used by the legislature or even 'do some violence' to it, so as to achieve the obvious intention of the legislature and produce a rational construction. [594-C] A

*Commissioner of Income Tax, Bangalore v. J.H. Gotla, Yadagri*, [1985] 4 SCC 343 and *State of Tamil Nadu v. Kodaikanal Motor Union (P) Ltd.*, [1986] 3 SCC 91, referred to. B

*Per S.P. Bharucha, J (dissenting)*

1.1. For the purpose of obtaining exemption under clause (22) of Section 10 of the Income Tax Act, 1961, the University must be "existing solely for educational purposes and not for the purposes of profit". This means the sole purpose of a University must be to impart a education and not to make profit. The word "existing" in the context means "being" It has no vocational sense. The clause does not say "existing in India" and the words "in India" cannot be read into it. The clause does not require that the University must impart education in India before it can qualify for exemption thereunder. [605-D] C  
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1.2. The assessee was a part of a foreign University and that the income was the income of the foreign University. The "person" that was being taxed was not a branch of the foreign University but the foreign University itself. The foreign University is a hallowed institution of learning that exists solely for education purposes. The income derived by printing, publishing and selling of books has no relevance because it is still the income of the foreign University that exists for educational purposes. [603-F-G] E

1.3. There is no unjustness, unreasonableness, irrationality or absurdity in the provisions of clause (22) of Section 10. Parliament could not possibly meant it was not willing to forego a very small percentage of tax revenue for the purposes of education, even though it might mean the education of people outside India, if that education was being provided by a University or other educational institution whose sole purpose was to provide education and not at all to make a profit. It cannot be that Parliament yet again failed to express its true intendment. If Parliament had meant to provide an exemption with a locational limitation in clause (22A) it would have made it clear, and it would have amended clause (22). [606-E-G] F  
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*K.P. Varghese v. Income Tax Officer, Ernakulam & Anr.*, [1981] 4 SCC (173) and *Commissioner of Income Tax, Bangalore v. J.H. Gotla, Yadagri*, [1985] 4 SCC 343, referred to. H

A 2. It is trite law and now needs no authority that a taxing statute must be read as it stands: no words may be added, no; words subtracted. It is not permissible to read the definition of a word in one Act into another Act unless the latter Act so requires. A definition in University Grants Commission Act, 1956 cannot be read to limit the scope of a word which was first used in Indian Income Tax Act, 1922 and then incorporated in the Income Tax Act, 1961. [603-H; 604-B]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 533 of 1970-71.

C From the Judgment and Order dated 21.12.95 of the Bombay High Court in I.T.R. No. 82 of 1984.

With

C.A. Nos 534/97, 4406/97 & 7275/99.

D S.E. Dastur, Jehangita Mistry, J.B. Dadachanji, T. Pooran, Mrs. A.K. Verma and B.A. Ranganathan for the Appellants.

M.L. Verma, Nikhil Sakhardande, S.K. Dwivedi, Ajay Sharma and Ms. Sushma Suri for the Respondents.

E The following Judgments/Order of the Court were delivered :

F **D.P. MOHAPATRA, J.** I have had the privilege of reading the draft judgment prepared by my learned brother Bharucha, J., in which he has taken the view that the High Court erred in holding that the assessee is not entitled to exemption from tax under section 10(22) of the Income Tax Act, 1961 (for short 'the Act'). With respect, I am unable to agree with the view taken in the draft judgment.

G The question which was referred by the Income Tax Appellate Tribunal to the High Court reads "Whether, on the facts and in the circumstances of the case the tribunal was justified in holding that 'Oxford University Press', Bombay, which is a part of "Oxford University" is exempted under section 10(22) of the Income Tax Act?" The High Court in the judgment under challenge, answered the question in the negative and in favour of the Revenue.

H The relevant facts appearing from the orders passed by the statutory

authorities may be stated thus :

The assessee, Oxford University Press, is engaged in the business of printing, publishing and selling of books. It has been assessed to income-tax as a company from the assessment year 1952-53 onwards on the basis of the notification issued by the Central Board of Revenue. The said notification was issued on the application filed by the assessee. For the assessment year 1976-77 the assessee filed a return showing income of Rs. 19.94 lacs. It claimed exemption from payment of tax under section 10(22) of the Act mainly on the basis that it is a part of the Oxford University incorporated in the United Kingdom. The assessing officer did not accept the claim of exemption and passed the order of assessment under section 144-B of the Act. On appeal the Commissioner of Income-Tax (Appeals) accepted the assessee's contention that being a part and parcel of the University of Oxford of U.K. it is entitled to the exemption under section 10(22) of the Act. On the said finding the appeal was allowed and the assessment order was set aside. A further appeal filed by the Revenue before the I.T.A.T. proved futile. Thereafter the Tribunal referred the question as noted earlier to the High Court under section 256(1) of the Act. The High Court accepted the contention raised on behalf of the Revenue that the assessee, in the facts and circumstances of the case, did not qualify for the exemption provided under section 10(22) of the Act.

From the discussions in the judgment of the High Court it appears that the main thrust of the contentions raised on behalf of the assessee was that the Oxford University Press being a part of the Oxford University of U.K. the income earned by it is the income of the University and as such entitled to exemption from the tax. It was also urged on behalf of the assessee that in order to qualify for the exemption it is not necessary that the University should be incorporated in India or should be engaged in any activity relating to education or concerning the field of education in India. The High Court held that even assuming that the Oxford University Press is a part of the Oxford University, what is existing in India is only the 'Oxford University Press' which is the assessee and in such a situation the assessee cannot be regarded as a University or an educational institution existing solely for educational purposes and not for the purpose of profit; therefore, the assessee is not entitled to the exemption provided under section 10(22) of the Act.

Shri S.E. Dastur, learned counsel appearing for the appellant, contended that only a person can be assessed to income-tax as provided in section 4 of the Act and such a person in the present case is the Oxford University of

A which the Oxford University Press is a part; any income earned by the Oxford University Press has to be taken as the income of the University and in that event the entire income is totally exempted from tax under section 10(22) of the Act. It was the further contention of Shri Dastur that in the case of a University the nature of the activities undertaken by it in India and the form and character of the establishment of the University in this country, are not relevant. According to the learned counsel once an institution or establishment in the country which earns the income is accepted as a part of a University, no matter whether it is incorporated in India or in a foreign country, the exemption from tax extends to such income.

C Shri M.L. Verma, learned senior counsel appearing for the Revenue, on the other hand contended that the expression 'existing solely for educational purposes etc.' qualifies the expression 'income of a University or other educational institutions'. Therefore even assuming that the Oxford University Press is a part of the Oxford University still it does not qualify for exemption since the Oxford University does not exist solely for education purposes in India. According to Shri Verma the Oxford University has no existence in this country as a University. The Oxford University Press, assuming that it is a part of that University, is engaged in commercial activities like printing, publishing and selling of books from which the amount has been earned during the assessment year in question. According to Shri Verma accepting the contention raised on behalf of the assessee will lead to an absurd position that a University which is not engaged in any educational activity in this country is given total exemption of tax in respect of income entirely earned from business activities in this country. It was the further submission of Shri Verma that though the provision to be interpreted is a part of a taxing statute still a purposive and meaningful interpretation is necessary to avoid such absurd result as aforementioned.

