REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 5724-5725 OF 2011

UNION OF INDIA &
ORS. .....APPELLANT(S)

VERSUS

M/S. MARGADARSHI CHIT FUNDS (P)

LTD.
ETC. .....RESPON
DENT(S)

W I T H

CIVIL APPEAL NOS. 6916-6917 OF 2011

J U D G M E N T

A.K. SIKRI, J.

In these appeals, the appellant is Union of India, which has assailed the common judgment and order dated July 14, 2008, passed by High Court of Judicature at Andhra Pradesh, in a batch of writ petitions. Those writ petitions were filed by some chit fund companies (hereinafter referred to as the 'assessees') assailing the validity of Circular No. 96/7/2007-ST (Circular No. 034-04) dated August 23, 2007 and Proceedings No. HAST 141/2007 dated December 18, 2007 which were issued by the Central Board of Excise & Customs, Ministry of Finance, Department of Revenue (Tax Research Unit), Government of India (hereinafter referred to as the 'Revenue'). By the aforesaid Circular and Proceedings, the Revenue had called upon the assessees to pay the service tax on the running of chit funds as according to the Revenue, it was a service provided by the assessees which was covered under 'banking and other financial services', a taxable service under sub-section 12 of Section 65 of the Finance Act, 1994. Plea of the assessees was that the chit fund business does not amount to any service covered by the definition of 'banking and other financial services' as per the said term as defined in that provision, prevalent during the relevant period. The High Court has accepted the plea of the assessees and thereby quashed the Circular dated August 23, 2007 and consequently Proceedings dated December 18, 2007.

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It may be mentioned at this stage that we are concerned with the issue as to whether service tax is leviable on chit fund or not w.e.f. June 1, 2007, the date on which the Finance Act, 2007 came into effect.

2) In order to appreciate the controversy and resolution thereof, it would be apposite to first take note of the relevant statutory provisions of the Act. It would also be necessary to take into account the nature of operations performed by the assessees which are governed and regulated by the Chit Fund Act, 1982.

3) With the enactment of the Finance Act, 1974, for the first time the Parliament imposed the levy of service tax on rendition of 'services' by the service providers to the service receivers. It is covered by Chapter V of the Act. Section 65 thereof as it stood prior to June 1, 20071, contains certain definitions. Sub-section (12) defines 'banking and other financial services' which reads as under:

> "banking and other financial services" means –
>
> "(a) the following services provided by a banking company or a financial institution including a non-banking financial company or any other body corporate or any commercial concern, namely:
>
> (i) (ii) (iii)
>
> (iv)
>
> (v) asset management including portfolio management, all forms of fund management, pension fund management, custodial, depository and trust services**, but does not include cash management**;
>
> (vi)
>
> (vii)
>
> (viii)
>
> (ix)"

4) Though, the definition of 'banking and other financial services' as contained in sub-section (12) is very wide, we are concerned only with sub-clause (v) thereof which mentions that asset management is also to be treated as banking and financial services. However, the aforesaid definition would disclose that from asset management, 'cash management' was specifically excluded. The aforesaid definition of 'banking and other financial services' was incorporated in the Finance Act, 1994 vide the Finance Act, 2001 in consultation with the Reserve Bank of India (RBI). However, RBI had suggested to consider exemption from levy of service tax for cash management services. Accordingly, cash management was specifically excluded from the definition of 'banking and other financial services'. Therefore, service tax was not leviable on cash management services. The aforesaid definition was amended vide Finance Act, 2007, which came into force w.e.f. June 1, 2007. Thereby, the words 'but does not include cash management' were deleted. It is in the aforesaid backdrop, with the amendment of definition in the manner stated above, becoming effective from June 1, 2007, it is to be examined as to whether chit fund services are included in the definition of banking and other financial services. In particular, it is to be examined as to whether such a service is

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covered by the term 'asset management'. As per the appellant, managing chit fund, which is a fund management service, is a specie of cash management, now stands included in the amended definition made effective from June 1, 2007. The assessees, on the other hand, maintain that even with the deletion of the words 'but does not include cash management' from sub-clause (v) of sub-section (12), chit fund does not get covered and for the purpose of coverage, it is to be shown that the chit fund services is 'asset management', while it is not so.

5) To understand the nature of chit fund business, we now refer to the relevant provisions of Chit Funds Act, 1982. Section 2(b) defines 'chit', in the following manner:

> "chit means a transaction whether called chit, chit fund, chitty, kuri or by any other name by or under which a person enters into an agreement with a specified number of persons that every one of them shall subscribe a certain sum of money (or a certain quantity of grain instead) by way of periodical installments over a definite period and that each such subscriber shall, in his turn, as determined by lot or by auction or by tender or in such other manner as may be specified in the chit agreement, be entitled to the prize amount.
>
> **Explanation.-** A transaction is not a chit within the meaning of this clause, if in such transaction, -
>
> (i) some alone, but not all, of the subscribers get the prize amount without any liability to pay future subscriptions; or
>
> (ii) all the subscribers get the chit amount by turns with a liability to pay future subscriptions
>
> Section 12 of the Chit Funds Act, 1982 prohibits chit fund companies from conducting any other business, except with the general or special permission of the State Government.
>
> Section 14 of the Chit Funds Act, 1982 provides that "no person carrying on chit fund business shall utilize the moneys collected in respect of business (other than commission or remuneration payable to such person or interest or penalty, if any, received from a defaulting subscriber), except for –
>
> (a) carrying on chit business; or
>
> (b) giving loans and advances to non-prized subscribers on the security of subscriptions paid by them; or
>
> (c) Investing in trustee securities within the meaning of section 20 of the Indian Trusts Act, 1882 (2 of 1882); or
>
> (d) making deposits with the approved banks mentioned in the chit agreement.
>
> Chit funds are of two types, namely:
>
> (a) Simple Chits: In simple chit members agree to contribute to fund a certain amount at regular interval. Lots are drawn periodically and the member, whose name appears, gets the periodical collection. There is no foreman and even if there is one, he does not charge any commission.

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(b) Business Chits: In this case, there is a promoter called foreman who enrolls subscribers and draws up the terms and conditions of the scheme. Every subscriber has to pay his subscription in regular installments. The foreman charges, for his services, a commission on which there is a ceiling fixed by law in some States. Depending upon the terms and conditions, a fixed amount is also sometimes set aside for distribution among the non-prized members. After making provision for the above deductions, the balance amount is put to auction and given as prize to member who is prepared to forego the highest discount. The amount of discount is distributed as dividend either among all the members or among the non-prized member only."

