

A COMMISSIONER OF INCOME TAX(TDS)
KANPUR AND ANR.

v.

B CANARA BANK
(Civil Appeal No. 6020 of 2018)

JULY 02, 2018

[A. K. SIKRI AND ASHOK BHUSHAN, JJ.]

C *Income Tax Act, 1961 – s.194A(3)(iii)(f) – Notification issued*
under – Payment of interest to State Industrial Development
Authority – Exemption from deduction of tax at source – Benefit of,
when available – New Okhla Industrial Development Authority
(NOIDA) constituted under the 1976 Act – Respondent-Bank paid
interest to NOIDA in form of FDs/Deposits, however, did not deduct
tax at source – Assessing Officer holding that the respondent was
D assessee in default, issued demand notice – Bank filed appeal before
Commissioner of Income Tax (Appeals) placing reliance upon
notification dtd. 22.10.1970 issued u/s.194A(3)(iii)(f) – Plea of
E appellant-Revenue that NOIDA is not entitled for the benefit of
notification dtd. 22.10.1970 as under the said notification only a
Corporation established by Central, State or Provincial Act is entitled
for the benefit, however, NOIDA is not established by the 1976 Act
rather it is established under the 1976 Act – Held: Section
194A(3)(iii) uses both the expressions “by or under” – In Dalco
Engineering case, Supreme Court held that the phrase established
F by or under the Act is a standard term used in several enactments to
denote a statutory corporation established or brought into existence
by or under the statute – Ratio laid down in Dalco Engineering case
fully covers the present case – Further, the composition of NOIDA
is statutorily provided by s.3 of 1976 Act itself, hence, it has been
G 22.10.1970 – High Court did not commit any error in dismissing
the appeal filed by the appellant – Uttar Pradesh Industrial Area
Development Act, 1976– s.3– State Financial Corporation Act,1951
– Interpretation of Statutes.

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Words & Phrases – ‘Corporation’, ‘Statutory Corporations’ and ‘Non-Statutory Corporations’ – Meaning of. A

Words & Phrases – Expression ‘by or under’ – Meaning of.

Dismissing the appeals, the Court

HELD: 1.1 A Corporation is an artificial being which is a legal person. It is a body/corporate established by an Act of Parliament or a Royal Charter. It possesses properties and rights which are conferred by the Charter constituting it expressly or incidentally. Corporations which are instrumentalities of the Government are subject to the limitation as contained in the Constitution. Whereas the statutory corporations owe their existence from “by or under” statute, the non-statutory bodies and corporations are not created by or under statute rather are governed by a statute. [Paras 12, 17][875-F-G; 879-H; 880-B] B
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“ESTABLISHED BY A CENTRAL, STATE OR PROVINCIAL ACT” D

1.2 Section 194A(3)(iii) clauses (b), (c) and (d) of the Income Tax Act, 1961 refer to expression “established”. In sub-clause (b) expression used is “established by or under a Central, State or Provincial Act”, in sub-clause (c) the expression used is “established under the Life Insurance Corporation Act” and in sub-clause (d) expression used is “established under the Unit Trust of India Act”. The Section thus uses both the expressions “by or under”. [Para 19][879-E-F] E

1.3 In Dalco Engineering case Supreme Court held that the phrase established by or under the Act is a standard term used in several enactments to denote a statutory corporation established or brought into existence by or under the statute. Referring to provisions of The State Financial Corporations Act, 1951 which provides for establishment of various financial corporations under the Act, it was held that such Financial Corporations are established by an Act or under an Act. On comparing the provisions of Section 3 of Uttar Pradesh Industrial Area Development Act, 1976 with those of The State Financial Corporations Act, 1951, it is clear that the establishment of Corporation in both the enactments is by a notification by State F
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A **Government.** In the present case, notification has been issued in exercise of power of Section 3 of 1976 Act and the Authority (NOIDA) has been constituted. The ratio laid down in *Dalco Engineering* that establishment of various financial corporations under State Financial Corporation Act, 1951 is establishment of a Corporation by an Act or under an Act, fully covers the present case and there is no doubt that the Authority (NOIDA) have been established by the 1976 Act and it is clearly covered by the Notification dated 22.10.1970. The very preamble of the 1976 Act reads “an Act to provide for the Constitution of an Authority for the development of certain areas in the State into industrial and urban township and for masses connected through with”. Further, the composition of the Authority (NOIDA) is statutorily provided by Section 3 of 1976 Act itself, hence, there is no denying that Authority (NOIDA) has been constituted by the Act itself. The High Court did not commit any error in dismissing the appeal filed by the Revenue. [Paras 23, 25, 28 and 30][881-D-E; 883-G-H; 885-E; 887-D-E]

Sukhdev Singh and Others v. Bhagatram Sardar Singh Raghuvanshi and Another (1975) 1 SCC 421 : [1975] 3 SCR 619 – followed.

