CASE NO.:
Appeal (civil) 3326 of 2008

PETITIONER:
R & B Falcon (A) Pty Ltd.

RESPONDENT:
Commissioner of Income Tax

DATE OF JUDGMENT: 06/05/2008@
S.B. Sinha & V.S. Sirpurkar
&
J U D G M E N T
REPORTABLE

CIVIL APPEAL NO. 3326 OF 2008
(Arising out of SLP (C) No.10451 of 2007)

S.B. Sinha, J.

1. Leave granted.
2. Interpretation and/or application of the provisions of Section 115WB of the Income Tax Act, 1961 (for short, 'the Act') providing for imposition of tax on 'fringe benefits' is in question herein.
3. Before embarking upon the said question, however, we may notice the basic fact of the matter.

Appellant is incorporated under the laws of the Commonwealth of Australia. It is engaged in the business of providing Mobile Offshore Drilling Rig (MODR) along with crew on a day rate charter hire basis to drill offshore wells. The MODR operates offshore (upto 200 nautical miles off the coast of India). Allegedly, having regard to the harsh working environment and purported to be in line with global practices typical to such industry, the employees who may be residents of various countries including Australia, USA, UK, France etc. work on the MODR on a 'commuter basis'. They come to India, stay in the Rig for 28 days and go back to their own country being their place of residence for a further period of 28 days. The crew or the employees are transported from their home country to the MODR in two laps :

- first is from the nearest designated base city at the place of residence in the home country to a designated city in India for which the petitioner provides free air tickets of economy class and;
- second is from that city in India to the MODR through helicopter especially hired by the petitioner for this purpose.

4. Allegedly, on completion of 28 days, they go back from the Rig to the designated base city in their home country in the same manner. Appellant states that no conveyance/transport allowance is paid to them. Appellant entered into a contract of supplying MODR along with equipment and offshore crew on charter hire basis with Oil and Natural Gas Commission, a public sector undertaking, on or about 10.10.2003. It filed an application under Section 245Q(1) of the Income Tax Act, 1961 before the Authority for Advance Ruling (AAR) on the following question :

"Whether transportation cost incurred by the petitioner in providing transportation facility for movement of offshore employees from their residence in home country to the place of work and back is liable to Fringe Benefit Tax?"

5. Chapter XII of the Act providing for income tax on fringe benefits was inserted by the Finance Act, 2005. It came into force with effect from 1.4.2006.

6. Section 115W defines "employer" and "fringe benefit tax". "Fringe Benefit Tax" (FBT) has been defined as a tax chargeable under Section 115WA.

Section 115 WA(1) provides for the basis for charge of fringe benefit tax in the following terms :

"115WA.(1) In addition to the income-tax charged under this Act, there shall be charged for levy assessment year commencing on or after the 1st day of April, 2006, additional income-tax (in this Act referred to as fringe benefit tax) in respect of the fringe benefits provided or deemed to have been provided by an employer to his employees during the previous year at the rate of thirty per cent on the value of such fringe benefits.
(2) Notwithstanding that no income-tax is payable by an employer on his total income computed in accordance with the provisions of this Act, the tax on fringe benefits shall be payable by such employer."

Section 115WB consists of three sub-sections, the relevant clauses whereof read as under:

"Section 115WB - Fringe benefits (1) For the purposes of this Chapter, "fringe benefits" means any consideration for employment provided by way of-

(a) any privilege, service, facility or amenity, directly or indirectly, provided by an employer, whether by way of reimbursement or otherwise, to his employees (including former employee or employees);

(b) any free or concessional ticket provided by the employer for private journeys of his employees or their family members; and

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(2) The fringe benefits shall be deemed to have been provided by the employer to his employees, if the employer has, in the course of his business or profession (including any activity whether or not such activity is carried on with the object of deriving income, profits or gains) incurred any expense on, or made any payment for, the following purposes, namely:-

(A) entertainment;

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(F) conveyance;

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(Q) tour and travel (including foreign travel).;

(3) For the purposes of sub-section (1), the privilege, service, facility or amenity does not include perquisites in respect of which tax is paid

or payable by the employee or any benefit or amenity in the nature of free or subsidised transport or any such allowance provided by the employer to his employees for journeys by the employees from their residence to the place of work or such place of work to the place of residence".

