

Jurisprudence of income tax law & interpretations

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Meaning of Tax

- A Tax is a compulsory exaction of money by a public authority for public purposes enforceable by law and is not payment for service rendered. In other words it is not Quid-Pro-quo between the tax payer and the public authority. In **Commissioner, Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar (Shirur Mutt case) [1954] 1 SCR 1005 ; AIR 1954 SC 282**. Essential elements are **1. Compulsory 2. Imposed by valid law by competent legislature 3. Levied by public authority 4. For public purposes 5. No direct quid pro quo (i.e no direct benefit)**
- A. 366(28)- Taxation includes imposition of any tax or impost(compulsory levy) whether general or local or special and tax shall be construed accordingly. Tax is wider and includes all imposts such as duty, cess or fee
- Power to tax is a sovereign function, legislative in character essentially required for very existence of government because state entitled to raise money by taxation.
- Levy of tax to be exercised within constitutional limitations

Regulatory or Compensatory tax theory

Issues before the Court in the *Jindal Stainless Ltd. v. State of Haryana* were

1. Whether state entry taxes infringe Article 301's guarantee of free trade, commerce, and intercourse?

Ans: no automatically but States may tax goods imported from other states only if the tax is non-discriminatory under Article 304(a) and, where restrictive, is **reasonable** and in **the public interest** under Article 304(b).

2. Whether such taxes can be justified as "compensatory" or must satisfy Article 304(b)'s conditions of **reasonableness** and **Presidential assent**?

Ans: yes surely have to satisfy A-304(b)

3. Whether the doctrine of compensatory taxation remains valid constitutional law?

Ans: no, earlier jurisprudence treating compensatory taxes as outside Article 301's ambit was erroneous.

A tax is valid (even if it affects trade) if it is imposed to compensate the State for services or facilities provided to traders. while interpreting Article 301, on the freedom of trade, commerce, and intercourse across India. tax imposed is a direct restriction on inter-State movement transport vehicle and therefore unconstitutional in absence of the President's sanction under Article 304(b). It was upheld that the **Rajasthan Motor Vehicles Taxation Act, 1951**, establishing that regulatory or compensatory taxes for road use so as to upkeep and maintain roads and transport infrastructure are **facilitative**, not restrictive therefore do not violate economic freedom under Article 301. The judgment became a cornerstone of Indian constitutional and fiscal law. **Automobile Transport (Rajasthan) Ltd & and others . Vs. State of Rajasthan(1962) 1 SCR 491; AIR 1962 SC 1406.**

The theory of compensatory tax in Indian constitutional law was effectively overruled and replaced by a new test laid down by the Supreme Court in the case of **Jindal Stainless Ltd. v. State of Haryana (2016) 11 SCC 1 9 members benches** wherein Jindal Stainless Ltd. challenged these levies as unconstitutional barriers to inter-State trade and Constitutional validity of state entry tax levied by various states was examined .

Tax, Cess, Fee, Surcharge

- **Tax** has no element of Quid-Pro-Quo.
- **Fee** is payment for special benefit or privileges i.e. Some element of quid pro quo here but missing in tax. **Hingir-Rampur Coal Co. Ltd. v. State of Orissa (AIR 1961 SC 459)**. However, in the *Jindal Stainless Ltd. Vs State of Haryana* 2017 12 SCC 1 obliterated the difference between Tax and Fee and rejected compensatory tax theory.
- **Surcharge**: Surcharge under tax laws means an **additional tax** levied on the amount of income tax, not directly on income. It is basically a “tax on tax”. Article 271 of the Constitution of India is a fiscal provision that empowers Parliament to impose a surcharge on certain taxes and duties levied by the Union Government. It is designed to provide to the union an additional source of revenue, over and above the standard distribution between the Union and the States. Surcharge is not a separate tax, but an increment or enhancement of the existing tax so nature of surcharge is same as main tax.
- **Cess**: A cess is a **special type of tax** imposed by the government for a specific purpose. cess is earmarked for a particular objective. **Cess is treated as a tax, It must be constitutionally valid levy.** No strict requirement of quid pro quo unlike fee. *India Cement Ltd. v. State of Tamil Nadu* (1990) 1 SCC 12.

Direct tax and indirect tax

Economist version: burden of tax by the assessed or Taxpayer in the case of direct tax , whereas in the indirect tax, tax borne by the customer. in other words tax collected from the customers and deposited with the government.

constitution and Tax statute version: it is the liability of taxpayer only, even if he is unable to collect tax from the customers, he is under obligation to deposit the tax. in other words, it is the levy on the taxpayer, whether it is direct tax or indirect tax. There is no difference at all.