E *S.S. Dhanoa vs. Municipal Corporation, Delhi and Others* (1981) 3 SCC 431 : [1981] 3 SCR 864; *Executive Committee of Vaish Degree College, Shamli and Others v. Lakshmi Narain and Others* (1976) 2 SCC 58 : [1976] 2 SCR 1006; *Dalco Engineering Private Limited v. Satish Prabhakar Padhye and Others* (2010) 4 SCC 378 : [2010] 4 SCR 15 – relied on.

F *RBI vs. Peerless General Finance & Investment Co. Ltd.* (1987) 1 SCC 424: [1987] 2 SCR 1; *Dartmouth College v. Woodward, NH 4 Wheat 518, 636:4 L Ed 629* – referred to.

G *Halsbury’s Laws of England Fifth Edition, Vol. 24* – referred to.

Case Law Reference

[1981] 3 SCR 864 relied on Para 14

[1987] 2 SCR 1 referred to Para 15

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[1975] 3 SCR 619 followed Para 16 A
[1976] 2 SCR 1006 relied on Para 20
[2010] 4 SCR 15 relied on Para 28

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6020
of 2018. B

From the Judgment and Order dated 04.04.2016 of the High Court
of Allahabad in ITA No. 64 of 2016.

WITH

C.A. Nos. 6064, 6056, 6058, 6055, 6060, 6057, 6054, 6066, 6065,
6059, 6053, 6052, 6051, 6063, 6062, 6061 of 2018, 5378, 5374 of 2017,
6023, 6021, 6031, 6025, 6022, 6034, 6027, 6048, 6026, 6028, 6032, 6029,
6036, 6024, 6033, 6039, 6038, 6037, 6046, 6043, 6040, 6030, 6045, 6042,
6041, 6047, 6049, 6044, 6035, 6050, 6069, 6068, 6067 and 6070 of 2018 C

K. Radhakrishnan, Balbir Singh, Adarsh B. Dial, Sr. Advs., H. R.
Rao, D. L. Chidananda, Arijit Prasad, Shekhar Vyas, Deepak Prakash, D
Mrs. Anil Katiyar, Jasmeet Singh, Naman Joshi, Ms. Ruhsheet J. Saluja,
Hemant Jain, S. N. Tayagrajan, R. S. Saluja, Maninder Singh, Ms. Rubal
Maini, Sandeep Chilana, Nitesh Shrivastava, Mohd. Raiz, Prabhu Dayal
Chilana, Ms. Seema Joshi, SARC & Associates, Ms. Ananya Datta
Majumdar, Rajiv Nanda, Ms. Sumati Anand, Pankaj Garg, Milind Garg, E
A. S. M. Tripathi, S. K. Jha, Mehvish Hameed, Suvidutt M. S., Ms. Arti
Singh, Ms. Pooja Singh, Mrs. Anil Katiyar, Ravi Prakash Mehrotra,
Debesh Panda, Neil Chatterjee, V. D. Verma, Ravindra Kumar, Ms.
Kavita Jha, Ms. Devika Jain, Debal Banerji, Ms. Meera Mathur, Advs.
for the appearing parties. F

The Judgment of the Court was delivered by

ASHOK BHUSHAN, J. 1. Leave granted.

2. These appeals question the Division Bench judgment dated
04.04.2016 of the Allahabad High Court, by which judgment Income
Tax Appeals filed by the Revenue has been dismissed affirming the
order of the Income Tax Appellate Tribunal. The common questions of
facts and law are involved in these appeals and it is sufficient to refer
the facts and pleadings in Civil Appeal No.... 2018 arising out of SLP(C)
3168 of 2017, Commissioner of Income Tax(TDS), Kanpur and Anr. vs. G

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A Canara Bank wherein the judgment of the High Court dated 04.04.2016 in ITA No. 64 of 2016 has been questioned.