As noted earlier the main basis for the claim for exemption from the tax is that the Oxford University Press is a part of the Oxford University in U.K. and therefore its income is exempted from tax under section 10(22) of the Act. This contention which found favour with the Tribunal appears to have been based on the name of the assessee in this case, the Oxford University Press and the averment made in the petition filed by the assessee for being treated as a company that it is a part of the University. The Tribunal has also noted that no material was produced by the Revenue to show that the assessee is an independent entity having no connection either with the Oxford University in U.K. or the Oxford University Press.

In para 8 of its order the Tribunal has observed "it is well within everybody's knowledge that Oxford University is purely an educational institution". The discussions in paragraph 9 are based on the assumption that the assessee being a part of the Oxford University which is engaged in educational activities claim of exemption is to be accepted. The position that emerges from the discussion in the order of the Tribunal, as I read it, is that since the name of the assessee is Oxford University Press and it claims to be a part of the Oxford University in U.K. that is sufficient to enable it to get exemption from the tax. To put it differently the description of the name of the assessee has been accepted as a major factor for determination of the question whether its claim for exemption is acceptable or not. If a business establishment has the word 'university' as a part of its name but is engaged in commercial activities and has earned the amount by such activities then its claim of exemption of tax as a part of a university has to be accepted. Another reason stated by the Tribunal in support of its finding in this regard is that no material has been placed by the Revenue to show that the assessee has an identity independent of the University, which in other words places the onus of proving the contrary in a claim for exemption by the assessee. There is no consideration in the order of the Tribunal on the question whether the income earned by the assessee is a part of the funds of the Oxford University. The approach of the Tribunal in this regard is clearly erroneous and the finding recorded by it vitiated. The contention raised by Shri Dastur that the real assessee in the case is the Oxford University, cannot be accepted.

From the case of the parties and the contentions raised on their behalf the question that arises for determination is whether in the facts and circumstances of the case the claim for exemption from tax under section 10(22) of the Act by the assessee on the ground that the Oxford University Press is a part of the Oxford University of U.K. can be accepted?

The answer to this question depends on the interpretation of the provision under section 10(22). The section reads:

"10. In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included —

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(22) any income of a university or other educational institution, existing

A solely for educational purposes and not for purposes of profit.”

On a plain reading of the section it is clear that the provision is intended to cover any income of a University or other educational institution, existing solely for educational purposes and not for purposes of profit. The purpose for which and the object with which the institution is established and the source from which the income is earned are relevant considerations to determine whether the income earned by the assessee is exempted from tax under the provision. The section does not provide that the University or other educational institution should be one established or incorporated by or under an enactment in this country. Therefore, even a University or other educational institution established or incorporated outside India can be eligible for the exemption from tax under the provision provided that it exists solely for educational purposes and not for purposes of profit. On a closer examination of the provision it becomes clear that in using the expression ‘existing solely for educational purposes and not for purposes of profit’ the legislature has made it clear that it intends to exempt the income of institutions established solely for the educational purposes and not for commercial activities. Such a provision is meant to encourage institutions (including University) engaged in educational activities and it is not intended to benefit institutions engaged in commercial activities with the intention of earning profit. In my view this interpretation will not only serve the intent and purpose of the statutory provision but will also help in avoiding the criticism of want of rationale in granting the exemption.

On examination of the different provisions in section 10 dealing with exemption from the tax it would be clear that each one of the said provisions is intended to serve a definite public purpose and is meant to achieve a special object.

Section 10(20A) provides for exempting the income of an authority constituted in India by or under any law enacted either for the purpose of dealing with the satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both.

Section 10(21) provides for exemption of income of an approved scientific research association, the income of which is applied wholly or exclusively to the objects for which it is established.

Under Section (22A) any income of a hospital or other institution for

the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit is exempted. A

Section 10(22B) provides for exemption of any income of such news agency set up in India solely for collection and distribution of news as the Central Government may, by notification in the Official Gazette, specify in that behalf provided that the news agency supplies its income or accumulates it for application solely for collection and distribution of news and does not distribute its income in any manner to its members. B C

Similarly Section 10 (23) deals with exemption of any income of an association or institution established in India which may be notified by the Central Government in the Official Gazette having regard to the fact that the association or institution has as its object the control, supervision, regulation or encouragement in India of the games of cricket, hockey, football, tennis or such other games or sports as the Central Government may, by notification in the Official Gazette, specify in that behalf. The proviso to the said clause makes provision regarding accumulation and application of the income wholly and exclusively for the objects for which the association is established. D

I am of the view that the expression 'existing solely for the educational purpose and not for the purpose of profit' qualifies and 'university or other educational institution'. In a case where a dispute is raised whether the claim of exemption from the tax by the assessee is admissible or not it is necessary for the assessee to establish that it is a part of a university which is engaged solely or at least primarily for educational purposes and not for purposes of profit and the income in respect of which the exemption is claimed is a part of the income of the university. This question assumes importance in a case like the one in hand where the assessee is nothing more than a commercial establishment/business enterprise engaged in the business of printing, publishing and selling of books in this country. The label "university press" is not sufficient to establish that it is engaged in any educational activities. E F G  
The purpose of the existence of the assessee in this country as appears from the material on record, is possibly to earn profit. If the interpretation of the provision in section 10(22) of the Act as urged on behalf of the assessee is accepted the provision will be exposed to challenge on the ground of being irrational and therefore arbitrary. Then the question will arise for what purpose H

A is this exemption from tax extended to the assessee? How is it different from the large number of such establishments engaged in the business of printing, publishing and selling of books.

B In *State of Tamil Nadu v. Kodaikanal Motor Union (P) Ltd.*, [1963] 3 SCC 91 this Court referring to *K.P. Verghese v. I.T.O.*, [1981] 4 SCC 173 and *Luke v. Inland Revenue Commissioners*, (1964) 54 ITR 692 (IIL) observed:

C “The courts must always seek to find out the intention of the legislature. Though the courts must find out the intention of the statute from the language used, but language more often than not is an imperfect instrument of expression of human thought. As Lord Denning said it would be idle to expect every statutory provision to be drafted with divine prescience and perfect clarity. As Judge Learned Hand said, we must not make a fortress out of dictionary but remember that statutes must have some purpose or object, whose imaginative discovery is judicial craftsmanship. We need not always cling to literalness and should seek to endeavour to avoid an unjust or absurd result. We should not make a mockery of legislation. To make sense out of an unhappily worded provision, where the purpose is apparent to the judicial eye ‘some’ violence to language is permissible.”