7. Before the AAR, a circular issued by the Central Board of Direct Tax (CBDT) bearing No.8 of 2005, was relied upon by both the parties. We will refer to a part of it. The circular provides for explanatory notes on provisions relating to fringe benefit tax.
The object for imposition of the said tax is stated to be as under:
"The taxation of perquisites or fringe benefits is justified both on grounds of equity and economic efficiency. When fringe benefits are under-taxed, it violates both horizontal and vertical equity. A taxpayer receiving his entire income in cash bears a higher tax burden in comparison to another taxpayer who receives his income partly in cash and partly in kind, thereby violating horizontal equity. Further, fringe benefits are generally provided to senior executives in the organization. Therefore, under-taxation of fringe benefits also violates vertical equity. It also discriminates between companies which can provide fringe benefits and those which cannot thereby adversely affecting market structure. However, the taxation of fringe benefits raises some problems primarily because-
(a) all benefits cannot be individually attributed to employees, particularly in cases where the benefit is collectively enjoyed;
(b) of the present widespread practice of providing perquisites, wherein many perquisites are disguised as reimbursements or other miscellaneous expenses so as to enable the employees to escape/reduce their tax liability; and
(c) of the difficulty in the valuation of the benefits."

8. The heading of paragraph 11 of the said circular is "Frequently asked questions". The questions which were posed and answered and in turn are relevant for our purpose read as under :
"In terms of the provisions of sub-section (1) of Section 115WA, an employer in India is liable to FBT in respect of the value of fringe benefits\027
(a) Provided by him to his employees; and
(b) Deemed to have been provided by him to his employees.
The scope of fringe benefits provided or deemed to have been provided is defined in section 115WB. Sub-section (1) of the said section defines the scope of fringe benefits provided by the employer to his employees. Similarly, sub-section (2) of the said section defines the scope of fringe benefits deemed to have been provided by the employer to his employees. Therefore, sub-section (2) expands the scope of sub-section (1) through a deeming provision.
The provision relating to the computation of the value of the fringe benefits is contained in section

115WC. It is a settled principle of law that where the computation provisions fail, the charging section cannot be effectuated. Therefore, if there is no provision for computing the value of any particular fringe benefit, such fringe benefit, even if it may fall within clause (a) of sub-section (1) of section 115WB, is not liable to FBT.

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19. FBT is payable in the year in which the expenditure is incurred irrespective of whether the expenditure is capitalized or not. However, the same expenditure will not be liable to FBT again in the year in which it is amortized and charged to profit.

Is FBT payable by an Indian Company having employees based both in and outside India on its total (global) expenditure incurred by it for the purposes referred to in clauses (A) to (P) of sub-section (2) of section 115B?

20. FBT is payable on the value of fringe benefits provided or deemed to have been provided to employees based in India and determined on a presumptive basis in accordance with the provisions of Section 115WC of the Income-tax Act. The value of such fringe benefits is determined, inter alia, as a proportion of the total amount of expenses incurred for some identified purposes. In the case of an Indian company having employees based both in India and in a foreign country, FBT is payable on the proportion (50 per cent, 20 per cent or 5 per cent, as the case may be) of the total amount of expenses incurred for the purposes referred to in clauses (A) to (P) of sub-section (2) of section 115WB and attributable to the operations in India. If the company maintains separate books of account for its Indian and foreign operations, FBT would be payable on the amount of expenses reflected in the books of account relating to the Indian operations. If however, no separate accounts are maintained, the amount of expenses attributable to Indian operations would be the proportionate amount of the global expenditure. Further, such proportionate amount shall be determined by applying to the global expenditure the proportion which the number of employees based in India bears to the total worldwide employees of the company.

Whether an Indian company carrying on business outside India would be liable to FBT even though none of its employees in such business may be liable to pay income tax in India?

21. An Indian company would be liable to the FBT in India if it has employees based in India. Therefore, if an Indian company carries on business outside India but does not have any employees based in India, such company would not be liable to FBT in India.

Does FBT apply to foreign companies?