3. The New Okhla Industrial Development Authority (NOIDA), hereinafter referred to as “Authority” has been constituted by Notification dated 17.04.1976 issued under Section 3 of the Uttar Pradesh Industrial Area Development Act, 1976 hereinafter referred to as “1976 Act”.
B The Canara Bank, respondent No. 3 is the banker of the Authority. The respondent Bank made a payment of Rupees Twenty Crores Ten Lakhs as interest to Authority in form of FDs/Deposits for the financial year 2005-06. The Canara Bank, however, did not deduct tax at source under
C Section 194A of the Income Tax Act, 1961 hereinafter referred to as “IT Act, 1961”.

4. Notices were issued by the appellant to Canara Bank asking for information pertaining to interest paid to the Authority on its deposits. Notices were also issued by the appellant to the Bank for showing cause for not deducting tax at source. A writ petition had been filed by the
D NOIDA being Writ Petition No.1338/2005 challenging the notices issued to the Authority as well as its bankers. Assessment proceeding could not proceed due to certain interim directions passed by the High Court in the above writ petition. The writ petition was ultimately dismissed by the
E High Court on 28.02.2011 holding that the Authority is not a local authority within the meaning of Section 10(20) of IT Act, 1961 and its income is not exempt from tax. The Assessing Officer thereafter proceeded to pass an order under Section 201(1)/201(1A) read with Section 194A of the IT Act, 1961 dated 28.02.2013.

5. Income Tax Authority held that the respondent Bank is assessee in default. The default was computed and demand notice as per Section
F 156 of the IT Act, 1961 was issued. Penalty proceeding was also separately initiated. The Canara Bank aggrieved by the order of the Assessing Officer dated 28.02.2013 filed an appeal before the Commissioner of Income Tax (Appeals). Before the Commissioner, the bank relied on
G Notification dated 22.10.1970 issued under Section 194A(3)(iii)(f) of the IT Act, 1961. The Appellate Authority vide its judgment dated 02.12.2013 allowed the appeal setting aside the order of the Assessing Officer. The Revenue aggrieved by the judgment of the Appellate Authority filed an appeal before the Income Tax Appellate Tribunal. The Tribunal also held that payment of interests by the banks to the

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State Industrial Development Authority does not require any deduction at source in terms of Section 194A(3)(iii)(f). A

6. The Revenue aggrieved by the order of the Tribunal filed an appeal under Section 260A of the Act before the High Court. The Division Bench of the High Court vide its judgment dated 04.04.2016 has dismissed the appeal. The Division Bench came to the following conclusions while dismissing the appeal: B

“We have, therefore, no manner of doubt from a reading of the provisions of the Industrial Area Development Act that the NOIDA has been constituted by the State Act and, therefore, entitled to exemption of payment of tax at source under section 194-A(1) of the Act. C

The decision of the Division Bench of this Court in New Okhla Industrial Development Authority (supra), on which reliance has been placed by learned counsel for the appellants, would, therefore, not come to the aid of the appellants as it was restricted to the issue as to whether NOIDA would be a local authority or not and did not deal with the issue involved in this appeal as to whether the NOIDA is a Corporation established by a State Act. D

We therefore, answer the question of law framed by us in negative and hold that NOIDA is a Corporation established by Uttar Pradesh Industrial Area Development Act, 1976. “ E

7. Shri K. Radhakrishnan, learned senior advocate appearing for the appellants challenging the Division Bench judgment of the High Court contends that Authority is not entitled for the benefit of Notification dated 22.10.1970 issued under Section 194A (3)(iii)(f). It is submitted that under the above notification only a Corporation established by Central, State or Provincial Act is entitled for the benefit. Authority is not a Corporation established by the State Act rather Authority is a Corporation which is established under 1976 Act. He submitted that there is a vast difference between a body established by an Act and a body established under an Act. The provisions of Section 194A have to be strictly construed and benefit can be extended only when a body falls expressly within the benefit of exemption. In the exceptions carved out under Section 194A(3) there is homogeneity in the group. The legislature when used a word with a limitation the same has to be read in the entire phrase and only such corporations are entitled for the exemption which are established H

A by a Central, State or Provincial Act. It is submitted that words have to be construed, in accordance with the intention and use of the word as per the Notification dated 22.10.1970, normally indicate that for purposes of claiming exemption the corporation has to be established by a Central, State or Provincial Act. The corporations established under an Act fall in a different category and are not entitled for exemption. He has submitted that CIT Appeals, Income Tax Tribunal as well as High Court erred in not correctly construing the Notification dated 22.10.1970 and had wrongly extended benefit under Section 194(3)(iii)(f).