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E In *Keshvaji Ravji and co. and others v. Commissioner of Income Tax*, [1990] 2 SCC 231 this Court held that in a taxation statute where literal interpretation leads to a result not intended to subserve the object of the legislation another construction in consonance with the object should be adopted. Therein referring to the words of Thomas M. Cooley in *Law of Taxation Vol. 2*, this Court observed : (at p. 243).

F “Artificial and unduly latitudinarian rules of construction which, with their general tendency to “give the tax payer the breaks”, are out of place where the legislation has a fiscal mission. Indeed, taxation has ceased to be regarded as an “impertinent intrusion into the sacred rights of private property” and it is now increasingly regarded as a potent fiscal tool of State policy to strike the required balance-required in a context of the felt needs of the times - between citizen’s claim to enjoyment of his property on the one hand and the need for an equitable distribution of the burdens of the community to sustain social services and purposes on the other. These words of Thomas M. Cooley in *Law of Taxation Vol. 2* are worth mentioning:

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“Artificial rules of construction has probably found more favour with the courts than they have ever deserved. Their application in legal controversies has often times been pushed to an extreme which has defeated the plain and manifest purpose in enacting the laws. Penal laws have sometimes had all their meaning construed away and in remedial laws, remedies have been found which the legislature never intended to give. Something akin to this has befallen the revenue laws....”

Income of the public exchequer and expenditure from it is a matter of considerable public importance. Citizens of this country, particularly the tax payers, are entitled to know the rational basis for granting exemption from income-tax to an assessee. In extending the exemption to Universities which exist solely for educational purposes and not for the purposes of profit, there is a rational basis and a valid reason. If establishments/institutions which are engaged solely in commercial activities are included in the expression ‘University’ and are treated at par for the purpose of granting exemption from the tax then it will amount to treating unequals as equals and, therefore, discriminatory. A provision of exemption from tax in a fiscal statute is to be strictly construed. Interpretation of such a statutory provision which does not stand the test of rationality and will lead to absurd results cannot be accepted.

Giving a purposeful interpretation of the provision it will be reasonable to hold that in order to be eligible to claim exemption from tax under section 10(22) of the Act the assessee has to establish that it is engaged in some educational activity in India and its existence in this country is not for profit only. This interpretation of section 10(22) neither causes violence to the language of the provision nor does it amount to re-writing the same. On the other hand it only gives a harmonious construction of the provision which subserves the object and purpose for which the provision is intended to serve.

For the reasons stated in the preceding paragraphs, I am persuaded to take the view that in the facts and circumstances of the case the High Court rightly held that the assessee, Oxford University Press, was not entitled to the exemption from the tax under Section 10(22) of the Act. The appeals are accordingly dismissed. There will however be no order for costs.

**Y.K. SABHARWAL, J.** The main question for consideration in this

A matter is about the interpretation of Clause (22) of Section 10 of the Income-tax Act, 1961 (for short 'the Act'). I have gone through the judgments proposed by Hon'ble Mr. Justice S.P. Bharucha and Hon'ble Mr. Justice D.P. Mohapatra. Justice Bharucha has come to the conclusion that the question must be answered in favour of the assessee and appeal be allowed. Justice Mohapatra, on the other hand, has expressed the view that the assessee is not entitled to the exemption from the tax under Section 10(22) of the Act. With utmost respect, I am unable to agree with the conclusion arrived at by Justice Bharucha. The reasons for my conclusion that the assessee is not entitled to the exemption under Section 10(22) and the appeals merit dismissal are set out hereinafter.

C The question referring to the High Court under Section 256(1) of the Act was :

D "Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that Oxford University Press, Bombay, which is part of Oxford University, is exempt under Section 10(22) of the Income-tax Act, 1961?"

E The High Court answered the question in the negative and in favour of the revenue. Resultantly, the assessee is in appeal before us. The facts have been incorporated in the judgments and of Justice Bharucha and Justice Mohapatra and I do not consider it necessary to again set out the facts.

F The finding of fact record by the Tribunal, which I will assume as correct, and on that basis examine the matter, is that the assessee, Oxford University Press, is a part of the Oxford University. The question referred to the High Court also proceeds on that basis. Further I will assume that the sole purpose of the University of Oxford is educational and not profit and the income of the Press, which is part of the university, is the income of the university. At the same time, it may also be noticed that the University of Oxford is not imparting any education or providing any educational facility in India: none argued it.

G Can exemption be denied to the assessee despite aforesaid findings and assumptions, is the question to be decided, the answer of which depends on the interpretation of Section 10(22) which reads as under :

H "10(22) Income not included in total income :—In computing the total

income of a previous year of any person, any income falling within any of the following clauses shall not be included. A

(22) any income of a university or other educational institution, existing solely for educational purposes and not for purposes of profit.”

The points to be considered are :

- (1) Whether the words ‘existing solely for educational purposes and not for purposes of profit’ qualify the words ‘other educational institution’ and not the words ‘a university’! B
- (2) Whether Section 10(22) of the Act applies only to an Indian university! C
- (3) Whether imparting of education in India is a *sine qua non* for claiming exemption under Section 10(22), by a university or other educational institutional! D

*Point No. 1 :*

The plain language of Clause (22) does not suggest that the words mentioned above qualify only other educational institution and not universities. Mr. Dastur though faintly suggested that it can be argued that these words do not qualify universities and qualify other educational institutions but learned counsel did not argue on that basis. Learned counsel assumed that the requirement of sole existence for educational purposes and not for purposes of profit applies to universities as well as to other educational institutions. Unfortunately, the existence of the so-called universities ostensibly for sole educational purposes and in reality for purposes of profit is not unknown in this country. The words to the similar effect have also been used in Clause (22A) of Section 10 of the Act in relation to a ‘hospital’ or ‘other institution for the reception and treatment of persons.....’. The words used in the similar setting in Clause (22A) are ‘existing solely for philanthropic purposes and not for purposes of profit’. There is no reason to restrict the application of these words only to ‘other institution’ and not to ‘a hospital’ by holding that these words do not qualify the words ‘a hospital’. E F G

The requirement of existing solely for educational purposes and not for purposes of profit will also be applicable to be universities and to this extent I am in respectful agreement with the reasoning of Brother Mohapatra. For the present purposes, however, as already said, I will assume that sole H

A purpose of University of Oxford is educational and not profit.

*Point No. 2 :*

B The contention urged on behalf of the revenue is that Clause (22) of Section 10 of the Act applies only to Indian universities. Section 10(22) per se does not stipulate that a university or other educational institution should be Indian. The only stipulation is the existence of 'a university or other educational institution solely for educational purposes and not for purposes of profit'. Mr. M.L. Verma, learned counsel for the revenue contends that the definition of 'university' as provided in Section 2(f) of the University Grants Commission Act, 1956, deserves to be read into Section 10(22) of the Act. C Section 2(f) of the University Grants Commission Act, 1956 reads as under:

D "‘University’ means a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concerned, be recognised by the Commission in accordance with the regulations made in this behalf under this Act."