6) Since banking and other financial services can be carried out only with the permission of and after obtaining requisite license from the RBI as per the provisions of Reserve Bank of India Act, 1954 (RBI Act), it would also become necessary to take note of some provisions of the RBI Act as well, which are relevant for the purposes of the present case. As per Section 45-I of the RBI Act, chit funds are categorized as financial institutions. Section 45-I (c) also defines the financial institution. Relevant extract whereof is as follows:

"Financial institution" means any non-banking institution which carries on as its business or part of its business any of the following activities, namely:-

(i)

(ii)

(iii)

(iv)

(v) managing, conducting or supervising, as foreman, agent or any other capacity, of chits or kuries as defined in law which is for the time being in force in any State, or any business, which is similar thereto;

(vi)"

Thus, the activity of managing, conducting or supervising chits or kuries is covered by the term 'financial institution'.

7) After the amendment in the Finance Act, 1994 vide Finance Act, 2007, amending definition of banking and financial services, clarification was issued by the Government vide Budget instruction dated February 28, 2007 wherein it was stated as follows:

"7.6 (ii) At present cash management is specifically excluded from the scope of this service. Specific exclusion of cash management is being omitted. Consequently, cash management services will be leviable to service tax under this service."

Some clarifications are issued by the RBI as well, from time to time, touching upon the nature of business of chit fund. We shall refer to these circulars/clarifications at the relevant stage.

8) After taking note of the relevant statutory provisions under different enactments, facts leading to the present dispute may now be recapitulated, which are in a very narrow campus as the main dispute is purely of a legal nature. It so happened that after the amendment of

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definition of banking and financial services w.e.f. June 1, 2007, the Government issued Circular No.96/7/07-ST dated August 23, 2007 stating that activity of chit fund is in the nature of cash management and, therefore, leviable to service tax under 'banking and other financial services'. Likewise, the Commissioner of Customs, Central Excise and Service Tax also issued Letter HQST 141/2007 dated December 18, 2007 whereby he advised the assessees under his jurisdiction to obtain registration and clear service tax liability w.e.f. June 1, 2007 at applicable rates immediately. It is these two circulars dated August 23, 2007 and December 18, 2007 which were challenged by the respondents herein by filing writ petitions in the High Court as noted in the beginning. The High Court has held that notwithstanding deletion of the words 'but does not include cash management' from sub-clause (v) from sub-section (12) of Section 65, the assessees would not be covered by even under the amended definition of 'banking and other financial services'. As per the High Court, mere deletion of the aforesaid words would not suffice inasmuch as for the purpose of coverage, it is necessary that business of chit fund is that of 'asset management'.

9) The High Court noted that there was neither any definition of 'cash management' nor 'asset management' in the Act. Therefore, in the absence of specific statutory definition of the aforesaid expression, the question of its wider interpretation either by seeking to include or exclude any other transactions or business does not arise and is not permissible. The High Court went by the basic principle in the taxing statute, namely, no tax can be imposed on the subject without words in the Act clearly showing an intention to lay a burden upon the assessee; that the taxing statute are to be interpreted strictly; and that if two views are possible, benefit of doubt would have to be given to the assessee. In the opinion of the High Court, the deletion of the words 'but does not include cash management' while amending sub-section (12) of Section 65 of the Finance Act would not serve any purpose.

10) We may note here that the case set up by the Union of India before the High Court was that it was all along understood by the parties that business of chit fund was in the nature of cash management. Since, the definition of 'banking and financial services' prior to June 01, 2007 specifically excluded 'cash management', the benefit was extended to the chit fund companies by not levying any service tax as they were in the business of cash management. According to the Revenue, the amendment, thus, brought chit fund companies within the purview of the service tax. It was submitted that sub-clause (v) of sub-section (12) specifically covers 'asset management' as 'banking and other financial services' and categorically mentions that 'all forms of fund management' are to be treated as 'asset management'. As per the Revenue, cash management is one of the forms of 'fund management'. The High Court, however, has not agreed with this submission on the ground that the Revenue could not rely upon the dictionary meanings assigned to fund and there had to be specific provision in the Act covering chit funds.

11) We may mention, at the outset, that mere deletion of the words 'but does not include cash management' by 2007 amendment may not serve the purpose of the Revenue. When these words were there in sub-clause (v), those companies doing the business of cash management were specifically excluded. After deletion of those words, we have to look into the definition of 'asset management' in amended form and, therefore, the Revenue has to establish that the chit fund business is a service which comes within the scope of 'asset management'. Conscious of this fact, the Revenue has argued that since asset management includes all forms of fund management and as the cash management is one of the form of 'fund management', chit fund companies would be covered thereby. It would be of interest to note that the single Judge of the Kerala High Court in the case of **All Kerala Association of Chit Funds v. Union of India2** has accepted this very proposition advanced by the Department, namely, cash management is one of the forms of fund management and would, therefore, be

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covered by the expression 'asset management'. Kerala High Court, while forming this opinion, has not agreed with the impugned judgment rendered by the Andhra Pradesh High Court with the observations that the Andhra Pradesh High Court failed to notice that the definition of asset management includes 'all forms of fund management' and that cash management would be one of the forms of fund management. However, even the Kerala High Court has not adverted to the issue in proper perspective by defining what amounts to cash management and whether cash management is specie of fund management. On the other hand, it has been primarily influenced by the fact that with the amendment of sub-clause (v) of sub-section (12) by Amendment Act, 2007 resulting into deletion of the words 'but does not include cash management', the business of chit fund would be covered by the term 'all forms of fund management' which can be seen from the following discussion therein:

> "31 .The nature of contentions raised, argued and dealt with before the High Court of Andhra Pradesh in A.P. Federation Chit Funds v. Union of India (2009 (13) STR 350 (A.P.)) is more discernible from Paragraphs 5,6,7 and 8 of the said verdict, which are extracted below:
>
> > "5. Shri.N. Venkataramana, learned Senior Counsel appearing on behalf of the petitioner mainly contended that merely because of deletion of certain expressions under the aforesaid sub-clause (12) of S. 65 of the Finance Act, 2007, the nature of business done by the petitioner cannot be roped in, as long as the levy is not made specifically in respect of such transactions in clear words. Therefore, even otherwise it has been contended that in view of the nature of chit transaction as already been explained to by the Apex Court, it cannot come within the parameters of any of the exemptions under the Finance Act as exists. Even otherwise, it is stated that the respondents herein cannot take upon themselves by imposing of levy proposals on totally different class by mere issuance of circular which itself is without any jurisdiction.
> >
> > 6. Shri Vedula Venkataramana, learned counsel appearing on behalf of petitioners has adopted broadly the submissions made by Shri.N. Venkataramana, senior counsel. However, he sought to restrict his submissions as regards the validity of the circular rather than going beyond to hold that the nature of chit transactions would fall within asset management on the deletion of expression under the later amended Finance Act. He further contended that by the impugned action, the respondents are only trying to enlarge the scope of sub-clause (12) of S. 65 of the Finance Act, 2007 by way of circular without there being any legislative transanction or statutory basis. Hence, the impugned action is liable to be set aside.
> >
> > 7. Shri.K. Rajashekar Reddy, learned Assistant Solicitor General, appearing on behalf of the respondents have sought to sustain the entire impugned action and the circulars issued by the respondents contending that the expression 'cash management' is inclusive one and the impugned circulars are only clarificatory, therefore the question of statutory interpretation as such does not arise and whatever sought to be excluded earlier was brought within the four corners of the levy and it is not open for the petitioners to question the same. Even otherwise, all these Writ Petitions are premature and the same are liable to be dismissed.
> >
> > 8. Having considered the submissions made and on perusal of the material, the crux of the matter for consideration is as to whether the petitioners' business

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i.e., chit fund fall within the mischief of expression "cash management", as amended under sub-S.(12) of S. 65 of the Finance Act, 2007 and consequently under the impugned circular issued by the respondents is valid?"

32. From the above, it is evident that the scope of the terms "all forms of fund management" before the deletion of the words "but does not include cash management" and after the deletion vide the amendment in 2007, was not specifically projected or adverted to. The thrust was more with regard to the meaning of the expression 'cash management', though the provision was extracted in paragraph 11. The verdict passed by the Apex Court in AIR 1993 SC 2063 (cited supra) was also referred to, extracting the relevant portion in paragraph 10, wherein it was held that:

> **"the foreman does not lend his money to constitute any money lending business and that the dominant purpose of the Act (Chit Funds Act 1982) was to regulate the chit and control the activity for the foreman and protect the interest of the subscribers which essentially in the realm of fund management."**

33. True, the provisions in a 'taxation statute' have to be interpreted strictly, as made clear by the Apex Court. But when "**all sorts of fund management**" were sought to be taxed, giving exception only to 'cash management' under the unamended provision and when it came to be excluded after the amendment to S.65(12)(a)(v) in the year 2007, this Court finds that, each and every instance of 'fund management' need not be separately mentioned in the provision, to attract the tax liability. Even as per the unamended statute, when the exception was only to a limited extent i.e., in respect of 'cash management', the deletion of the exception has revived "all forms of fund management" with full vigor and vitality, which cannot be watered down. To put in other words, the term "**all forms of fund management**" forms the genus, of which, 'cash management' is one of the species. The exception given to the specie (cash management) is taken away by deleting the same in the year 2007, after which, all forms of fund management become taxable. It has to be noted that, there is absolutely no challenge against the statutory provision i.e., in respect of the amendment brought about in the year 2007 and this being the position, the tax liability stands governed, not by virtue of the Circular, but by virtue of the amended provision. The idea and understanding of the petitioners to the contrary, is quite wrong and misconceived."

12) We, therefore, feel that neither the Andhra Pradesh High Court in the impugned judgment nor Kerala High Court in the aforesaid judgment has addressed the matter in right perspective. According to us, in order to levy service tax on the chit fund business, as per amended definition of sub-section (12) by the Amendment Act, 2007, it is necessary to understand the meaning of 'cash management' and to see as to whether the activity of managing chit fund amounts to cash management. Thereafter, the second question would be as to whether cash management is a form of 'fund management'. Only then it would be covered by the expression 'asset management' and exigible to the service tax. Keeping this perspective in mind, the two questions which need to be discussed and answered are:

> **Question No.1** - Whether chit fund activity can be treated as business of cash management?
>
> **Question No.2** - Whether chit fund can be treated as a form of fund management?

Before we deal with these questions directly, it would be apposite to take note of the amendments which are made in sub-section (12) of Section 65 of the Act from time to time as this historical background of levying service tax on banking and other financial services

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would throw adequate light on the answers to the questions posed by us. We have already noticed the definition of 'banking and other financial services' as it existed prior to June 01, 2007 (which was introduced w.e.f. 2001) and its amendment in 2007.

13) No doubt, the definition of banking and other financial services contained in sub-section (12) of Section 65 as it stood prior to June 1, 2007 specifically excluded cash management. At that time, a doubt had arisen in the Department of Revenue, Ministry of Finance as to whether it would include the services rendered by a chit fund. Letter dated December 7, 2001 was written by the Ministry of Finance to the RBI seeking its clarification. RBI, after examining the issue, responded vide its communication dated February 5, 2002 explaining the meaning of the term 'cash management' and also opining that chit fund may not be regarded as providing any taxable service in view of detailed note dated January 29, 2001 which was appended along with said letter dated February 05, 2002. After receiving this clarification, Ministry of Finance, Government of India issued Circular No. 41/4/2002 dated March 15, 2002 addressed to the officials of Central Excise and Customs as well as service tax clarifying that banking and other financial services will not include the service rendered by the chit fund and, therefore, no service tax was payable.

14) Amendment was carried w.e.f. June 1, 2007 whereby the words 'but does not include cash management' were deleted. This provision remained on statute book upto June 30, 2012. By Finance Act, 2012, entire scheme of service tax was completely changed and overhauled with the introduction of altogether new system of service tax. There was a paradigm shift in the service tax regime. Initially, service tax was levied only on three services by the Finance Act, 1994. The Finance Act, 1996 extended the levy to three more services. Twelve more services were brought under the service tax net by the Finance Act, 1997 and its scope was further enlarged by the Finance Act, 1998 when twelve more services were brought under the service tax net. Three services were exempted from the service tax by the Finance Act, 1998 and one more service by the Finance Act, 2000. Its scope was further widened by the Finance Act, 2001 when service tax was extended to include fifteen more services. The Finance Act, 2002 further levied service tax on ten more services. The Finance Act, 2003 brought 8 new services within the ambit of service tax. Further, the Finance (No.2) Act, 2004 brought 13 new services under service tax which included re-introduction of service tax on 3 services and also made applicable service tax on risk cover in life insurance under the life insurance service, whereas this service was introduced in the year 2002. The Finance Act, 2005 brought 9 new services under the service tax net. The Finance Act, 2006 brought 15 new services under the service tax net. The Finance Act, 2007 brought 7 new services under the service tax net and six telecom related services were omitted and merged into one new category of taxable service. Further, the Finance Act, 2008 w.e.f. May 16, 2008, introduced 6 new services. Further, the Finance (No.2) Act, 2009 w.e.f. September 1, 2009 introduced 3 new services. Likewise, the Finance Act, 2010 w.e.f. July 1, 2010 vide Notification No.24/2010-ST, dated June 22, 2010 introduced 8 new services. By the Finance Act, 2011 w.e.f. May 1, 2011 vide Notification No. 29/2011-ST, dated April 25, 2011, 2 new services were brought within its net and at the same time, health service was exempted w.e.f. May 1, 2011 by Notification No. 30/201 1-ST, dated April 25, 2011. Thus, the service tax was on a total of 115 services.