8. Learned senior counsel appearing for the different banks have refuted the above submissions of learned senior counsel for the appellants. It is submitted that Section 3 of 1976 Act provides that “the State Government may by notification, constitute for the purpose of this Act, an authority to be called (Name of the area) Industrial Development Authority, for any Industrial Development Area”. It is submitted that Authority is established under the 1976 Act. Referring to provisions of State Bank of India Act, 1955, Life Insurance Corporation of India Act, 1956, it is submitted that statute provides for establishing of the corporation by virtue of a notification by the Central Government. It is submitted that in similar manners Authority has been established by issuing a notification, hence, Authority has to be treated as established by the 1976 Act. Alternatively, it is submitted that the legislature has used the words “by and under” interchangeably which is clear from the provisions of Section 194A(3)(iii)(c) and Section 194A((3)(iii)(d). In the Section 194A(3)(iii), itself differentiation in “by and under” has been done away, with that the Authority established by 1976 Act is clearly covered by the Notification dated 22.10.1970. The Notification dated 17.04.1976 establishing Authority fulfills the mandate of “by” hence it is clearly entitled for the benefit of the Section 194A(3)(iii).

9. Learned counsel for the parties have placed reliance on various judgments of this Court, which shall be referred to while considering the submissions in detail.

G 10. We have considered the submissions of the learned counsel for the parties and perused the record. Present set of appeals relates to Section 194A of the IT Act, 1961. It is useful to extract provisions of 194A which is to the following effect:

H “194A. Interest other than “Interest on securities”.- (1) Any person, not being an individual or a Hindu undivided family, who is

responsible for paying to a resident any income by way of interest other than income [by way of interest on securities], shall at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force:

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[Provided that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which such interest is credited or paid, shall be liable to deduct income-tax under this section.]

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[Explanation.-For the purposes of this section, where any income by way of interest as aforesaid is credited to any account, whether called "Interest payable account" or "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.]

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(2)[***]

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(3) The provisions of sub-section (1) shall not apply -

(i)...

5[***]

(iii) to such income credited or paid to-

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(a) any banking company to which the Banking Regulation Act, 1949 (10 of 1949), applies, or any co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank), or

(b) any financial corporation established by or under a Central, State or Provincial Act, or

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(c) the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 (31 of 1956), or

(d) the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963), or

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A (e) any company or co-operative society carrying on the business of insurance, or

(f) such other institution, association or body [or class of institutions, associations or bodies] which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette;”

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11. In the present case notification on which reliance has been placed by the respondent is Notification dated 22.10.1970 issued under Section 194A(3)(iii)(f), hence, it is necessary to refer to the entire Notification dated 22.10.1970 which is to the following effect:

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“Notification No. S.O. 3489 [No. 170 (F.No.12/164/68-ITCC/ITJ).], Dated 22.10.1970

In pursuance of sub-clause(f) of clause (iii) of sub-section (3) of section 194A of the Income Tax Act, 1961 (43 of 1961), the Central Government hereby notify the following for the purposes of the said sub-clause:-

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(i) any corporation established by a Central, State or Provincial Act;

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(ii) any company in which all the shares are held (whether singly or taken together) by the Government or the Reserve Bank of India or a Corporation owned by that Bank; and

(iii) any undertaking or body, including a society registered under the Societies Registration Act, 1860 (21 of 1860), financed wholly by the Government. “

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12. Before we proceed to examine rival contentions of the parties, it is necessary to ascertain the concept of a Corporation. A Corporation is an artificial being which is a legal person. It is a body/corporate established by an Act of Parliament or a Royal Charter. It possesses properties and rights which are conferred by the Charter constituting it expressly or incidentally. **Halsbury’s Laws of England** Fifth Edition, Vol. 24 defines the Corporation as follows:

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“301. Corporations and unincorporated associations. A corporation may be defined as a body of persons (in the case of a corporation aggregate) or an office (in the case of a corporation sole) which is recognised by the law as having a personality which is distinct

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from the separate personalities of the members of the body or the personality of the individual holder for the time being of the office in question. There are many associations and bodies of persons which are not corporations. Unincorporated associations do not have legal personality, may not sue or be sued in their own name nor (unless their purposes are charitable) may property be held for their purposes otherwise than by virtue of a contract between the members for the time being. “