- ❑ **Rashtriya ispat Nigam Ltd vs. Diwan Chand Ram Sharan (2012), 5 SCC 306, para 39:** in that context of Levy of service tax it was held that provision concerning service tax are relevant only as between the assessee under the statute and the tax authorities. The statutory provision can be of no relevance to determine the right and liabilities between the parties as agreed as per the contract between them.
- ❑ Under the scheme of Constitution, no express distinction between direct tax and indirect tax. **Union of India vs. Bengal shrachi housing development Limited.(1964) 3SCR 787 Para 26,94.**

Article 265 of the Constitution is declaratory in nature. It says that "no tax shall be levied or collected except by authority of law". This no doubt means that taxes collected contrary to law have to be refunded. But where a taxing enactment contains provisions providing for and governing the refund of taxes collected without the authority of law, the validity of such provisions, if and when questioned, has to be examined with reference to other provisions of the Constitution. Article 265 does not itself lay down any criteria for testing the validity of a statute. When it speaks of "law", it no doubt refers to a valid law but the validity of a law has to be determined with reference to other provisions in the Constitution. **Para no 16 in case of Mafatlal Industries Ltd. And Ors. vs Union Of India (UOI) And Ors. on 19 December, 1996 1997(89)ELT247(SC)**

- **265 - No tax shall be levied or collected except by authority of law.**
- Payment by an assessee will not absolve the responsibility of the proper officer to pass an order justifying the demand of tax and penalty. The assessee, even by election, cannot be treated to have waived his right against the illegality committed by the proper officer or acquiesced to the demand, as by the constitutional mandate under Article 265 of the Constitution, no tax can be levied or collected except with the authority of law. There is not only a bar against levy but also against collection. Therefore, the action of the proper officer must always be justifiable and fall within the four corners of law, as it is well settled that there can be no acquiescence in tax on para no. 16.1 in case of **ASP Traders Vs. State of UP [2025] 176 taxmann.com 782 (SC)**

**Tarachand Logistics Solutions
Ltd Vs. State of Andhra
Pradesh 2025 SC SLP(CIVIL)
NO. 001547/2025**

Vehicles operating exclusively within restricted private premises (like the Visakhapatnam Steel Plant) are not liable for motor vehicle tax, as they do not use public roads. State of AP sought to levy motor vehicle tax under the A.P. Motor Vehicle Taxation Act, 1963.

The SC emphasized that taxation must be strictly construed under Article 265 of the Constitution. "No Road, No Tax" was the governing principle, meaning vehicles confined to private, non-public areas are exempt. The court affirmed that tax is not payable if the vehicles are not used in a "public place," setting aside lower court orders and ordering a refund of over ₹22 lakhs.

**Mangalore Ganesh
Beedi Works vs. CIT,
Mysore [2015] 62
taxmann.com 400 (SC)**

The income tax officer or revenue officer have to follow the agreement & can not re-write the agreement for higher tax collection. It is the tax payer who entered into agreement with various party as per his own wisdom.

The revenue is actually seeking to re-write agreement between the erstwhile partners of assessee. This clause specifically states that the going concern and all the trademarks used in the course of the said business by the said firm and under which the business of the partnership is carried on shall vest in and belong to the highest bidder. Under the circumstances, it is difficult to appreciate how it could be concluded by the revenue that the trademarks were not auctioned off and only the goodwill in the erstwhile firm was auctioned off. [Para 33]

CIT v. Walchand & Co. [1967] 3 SCR 214

**reasonableness of the expenditure
has to be adjudged from the point
of view of the businessman.**

Any business expenditure before disallowance must be tested on this ground. It is the businessman to decide the reasonableness of the expenditure & not AO.

it is not the function of the Tribunal to determine the remuneration which in their view should be paid to in employee of the assessee. When a claim for allowance under section 10(2)(xv) of the Income-tax Act is made, the Income Tax Authorities have to decide whether the expenditure claimed as an allowance was incurred voluntarily and on grounds of commercial expediency. **In applying the test of commercial expediency for determining whether the expenditure was wholly and exclusively laid out for the purpose of the business, reasonableness of the expenditure has to be adjudged from the point of view of the businessman and not of the Revenue."**

[at page 217]

**Shiv Raj Gupta Vs. CIT
Delhi [2020] 117
taxmann.com 871 (SC)**

Mr. Shiv Raj Gupta was Chairman and Managing Director 'CDBL' having rich experience of include manufacturing and marketing of IMFL and Beer.