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103. FBT is a liability qua employer. It is an expenditure laid out or expended wholly and exclusively for the purposes of the business or profession of the employer. However, sub-clause (ic) of clause (a) of section 40 of the Income-tax

Act expressly prohibits the deduction of the amount of FBT paid, for the purposes of computing the income under the head profits and gains of business or profession. This prohibition does not apply to the computation of book profit for the purposes of section 115JB. Accordingly, the FBT is an allowable deduction in the computation of book profit under section 115JB of the Income-tax Act.
Whether expenditure incurred by the employer for the purposes of providing free or subsidized transport for journeys to employees from their residence to the place of work or such place of work to the place of residence would attract FBT?"

9. AAR by reason of its judgment and order dated 13.12.2006 holding that the company is liable to pay fringe benefit tax for providing transportation and movement of offshore employees for their residence and home countries outside India to the place of rig and back, opined that
(1) The exemption provision contained in sub-section (3) of Section 115WB is restricted to sub-section (1) whereas the exemption falls under the deeming provision contained in sub-section (2);
(2) Residence within the meaning of the said provision would mean residence in India and as the employees concerned are residents of the countries outside India, sub-section (3) of Section 115WB is not applicable.
10. Mr. S. Ganesh, learned counsel appearing on behalf of the appellant, would submit;
(1) The AAR committed an error of law insofar as it failed to consider that sub-section (3) covers both the contingencies envisaged under sub-sections (1) and (2);
(2) The distinction between sub-sections (1) and (2) is highly artificial inasmuch as the exemption is provided for in clauses (F) and (Q) of sub-section (2) of Section 115WB and unless the said provisions are read into sub-section (3), the same would be rendered otiose;
(3) While granting exemption, the Parliament having not restricted the operation of sub-section (3) only to the regular employees or the transport provided by the employer, no restrictive meaning can be given to sub-section (3).
(4) Residence of an employee being not restricted to the Territory of India, the AAR committed a serious error of law in passing the impugned judgment.
(5) CBDT itself, in its circular, having clarified that sub-section (2) is merely an expansion of sub-section (1), it was impermissible for the AAR to take the said factor into account.
(6) From the questions and answers contained in the said circular, it is evident that fringe benefit tax would be applicable on the value of fringe benefit provided or deemed to have been provided to employees based in India and no fringe benefit tax would be payable in respect of an expenditure incurred by the employer for an employee who is not based in India and in any event if the employee is based in a foreign country would also come within the purview thereof.
(7) The AAR is clearly wrong in holding that the word 'residence' would mean only residence in India.
11. Mr. G.E. Vahanavati, learned Solicitor General appearing on behalf of the respondent, on the other hand, would urge:
(A) Fringe benefit tax is a new concept in terms whereof any consideration for employees provided, inter alia, for facility or amenity comes within the purview thereof; and
(B) The tax is payable only when the employer incurs an expenditure delineated in sub-section (2) and such exemption is to be granted only on the tax leviable under sub-section (1).
(C) The terms 'residence', 'transport', 'conveyance' etc. must be given a broad meaning which would lead to the conclusion that only when

employees are provided for transport on a regular basis for attending to their work from the place of their residence to the place of work, exemption should be granted.

(D) The Parliament, in its wisdom, having used the words 'employees, journey, the same would only mean that on any journey undertaken by the employees for regularly attending the works and not on a work on periodic basis.

12. Fringe benefit tax is a new concept. The taxes to be levied on the fringe benefit provided or deemed to have been provided by an employer to employees during the previous year is at the rate of 30 per cent on the value of such fringe benefits. The object for imposition of the said tax, as is evident from the said circular dated 29.8.2005, was to bring about an equity. The intention of the Parliament was to tax the employer who, on the one hand, deducts the expenditure for the benefit of the employees including entertainment, etc. and on the other when the employees getting the perks are to be taxed, those who get direct or indirect benefits from the expenditures incurred by the employer, no tax is leviable. As stated in the objective, it is for bringing about a horizontal equity and not a vertical equity.

13. Sub-section (1) of Section 115WB contains the interpretation section. It is in two parts. It provides for a direct meaning, as also an expanded meaning. Expanded meaning of the said provision is contained in sub-section (2). Whereas sub-section (1) takes within its sweep any consideration for employment, inter alia, by way of privilege service, facility or amenity directly or indirectly, sub-section (2) thereof expands the said definition stating as to when the fringe benefit would be deemed to have been provided. The expansive meaning of the said term 'benefits' by reason of a legal fiction created also brings within its purview, benefits which would be deemed to have been provided by the employer to his employees during the previous year. Indisputably, sub-section (3) refers to sub-section (1) only. Ex facie, it does not have any application in regard to the matters which have been brought within the purview of the fringe benefit tax by reason of application of the deeming provision. We are concerned here with a question in regard to grant of exemption in respect of 'conveyance' as provided for in clause (F) of sub-section (2) and 'tour and travel' which is provided for in clause (Q) of sub-section (2) of Section 115WB.