15) Thus, right from 1994 till 2011, the mode adopted was to specify those services on which it was intended to levy service tax. However, the Parliament by the Finance Act, 2012 w.e.f. July 01, 2012 has introduced altogether new system of taxation of services by making a paradigm shift. Now, the scheme of taxation of services is based on negative list of services. Therefore, earlier list of taxable services is no longer applicable. Instead two things have happened. First, the term 'service' is defined whereas there was no definition of 'service' in

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the Finance Act, 1994 which position remained till 2012. Earlier, each individual service on which tax was levied (known as taxable service) was defined. Secondly, the definition of service given now contains a negative list which is contained in Section 66D of the Act. In other words, it specifically excludes certain transactions from the ambit of service. Thus, those transactions which are specifically excluded are not liable for service tax. Any other kind of service which qualifies the definition of 'service' contained in the Act would be exigible to service tax.

16) The term service is defined in Clause 44 of Section 65B of the Act which reads as under:

> "44. "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include –
>
> (a) an activity which constitutes merely,-
>
> > "(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or
> >
> > (ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or
> >
> > (iii) a transaction in money or actionable claim;
>
> (b) a provision of service by an employee to the employer in the course of or in relation to his employment;
>
> (c) fees taken in any Court or tribunal established under any law for the time being in force."

Likewise, negative list of service is contained in Section 66D of the Act and all those services which are mentioned therein are not liable for service tax.

17) Interestingly, in the context of chit fund business, a question arose as to whether it would be service within the aforesaid definition and this issue came to be considered by Delhi High Court in the case of **Delhi Chit Fund Association v. Union of India3**. The Delhi High Court examined the nature of chit fund business, keeping in mind the dicta of this Court in **Sriram Chits and Investment (P) Ltd. v. Union of India4** wherein the nature of chit fund business is explained in detail and came to the conclusion that it was not a service as per the definition of 'service' contained in Section 65B(44) of the Act. Following discussion in the judgment is relevant in this behalf:

> "10. We shall first address the argument that what is excluded is only a service in relation to an activity which constitutes merely a transaction in money or actionable claim. The basis of this argument is the principle that a provision cannot exclude something from the definition, unless it is included in the definition. Section 65B(44) defines "service" as any activity carried out by a person for another for consideration. This implies, as pointed out on behalf of the petitioner, that there are four elements therein: the person who provides the service, the person who receives the service, the actual rendering of the service and, lastly, the consideration for the service. The opening words of the definition consist of the above four aspects or characteristics and unless all the four are present, the activity cannot be charged with service tax. A mere transaction in money or actionable claim cannot under the ordinary notions of a

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service be considered as a service, neither can it be considered as falling within the first part of the definition because it lacks the four constituent elements which are required by the definition. In a mere transaction in money or actionable claim, no service is involved; there is just the payment and receipt of the money. The word "money" is defined in section 65B(33) in the following manner:—

> "(33) "money" means legal tender, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveler cheque, money order, postal or electronic remittance or any similar instrument but shall not include any currency that is held for its numismatic value;

11. A mere transaction in money represents the gross value of the transaction. But what is chargeable to service tax is not the transaction in money itself since it can by no means be considered as a service. The exclusionary part of the definition of the word "service" however refers to "an activity which constitutes merely a transaction in money or actionable claim". Since a mere transaction in money or actionable claim cannot under the common notions of a service be considered as a service by any stretch of imagination, it is necessary to examine what could have been the intention of the legislature in excluding it from the definition. The obvious answer is that it is not the mere transaction in money or actionable claim that is sought to be excluded from the definition but what is sought to be excluded is any service rendered in connection with a transaction in money or actionable claim. But the difficulty which could arise in this line of reasoning can be that the language of the exclusionary part of the definition in terms refers to the very activity which constitutes a transaction in money and contains no reference to any service rendered in connection therewith. The possible answer to this conundrum is that the legislature deemed it fit, ex abundanti cautela, to exclude an activity which constitutes merely a transaction in money, which even otherwise could not have been considered as a service in any sense of the word. This however appears to us to be a far-fetched answer. A clue to a proper interpretation of the exclusionary part of the definition is embedded in Explanation 2. This Explanation carves out an exception to the exclusionary part of the definition by providing that any activity relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination to another form, currency or denomination for which a separate consideration is charged shall not be considered as a transaction in money. Therefore, if the only activity, for which a separate consideration is charged, and which cannot be considered as a transaction in money is the activity mentioned in the Explanation, and service tax would accordingly be charged on the consideration received in respect of such an activity, then it follows that all other cases of transaction in money shall stand excluded from the charge of service tax, including the consideration charged for the services of a foreman in a chit business. The Explanation, therefore, seems to offer a clue to the problem which appears to us to be a creation of the very confounding manner in which the definition is found to have been drafted. However, we have to make sense of what we have.

12. It is the function of an Explanation to explain the meaning and effect of the main provision to which it is an Explanation and to clear up any doubt or ambiguity in it. Ultimately, however, it is the intention of the legislature which is paramount and a mere use of a label cannot control or deflect such a function. This is the principle laid down by a Constitution Bench of the Supreme Court in Dattatraya Govind Mahajan v. State of Maharashtra : (1977) 2 SCC 548. In S. Sundaram Pillai, etc. v. P. Lakshminarayana Charya : (1985) 1 SCC 591 : AIR 1985 SC 582, a three-Judge Bench of the Supreme Court considered the object of an Explanation and observed as follows:—

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"52. Thus, from a conspectus of the authorities referred to above, it is manifest that the object of an Explanation to a statutory provision is—

(a) to explain the meaning and intendment of the Act itself,

(b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to sub serve,

(c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,

(d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment, and

(e) it cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same".

