

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

+ LPA No.1794/2006

Date of Decision : 30th July, 2008

ALL INDIA MANAGEMENT ASSOCIATION Appellant

Through

Mr. Rajiv Sharma, Adv.

versus

UNION OF INDIA & ORS.

.....Respondents

Through

Mr. Rakesh Tiku with

Mr. Prakash Gautam, Adv.

CORAM:

HON'BLE MR. JUSTICE MUKUL MUDGAL

HON'BLE MR. JUSTICE MANMOHAN

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| 1. | Whether the Reporters of local papers
may be allowed to see the judgment? | Yes |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be
reported in the Digest? | Yes |

JUDGMENT

30-07-2008

: MUKUL MUDGAL,J.(Oral)

1. The appellant was the original writ petitioner before the learned Single Judge. The appellant is the All India Management Association, which according to the appellant is exempted under Section 80(G) of the Income Tax Act, as a charitable Trust.

2. The following facts are not in dispute:

(a) The appellant had made postal deposits with the respondents at stipulated rates of interests varying from 7.5% to 9% per annum and the deposit periods varied from 8th February 2002 to 26th December, 2003.

2(b) A dispute arose on account of a subsequent postal audit. During the audit it was found that the accounts opened by the appellant were in contravention of the existing rules and instructions and it was revealed that the petitioner could not have made such deposits, accordingly, a letter dated 21st June 2004 was sent by the respondent to the petitioner averring as follows:

“To,

All India Management Association
14, Institutional Area,

Lodi Road, N.D.-3.

No.APN SB No./Audit/04

dtd.21.6.04

Sub: Irregular opening of I.D. Accounts
with the bank of Rs.9.49 crores.

PO.

As per Post Office Small Saving Scheme,
other institutional accounts to be opened by a
trust, Regimental & welfare fund only w.e.f.
1.4.95.

You are, therefore, requested to
intimate whether "All India Management
Association" is one under Institutional or
other Institutional Accounts category.

Sr. Postmaster
Lodi Road, HPC
New Delhi-110003."

The appellant responded to the said letter in the following terms:

"To
Sr. Post Master
Lodhi Road, HPO
New Delhi 110003.

Ref: Your letter No.APM SBHO/Audit/04
dated 21/06/04.

Dear Sir,

Please refer to your above mentioned

letter in connection with the opening of TD accounts for the sum of Rs.9.49 crores. In this connection we hereby inform you that AIMA is an autonomous body and all its activities are educational and towards the development of the management profession. In addition, we are exempted u/s 10(23 C)(vi) and 80G of the income tax act, 1961. We have to follow sec. 11(5) of the income tax act to invest our surplus funds and are assessed as Charitable Trust by the Income tax department. Copy of all these relevant documents were submitted to you while opening our first TD account on 08/02/2002. Thereafter, you have allowed us to open our further TD accounts till our last deposit 26/12/2003.

However, we once again are enclosing herewith the copies of aforesaid papers and request your to release all our interest amount due on various TD accounts. In case you have any reservation on this account, the same should be intimated to us urgently so that we can suitably invest our funds elsewhere.”

3. Eventually, on 18th October 2004, the appellant was directed by the respondent to close its account in the following terms:

“Sir,

Kindly refer to your office letter no.AIMA/crs/INV/04-05 dated 28-06-04 regarding opening TD accounts for the sum of Rs.9.39 crores.

In this connection, it is intimated that our Audit objected that all your office TD accounts were opened in contravention of the Rules. As per existing rules, only trust, Regimental Fund and Welfare Fund can open a Time Deposit Account under other institutional accounts category. Your institution does not come under the above category.

As per D.G. instructions you are requested to close your irregular TD accounts within a week, if you are not agree to close these accounts, this office will close all the TD account opened in contravention of Rules after deducting the interest paid till date earlier.”

4. It is not in dispute that all the deposits of the appellant were returned on 26th October 2004 by the respondents. The said amounts were returned to the appellant after deducting the sum of Rs.61,85,726.85 which was the offered rate of interest already paid to the appellant.

5. This led to the filing of the writ petition in this Court where the petitioner's main grievance was that he ought not have to suffered on account of respondents' mistake as the appellant had not made any mis-declaration while making deposits. The learned Single Judge while agreeing with the

petitioner and setting aside the deduction of 61,85,726.85 by the respondent, granted interest to the petitioner only @ 5% per annum. This denial of the interest at the offered rate on deposits by the respondents has led to the present appeal by the appellant.

6. The main grievance of the appellant as ventilated by Mr. Rajiv Sharma, the learned counsel appearing for the appellant is that when the learned Single Judge had found that there was no mis-declaration made by the appellant and the appellant was in no way responsible for what was later termed as an error which was discovered during the audit, the writ petitioner/appellant should not have been penalized because grant of interest limited to 5% per annum would deny him the amount of interest which he could have secured from the deposits with the respondent or elsewhere.

