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**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT**

Mr. Justice Umar Ata Bandial  
Mr. Justice Maqbool Baqar  
Mr. Justice Faisal Arab

AFR:

**CIVIL APPEAL NO. 837 OF 2011**

(Against order dated 21.04.2011 of the  
High Court of Sindh, Karachi passed in  
ITR No. 171/2003)

***Commissioner Inland Revenue (Zone-I) LTU, Appellant(s)***  
***Karachi***

***Versus***

***M/s Linde Pak Ltd, Karachi***

***Respondent(s)***

For the Appellant(s) : Mr. Irfan Mir Halepota, ASC

For the Respondent(s) : Mr. Shahid Hamid, Sr. ASC

Date of Hearing : 25.09.2019

**ORDER**

**MAQBOOL BAQAR, J.** During the assessment proceedings in the year 1998-99, an Assessment Officer, of the applicant's department found that the respondent-company has not deducted and paid tax on the mark-up accrued in terms of a finance/loan agreement executed between the respondent-company and a consortium of financial institutions and commercial banks, in respect of a long term finance granted by the said consortium to the respondent-company ("**The Finance/Loan agreement**"). It was observed that the respondent-company, in terms of the finance/loan agreement, was obliged to deduct income tax on the markup accrued in respect of the finance granted in terms of the finance/loan agreement, as mandated by section 50(7D) of the Income Tax Ordinance, 1979 ("**The Ordinance**"). The Assessing Officer thus declaring, the respondent-company, an assessee in

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default under section 52 of the Ordinance, also imposed additional tax as prescribed through section 86 of the Ordinance. Upon dismissal of their appeal filed against the aforesaid order, by the Commissioner Income Tax (Appeals), the respondents brought their challenge before the Income Tax Appellate Tribunal. Ultimately a full bench of the Tribunal, through order dated 13.09.2001, referred to the learned High Court of Sindh, for their opinion, a question of law arising out of the order of the Tribunal, as follows:

*"Whether on the facts and circumstances of the case the learned Income Tax Appellate Tribunal was justified in holding that "loan agreement" is an "instrument" within the meaning of the words "instrument of any kind" as have been used in section 50(7D) of the Ordinance."*

A learned Division Bench of the High Court through the impugned order answered the above question in the negative.

2. Section 50(7D) of the ordinance reads as under:

*"(7D)-Any person responsible for making any payment by way of profit or interest on bonds, certificates, debentures, securities or instruments of any kind issued by any banking company, or any company referred to in Sub-Clause (a) or Sub-Clause (b) of Clause (16) of Section 2, or any local authority, or any finance society not being a payment to which Sub-Section (2) of Section 50 applies, shall deduct advance tax, at the time of making such payment at the rate specified in the First Schedule."*

Indeed, along with the four specific documents (*specific documents*), section 50(7D) of the Ordinance also mentions "instrument of any kind", as a document creating obligation and liability in terms of the said provision. Admittedly not any bond, certificate, debenture or any other security has been issued by the respondent-company which may obligate it to pay any profit or interest to the lender's consortium. The document on the basis whereof the respondent-company was said to be obligated to deduct tax, is a finance/loan agreement executed by and between the respondent-company and the lender's consortium. In the

assessment officer's opinion, which has been upheld by the Commissioner Income Tax (Appeals), and the Tribunal, the finance/loan agreement, being an instrument, falls within the category of documents as enumerated in section 50(7D) of the Ordinance.

3. The terms 'instrument' has been defined by Black's Law Dictionary, 10<sup>th</sup> Edn., in its ordinary sense, as a written legal document that defines rights, duties, entitlements or liabilities, such as statute, contract, will, promissory note or share certificate and with reference to commercial law, the terms has been defined there as an unconditional promise or order to pay a fixed amount of money or other fixed charges described in the promise or order esp., commercial paper or security, or any other writing that evidences a right to the payment of the money.

4. Whereas an 'agreement' according to Black's Law Dictionary 10<sup>th</sup> Edn., is a manifestation of mutual assent by two or more persons, and as 'the parties actual bargain founded in their language, or by implication from other circumstances'. It is an act in law whereby two or more persons declare their consent as to any act or thing to be done or forborne by some or one of those persons for the use of the others and other of them, which should reflect the meeting of minds of the contracting parties.

5. Indeed an agreement falls within the definition of instrument but, as evident from the comparison of its definition with that of the '*specific documents*', it is not of the category or class of the '*specific documents*'.

6. Thus a '*bond*' has been described by Black's Law Dictionary 10<sup>th</sup> Edn., as a "*document containing confession of a debt*", as a "written promise to pay money", or to do some act if certain circumstances occur, or a certain time elapse. With reference to

case law it is stated that there is no distinction between bonds and 'certificates of indebtedness' which conforms to all the characteristics of bonds. The word 'certificate' has been defined by Chamber's English Dictionary, as a written declaration, official or formal of some fact and the term 'Debenture' whose origin lies in the latin word *debenture*, meaning, 'there are due', has been described by Black's Law Dictionary 10<sup>th</sup> Edn., as an instrument acknowledging a debt secured only by a general credit and financial reputation of the corporate issuer, not by a lien on corporate assets. Whereas the term 'security' has been defined there as a collateral, given or pledged to guarantee the fulfilment of an obligation, esp, the assurance that a creditor will be repaid (usu, with interest) any money or credit extended to a debtor.