E It is not permissible to read the aforesaid definition in Section 10(22) of the Act. Further if we accept the contention of Mr. Verma that 'a university' to claim the benefit of exemption under Section 10(22) has to be Indian, what would be the position of 'other educational institution'. It would be absurd situation where 'a university' to claim benefit of exemption under Section 10(22) will have to be Indian whereas 'other educational institution' to claim the said benefit need not be so.

F Let me also examine the contention of Mr. Verma from another angle. The acceptance of the contention of learned counsel would mean that a 'a university' to claim the benefit of exemption under Section 10(22) ought to be established, constituted or set up in India. The words 'constituted in India', 'set up in India' and 'established in India' have been used in Clause (20A), G (22B) and (23) of Section 10. The relevant portions of these provisions read as under :

H "10(20A) any income of an authority constituted in India by or under any law enacted either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both:

10(22B) any income of such news agency set up in India solely for collection and distribution of news as the Central Government may, by notification in the Official Gazette, specify in this behalf: A

Provided that the news agency applies its income or accumulates it for application solely for collection and distribution of news and does not distribute its income in any manner to its members. B

Provided further that any notification issued by the Central Government under this clause shall, at any one time, have effect for such assessment year or years, not exceeding three assessment years (including an assessment year or years commencing before the date on which such notification is issued) as may be specified in the notification; C

10(23) any income of an association or institution established in India which may be notified by the Central Government in the Official Gazette having regard to the fact that the association or institution has as its object the control, supervision, regulation or encouragement in India of the games of cricket, hockey, football, tennis or such other games or sports as the Central Government may, by notification in the official Gazette, specify in this behalf.....” D

From the above provisions, it is evident that wherever the constitution, setting up or establishment ‘in India’, as the case may be, was intended by the legislature, it said so. The legislature did not say that in relation to Clause (22) of Section 10 of the Act. It is thus evident that the establishment, constitution or setting up of ‘a university or other educational institution’ in India was not intended by the legislature. Thus the contention that Section 10(22) applies only to Indian universities cannot be accepted; it applies to all universities subject to fulfilment of other requirements of the section. E F

*Point No. 3 :*

This is the key question involved in the case. Its answer would depend upon the interpretation of Section 10(22) of the Act. Would it be permissible to read into Clause (22) of Section 10 words which, as such, are not incorporated therein with a view to come to the conclusion that imparting of education or providing other educational facilities in India is implied in the provision, is the question? Can it be said from the language of Section 10(22), that legislature intended that even if neither education is imparted nor any other educational facility is provided by a university or other institution in India, it would still G H

A be entitled to exemption of tax? Further, the aspect to be considered is the effect of use of the words 'in India' in relation to constitution of an authority as in Section 10(22A), setting up of news agencies as in Section 10(22B) and establishment of an association or institution as in Section 10(23) of the Act.

B The absence of the words 'in India' in Section 10(22) only leads to a conclusion that 'a university or other educational institution' need not be constituted, set up or established in India to claim the benefit of exemption. It is not possible to infer anything more than this. While dealing with Point No. 2, I have already said that Section 10(22) of the Act applies not only to Indian universities but to other universities as well. Therefore, the constitution, setting up or establishment of a university in India to claim benefit of exemption under Section 10(22) is not necessary but that does not lead to the conclusion that imparting of education or providing any educational facilities in India is also not necessary for such a university to claim the benefit of exemption.

D I have no difficulty in accepting the contention of Mr. Dastur, learned counsel for the appellant, that for the purposes of claiming exemption under clause (22) of Section 10, source of income is not relevant and, therefore, the question whether income of press is from sale and printing of books, is of no consequence and on that ground exemption cannot be denied to the appellant. Mr. Dastur has also relied upon the decision of this Court in *Orissa State Warehousing Corporation v. Commissioner of Income-tax*, (1999) 237 ITR 589. In this case the question involved was about the interpretation of Clause (29) of Section 10 of the Act. The assessee was in appeal before this Court against the decision of the High Court opining that the Tribunal was not justified in holding that the interest received by the assessee from the banks on fixed deposits was exempt under Section 10(29) of the Act. The contention urged on behalf of assessee—Warehousing Corporation was that regard being had to Section 16 and 24 of the Warehousing Corporations Act, 1962, all money coming in the hands of the Corporation have to be deposited in the bank account maintained by the Corporation and the same being a statutory obligation, the question of income, therefore, cannot but be termed to be a part of the functioning of the unit and as such exempt under Section 10(29) Rejecting the contention, this Court said:

H "Having due regard to the language used, the question of exemption would arise pertaining to that part of the income only

which arises or is derived from the letting of godowns or the warehouses and for the purposes specified in Section 10(29) of the Act-as notified above. The statute has been rather categorical and restrictive in the matter of grant of exemption : storage, processing or facilitating the marketing of the commodities are definitely regarded as three different forms of activities which are entitled to exemption in the event of there being any income therefrom. We do land our concurrence to the view expressed by the Madhya Pradesh High Court and record that the event the letting of godowns or warehouses is for any other purpose or if income is derived from any other source, then and in that event such a income cannot possibly come within the ambit of Section 10(29) of the Act and is thus not exempt from tax. The facts in issue pertaining to the interest income on fixed deposit or ascribing the activities of the assessee being termed to be one integrated activity does not and cannot arise. Mr. C.S. Vaidyanathan, Addl. Solicitor General, rightly contended that the language being clear and there being no ambiguity, the question of there being any integrated activity and reading the same into the statutes would be a violent departure from the intent of the legislature.”

After considering some of the decisions, pertaining to the interpretation of the fiscal statutes, it was said :

“In fine thus, a fiscal statute shall have 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 the natural and ordinary meaning to the words used by the Legislature and the court ought not, under any circumstances, to substitute its own impression and ideas in place of the legislative intent as is available from a plain reading of the statutory provisions.”

Mr. Dastur also brought to notice the decision in *Commissioner of Income-tax v. Gujarat State Warehousing Corporation Ltd.*, (2000) 245 ITR 1, referring the case of *Orissa State Warehousing Corporation* to a larger Bench. For the present purposes, however, the decisions relevant to be considered are those which examined, in particular, the fiscal provisions from the angle of ambiguity and the absurd results that may follow, if literal interpretation is adopted. The case of *Orissa State Warehousing Corporation* does not fall in that category.

A In *K.P. Varghese v. Income Tax Officer, Ernakulam & Anr.*, [1981] 4 SCC 173, Section 52(2) of the Act, the interpretation whereof came up for consideration was as under :

B “52(2) Without prejudice to the provisions of sub-section (1), if in the opinion of the Income Tax Officer the fair market value of a capital asset transferred by an assessee as on the date of the transfer exceeds the full value of the consideration declared by the assessee in respect of the transfer of such capital asset by an amount of not less than 15 per cent of the value declared, the full value of the consideration for such capital asset shall, with the previous approval of the  
C Inspecting Assistant Commissioner, be taken to be its fair market value on the date of the transfer.”