Moreover, "every clause of a statute should be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject matter", as held in Canada Sugar Refining Company v. R., (1898) A.C. 375, a principle that is frequently applied in case of difficulty in construing a statute. In N.T. Veluswami's case (AIR 1959 SC 422), a three-judge Bench of the Supreme Court speaking through T.L. Venkatarama Aiyar, J, held as follows:

> ".... It is no doubt true that if on its true construction, a statute leads to anamolous result, the courts have no option but to give effect to it and leave it to the legislators to amend and alter the law. But when on a construction of a statute, two views are possible, one which results in an anamoly and the other, not, it is our duty to adopt the latter and not the former, seeking consolation in the thought that the law bristles with anamolies".

13. If these rules of interpretation are applied, it appears to us that even if it is assumed that there is an ambiguity or doubt in the interpretation of the exclusionary part of the definition of the word "service" and as to what types of activities in relation to a transaction or money or actionable claim are exempted from the levy of service tax, that doubt or ambiguity gets cleared up on a careful examination of the implications of the Explanation 2. The Explanation has been enacted only for the purposes of this clause, and since it is placed below clause (c), strictly speaking it is relevant only for the purpose of the aforesaid clause. However, clause (c) refers to fees taken in any Court or Tribunal established under any law for the time being in force. It is obvious that Explanation 2 can have no relevance to this clause. If we refer to clause (c) immediately below which the Explanation is placed, we find that the said clause refers to duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or State Governments or local authority and who is not deemed as an employee before the commencement of this section. It is obvious that the Explanation can have no relevance to this clause also. In these circumstances we are constrained to hold that Explanation 2, when it says for the purpose of this clause., the reference can only be to clause (a) and more

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precisely to sub-clause (iii) which refers to a transaction in money or actionable claim. Be that as it may, if the exclusionary part of the definition [i.e., clause (a)(iii)] is construed on its own terms there would be an anamoly in as much as what was not a "service" in the first place within the opening words of Section 65B (44) would fall to be excluded - a construction that would be aimless or futile; but if that part is construed in the light of or with the aid of Explanation 2 and what it signifies or implies, then the anamoly gets ironed out or removed, as we have explained earlier. Obviously, we have to prefer the latter interpretation and not the former.

14. In a chit business, the subscription is tendered in any one of the forms of "money" as defined in section 65B(33). It would, therefore, be a transaction in money. So considered, the transaction would fall within the exclusionary part of the definition of the word "service" as being merely a transaction in money. This would be the result if the argument that the exclusionary part of the definition in clause (a) is considered to have been enacted ex abundant cautela; if the argument based on Explanation 2 read with the exclusionary part of the definition is accepted as correct, even then the services rendered by the foreman of the chit business for which a separate consideration is charged, not being an activity of the nature explained in the said Explanation, would be out of the clutches of the definition. Either way, there can be no levy of service tax on the footing that the services of a foreman of a chit business constitute a taxable service."

18) The High Court, thus, held that chit fund business was not exigible to service tax. Pertinently, SLP (C) No. 24998 of 2013 filed by the Revenue against the aforesaid judgment of Delhi High Court has been dismissed by this Court vide order dated January 7, 2014.

19) It is also relevant to mention that by Finance Act, 2015, definition of service contained in sub-section (44) of Section 65B of the Act has been amended by adding explanation 2 which reads as under:

"Explanation 2 – For the purposes of this clause, the expression "transaction in money or actionable claim" shall not include –

(i) any activity relating to use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

(ii) any activity carried out, for a consideration, in relation to, or for facilitation of, a transaction in money or actionable claim, including the activity carried out-

(a) by a lottery distributor or selling agent in relation to promotion, marketing, organizing, selling of lottery or facilitating in organizing lottery of any kind, in any other manner;

(b) by a foreman of chit fund for conducting or organizing a chit in any manner."

20) By the aforesaid amendment, activity carried out by foreman of a chit fund for conducting or organising a chit in any manner is to be covered by the expression 'transaction in money or actionable claim'. Thus, it has been brought specifically within the definition of service by the aforesaid amendment which takes effect from June 15, 2015. Therefore, there is no dispute that w.e.f. June 15, 2015, service tax is payable on chit fund.

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21) The aforesaid historical background would demonstrate that admittedly upto June 14, 2007, chit fund business was not exigible to service tax. Likewise, from July 01, 2012 to June 14, 2015, no service tax was payable. Present dispute concerns the intervening period from June 15, 2007 to June 30, 2012, the outcome whereof depends upon the definition of banking and financial service contained in sub-section (12) of Section 65 of the Act and particularly sub-clause (v) thereof as amended in 2007.

22) Having noted the aforesaid historical background, we now proceed to discuss the two questions that arise for consideration as the answer thereto will determine the issue involved in these appeals.

> **Question No.1 -** Whether chit fund activity can be treated as business of cash management?

23) We have already reproduced definition of' chit' as contained in Section 2(b) of the Chit Funds Act. This nature of chit transactions is lucidly explained in the case of **Shriram Chits and Investment (P) Ltd. v. Union of India & Ors.5** Relevant portion thereof describing the nature of chit funds business is as follows:

> "The provision in Section 6 relating to entering into Chit agreement clearly shows that a contract has to be entered into between the subscribers and the foreman and in view of the definitions provided in Sections 2(b), 2(c), 2(d), 2(e) and 2(j) enforceable contract comes into existence and the Act provides how the contract has to be implemented and acted upon by the parties to the contract. Therefore, it is a special form of contract contemplated by Entry 7 of List III of Seventh Schedule of the Constitution of India and it cannot be termed as money lending business. It is clear that the foreman does not lend his money to any of the subscribers. The foreman acts only as person to bring together the subscribers and certain obligations are cast upon him with a view to protect the subscribers from the mischief and fraud committed by the foreman in view of his position. The amounts are paid to the subscribers as per the chit and in accordance with the provisions of the Act. It will not be correct to state that each subscriber lends money to the person who gets chit earlier. It cannot also be construed that the person who gets chit later should be treated as the moneylender. The agreement between the parties that is entered as per Section 6 of the Act, only provides for distribution of the chit amount. This agreement has to be treated as contract between the subscribers and the foreman and it is the foreman who brings the subscribers together and therefore, the Act provided for payment of commission for the services rendered by the foreman as he does not lend money belonging to him. The dominant purpose of the Act is to regulate the chit and control the activity of the foreman and protect the interests of the subscribers. The pith and substance of the Act is that it provides for a special contract. The legislation provides for a special kind of contract and thus squarely falls within Entry 7 of List III of Schedule VII."