14. CBDT categorically states in answer to question number 7 that sub-section (2) provides for an expansive definition.

Does it mean that sub-section (2) is merely an extension of sub-section (1) or it is an independent provision? If sub-section (2) is merely an extension of sub-section (1), Mr. Ganesh may be right but we must notice that Section 115WA provides for imposition of tax on expenditure incurred by the employer or providing its employees certain benefits. Those benefits which are directly provided are contained in sub-section (1). Some other benefits, however, which the employer provides to the employees by incurring any expenditure or making any payment for the purpose enumerated therein in the course of his business or profession, irrespective of the fact as to whether any such activity would be carried on a regular basis or not, e.g., entertainment would, by reason of the legal fiction created, also be deemed to have been provided by the employer for the purpose of sub-section (2). Whereas sub-section (1) envisages any amount paid to the employee by way of consideration for employment, what would be the limits thereof are only enumerated in sub-Section (2). We, therefore, are of the opinion that sub-sections (1) and (2), having regard to the provisions of Section 115WA as also sub-section (3) of Section 115WB, must be held to be operating in different fields.

15. We must test the submissions of Mr. Ganesh from another angle. The learned counsel contended that any benefit or amenity in the nature of free or subsidized transport provided by the employer to his employee for the purposes mentioned in sub-section (3) are to be found only in clauses (F) and (Q) of sub-section (2) and if that be so, the statute must be held to envisage grant of exemption in respect of matters which do not form the subject matter thereof.

We have noticed the factual matrix of the instant case. The employees concerned are experts in their field. They are necessarily

residents of other country. They are brought to the Rig by providing air tickets for their coming from their place of residence to the Rig.

The employer incurs the said expenditure as of necessity. It, therefore, clearly falls within the purview of the words 'consideration for employment'. If fringe benefits are provided for consideration for employment, which is given or provided to the employee by way of an amenity, reimbursement or otherwise; clearly clause (a) of sub-section (1) shall be attracted.

A statute, as is well known, must be read in its entirety. What would be the subject matter of tax is contained in sub-sections (1) and (2). Sub-section (3), therefore, provides for an exemption. There cannot be any doubt or dispute that the latter part of the contents of sub-section (3) must be given its logical meaning. What is sought to be excluded must be held to be included first. If the submission of learned Solicitor General is accepted, there would not be any provision for exclusion from payment of tax any amenity in the nature of free or subsidized transport.

16. Thus, when the expenditure incurred by the employer so as to enable the employee to undertake a journey from his place of residence to the place of work or either reimbursement of the amount of journey or free tickets therefor are provided by him, the same, in our opinion, would come within the purview of the term 'by way of reimbursement or otherwise'.

The Advanced Law Lexicon defines "otherwise" as:

"By other like means; contrarily; different from that to which it relates; in a different manner; in another way; in any other way; differently in other respects in different respects; in some other like capacity."

"Otherwise" is defined by the Standard Dictionary as meaning 'in a different manner, in another way; differently in other respects'; by Webster, 'in a different manner; in other respects'.

As a general rule, 'otherwise' when following an enumeration, should receive an ejusdem generis interpretation (per CLEASBY, B. Monck v. Hilton, 46 LJMC 167, The words 'or otherwise', in law, when used as a general phrase following an enumeration of particulars, are commonly interpreted in a restricted sense, as referring to such other matters as a are kindred to the classes before mentioned, (Cent. Dict.)"

17. It is now a well settled principle of law that a statute should ordinarily be given a purposive construction. {See New India Assurance Company Ltd. v. Nusli Neville Wadia and Anr. [2007 (14) SCALE 556]; Tanna and Modi v. C.I.T., Mumbai XXV and Ors. [2007 (8) SCALE 511] and Udai Singh Dagar and Ors. v. Union of India (UOI) and Ors. [2007 (7) SCALE 278]}.