Agreement for payment received as non-competition fee of Rs. 6.6Cr under a negative covenant was always treated as a capital receipt till assessment Year 2003-04.

(As per Appellant)

Vs.

Whether it is in fact part of a sham transaction which, in the guise of being a separate Deed of Covenant, is really in the nature of payment received by the appellant as compensation for terminating his management of CDBL, in which case it would be taxable under section 28(ii)(a) of the Income-tax Act, 1961. (As per AO)

Retrospective taxation

- ❑ The court in the case of **Jawaharmal vs. state of Rajasthan, (1966) 1 SCR 890 para 18**, reiterated that it is well- recognised that the power to legislate includes power to legislate prospectively as well as retroactively.
- ❑ General principles related to retrospective legislation in tax matters- retrospective legislation in charging provision is exception.
- ❑ Limitations on power to enact retrospective legislation
- ❑ Effect of validation act

General principle of retrospective legislation in tax, Matters

- ❑ unless a contrary intention appears, a legislation is presumed not to be intended to have retrospective operation of law. **CIT vs. Vatika Township Private Limited, 2015 1 SCC 1**
- ❑ The idea behind the rule is that **current law should govern current activities** which is based on the principle of law as **Lex Prospicit non respicit**: That is **law looks forward, not backward. But in tax several exception.**
- ❑ Legislation which modify accrued rights, or which Impose obligation, impose new duties/tax or attract a new disability have to be treated as prospective unless legislative intent is clearly to give enactment at retrospective effect or legislation for the purpose of supplying and **obvious omission** in a former legislation or to **explain a former legislation. CIT vs. Vatika Township Private Limited, 2015 1 SCC 1 para 28 and 29.**

Subordinate or
delegated legislation-
generally prospective

- ❑ In the case of Mahavir vegetable oils Private Limited vs. state of Haryana, (2006)3 SCC 620 para 41 it was held that subordinate legislation can be given retrospective effect only if a power in this behalf is contained in the Principal act.
- ❑ In MRF Limited vs. CST, (2006) 8 SCC 702 para 41, the court held that in absence of a specific conferment of power to legislate retrospectively, the government as a delegate, exercising delegated authority has no power to issue notification with retrospective effect.

In the case of **CIT vs. Essar technology Limited (2018) 3 SCC 253 para 44** it was held that there cannot be any dispute to the proposition that machinery provision of a taxing statute has to give effect to its manifest purpose, but applicability of machinery provision, whether it is prospective or retrospective depend on the contents and nature of the statutory scheme.

sections 147 to 151 are machinery provisions. Therefore, they must be given an interpretation that is consistent with the object and purpose of the Income-tax Act. **[Para 69] Union of India vs. Rajeev Bansal [2024] 167 taxmann.com 70 (SC)**

Section 147A – Inserted by FA 2026 to over rule Hexaware Technologies Limited vs Assistant Commissioner Of Income Tax BOMBAY HC JAO VS.FAO for reopening of assessment.

“147A. Notwithstanding anything contained in any judgement, order or decree of any court or in section 151A or in any scheme framed thereunder, for the removal of doubts, it is hereby clarified that the Assessing Officer for the purposes of sections 148 and 148A shall mean and shall always be deemed to have meant to be an Assessing Officer other than the National Faceless Assessment Centre or any assessment unit referred to in sub-section (3) of section 144B.

Validating act

There is difference between judicial power encroachment vs. nullification of effect of judicial decision by changing the law retrospectively. **Tirath Ram Rajendra Nath versus state of UP (1973) 3 SCC 585 para 7**

indivisible works contracts fall outside the definition of “sale” under state sales tax laws of Uttar Pradesh .

- ❑ Validating act are generally enacted to nullified the effect of judicial decisions.
- ❑ Power to pass **validating laws with retrospective effect**, recognized by court time to time and it was reiterated by the apex court in the case of **Eurotex industries and exports Limited vs. state of Maharashtra, (2017) 14 SCC 390**. Maharashtra introduced incentive schemes to promote industries in backward areas (VAT exemption benefits) under the Maharashtra Value Added Tax (MVAT) Act Later, the State amended the MVAT Act retrospectively in the 2009 Amendment Act, effective from 01.04.2005, restricting exemption to proportionate turnover instead of full exemption which was challenged as unfair and arbitrary and Violates Article 14 (equality) and Article 19(1)(g). Appeal dismissed and Amendment upheld as valid Legislature can cure defects or remove basis of earlier law.