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13. “Corporation aggregate”, has further been defined by **Halsbury’s Laws of England**, Fifth Edition, Vol. 24 to the following effect:

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“312. Meaning of ‘Corporation aggregate’. A corporation aggregate has been defined as a collection of individuals united into one body under a special denomination, having perpetual succession under an artificial form, and vested by the policy of the law with the capacity of acting in several respects as an individual, particularly of taking and granting property, of contracting obligations and of suing and being sued, of enjoying privileges and immunities in common and of exercising a variety of political rights, more or less extensive, according to the design of its institution, or the powers conferred on it, either at the time of its creation or at any subsequent period of its existence. “

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14. This Court in **S.S. Dhanoa vs. Municipal Corporation, Delhi and Others (1981) 3 SCC 431** had elaborately considered the concept of Corporation. This Court referred and relied the definition of Corporation as given by **Chief Justice Marshall** in celebrated case of **Dartmouth College v. Woodward, NH 4 Wheat 518, 636:4 L Ed 629**. It is useful to extract paragraph Nos. 8 and 9 of the judgment which are as follows:

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“8. A corporation is an artificial being created by law having a legal entity entirely separate and distinct from the individuals who compose it with the capacity of continuous existence and succession, notwithstanding changes in its membership. In addition, it possesses the capacity as such legal entity of taking, holding and conveying property, entering into contracts, suing and being sued, and exercising such other powers and privileges as may be conferred on it by the law of its creation just as a natural person may. The following definition of corporation was given by Chief Justice Marshall in the celebrated *Dartmouth College case*:

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A A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly or as incidental to its very existence. These are such as are supposed best calculated to effect the object for which it was created. Among the most important are immortality, and, if the expression may be allowed, individuality; properties, by which a perpetual succession of many persons are considered as the same, and may act as a single individual. They enable a corporation to manage its own affairs, and to hold property, without the perplexing intricacies, the hazardous and endless necessity, of perpetual conveyances for the purpose of transmitting it from hand to hand. It is chiefly for the purpose of clothing bodies of men, in succession, with these qualities and capacities, that corporations were invented, and are in use. By these means, a perpetual succession of individuals are capable of acting for the promotion of the particular object, like one immortal being.

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The term “corporation” is, therefore, wide enough to include private corporations. But, in the context of clause Twelfth of Section 21 of the Indian Penal Code, the expression ‘corporation’ must be given a narrow legal connotation.”

E “9. Corporation, in its widest sense, may mean any association of individuals entitled to act as an individual. But that certainly is not the sense in which it is used here. Corporation established by or under an Act of Legislature can only mean a body corporate which owes its existence, and not merely its corporate status, to the Act.

F For example, a Municipality, a Zilla Parishad or a Gram Panchayat owes its existence and status to an Act of Legislature. On the other hand, an association of persons constituting themselves into a company under the Companies Act or a society under the Societies Registration Act owes its existence not to the Act of Legislature but to acts of parties though, it may owe its status as a body corporate to an Act of Legislature.”

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15. Before us, there is no issue that the Authority is not a Corporation. It is also not contended before us that Authority is not a statutory corporation. What is contended before us is that Authority having not been established by a Central, State or Provincial Act is not covered

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by Notification dated 22.10.1970 hence, not eligible for the benefit. The provision of Section 194A and the notification issued by Central Government under 194A(3)(iii)(f) falls for consideration. We may beneficially notice a principle of statutory interpretation which needs to be applied while interpreting the above provisions of IT Act, 1961. This Court in *RBI vs Peerless General Finance & Investment Co. Ltd., (1987) 1 SCC 424*, laid down the following in paragraph No. 33:

“ 33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the Court construed the expression “Prize Chit” in *Srinivasa* and we find no reason to depart from the Court’s construction.”