18. The Parliament, in introducing the concept of fringe benefits, was clear in its mind in so for as on the one hand it avoided imposition of double taxation, i.e., tax both on the hands of the employees and employers; on the other, it intended to bring succour to the employers offering some privilege, service, facility or amenity which was otherwise thought to be necessary or expedient. If any other construction is put to sub-sections (1) and (3), the purpose of grant of exemption shall be defeated. If the latter part of sub-section (3) cannot be given any meaning, it will result in an anomaly or absurdity. It is also now a well settled principle of law that the court shall avoid such constructions which would render a part of the statutory provision otiose or meaningless. [See Visitor and Ors. v. K.S. Misra [(2007) 8 SCC 593]; Commissioner of Sales Tax, Delhi and Ors. v. Shri Krishna Engg. Company and Ors. [(2005) 2 SCC 692].

19. We, therefore, are of the opinion that AAR was right in its opinion that the matters enumerated in sub-section (2) of Section 115WB are not covered by sub-section (3) thereof, and the amenity in the nature of free or subsidized transport is covered by sub-section (1).

20. It brings us to the next question, namely, whether the employee concerned should be a resident of India. The statute does not say so. Fringe benefit tax being a tax on expenditure; the only concern of the revenue wherefor should be as to whether such expenditure has been made.

Appellant has a permanent establishment in India. It pays income-tax in India. It carries on business in India. It has for the purpose of carrying out its business activities engaged persons from within India or outside India. If it makes any expenditure for bringing any employee from abroad, the same would also liable to be taken into consideration for the purpose of sub-section (1) of Section 115WB.

21. AAR with respect was not correct in its view in reading the words 'in India' after the word residence in sub-section (3).

22. If the reasonings of the AAR are taken to its logical conclusion, the CBDT circular would not be attracted. An employer cannot afford to loose on both the fronts. Its right to claim exemptions either would be in respect of the employees who are based in India or who are not. If the said employees are required to be based in India, sub-section of Section 115WB would not be attracted. However, if such expenditure incurred is found to be as consideration for employment, the same would also bring within its purview the employees who have been hired from outside the country. For the purpose of obtaining the benefit of the said exemption, however, the expenditure must be incurred on the employees directly for the purposes mentioned therein, namely, they are to be provided transport from their residence to the place of work or such place of work to the place of residence. Any expenditure incurred for any other purpose, namely, other than for their transport from their residence to the place of work or from the place of work to the place of residence would not attract the exemption provision. The Assessing Authority, therefore, must, in each case, would have a right to scrutinize the claim.

CBDT has the requisite jurisdiction to interpret the provisions of Income-tax Act. The interpretation of CBDT being in the realm of executive construction, should ordinarily be held to be binding, save and except where it violates any provisions of law or is contrary to any judgment rendered by the courts. The reason for giving effect to such executive construction is not only same as contemporaneous which would come within the purview of the maxim temporania caste pesto, even in certain situation a representation made by an authority like Minister presenting the Bill before the Parliament may also be found bound thereby.

23. Rules of executive construction in a situation of this nature may also be applied. Where a representation is made by the maker of legislation at the time of introduction of the Bill or construction thereupon is put by the executive upon its coming into force, the same carries a great weight.

24. In this regard, we may refer to the decision of the House of Lords in the matter of R.V. National Asylum Support Service [(2002) 1 W.L.R.2956] and its interpretation of the decision in Pepper v. Hart [(1993) A.C. 593]. on the question of 'executive estoppel'. In the former decision, Lord Steyn stated:-

"If exceptionally there is found in the Explanatory Notes a clear assurance by the executive to Parliament about the meaning of a clause, or the circumstances in which a power will or will not be used, that assurance may in principle be admitted against the executive in proceedings in which the executive places a contrary contention before a court."

25. A similar interpretation was rendered by Lord Hope of Craighead in Wilson v. First County Trust Ltd., [2004] 1 A.C. 816, wherein it was stated:-

"As I understand it [Pepper v. Hart], it recognized a limited exception to the general rule that resort to 'Hansard' was inadmissible. Its purpose is to prevent the Executive seeking to place a meaning on words used in legislation which is different from that which ministers attributed to whose words when promoting the legislation in Parliament\005"

For a detailed analysis of the rule of executive estoppel useful reference may be to the article authored by Francis Bennion entitled

"Executive Estoppel: Pepper v. Hart revisited", published in Public Law, Spring 2007, pg. 1 which throws a new light on the subject matter.