The brief facts were these:

D The assessee was the owner of a house which he had purchased in 1958 for Rs. 16,500. On December 25, 1965 the assessee sold the house for the same price of Rs. 16,500 to his daughter-in-law and five of his children. The assessment of assessee in respect of the assessment year 1966-67 was completed in normal course and in this assessment no amount was included by way of capital gains in respect of the transfer of the house since the house  
E was sold at the same price at which it was purchased and no capital gains accrued or arose to him as a result of the transfer. On April 4, 1968, however, the Income-tax Officer issued a notice under Section 148 of the Act seeking to reopen the assessment of the assessee for the assessment year 1966-67. The Income-tax Officer proposed to fix the fair market value of the house sold by the assessee on 25th December, 1955 at Rs. 65,000 as against the  
F consideration of Rs. 16,500 for which the house was sold and assessed the difference of Rs. 48,500 as capital gains in the hands of the assessee. The Income-tax Officer rested his decision to assess the sum of Rs. 48,000 to tax on Section 52(2) taking the view that the said section did not required as a condition precedent, that there should be understatement of consideration in respect of the transfer and it was enough to attract the applicability of Section  
G 52(2) if the fair market value of the property as on the date of the transfer exceeded the full value of the consideration declared by the assessee by an amount of not less than 15% of the value so declared, which was indisputably the position. The Full Bench by a majority decision did not accept the contention of the assessee that the understatement of consideration in respect  
H of the transfer was a necessary condition for attracting the applicability of

Section 52(2). The case proceeded on the basis that admittedly there was no understatement of consideration and it was a perfectly *bona fide* transaction. The contention of the revenue was not that the consideration paid was more than the stated consideration of Rs. 16,500. The contention was that the payment of consideration was not a relevant consideration for attracting Section 52(2) and what was relevant was only the fair market value of a capital asset at the time of the transfer which was found as Rs. 65,000 and, therefore, as on the date of the transfer, it exceeded the full value of the consideration declared by the assessee in respect of the transfer of such capital asset by an amount of not less than 15%.

On the aspect of interpretation of Section 52(2) the contention of the revenue which found favour with the Full Bench of the Kerala High Court was that on a plain and natural construction the only condition for attracting the applicability of the said provision is that the fair market value of the capital asset transferred by the assessee as on the date of the transfer exceeds the full value of the consideration declared by the assessee in respect of the transfer by an amount of not less than 15% of the value so declared. Once the Income-tax Officer is satisfied that this condition exists it can proceed to invoke the provisions in Section 52 sub-section (2) and take the fair market value of the asset transferred by the assessee as on the date of the transfer as representing the full value of the consideration for the transfer of the capital asset and compute the capital gains on that basis. The revenue contended that no more is necessary to be proved and to introduce any further condition such as understatement of consideration in respect of the transfer would be to read into the statutory provisions something which is not there; Indeed it would amount to rewriting the section. The argument was based on a strictly literal reading of Section 52(2).

This Court noticed the basic principle of interpretation of statutory provisions. Noticing the words of Judge Learned Hand, it was said that the task of interpretation of a statutory enactment is not a mechanical task. It is more than a mere reading of mathematical formulae because few words possess the precision of mathematical symbols. We must not adopt a strictly literal interpretation of Section 52(2) but construe its language having regard to the object and the purpose which the legislature had in view in enacting the provision and in the context of the setting in which it occurs. The literal construction would lead to manifestly unreasonable and absurd consequences. It is well recognised rule of construction that a statutory provision must be so construed if possible that absurdity and mischief may be avoided. It was

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A held that construction suggested on behalf of the revenue would lead to a wholly unreasonable result which could never have been intended by the legislature. It was said that the literalness in the interpretation of Section 52(2) must be eschewed and the court should try to arrive at an interpretation which avoids the absurdity and the mischief and makes the provision rational, sensible, unless of course, the hands of the court are tied and it cannot find any escape from the tyranny of literal interpretation. It is said that it is now well-settled rule of construction that where the plain literal interpretation of a statutory provision produces a manifestly absurd and unjust result which could never have been intended by the legislature, the court may modify the language used by the legislature or even 'do some violence' to it, so as to achieve the obvious intention of the legislature and produce a rational construction. In such a case the court may read into the statutory provision a condition which though not expressed, is implicit in construing the basic assumption underlying the statutory provision. Bearing in view these principles the court held that on a fair and reasonable construction of Section 52(2) the court would read into it a condition that it would apply only where the consideration for the transfer is understated or in other words, the assessee has actually received a larger consideration for the transfer than what is declared in the instrument of transfer and it would have no application in case of a *bona fide* transaction where the full value of the consideration of transaction is correctly declared by the assessee. Thus, a condition though not expressed, was read into Section 52(2) constituting the basic assumption underlying the said sub-section.

In *Commissioner of Income Tax, Bangalore v. J.H. Gotla, Yadagiri*, [1985] 4 SCC 343, facts in brief were that the assessee, an individual, was carrying on business in purchase and sale of groundnut oil and was also running an oil mill. He was also an abkari contractor. On June 1, 1957, he gifted away a part of the oil mill machinery, viz., a solvent extraction plant, to his wife and three minor children. A firm was constituted by the assessee's wife and another person to the profits of which the three minor sons of the assessee were also admitted. The mill premises as well as the remaining machinery of the assessee were leased out to this firm which carried on the business of the manufacture and sale of ground-nut oil. The assessee had also entered into an agreement with the firm under which certain services were rendered to the firm by way of management. The assessee was entitled to get commission at the stipulated rates on the purchase of oil cake and sale of de-oiled cake made by the firm. The assessee himself continued to carry on business in purchase and sale of gount-nut cake and oil on a small scale. He

also continued his business as abkari contractor. The assessee incurred huge losses in his individual business in the earlier years which were being carried forward from year to year upto the assessment year 1958-59. The share income of assessee's wife and minor children from the firm was included in the computation of the total income of the assessee under Section 16(3) of the Act for the assessment year 1959-60. The assessee claimed set off of the loss carried forward from the assessment year 1958-59 against the profits of his own business as also the share income of his wife and minor children. The Income Tax Officer rejected the claim for set off insofar as it related to the share income of his wife and minor children. In appeal, the Appellate Assistant Commissioner allowed the set off claimed on the ground that the assessee himself is deemed to be carrying on the business from which the share income was derived by his wife and minor children. The Tribunal in the appeal filed by the revenue, however, held that the assessee was not carrying on the business of manufacture and sale of oil during the year under appeal; he was continuing to carry on the business of oil in general; that the firm did carry on the same business as was hitherto carried on by the assessee but there was no connection between the assessee and the business carried on by the firm and they were two different entities and, as such, the assessee could not be said to carrying on the business out of which the share income of the wife and minor children arose. Accordingly, the Tribunal held that the assessee was not entitled under Section 24(2) of the Act to claim set off of his losses against the income of his wife and minor children. The High Court on reference held that the share income of the assessee's wife and minor children included in the assessee's total income under Section 16(3) of the Act should be recorded as business income derived from the business carried on by the assessee and in that view of the matter, the assessee was entitled to set off his losses carried forward from the previous year. The question was thus answered by the High Court in the affirmative and in favour of the assessee. The revenue came up with the appeal before this Court. The main question for consideration was the interpretation of Section 16(3). The said provision as noticed in *Gotla's* case reads as under :