16. A Constitution Bench of this Court in *Sukhdev Singh and Others vs. Bhagatram Sardar Singh Raghuvanshi and Another, (1975) 1 SCC 421* had occasion to consider the nature and character of Corporation including its early history. **Justice Mathew**, delivering his concurrent opinion noted that Corporations in 17th, 18th and 19th Centuries were far more like the bodies corporate we call “public authorities” today. In paragraph Nos. 83, 86 and 87 following has been laid down:

- A “83. The chartered corporations of the 17th, 18th and 19th centuries were expected, perhaps required, to perform stated duties to the community like running a ferry, founding a colony or establishing East Indian trade. Performance of these functions and securing whatever revenue the enterprise made to the Crown were the primary reasons why a charter was granted. Corporations in early English law were in fact, and in legal cognizance, a device by which the political State got something done. They were far more like the bodies corporate we call “public authorities” today. Few in the 17th or 18th century would have disputed that such a corporation was an agency of the State.”
- B
- C 86. The public corporation, therefore, became a third arm of the Government. In Great Britain, the conduct of basic industries through giant corporations is now a permanent feature of public life.
- D 87. A public corporation is a legal entity established normally by Parliament and always under legal authority, usually in the form of a special statute, charged with the duty of carrying out specified governmental functions in the national interest, those functions being confined to a comparatively restricted field, and subjected to control by the Executive, while the corporation remains juristically an independent entity not directly responsible to Parliament. A public corporation is not generally a multipurpose authority but a functional organisation created for a specific purpose. It has generally no shares or shareholders. Its responsibility generally is to Government. Its administration is in the hands of a Board appointed by the competent Minister. The employees of public corporation are not civil servants. It is, in fact, likely that in due course a special type of training for specialized form of public service will be developed and the status of the personnel of public corporation may more and more closely approximate to that of civil service without forming part of it. Insofar as public corporations fulfil public tasks on behalf of Government, they are public authorities and as such subject to control by Government.”
- E
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- H 17. One more principle which was reiterated by this Court in above Constitution Bench judgment is that Corporations which are instrumentalities of the Government are subject to the limitation as contained in the Constitution. The Corporations which were under

consideration in the above case, namely, Life Insurance Corporation of India, Oil and Natural Gas Commission, Industrial Finance Corporation were held to be constituted within the meaning of Article 12 of the Constitution. Two categories of Corporations have been noticed i.e. statutory corporations and non-statutory corporations. Whereas, the statutory corporations owe their existence from “by or under” statute, non-statutory bodies and corporations are not created by or under statute rather are governed by a statute.

“ESTABLISHED BY A CENTRAL, STATE OR PROVINCIAL ACT”

18. The appellant on the one hand submits that the Authority has not been established by 1976 Act rather it has been established under the 1976 Act, hence it is not covered by Notification dated 22.10.1970 whereas the respondent submits that Authority has been established by the 1976 Act hence, it fulfills the condition as enumerated under Notification dated 2.10.1970. Alternatively, it is submitted that words “by and under” have been interchangeably used in the IT Act, 1961 and there is no difference, even if, the Authority is established under the 1976 Act.

19. Section 194A(3)(iii) clauses (b), (c) and (d) refer to expression “established”. In sub clause (b) expression used is “established by or under a Central, State or Provincial Act”, in sub clause (c) the expression used is “established under the Life Insurance Corporation Act” and in sub clause (d) expression used is “established under the Unit Trust of India Act”. The Section thus uses both the expressions “by or under”. The expression established by or under an Act have come for consideration before this Court on several occasions. In this context, it shall be useful to refer to few judgments of this Court. In *Sukhdev Singh (supra)*, the Court had occasion to consider the status of company incorporated under the Companies Act. The Court held that Company incorporated is not a Company created by the Companies Act. In paragraph No. 25 following was held:

“25.....A company incorporated under the Companies Act is not created by the Companies Act but comes into existence in accordance with the provisions of the Act. It is not a statutory body because it is not created by the statute. It is a body created in accordance with the provisions of the statute.”

A 20. **Mathew J.**, writing concurrent opinion while discussing the public corporation held that such corporations are created by State. In *Executive Committee of Vaish Degree College, Shamli and Others vs. Lakshmi Narain and Others, (1976) 2 SCC 58*, the question for consideration fell as to whether the Executive Committee of a degree college is a statutory body. Contention before the Court was that the
B Executive Committee was the statutory body since it was affiliated to the Agra University which was established by the statute. The Executive Committee was further covered by the statute framed by the Agra University. In the above context, this Court held that there is a clear distinction between a body which is created by the Statute and a body
C which having been come into existence is governed in accordance with the provisions of the statute. In paragraph No. 10 following was held:

 “10.....It is, therefore, clear that there is a well marked distinction between a body which is created by the statute and a body which after having come into existence is governed in
D accordance with the provisions of the statute. In other words the position seems to be that the institution concerned must owe its very existence to a statute which would be the fountainhead of its powers. The question in such cases to be asked is, if there is no statute would the institution have any legal existence. If the answer is in the negative, then undoubtedly it is a statutory body, but if the
E institution has a separate existence of its own without any reference to the statute concerned but is merely governed by the statutory provisions it cannot be said to be a statutory body.....”