26. We may notice a decision of this Court in Sedco Forex International Drill. Inc. & Ors. v. Commissioner of Income Tax, Dehradun & Anr. [(2005) 12 SCC 717], the question which arose therein was as to the salary paid to the employees of UK National Services for field breaks outside India would be subjected to tax under Section 9(1)(ii) and explanation appended thereto as inserted in 1983 w.e.f 1.4.1979. Appellant therein entered into agreements which are executed in the United Kingdom with each of the said employees who were residents of the said country. This Court, upon noticing the explanation appended to Section 9(1)(ii), as regards its retrospective operation, held:

"16. The departmental understanding of the effect of the 1999 Amendment even if it were assumed not to bind the respondents under Section 119 of the Act, nevertheless affords a reasonable construction of it, and there is no reason why we should not adopt it.

17. As was affirmed by this Court in Goslino Mario a cardinal principle of the tax law is that the law to be applied is that which is in force in the relevant assessment year unless otherwise provided expressly or by necessary implication. (See also Reliance Jute and Industries Ltd. v. CIT) An Explanation to a statutory provision may fulfil the purpose of clearing up an ambiguity in the main provision or an Explanation can add to and widen the scope of the main section. If it is in its nature clarificatory then the Explanation must be read into the main provision with effect from the time that the main provision came into force. But if it changes the law it is not presumed to be retrospective, irrespective of the fact that the phrases used are "it is declared" or "for the removal of doubts"."

27. It was categorically held that as the explanation sought to give an artificial meaning to "earned in India" and brings about a change effectively in the existing law, it should not be held to have any retrospective operation. Section 115WB does not contain such a provision. It must, therefore, be given its natural meaning. It would, therefore, be difficult to accept the contention of the learned Solicitor General that the employees must be based in India.

28. However, it appears that the contention that such expenditure should be paid on a regular basis or what would be the effect of the words 'employees journey' did not fall for consideration of AAR. What, therefore, is relevant would be the nature of expenses. The question as to whether the nature of a travelling expenditure incurred by the appellant would attract the benefits sought to be granted by the statute did not and could not fall for consideration of the AAR. Its opinion was sought for only on one issue. It necessarily had to confine itself to that one and no other. No material in this behalf was brought on record by the parties. Whether the payments were made to them on a regular basis or whether the expenditures incurred which strictly come within the purview of Section 115WB or not must, therefore, be answered having regard to the materials placed on records. If any question arises as to whether the agreement entered into by and between the appellant and the employees concerned would attract, in given cases, the liability under FBT benefit tax would have, thus, to be determined by the assessing authority.

29. The appeal is allowed to the aforementioned extent and with the aforementioned observations. In the facts and circumstances of this case, there shall be no order as to costs.

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Lachhman Singh (Deceased)through Legal Representatives & Ors
Vs.
Hazara Singh (Deceased) through Legal Representatives & Ors
@
May 6, 2008

BENCH:
S.B. Sinha & Lokeshwar Singh Panta

JUDGMENT:
J U D G M E N T
REPORTABLE

CIVIL APPEAL NO. 3322 OF 2008
(Arising out of SLP (C) No.1395 of 2007)

S.B. Sinha, J.

1. Leave granted.
2. What would be the period of limitation in a suit for redemption of mortgage in the factual matrix involved in the present case is the question in this appeal which arises out of a judgment and order dated 19.7.2006 passed by the High Court of Punjab and Haryana in RSA No.1340 of 1980.
3. A transaction of mortgage in respect of the suit property admeasuring 58 kanals 11 marlas was entered into by and between the predecessors in the interest of the parties herein. The actual date of execution of the deed of mortgage was not known to the plaintiffs-respondents. However, the said mortgaged properties were mutated in the name of the mortgagees on or about 19.3.1913.
4. A suit for redemption of the said mortgage was filed by the respondents on or about 30.12.1970. The learned trial court, as also the First Appellate Court, dismissed the said suit as being barred by limitation opining that the actual date of mortgage being not known, a decree for redemption of mortgage could not be passed.
5. The High Court, however, in the second appeal preferred thereagainst by the respondent herein, formulated the following substantial questions of law :
"1. Whether the finding recorded by the learned first Appellate Court regarding relationship is sustainable?
2. Whether the suit for possession by way of redemption is within the period of limitation?"