"16. *Exemptions and exclusions in determining the total income.*—  
 (3) In computing the total income of any individual for the purpose of assessment, there shall be included :

(a) so much of the income of a wife or minor child of such individual as arises directly or indirectly—

(i) from the membership of the wife in a firm of which her

- A husband is a partner;
- (ii) from the admission of the minor to the benefits of partnership in a firm of which such individual is a partner;
- B (iii) from assets transferred directly or indirectly to the wife by the husband otherwise than for adequate consideration or in connection with an agreement to live apart; or
- (iv) from assets transferred directly or indirectly to the minor child, not being a married daughter, by such individual or otherwise than for adequate consideration.”
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Eschewing the literal interpretation, this Court held that where Section 16(3) of the Act operates, the profit or loss from a business of the wife or minor child included in the total income of the assessee should be treated as the profit or loss from a “business carried on by him” for the purposes of carrying forward and set off of such losses under Section 24(2) of the Act. The relevant provisions of sub-section (2) of Section 24 material for the purpose of *Golla's case* as reproduced therein are as under :—

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“Where any assessee sustains a loss of profits or gains in any year, being a previous year not earlier than the previous year for the assessment for the year ending on March 31, 1940, in any business, profession or vocation, and the loss cannot be wholly set off under sub-section (1), so much of the loss as is not so set off or the whole loss where the assessee had no other head of income shall be carried forward to the following year, and

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(i) where the loss was sustained by him in a business consisting of speculative transactions, it shall be set off only against the profits and gains, if any, of any business in speculative transactions carried on by him in that year;

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(ii) where the loss was sustained by him in any other business, profession or vocation, it shall be set off against the profits and gains, if any, of any business, profession or vocation carried on by him in that year : provided that the business, profession or vocation in which the loss was originally sustained continued to be carried on by him in that year; and

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(iii) if the loss in either case cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following year and so on but no loss shall be so carried forward for more than eight years.”

Interpreting the aforesaid provisions, it was said:

“We have noted the object of Section 16(3) of the Act which has to be read in conjunction with Section 24(2) in this case for the present purpose. If the purpose of a particular provision is easily discernible from the whole scheme of the Act which in this case is, to counteract the effect of the transfer of assets so far as computation of income of the assessee is concerned then bearing that purpose in mind, we should find out the intention from the language used by the Legislature and if strict literal construction leads to an absurd result i.e., result not intended to be subserved by the object of the legislation found in the manner indicated before, the if another construction is possible apart from strict literal construction then that construction should be preferred to the strict literal construction. Though equity and taxation are often strangers, attempts should be made that these do not remain always so and if a construction results in equity rather than in injustice, then such construction should be preferred to the literal construction. Furthermore, in the instant case we are dealing with an artificial liability created for counteracting the effect only of attempts by the assessee to reduce tax liability by transfer. It has also been noted how for various purposes the business from which profit is included or loss is set off is treated in various situations as assessee’s income. The scheme of the Act as worked out has been noted before.

In view of the aforesaid and in view of the attitude of the law-makers in dealing with this problem as evidenced by the amendment and in the circular originally issued prior thereto and bearing in mind that under the scheme of the act where the wife or minor child carries on a running business, the right to carry forward the loss in the running business would be available to the wife or minor child if they themselves were assessed but the right would be completely lost if the individual in whose total income the loss is to be included is not permitted to carry forward the loss under Section 24(2); since that would be the result of the strict literal construction it is apparent that that could not have been the intent of the Parliament. Therefore,

A where Section 16(3) of the Act operates, the profits or loss from a business of the wife or minor child included in the total income of the assessee should be treated as the profit or loss from a "business carried on by him" for the purpose of carrying forward and set off of such loss under Section 24(2) of the Act."

B Referring to *K.P. Varghese's case* (supra) it was said :

C "Where the plain literal interpretation of a statutory provision produces a manifestly unjust result which could never have been intended by the Legislature, the Court might modify the language used by the Legislature so as to achieve the intention of the Legislature and produce a rational construction. The task of interpretation of a statutory provision is an attempt to discover the intention of the legislature from the language used. It is necessary to remember that language is at best an imperfect instrument for the expression of human intention. It is well to remember the warning administered by D Judge Learned Hand that one should not make a fortress out of dictionary but remember that statutes always have some purpose or object to accomplish and sympathetic and imaginative discovery is the surest guide to their meaning."

E In *State of Tamil Nadu v. Kodaikanal Motor Union (P) Ltd.*, [1986] 3 SCC 91, It was again said :

F "As Lord Denning has said, the Judge has to perform the constructive task of finding the intention of Parliament, and he must supplement the written word so as to give 'force and life' to the intention of the legislature. Primarily, it is always the duty to find out the intention of the legislature and if it can be done without doing much violence to the language as we find it can be done in this case, though as we have noted that when the purpose was writ large in the scheme of the section 'some violence' is permissible, here we are of the opinion that G the construction put by the assessee cannot be accepted and the contention urged on behalf of the revenue in this case should be preferred."

H The imparting of education is service to the society. From the language of Section 10(22), it does not appear that without any such service in India, the legislature intended to exempt the total income of the assessee. I do not

think that from the language of Section 10(22), it can be said that the hands of the Court are so tied that it cannot read into this provision, the requirement of imparting education or some other educational activity in this country. A university or other educational institution which exists solely for educational purposes and not for purposes of profit though not established in India but having some educational activity in this country alone would be entitled to claim exemption. Such a university or educational institution having educational activity in India but being established or constituted in some other country would not be denied the benefit of exemption only on the ground it has not been established or constituted in India. The imparting of education or existence of educational activity in India is the basic assumption of Section 10(22) and the place of the establishment or constitution of a university or other educational institution is of no consequence. Similar phraseology has also been used in Clause (22A) in relation to the income of a hospital or other institution for the reception and treatment of the ailments referred to in the said provision. The requirement there is about existence solely for philanthropic purposes and not for the purposes of profit, Clause (22A) of Section 10 reads as under :

“(22A) any income of a hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit;”

If the contention urged on behalf of the assessee is accepted, it would result in an university or other educational institution (clause 22) or hospital or other institution as contemplated by Clause (22A), without providing in India any educational or philanthropic activity, as the case may be, claiming the benefit of exemption on the ground that such a service is being provided in some part of the world though in India such body is engaged itself or through its branch in an activity akin to a business or profit making activity. The existence of activity, which is in the nature of service to society in India is implicit in Clauses (22) and (22A) of Section 10 of the Act. Further, under Clause (29) though the words ‘Indian law’ are not used, but to claim exemption the authority therein has to be constituted under any law for the time being in force in ‘India’. The word ‘India’ in relation to law is implicit. It would be absurd if a person is allowed to claim exemption by saying that it is constituted under law in force in some other country and there is no requirement under Section 10(29) that it should be constituted under any law for the time being

A in force in India. Clause (29) of Section 10 reads as under :

“(29) in the case of an authority constituted under any law for the time being in force for the marketing of commodities, any income derived from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities.”