 21. Again in **S.S.Dhanoa (supra)**, this Court had occasion to consider a Registered Society which was a body/corporate. The question
F was as to whether the State Body /corporate is a Corporation within the meaning of Clause Twelfth of Section 21 of the IPC (Indian Penal Code). This Court again held that expression Corporation means a Corporation created by the legislature. In paragraph No. 7 following was held:

 “7.....In our opinion, the expression ‘corporation’ must, in the context, mean a corporation created by the legislature and not a body or society brought into existence by an act of a group of individuals. A cooperative society is, therefore, not a corporation established by or under an Act of the Central or State Legislature.”

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22. Further noticing the distinction between Corporation established by or under Act or body created by or under Act, following was held in paragraph No. 10: A

“10. There is a distinction between a corporation established by or under an Act and a body incorporated under an Act. The distinction was brought out by this Court in *Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi*. It was observed: [SCC p. 435: SCC (L&S) p. 115, para 25] B

“A company incorporated under the Companies Act is not created by the Companies Act but comes into existence in accordance with the provisions of the Act.” C

There is thus a well-marked distinction between a body created by a statute and a body which, after coming into existence, is governed in accordance with the provisions of a statute.....”

23. Another judgment which had occasion to consider the expression established by or under the Act is a judgment of this Court in *Dalco Engineering Private Limited vs. Satish Prabhakar Padhye and Others (2010) 4 SCC 378*. The Court had occasion to examine the provision of Section 2k, of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, specifically expression “establishment” means a Corporation established by or under Central, Provincial or State Act. This Court held that the phrase established by or under the Act is a standard term used in several enactments to denote a statutory corporation established or brought into existence by or under the statute. On Company it was held that the company is not established under the Companies Act and an incorporated company does not “owe” its existence to the Companies Act. In paragraph No. 20 following has been laid down: D E F

“20. A “company” is not “established” under the Companies Act. An incorporated company does not “owe” its existence to the Companies Act. An incorporated company is formed by the act of any seven or more persons (or two or more persons for a private company) associated for any lawful purpose subscribing their names to a memorandum of association and by complying with the requirements of the Companies Act in respect of registration. Therefore, a “company” is incorporated and registered under the Companies Act and not established under the Companies H

A Act. Per contra, the Companies Act itself establishes the National Company Law Tribunal and the National Company Law Appellate Tribunal, and these two statutory authorities owe their existence to the Companies Act.”

B 24. This Court further elaborating the expression held that when the expression used is “established by or under the Act”, the emphasize should be on the word “established” in addition to the words “by or under”. It is useful to refer to what has been said in paragraph Nos. 21 and 22 of the judgment which is to the following effect:

C “21. Where the definition of “establishment” uses the term “a corporation *established* by or under an Act”, the emphasis should be on the word “established” in addition to the words “by or under”. The word “established” refers to coming into existence by virtue of an enactment. It does not refer to a company, which, when it comes into existence, is governed in accordance with the provisions of the Companies Act. But then, what is the difference between “established *by* a Central Act” and “established *under* a Central Act”?”

D 22. The difference is best explained by some illustrations. A corporation is established by an Act, where the Act itself establishes the corporation. For example, Section 3 of the State Bank of India Act, 1955 provides that a bank to be called State Bank of India shall be constituted to carry on the business of banking. Section 3 of the Life Insurance Corporation Act, 1956 provides that

E 3. *Establishment and incorporation of Life Insurance Corporation of India.*—(1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be established a Corporation called the Life Insurance Corporation of India.

F State Bank of India and Life Insurance Corporation of India are two examples of corporations established by “a Central Act”.”

G 25. This Court has also referred to provisions of The State Financial Corporations Act, 1951 which provides for establishment of various financial corporations under the Act. It is useful to refer to definition of financial corporation as contained in Section 2(b) which is to the following effect:

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“2(b) Financial Corporation means a Financial Corporation A
established under Section 3 and includes a Joint Financial
Corporation established under Section 3A;”

26. Section 3 deals with establishment of State Financial
Corporation which provides as follows:

“3. Establishment of State Financial Corporations.: (1) The State B
Government may, by notification in the Official Gazette, establish
a Financial Corporation for the State under such name as may be
specified in the notification.