7. The learned counsel for the respondent, Mr. Rakesh Tikku assisted by Mr. Prakash Gautam, Advocate, has contended that the grant of 5% interest per annum adequately meets the ends justice as today the term Saving Bank Account offers rate of interest @ 3.5% per annum. This has been countered

by the learned counsel for the appellant by contending that the interest rates indicated by the respondent are in respect of Saving bank accounts and not fixed term deposit where the interest is much higher.

8. We are of the view that the mistake was made at the end of the respondent in accepting the deposit of the appellant and the appellant would have been entitled to reimbursement of the interest in case no audit objection had been raised.

While we agree with the grant of interest by the learned Single Judge to the appellant @ 5% per annum on the premise that there was no mis-declaration by the original writ petitioner, i.e., the appellant, we are satisfied that in the present case, the denial of the stipulated rate of interest available on Postal deposits in the present case causes grave injustice to the appellant as the fault was not at the appellant's end, since the deposits were only wrongly accepted by the respondent and discovered only upon the audit objection.

9. Even the Single Judge adopted the following rationale for awarding 5%

interest “The fact remains that the Respondents have enjoyed the fruits of the Deposits made to them by the Petitioner for a considerable period of time. The Respondents are, therefore, liable to pay interest on the amounts.” It is evident that the petitioner/appellant would have been entitled to the interest elsewhere at higher rates. The appellant, in our view, is entitled to plead that it should be granted interest as per the stipulated rate. We cannot lose sight of the fact that the appellant would have been given the interest at the stipulated rate in case no audit objection had been raised. Furthermore, the amount deposited by the appellant was available to the respondents till its return on 26th October 2004. The learned Single Judge has held that a bonafide mistake on the part of the respondent leads to the result that there is no *consensus ad idem* between the contracting parties.

10. According to Black's Law Dictionary (6th Edition) consensus ad idem means a meeting of minds. The Hon'ble Supreme Court in the case of **ITC Limited vs. George Joseph Fernandes and Anr. (1989) 2 SCC 1** while emphasizing on the concept of consensus ad idem, observed as follows: -

“.....Neither party can rely upon his own mistake to say that it was a nullity from the beginning, no matter that it was a mistake which to his mind was fundamental, and no matter that the other party knew that he was under a mistake. A fortiori, if the other party did not know the mistake, but shared it. There is no doubt that the application of the doctrine of mutual mistake depends upon the true construction of the contract made between the parties. A mutual misunderstanding will not nullify a contract but only if the terms of the contract construed in the light of the nature of the contract and of the circumstances believed to exist at the time it was done show that it was never intended to apply to the situation which in reality existed at that time, will the contract be held void. Mistake as to the quality of the article contracted for may not always avoid the contract. As Lord Atkin said in *Bell v. Lever Bros. Ltd.* mistake as to the quality of the thing contracted for raises more difficult questions. In such a case a mistake will not affect assent unless it is the mistake of both parties, and is as to the existence of some quality which makes the thing without the quality essentially different from the thing as it was believed to be. A distinction has, therefore, to be made between a mistake as to substance or essence on the one hand, and a mistake as to quality or attributes on the other. A mistake of the former type, will avoid the contract whereas a mistake of the latter type will not. Such a distinction was made in *Kennedy v. Panama Royal Mail Co. Ltd.* It may be said that if there be misapprehension as to the substance of the thing there is no contract; but if it be a difference in some quality or accident, even though the misapprehension may have been the actuating motive to the purchaser, yet the contract remains binding. Thus a mistake as to an essential and integral element in the subject matter of the contract will avoid the contract. A mistake will not affect assent unless it is the mistake of

both parties, and is as to the existence of some quality which makes the thing without the quality essentially different from the thing as it was believed to be. A distinction, therefore, should be drawn between a mistake as to the substance of the thing contracted for, which will avoid the contract and mistake as to its quality which will be without effect.”

In our view, in the present case, when the Appellant made the deposits, the meeting of mind between the parties was on the contracted rates of interest. Mistake, if any, had occurred only from one side, i.e., the respondent, and therefore, the principle a lack of *consensus ad idem* has no application to the present case. Accordingly, we allow the appeal and direct that instead of interest @ 5% per annum as ordered by the learned Single Judge the appellant shall be entitled to the interest at rates initially stipulated for on the deposits of the respondent. The said amount shall be paid to the appellant by the respondent not later than 25th September, 2008. The interest would be payable from the date of deposits at the stipulated rate in respect of each deposit up to 26th October, 2004. However, the amount of interest already paid shall be liable to be adjustable by the respondents.

11. With the above observations and directions, the appeal is allowed in the terms indicated above.

MUKUL MUDGAL, J.

MANMOHAN, J.

July 30, 2008
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