24) We have already noted that there are two types of chits, namely, simple chits and business chits. This categorisation was given by the Study Group headed by Dr. Bhabatosh Dutta constituted by the Banking Commission in 1970. The said description was given imprimatur by this Court in **Reserve Bank of India v. Pearless General Finance and Investment Company Limited6** The said description along with the definition of the term 'chit' contained in Section 2(b) of the Chit Funds Act gives a fair idea of the nature of fund business. A person (known as foreman) enters into agreement with specified number of persons where under all those persons agree to subscribe a certain sum of money by way of periodical instalment over a definite period. Say, for example, this kind of agreement is

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entered into with 20 persons. These 20 persons i.e. subscribers agree to subscribe Rs.5,000/- per month for 20 months. In this manner, every month Rs.1,00,000/- are contributed by these 20 persons. Out of this amount, foreman deducts his commission, say, Rs.10,000/- (which is regulated by the provisions of Chit Funds Act). Remaining amount of Rs.90,000/- would be the prize amount. This amount would be given to one of the subscribers as determined by lot or by auction or by tender or in such other manner as may be specified in chit agreement. If it is by auction, then the subscribers may give their bids offering the discount. The subscriber offering maximum discount shall be successful subscriber. It may be mentioned that there is a cap on such a discount which laid down in the Chit Funds Act and a subscriber cannot offer more discount than the maximum limit stipulated under the Chit Funds Act. If there are more than one subscribers offering maximum discount, then the successful subscribers would be chosen by draw of lots. Successful subscriber would get the prize amount, i.e., the amount after deduction of the discount offered by him. The amount of discount shall be distributed among all the subscribers. In a way, the said amount of discount which the successful bidder has foregone becomes the dividend which is to be distributed to all the subscribers after deducting a fixed amount representing the commission payable to the foreman. Foreman is a person who organises the auction and conducts the proceedings. From the aforesaid procedure in which this business is conducted it also becomes clear that those subscribers, who delay the bidding or do not bid, stand to gain and they receive maximum share in the discounts. If seen from this angle, the chit is somewhat like a recurring deposit with the bank. In fact, there is no bar on the foreman of the chit fund also to participate in the bidding, as a subscriber.

25) In **Sriram Chits & Investment (P) Ltd.** case, this Court declared the following propositions pertaining to the business of chit funds:

> (a) The Act, in pith and substance, deals with special contract and consequently falls within entry 7 of list III of the 7th Schedule to the Constitution of India;
>
> (b) A chit fund transaction is not a case of borrowing, nor is it a loan transaction. If a subscriber advances any amount, he does so only to one of the members;
>
> (c) The funds of the chit fund belong to the entire lot of subscribers;
>
> (d) The amounts are in deposit which the stake holder only holds a trust for the benefit of the members of the fund;
>
> (e) The foreman acts only as a person to bring together the subscribers and he is subject to certain obligations with a view to protecting the subscribers from any mischief or fraud committed by him by using the position;
>
> (f) Commission is payable to the foreman for the service rendered by him as he does not lend money beonging to him.

26) Having kept in mind the aforesaid nature of the chit fund business, it becomes difficult to hold that such business amounts to ‘cash management’. We have already noted that there is no definition of cash management in the Act. In the absence of such a definition, Mr. Radhakrishnan, learned senior counsel appearing for Union of India relied upon the dictionary meaning which is assigned to the term cash management. This Court in **Union of India & Ors. v. Martin Lottery Agencies Limited7** has observed that dictionary or etymological meaning to the term ‘service’ may or may not be appropriate. Following observations from that judgment may be noted:

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"20. The word "service" has not been defined in the Act. Its dictionary or etymological meaning may or may not be appropriate. We would, however, notice its dictionary meaning:

> "Work done or duty performed for another or others; a serving; as, professional services, repair service, a life devoted to public service.
>
> An activity carried on to provide people with the use of something, as electric power, water, transportation, mail delivery, telephones, etc.
>
> Anything useful, as maintenance, supplies, installation, repairs, etc., provided by a dealer or manufacturer for people who have bought things from him."

27) Bearing in mind the aforesaid caution, we may refer to the dictionary meaning of the term cash management as shown by the learned senior counsel for the Revenue:

> "Cash Management : Cash management is a broad area having to do with the collection, concentration, and disbursement of cash including measuring the level of liquidity, managing the cash balance, and short-term investments."

28) In the inaugural address delivered by Shri Vepa Kamesam, then Deputy Governor, Reserve Bank of India at a Workshop on "Marketing Cash Management Services" organised by the Administrative Staff College of India, Hyderabad on September 26, 2011, he explained this term as under:

> "... the fundamental objective of cash management is 'optimisation of liquidity through an improved flow of funds'."
>
> "Good cash management is a conscious process of knowing when, where, and how a company's cash needs will occur;
>
> knowing what the best sources for meeting additional cash needs; and being prepared to meet these needs when they occur by keeping good relationships with bankers and other creditors."

29) Even on the application of the aforesaid definition explaining cash management, it would be difficult to sustain the argument of the Revenue that chit fund activity amounts to cash management. In common parlance as well as in banking field, cash management is understood as managing the surplus cash of a person or a company.

Mr. Vishwanathan, learned senior counsel appearing for the respondents had referred to the following comments and opinion of RBI on the nature of chit fund business:

> "23/24.12.2001 - Department of Non-Banking Supervision (Central Office – Policy Division) **("DNBS (PD)")** provided its comments stating that:
>
> "...chit fund business neither explicitly nor implicitly falls within the meaning of fund management or cash management. It may be erroneous to cover chit fund activities within the meaning of section 137(a)(10) of the Finance Act. It also leaves scope for avoidable litigation until the chit fund activity is explicitly made subject to service tax."

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It was also suggested that the concurrence of DBOD (Department of Banking Operation and Development Central Office) on the meaning of cash management and of legal Division on the implication of covering chit business under service tax may be obtained.

21.01.2002 – DBOD provided an opinion on the meaning of 'cash management' wherein it was clearly stated that:

"Cash management" as a service activity would involve extending certain special facilities to the customer by virtue of which the customer is able to streamline his resources in an efficient manner resulting in reduction of the extent of idle cash/unrealized dues (by way of cheque/bills deposited for collection/clearing). It may not be correct to conclude that a chit fund company is extending service of the above nature to its member."