(2) The Financial Corporation shall be a body corporate by the C
name notified under sub-section (1), having perpetual succession
and a common seal, with power, subject to the provisions of this
Act, to [acquire, hold and dispose of] property and shall by the
said name sue and be sued. “

27. This Court clearly in above case, *Dalco Engineering (supra)* D
has held that such Financial Corporations are established by an Act or
under an Act. In paragraph No. 23 of the judgment following has been
held:

“23. We may next refer to The State Financial Corporations Act, E
1951 which provides for establishment of various financial
corporations under that Act. Section 3 of that Act relates to
establishment of State Financial Corporations and provides that
“the State Government may, by notification in the Official Gazette,
establish a financial corporation for the State under such name as
may be specified in the notification” and such financial corporation
shall be a body corporate by the name notified. Thus, a State F
Financial Corporation is established under a Central Act.
Therefore, when the words “by and under an Act” are preceded
by the words “established”, it is clear that the reference is to a
corporation established, that it is brought into existence, by an Act
or under an Act. In short, the term refers to a statutory corporation
as contrasted from a non-statutory corporation incorporated or G
registered under the Companies Act.”

28. Now, we revert back to the provisions of 1976, Act. The very H
preamble of that Act reads “an Act to provide for the Constitution of an
Authority for the development of certain areas in the State into industrial
and urban township and for masses connected through with”.

A 29. Thus, the Act itself provides for constitution of an authority. Section 2(b) of the 1976 Act defines Authority as authority constituted under Section 3 of the Act. Section 3 which is very relevant for the present case is as follows:

B “3. (1) The State Government may, by notification, constitute for the purposes of this Act, An authority to be called (Name of the area) Industrial Development Authority, for any industrial development area.

(2) The Authority shall be a body corporate.

C (3) The Authority shall consist of the following :-

(a) The Secretary to the Government, Uttar Pradesh, Industries Department or his Nominee not below the rank of Joint Secretary-ex-official.

Member

Chairman

(b) The Secretary to the Government, Uttar Pradesh, Public works Department or his nominee not below the rank of Joint Secretary ex-official.

Member

(c) The Secretary to the Government, Uttar Pradesh, Local Self-Government or his nominee not below the rank of joint Secretary-ex official.

Member

(d) The Secretary to the Government, Uttar Pradesh, Finance Member Department or his nominee not below the rank of Joint Secretary-ex official.

Member

H

- A (ii) Secretary to the Government, Uttar Pradesh, Public Works Department,
Ex Officio Member
(Under Clause(b))
- B (iii) Secretary to the Government, Uttar Pradesh, Local self-Government, Department Ex officio Member
(Under Clause (c))
- C (iv) Secretary to the Government, Uttar Pradesh, Finance Department, Ex officio Member
(Under Clause (d))
- D (v) Managing Director, UP State Industrial Development Corporation Ltd. Ex. Officio Member
(Under Clause (e))
- E (vi) Chairman, UP State Electricity Board, Ex-officio Member
(Nominated under Clause (f))
- F (vii) Chief Engineer, UP Jal Nigam Board, Ex-officio Member
(Nominated under Clause (f))
- G (viii) Chief Engineer, Irrigation Department UP, Ex-officio Member
(Nominated under(f))
- (ix) Chief Town and Country Planner, UP, Ex-officio Member
(Nominated under Clause(f))

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COMMISSIONER OF INCOME TAX(TDS) KANPUR v. 887
CANARA BANK [ASHOK BHUSHAN, J.]

(x) District Magistrate, A
Bulandshahr, Member
Ex-officio (Nominated under Clause(f))

(xi) Chief Executive Officer
Member Secretary B
(Under Clause (g))”

31. This Court having already laid down in ***Dalco Engineering (supra)*** that establishment of various financial corporations under State Financial Corporation Act, 1951 is establishment of a Corporation by an Act or under an Act. We are of the view that the above ratio fully covers the present case and we have no doubt that the Authority have been established by the 1976 Act and it is clearly covered by the Notification dated 22.10.1970. It is further relevant to note that composition of the Authority is statutorily provided by Section 3 of 1976 Act itself, hence, there is no denying that Authority has been constituted by Act itself. C D

32. In view of what has been said above, we are of the view that High Court did not commit any error in dismissing the appeal filed by the Revenue. In result, all the appeals are dismissed.

E

Divya Pandey

Appeals dismissed.