7. The basic characteristics and the shared features that emerges from the respective definitions of the aforesaid 'specific documents', that run through the generic string thereof, are that they signify acknowledgment, by the executor thereof, of the outstanding debt, carry indication of indebtedness, and hold a promise to pay the same (usu, with interest) to the creditor, and are a resource to be used in case of failure in the fulfilment of the principle obligation. The documents/instruments of this species are unilateral in form and nature, and are issued by the borrower/debtor in favour of the creditor/promisee.

8. Whereas agreements, as discussed earlier, manifest the mutual consent of the parties thereto, and embody their actual bargain in respect of any act or thing to be done or forborne, it is a mutual document, containing reciprocal promises and obligations, executed by and between the parties to the bargain. It could be either a bilateral and/ a multilateral document. The profound distinction between these two kinds of documents are well pronounced. The two patently belong to

distinct and different species of documents, and therefore the term 'instrument', cannot, in the context of the subject provision be construed in its wider sense, so as to include an agreement, or for that matter a finance/loan, agreement as it will be violative of the rule of construction known as *ejusdem generis*, meaning, 'the same kind or class', which requires that when a general word or phrase follows a list of specifics the former will be interpreted to include only the items of the same class as those listed. In the words of Bennion, where a word of wider meaning is included in a string of genus describing terms of narrower meaning, the *ejusdem generis* principle will operate to restrict the meaning of the wider word, so as to keep it within the genus (Bennion "Statutory Interpretation" 1984 Edn. P-536). The rule is founded upon the idea that if legislature intended a general word to be used in an unrestricted sense, the particular clauses would not have been mentioned.

9. The purpose behind the above principle is to restrict the imputed genus to an area that goes no wider than is necessary to encompass the entire generic string. Thus a string specified as "Boots, Shoes, Stocking and other articles" would import the genus 'foot ware' rather than the wider category of 'wearing apparel' [*Manghild (SS) v. McIntyre Bros & Co. (1920) 2 KB 321, 331*]. Similarly, in *Att.Gen. v. Seccombe (1911) 2 KB 688*, it was held that the words 'or otherwise' in the phrase 'any benefit to him by contract or otherwise', in the Customs and Inland Revenue Act, 1889, Section 11(1), must be construed *ejusdem generis* with 'Contract'. So also in *Scale v. Pickering [(1828) 2 Bing 448]*, the Court considered a local Act empowering a water company to 'break up the soil and pavement of roads, highways, footways, commons, streets, lanes, alleys, passages and public places'. There was thought to be an urban flavor about this string. The word 'footways' was thus held not to apply to a path across a field.

10. It is now well understood that words, and particularly general words, cannot be read in isolation, their colour and their contents are derived from their context. A word or a phrase is not to be construed as if it stood alone but in the light of its surroundings and thus the Latin maxim *Noscitur a Sociis*, which means, it is recognized by its associates. This contextual principle has been lucidly articulated by Stamp J. as English words derive colour from those which surround them. Sentences are not mere collection of words to be taken out of the sentence, defined separately by reference to the dictionary, or decided cases, and then put back into a sentence with the meaning which you have assigned to them as separate words (**Bourne v. Norwich Crematorium Ltd. (1967) 1WLR. 691,696**).

11. The addition the phrase 'of any kind', to the word 'instrument' also is of no avail to the petitioners, as such purported supplementation also cannot detach the word 'instrument' from the string of the 'specifics' preceding it. Although the phrase 'of any kind' has a wide amplitude and the word 'any' has a diversity of meaning, and may be employed to indicate 'all' or 'every', as well, 'some', or 'one', but its meaning in a given statute depends upon the context of the subject matter and the statute, its generality may thus be restricted by the context. Thus the giving of a right to do some act, 'at any time', is commonly construed as meaning within a reasonable time, and the words 'any other', following the enumeration of particular classes are to be read as, 'other such like', and include only other of the like kind and character. In **A.G. v. Brown (1920) 1 KB 773**, regarding the question of the extent of prohibition placed by section 42 of the Customs Consolidation Act 1976, (UK), which reads, "the importation or arms, ammunition, gunpowder or any other goods may be prohibited", the Court

observed that although the italicised words are completely general, it was obvious that some limitation was intended. Otherwise why did not the drafter simply say, *'The Importation of any other goods may be prohibited'* and held that ejusdem generis principle applied to restrict the italicised words to objects of the same nature as the substances listed in the generic string.

12. In the light of the foregoing, we are of the firm view that the phrase *'instrument of any kind'*, employed in Section 50 (7D) of the Ordinance, is not be construed as if it stood alone, but its generality is to be restricted by the context and thus cannot be read so widely as to embrace documents such as agreement, or for that matter the finance/loan agreement, within its folds and therefore the respondent-company cannot be held liable under section 50(7D) of the Ordinance, for not deducting income tax in relation to the finance/loan agreement. We thus do not find any justification for interfering with the judgment of the learned High Court impugned before us. The appeal is accordingly dismissed.

Sd/- \_\_\_\_\_ J  
Sd/- \_\_\_\_\_ J  
Sd/- \_\_\_\_\_ J

**Islamabad, the**  
25<sup>th</sup> September, 2019  
(Amir sh.)

**APPROVED FOR REPORTING.**

Amir  
15/11/19

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15-11-19