30) Thus, whenever a person is having idle cash or unrealised dues and wants the same to be utilised in a proper and fruitful manner, managing the said idle cash would amount to cash management. These are the services generally offered by the banking institutions to their clients.

Aswath Damodaran in his book Corporate Finance has spelled out the management of cash in the following manner:

"Every business has to maintain a cash balance to meet needs that can be managed only with cash. The convenience and liquidity associated with keeping cash also carries a cost, however, for cash does not earn a return for the business. Some businesses hold cash equivalents, such as Treasury Bills, which provide almost all of the convenience of cash but also earn a return for the holder, albeit one lower than earned by the business on real projects."

31) In business management, this aspect is studied with a specific focus in mind. It is accepted as a reality that one of the most important factors for failure of business firms is the shortage of working capital which emerges due to lack of attention to proper management of current assets i.e. cash, inventories, receivables etc. An efficient management of these current assets cannot only reduce the risk of financial distress but can also make a positive contribution to the profit of the firm. Therefore, need is felt to properly manage the aforesaid current assets which include cash as well. In this sense, cash management refers to management of cash balance and the bank balance including the short terms deposits. The cash is obviously the most important current assets, as it is the most liquid and can be used to make immediate payments. Insufficiency of cash at any stage may prevent a firm from discharging its liabilities or force it to sell its other assets immediately. On the other hand, extreme liquidity may take the firm to make uneconomic investments. This underlines the significance of cash management. The term cash is generally used in two different ways: One, it may include currency, cheques, drafts, demand deposits held by a firm i.e., pure cash or generally accepted cash equivalents. Second, and in a broader sense, it also includes near cash assets such as marketable securities and short term deposits with banks. For cash management purposes, the term cash is used in this broader sense i.e., it covers cash, cash equivalents and those assets which are immediately convertible into cash. In the aforesaid sense, managing the cash, which is crucial for any business, becomes a challenge, namely, to see as to how much cash is to be held which may be required for day to day liquidity/expenses and how the surplus cash is to be invested in order to have some return thereupon in the form of interest or otherwise. Thus, finance manager is required to manage

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the cash flows (both inflows and outflows) arising out of the operations of the business. In this sense, while undertaking the task of cash management, the financial manager may also be required to identify the sources from where cash may be procured on a short term basis or the outlets where excess cash may be invested for a short term so that whenever the cash is needed in the business, short term investment is liquidated and the cash utilised. A judicious management of cash, near cash assets and marketable securities allows the firm to hold the minimum amount of cash necessary to meet the firm's obligations as and when they arise. As a result, the firm is not only able to meet its obligations, but is also in a position to take advantage of the opportunity of earning a return and thereby increasing the profitability of the firm. Thus, the challenge before any business is to assess how much holding of cash is needed for day to day business, that is, for the purpose of business transactions as a precautionary measure, and even keeping in mind speculative motive in order to take advantage of potential profit making situations etc. Further, after setting apart cash for the aforesaid purposes which is to be held, how the surplus cash is to be invested so that it yield proper returns instead of keeping the surplus cash idle. At the same time, the company should also be in a position to liquidate the investment and realise cash immediately if situation so demands. For this, the Manager is supposed to ensure that the firm is having right quantity and the right liquidity from right source at right place and at the right time. All this is known as cash management. Cash management, thus, deals with optimisation of cash as an asset and for this purpose various decisions are to be taken for proper management thereof. The cash management schemes are, thus, built around two goals: (a) to provide cash needed to meet the obligations and (b) to minimise the idle cash held by the business.

32) When we understand the aforesaid concept of cash management, the answer we are seeking becomes obvious. Insofar as activity of chit fund is concerned, it does not amount to cash management.

33) The matter can be looked into from another angle as well. The aforesaid description of cash management as a management tool in any case, throws doubts on the claims of the Revenue and it cannot be claimed by the Revenue that the position as to whether chit fund business is cash management is specific or certain. We are dealing with a taxing statute and when we find that goods falls within the domain of uncertainty, it would be difficult to lean in favour of the Revenue.

> In **Commissioner of Income Tax (Central)-I, New Delhi v. Vatika Township Private Limited8**, a Constitution Bench of this Court highlighted that taxing statutes have to be specific and certain. Following discussion from that judgment is reproduced below:
>
> > "41. We would like to embark on a discussion on some basic and fundamental concepts, which would shed further light on the subject-matter:
> >
> > 41.1. No doubt, there is no scope for accepting the Libertarian theory which postulates among others, no taxation by the State as it amounts to violation of individual liberty and advocates minimal interference by the State. The Libertarianism propounded by the Austrian born economist philosopher Friedrich A. Hayek and American economist Milton Friedman stands emphatically rejected by all civilized and democratically governed States, in favor of a strongly conceptualized "welfare State". To attain a welfare State is our constitutional goal as well, enshrined as one of its basic feature, which runs through our Constitution. It is for this reason, specific provisions are made in the Constitution, empowering the legislature to make laws for levy of

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taxes, including the income tax. The rationale behind collection of taxes is that revenue generated therefrom shall be spent by the Governments on various developmental and welfare schemes, among others.

41.2. At the same time, it is also mandated that there cannot be imposition of any tax without the authority of law. Such a law has to be unambiguous and should prescribe the liability to pay taxes in clear terms. If the provision concerned of the taxing statute is ambiguous and vague and is susceptible to two interpretations, the interpretation which favors the subjects, as against the Revenue, has to be preferred. This is a well-established principle of statutory interpretation, to help finding out as to whether particular category of assessee is to pay a particular tax or not. No doubt, with the application of this principle, the courts make endeavor to find out the intention of the legislature. At the same time, this very principle is based on "fairness" doctrine as it lays down that if it is not very clear from the provisions of the Act as to whether the particular tax is to be levied to a particular class of persons or not, the subject should not be fastened with any liability to pay tax. This principle also acts as a balancing factor between the two jurisprudential theories of justice — Libertarian theory on the one hand and Kantian theory along with Egalitarian theory propounded by John Rawls on the other hand.