6. It was held that in view of the fact that the relationship between the parties as mortgagor and mortgagee was proved, the onus to prove that suit was barred by limitation was on the defendants.
The said Second Appeal on the said finding was allowed.
7. Mr. Shambhu Prasad Singh, learned counsel appearing on behalf of the appellant, would submit that the question of limitation being one of jurisdiction, the High Court committed a serious error in allowing the said second appeal. It was submitted that as the date of mutation was not the date of mortgage, the suit should have been held to be barred by limitation.
8. Mr. Manoj Swarup, learned counsel appearing on behalf of the respondents, on the other hand, has drawn our attention to an application filed by the respondent for adduction of additional evidence, as envisaged under Order 41 Rule 27 of the Code of Civil Procedure and submitted that the deed of mortgage which was registered in Village Pangota, Tehsil Taran Taran in the District of Amritsar, now in Pakistan, could be procured by the respondents which, if taken into consideration, would clearly establish that the suit was within the prescribed period of limitation having been executed

on 20.2.1913.
The relationship between the parties is not in dispute. Respondents filed the aforementioned suit for a decree for redemption of mortgage on payment of a sum as may be found due to the appellants herein. The details of the mortgage were furnished but the actual date of mortgage being not known could not be furnished.
Sohan Singh and Bahadur Singh were the original mortgagors. Sohan Singh is said to have been not seen 10 years prior to the institution of the suit and, thus, presumed to be dead. Respondents are said to have inherited the properties of the said mortgagors and, thus, stepped into their shoes. In the written statement, the respondent denied and disputed the relationship between the parties, stating :
"1. Para No.1 of the plaint is wrong and incorrect. The suit land is not of the plaintiffs. Rather the total land is under the permanent continuing possession of defendant No.1. The land in dispute as mentioned in para No.1 of the plaint filed by the plaintiffs never mortgaged with the defendants and the facts mentioned in para No.1 of the plaint regarding the alleged mortgaged are forged and fictitious one and the plaint is not with me."

9. The defendant claimed the ownership as also possession of the suit land in himself. The courts below, as noticed hereinbefore, found that there existed a relationship of mortgagor and mortgagee between the parties to the lis. The suit was dismissed only on the ground of being barred by limitation. The High Court was, in our opinion, entirely wrong in holding that the onus to prove that the suit was beyond the period of limitation was on the defendants. Limitation is a question of jurisdiction. Section 3 of the Limitation Act puts an embargo on the court to entertain a suit if it is found to be barred by limitation.
10. It appears that before the High Court also, an application for adduction of additional evidence was filed. No order thereupon was passed. Respondents, in our opinion, have made out a case for adduction of additional evidence.
It was stated that the mortgage deed was registered in the year 1913 in the District of Lahore. As it is a registered document, this Court in a situation of this nature, keeping in view the findings of the courts below, should allow the said application.
11. There cannot be any doubt whatsoever that the court should be loathed to entertain such an application but the respondents have herein made out adequate grounds therefor.
The jurisdiction of the Appellate Court is to be exercised not only when clause (a) or clause (aa) of sub-rule (1) of Rule 27 of Order 41 of the Code is attracted but also when such a document is required by the appellate Court itself to pronounce judgment or for any other substantial cause. If what the respondents contended is correct, namely, the mortgage was executed in 1913, the period of limitation having been prescribed under the old Limitation Act, namely, 60 years being the period of limitation having regard to the provisions of the new Limitation Act, the suit could be filed within a period of seven years from 1.1.1964, i.e. upto 1.1.1971. As the suit was filed on 30.12.1970, it may be held to be within the prescribed period of limitation.
12. We are of the opinion that keeping in view the peculiar facts and circumstances of this case, the respondents should be permitted to adduce evidence. We, therefore, set aside the impugned judgment and remit the matter back to the High Court directing it to take the additional evidence on record either allowing the parties to adduce evidence before it or to prove the said documents by the trial judge in terms of Order 41 Rule 28 of the Code.
Appeal is allowed to the above extent. No costs.