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Thus, it is evident that for the purposes of granting exemption the legislature assumed the existence of educational activities in India by a university or other educational institution but did not want to restrict the exemption only to such university or educational institution which is

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established or constituted or set up in India. That seems to be the reason for not placing limitation as to the setting up of such a body in India. In this view a foreign university would also be entitled to claim exemption so long as it was imparting education in India. The basic requirement of the section is the existence of ‘education purpose’ which, in other words, means the imparting of education which has to be in India. A university established in a foreign

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country is not excluded from the ambit of Section 10(22) in case it is imparting education in India or has some educational activity in India. It is not the case of the assessee nor is there any such finding that the assessee is imparting any education or has any educational activity in India. In this view the assessee is not entitled to claim exemption. Any other interpretation would be absurd and manifestly unjust. The absence of word ‘India’ in this provision

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is inconsequential. It has to be read into Section 10(22). The literal construction would lead to manifestly unreasonable and absurd consequences as indicated above.

F For the aforesaid reasons, I concur with the conclusion reached by Hon’ble Mr. Justice D.P. Mohapatra that the assessee is not entitled to exemption as held by the High Court.

In this view, the appeals deserve to be dismissed.

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**BHARUCHA, J.** These appeals by special leave are filed by the assessee. They impugn the correctness of the judgment and order of the High Court at Bombay dated 21st December, 1995 in respect of the Assessment Year 1976-77 and subsequent orders of the High Court following the aforesaid judgment for the Assessment Years 1972-73, 1973-74, 1974-75, 1977-78, 1979-80 & 1983-84. The question that arose for consideration in references to the High Court

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under Section 256(1) of the Income Tax Act, 1961 read:

“Whether on the facts and in the circumstances of the case the Tribunal was justified in holding that Oxford University Press, Bombay, which is part of Oxford University, is exempt under section 10(22) of the Income Tax Act, 1961 ?” A

The question was answered by the High Court in the negative and in favour of the Revenue. B

The assessee is a branch of the Oxford University Press, which, as the question itself notes, is a part of the University of Oxford in the United Kingdom. The assessee publishes books and carries on similar business in India. It was treated as a non resident company under the terms of a Notification issued by the Central Board of Revenue on 31st July, 1954 at its request from the Assessment Year 1952-53 onwards. For the Assessment Year 1976-77 the assessee returned an income of Rs. 19.94 lakhs, but, in the course of the assessment proceedings before the Income-tax Officer, it claimed that, as it was a branch of the University of Oxford, the same was exempt from the payment of income tax by virtue of the provisions of Section 10, clause (22) of the Income Tax Act, 1961. The Income-tax Officer rejected the contention and brought the income to tax. The Commissioner (Appeals), in the appeal filed by the assessee, overturned the assessment by the Income-tax Officer. Aggrieved by the order of the Commissioner (Appeals), the Revenue approached the Income Tax Appellate Tribunal. The Tribunal dismissed the appeal. Arising out of the judgment and order of the Tribunal, the question aforesaid was referred to the High Court. C  
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The High Court stated in the judgment and order under challenge that, admittedly, the assessee was the Oxford University Press and not the University of Oxford, but there was a finding of the Tribunal to the effect that the assessee was a part of the University of Oxford. In its view, what was necessary for availing the benefit of the exemption under Section 10(22) was that the income should be the income of an University or an educational institution existing solely for educational purposes and not for the purposes of profit. In the context and setting of clause (22), the word “existing” in the expression “existing solely for educational purposes and not for the purposes of profit” meant and referred to the existence of such University or institution solely for educational purposes in India. In other words, a University or an educational institution, whether established in India or abroad, had to retain the character of a University or an educational institution in India, and the H

A income in respect of which the exemption was claimed had to be income derived by it in its capacity as a University or an educational institution. If it did not carry on its activities as a University or educational institution in India, it could not be regarded as a University or educational institution existing solely for educational purposes and, hence, the income derived by it from any other activities would not qualify for exemption under Section

B 10(22). The assessee was the Oxford University Press and not the University of Oxford. The University of Oxford did not exist in India nor did it carry on the activities of a University in India. What existed in India was the Oxford University Press. The only activity carried on by the Press, which was the assessee, in India was the activity of printing and publishing books and

C selling them as well as publications of other publishers to earn profit. This activity amounted to carrying on the business of selling or supplying books for profit. Income made therefrom could not be regarded as the income of a University existing solely for educational purposes merely because the assessee claimed to be a part of the University of Oxford, which did not exist in India. The High Court added, "If it does not exist as a University or an educational

D institution solely for such purposes and does not carry on the primary activities of a University or educational institution but merely runs the business of press in India for printing and publishing books and selling and supplying the same as well as books published by other publishers for the purpose of profit, it cannot be held to be a "University" within the meaning of section

E 10(22) of the Act merely by reason of the fact that it is run by a University existing outside India for educational purposes or that it is a part of such University. .... If the case of the assessee is that in the true sense of the term it is a part and parcel of the Oxford University and has no independent existence of its own and all its income is the income of the said University, the "assessee" for the purpose of the Income-tax Act would have been the

F "Oxford University" and not the "Press". The Press, as an assessee might have been entitled to claim exemption in respect of its income under Section 10(22) of the Act if it could establish that the income is the income of the Oxford University which existed solely for educational purposes." On this basis, the High Court held against the assessee.

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Section 10, clause (22) reads thus:

"10. *Income not included in total income.*

H In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included -

(22) any income of a university or other educational institution, existing solely for educational purposes and not for purposes of profit.” A

By reason of Section 10(22), any income of a University or other educational institution, existing solely for educational purposes and not for purposes of profit, is not includible in its total income. A University is the creation of a Charter or a statute. It is created exclusively for educational purposes, and not for profit. An educational institution, while it may impart education, may yet have a profit motive. Strictly speaking, therefore, the phrase “existing solely for educational purposes and not for the purposes of profit” in clause (22) qualifies only the words “other educational institution” and not the words “a University”. But this strict interpretation is of no great account for the purposes of this case, and the expression may be read to qualify both “a University” and “other educational institution”. For the purposes of obtaining the exemption under clause (22) the University must be “existing solely for educational purposes and not for the purposes of profit”. What this means is that the sole purpose of a University must be to impart education and not at all to make profit. The word “existing” in the context means “being”. It has no locational sense. The clause does not say “existing in India” and the words “in India” cannot be read into it. The clause does not require that the University must impart education in India before it can qualify for exemption thereunder. The High Court was in error in interpreting the clause differently. B C D E

The High Court failed to appreciate that the assessee was a part of the University of Oxford, as the Tribunal had found and the question before it indicated, and that the income that was under consideration for assessment was, therefore, the income of the University of Oxford. The “person” that was being taxed was not and could not be a branch of the University of Oxford; it could only be the University of Oxford. That the University of Oxford is a hallowed institution of learning that exists, or is, solely for educational purposes is not, and cannot reasonably be, in dispute. That the income is derived by the printing, publishing and selling of books has no relevance because it is still the income of an University that exists for educational purposes. F G

It is trite law and now needs no authority that a taxing statute must be read as it stands: no words may be added, no words subtracted. Further, learned counsel for the assessee was right in pointing out that where Parliament had intended the exemption under Section 10 to be limited in any H

A way to the territory of India it had been assiduous in so stating; (see, for example, clauses 20A, 22B, 23, 24, 26 and 29 thereof).