41.3. Tax laws are clearly in derogation of personal rights and property interests and are, therefore, subject to strict construction, and any ambiguity must be resolved against imposition of the tax. In Billings v. United States [58 L Ed 596 : 232 US 261 at p. 265 : 34 S Ct 421 (1914)] , the Supreme Court clearly acknowledged this basic and long-standing rule of statutory construction: (L Ed p. 598)

> "Tax statutes ... should be strictly construed; and if any ambiguity be found to exist, it must be resolved in favor of the citizen.
>
> Eidman v. Martinez [46 L Ed 697 : 184 US 578 (1902)] , L Ed p. 701 : US p. 583; United States v. Wiggles worth [2 Story 369 (1842)] , Story p. 374 and Mutual Benefit Life Insurance Co. v. Herold [198 Fed 199 (1912)] , Fed p. 201, affirmed in Herold v. Mutual Benefit Life Insurance Co. [201 Fed 918 (CCA 3d 1913)] ; Park view Building & Loan Assn. v. Herold [203 Fed 876 (1913)] , Fed p. 880 and Mutual Trust Co. v. Miller [177 NY 51 : 69 NE 124 (1903)] , NY p. 57."

41.4. Again, in United States v. Merriam [68 L Ed 240 : 263 US 179 : 44 S Ct 69 (1923)] , the Supreme Court clearly stated at US pp. 187-88: (L Ed p. 244)

> "On behalf of the Government it is urged that taxation is a practical matter and concerns itself with the substance of the thing upon which the tax is imposed, rather than with legal forms or expressions. But in statutes levying taxes the literal meaning of the words employed is most important, for such statutes are not to be extended by implication beyond the clear import of the language used. If the words are doubtful, the doubt must be resolved against the Government and in favour of the taxpayer. Gould v. Gould [62 L Ed 211 : 245 US 151 (1917)] , L Ed p. 213 : US p. 153."

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41.5. As Lord Cairns said many years ago in Partington v. Attorney General[(1869) LR 4 HL 100] : (LR p. 122)

> "... as I understand the principle of all fiscal legislation it is this: if the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be."

34) Likewise, we would also like to reproduce discussion to the same effect contained in **Commissioner of Income Tax, Patiala & Ors. v.Shahzada Nand & Sons & Ors.9**

> "10. Before we advert to the said arguments, it will be convenient to notice the relevant rules of construction. The classic statement of Rowlatt, J., in Cape Brandy Syndicate v. IRC [(1921) 1 KB 64, 71] still holds the field. It reads:
>
> > "In a Taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."
>
> To this may be added a rider: in a case of reasonable doubt, the construction most beneficial to the subject is to be adopted. But even so, the fundamental rule of construction is the same for all statutes, whether fiscal or otherwise. "The underlying principle is that the meaning and intention of a statute must be collected from the plain and unambiguous expression used therein rather than from any notions which may be entertained by the court as to what is just or expedient". The expressed intention must guide the court."

35) We, therefore, hold that the term 'cash management' as understood in common parlance would not embrace chit fund business.

Question No.2 – Whether chit fund can be treated as a form of fund management?

36) We may mention that the entire case of the Revenue was that chit fund amounts to cash management and cash management is one of the forms of fund management. Once we have held that chit fund business is not cash management or a business of managing cash, no further discussion on this issue is even required. However, dehors the issue of cash management, we are of the view that activity of managing chit fund does not amount to management of any type of fund. Even as per the definition from dictionary relied upon by the Revenue, fund is an aggregation or deposit of resources from which supplies are or may be drawn for carrying on any work, or for maintaining existence. Mr. Radhakrishnan has relied upon the following dictionary meanings of fund management and asset management:

> "(a) Fund – A fund is a source of money that will be allocated to a specific purpose. A fund can be established for any purpose whatsoever, whether it is a city government setting aside money to build a new civic center, a college setting aside money to award a scholarship, or an insurance company setting aside money to pay its customer's claims.

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(Ref. http://www.investopedia.com/terms/f/fund/asp)

(b) Funds - All the financial resources of a firm, such as cash in hand, bank balance, accounts receivable. Any change in these resources is reflected in the firm's financial position.

(Ref. http://www.businessdictionary.com/definition/ funds. html)

(d) Fund

(i) Sum of money set aside and earmarked for a specified purpose.

(ii) Accounting entity (similar to a bank account) for recording expenditures and revenues associated with a specific activity.

(iii) To finance or underwrite a business, program, or project.

(iv) Popular term for mutual fund.

(Ref. http://www.businessdictionary.com/definition/ fund. html)

(d) Fund Management – Management of the investment fund of an institution such as an insurance company or a pension scheme. It is sometimes known as investment management. (Ref. Advanced Law Lexicon, Book I, P. Ramanatha Aiyar, 3rd edition Reprint 2009 @ 370).

(e) Fund management

The business of Dealing with the investment of sums of money on behalf of clients (Ref.

http://www.investorguide.com/definition/fund-management. html)

(f) Asset Management – The function of managing assets on behalf of a customer, usually for a fee. Management of assets of a customer, usually for a fee. Broadly, the efficient control and exploitation of a company's assets, most commonly used to describe the management of any fund by a fund manager. (Ref. Advanced Law Lexicon, Book I, P. Ramanatha Aiyar, 3rd edition Reprint 2009 @ 1948)."

37) Again, it refers to a fund which is normally created by a business or an organisation for a specific purpose and then utilised for the said purpose. A bare look at the aforesaid definitions compels us to hold that chit fund cannot be treated as fund management as understood in the sense the term is known in business parlance. We, therefore, hold that the chit fund business was not covered by sub-clause (v) of sub-section 12 of Section 65 even after its amendment by Finance Act, 2007.

38) For our reasons given above, we affirm the conclusion in the impugned judgment of the Andhra Pradesh High Court. We also hold that Kerala High Court has taken erroneous view and its judgment stands overruled. As a result, these appeals are dismissed.

No costs.

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.....J.

(A.K. SIKRI)

.....J.

(R.K. AGRAWAL)

NEW DELHI;

JULY 4, 2017

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ITEM NO.1501 COURT NO.6 SECTION XII-A

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Civil Appeal No(s). 5724-5725/2011

UNION OF INDIA & ORS. Appellant(s)

VERSUS

M/S MARGADARSHI CHIT FUNDS(P)LTD.ETC. Respondent(s)

WITH

C.A. No. 6916-6917/2011

Date : 04-07-2017 These appeals were called on for pronouncement of judgment today.

For Appellant(s) Mr. B. Krishna Prasad, AOR

For Respondent(s) M/s. Parekh & Co., AOR

Mr. V. N. Raghupathy, AOR

Hon'ble Mr. Justice A.K. Sikri pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice R.K. Agrawal.

The appeals are dismissed in terms of the signed reportable judgment.

Pending application(s), if any, stands disposed of accordingly.

(Ashwani Thakur) (Mala Kumari Sharma)

COURT MASTER COURT MASTER

(Signed reportable judgment is placed on the file)

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