It was submitted by learned counsel for the Revenue that the word “University” used in Section 10(22) should be read in the manner in which it was defined in Section 2(f) of the University Grants Commission Act, 1956, that is to say, to mean a University established or incorporated by or under a Central Act, a Provincial Act or a State Act; in other words, to mean an Indian University. It is not permissible to read the definition of a word in one Act into another Act unless the latter Act so requires. It is all the more difficult when the University Grants Commission Act can by its very purpose, namely, to make provision for the coordination and determination of standards in Universities and for that purpose to establish a University Grants Commission, apply only to Universities in India. Further, a clause identical to clause (22) was inserted into Indian Income Tax Act, 1922 by a notification dated 21st March, 1922 and that clause in the 1922 Act was in terms brought into the 1962 Act. A definition in an Act of 1956 cannot be read to limit the scope of a word first used in an Act of 1922 and then incorporated in an Act of 1962.

Learned counsel for the Revenue then drew attention to Section 10(22A), which reads thus :

“(22A) - any income of a hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit.”

In the submission of learned counsel for the Revenue clauses (22) and (22A) could not have been intended to grant the exemption for the benefit of children and the sick and infirm outside India. Parliament, in his submission, would not forego tax revenue for the benefit of educating people in the University of Oxford in the United Kingdom. A construction that would enable this to happen was, he contended, manifestly unreasonable and absurd and could never have been intended. It was, therefore, necessary to read clause (22) as applying only to Universities and educational institutions which existed in India or, at least, imparted education in India. Our attention was drawn by learned counsel for the Revenue to the judgments of this Court in *K.P. Varghese v. Income Tax Officer, Ernakulam & Anr.*, [1981] 4 SCC 173 and *Commissioner of Income Tax, Bangalore v. J.H. Gotla, Yadagiri*, [1985]

4 SCC 343, in support of the contention.

In *Varghese's* case, the assessee owned a house which he had purchased in 1958 for the price of Rs. 16,500. In 1965 he sold the house for the same price of Rs. 16,500 to his daughter-in-law and five children. It was not disputed that this sale was an honest and *bona fide* transaction and that the consideration was in fact Rs. 16,500. However, after completion of the assessment for the year 1966-67 in the normal course in this manner, the I.T.O. issued a notice to re-open the assessment on the basis that Section 52(2) of the 1962 Act was attracted because the fair market value of the property as on the date of the transfer exceeded the consideration of Rs. 16,500 by not less than 15 per cent. The I.T.O. proposed, accordingly, to fix the fair market value of the house at Rs. 65,000. and assess the difference of Rs. 48,500 as capital gains in the hands of the assessee. The assessee filed a writ petition. It was allowed, but, in appeal, the Full Bench of the Kerala High Court accepted as correct the ITO's view. This Court reversed the Full Bench decision, and it said that if sub-section (2) of Section 52 was literally construed, as applying to cases where the consideration in respect of the transfer was correctly declared and there was no understatement of consideration, it would result in amounts being taxed which had neither accrued to the assessee nor were received by him and "which from no view point can be rationally construed as capital gains or any other type of income. It is a well settled rule of construction that the Court should as far as possible avoid that construction which attributes irrationality to the legislature." It was also found that, so construed, sub-section (2) was violative of the Constitution and the Court "must obviously prefer a construction which renders the statutory provision constitutionally valid rather than that makes it void." The Court said in the course of the judgment, "It is now a well settled rule of construction that where the plain literal interpretation of a statutory provision produces a manifestly absurd and unjust result which could never have been intended by the legislature, the Court may modify the language used by the legislature or even 'do some violence' to it, so as to achieve the obvious intention of the legislature and produce a rational construction". Accordingly, the Court read into Section 52(2) the condition that it would apply only where the consideration for transfer was understated and it would have no application in the case of a *bona fide* transaction when the full value of the consideration was correctly declared by the assessee.

In *Golla's case*, a strict and literal construction of Section 16(3) read with Section 24(2) of the 1962 Act led to the conclusion that where the wife

A or minor child were carrying on a business, while the right to carry forward the loss in the business would be available to the wife or the minor child if they themselves were assessed, the right would be lost if the individual in whose total income the loss was to be included was not permitted to carry forward the loss under Section 24(2). The Court held that this could not have been the intention of Parliament. If a strict literal construction led to an absurd result, i.e., a result not intended to be subserved by the object of the legislation, and if another construction was possible apart from the strict literal construction, then that construction should be preferred to the strict literal construction. The Court, therefore, held, on a consideration of the scheme of the Act and the relevant provisions, that the income of the wife and the minor children included in the assessee's total income under Section 16(3) should be regarded as business income derived from business carried on by the assessee and, in that view, the assessee was entitled to set off his loss carried forward from the previous years.

D Now, learned counsel's submission is that Parliament could never have intended to forego tax revenue for the purpose of educating people outside India; this was manifestly unreasonable and absurd and, therefore, clause (22) should be so read as applying to Universities established in India, or at least providing educational facilities in India. I find no unjustness, unreasonableness, irrationality or absurdity in the provisions of clause (22).

E It does not strike me as being beyond the bounds of possibility that Parliament should be willing to forego a very small percentage of tax revenue for the purposes of education, even though it might mean the education of people outside India, if that education was being provided by a University or other educational institution whose sole purpose was to provide education and not at all to make a profit. I do not think Parliament could not possibly have meant what clause (22) so plainly says. I see, therefore, no reason to read clause (22) in a fashion that is not literal.

G It should be noticed that clause (22A), which also gives an exemption without any limitation as to location, was introduced into Section 10 in 1970. It cannot be that Parliament yet again failed to express its true intentment. If Parliament had meant to provide an exemption with a locational limitation in clause (22A) it would have made it clear, and it would have amended clause (22).

H The judgment and order under challenge cannot stand, and the question quoted above must be answered in the affirmative and in favour of the

assessee. The appeals are allowed accordingly. No order as to costs.

A

The view of the conclusions reached by the majority, the appeals are dismissed.

No order as to costs.

ORDER

B

In view of the conclusions reached by the majority, the appeals are dismissed.  
No order as to costs.

B.S.

Appeals dismissed.