**Tata Motors Ltd vs State Of
Maharashtra & Ors 2004**

CA 1153 of 1998

- ❑ It is no doubt true that the State has enormous powers in the matter of legislation and in enacting fiscal laws. Great leverage is allowed in the matter of taxation laws because several fiscal adjustments have to be made by the Government depending upon the needs of the Revenue and the economic circumstances prevailing in the State.
- ❑ Even so an action taken by the State cannot be so irrational and so **arbitrary** so as to introduce one set of rules for one period and another set of rules for another period by amending the laws in such a manner as to withdraw the benefit that had been given earlier resulting in higher burdens so far as the assessee is concerned without any reason.
- ❑ **Retrospective withdrawal of the benefit of set-off only for a particular period should be justified on some tangible and rational ground**, when challenged on the ground of unconstitutionality. Unfortunately, the State could not succeed in doing so.

limitation on retrospective legislation

- retrospective legislation not permissible to create an offence or penalty retrospectively
- within constitutional and legislative limitation
- such retrospective law not in conflict with other provisions of the Constitution
- reasonableness of restriction imposed by it but a law cannot be held to be unreasonable merely because it operates retrospectively
- retrospective law is discriminatory, or so unreasonable or confiscatory that it violates Articles 14 and 19 of the Constitution to be decided considering :(i) the context in which retrospectivity was contemplated, (ii) the period of such retrospectivity, and (iii) the degree of any unforeseen or unforeseeable financial burden imposed for the past period

tax planning
Vs
tax evasion
vs
tax avoidance

- **Tax Planning is Legal** : Every person is entitled to arrange his affairs as to avoid taxation but the arrangement must be real and genuine and not a sham or make belief – **JiyaJee Rao Cotton Mills Ltd. Vs CIT and EPT 1959 SC 270 Para 11.**
- **Morality in Taxation has no role** : In the Case of **A. Raman and Co. 1968 1 SCR 934 Para 9**, The Court Observe that avoidance of Tax Liability by arranging commercial affairs that charge of tax is disturbed is not prohibited. A Tax payer may resort to devise to divert the income before it accrue or arise to him and that the effectiveness of the devise depends not upon consideration of Morality but on the operation of Income Tax Act .
- **McDowells Co. Ltd. Vs CTO 1985 3 SCC 230 (Para 14,17,18 and 45).** Majority of the judges of the view that Tax Planning may be legitimate, provided it is within the framework of law. Colourable device cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by resorting the dubious methods. It is obligation of every citizen to pay tax honestly without resorting to subterfuges(clever evasion) or escapement dishonestly. Justice Chinnappa Reddy has raised divergent view of morality of tax

tax planning Vs tax evasion vs tax avoidance

- **Union of India vs Play world Electronics Private Limited 1989 3 SCC 181 Para 11.** Court observed that in McDowell Court tried to discourage colourable devise but court also observed that tax planning may be legitimate provided it is within framework of law and colourable devise not part of tax planning.
- **UOI vs Azadi Bachao Andolan 2004 10 SCC 1 Para 141, 154 , 165 and 166.** Observe that and act which is otherwise valid in law cannot be treated as non-est merely on the basis of some underlying motive supposedly resulting in some economic detriment or prejudice to the national interest and court has followed the principle of IRC Vs Duke of Westminster (Westminster is name of parliamentary democracy in U.K).
- **CIT vs Walfort share and stock brokers private limited (2010) 8 SCC 137 Para 45.** With Reference to Dividend stripping transactions, it was observed that mere tax planning without any motive to evade taxes through colourable devises is not frowned upon even by the judgement of apex court in McDowell Case.

tax planning Vs tax evasion vs tax avoidance

- **Vodafone International Holdings BV vs UOI (2012) 6 SCC 613** (Para 65, 69, 70, 80 and 82). It was held that what is prohibited is tax evasion through use of colourable device and by resorting to dubious methods and subterfuges (clever evasion or escapement dishonestly). Genuine strategic tax planning has not been abandoned by any decision of even English court .
- **Justice K.S.P Radhakrishnan** on the issue of tax avoidance vs Tax Evasion has made observation that a clear cut distinction between tax avoidance and tax evasion is still to emerge and in absence of legislative guidelines there is bound to be uncertainty.
- **Revenue cannot tax a subject without a statute to support and every tax payer is entitled to arrange his affairs so that tax shall be as low as possible and he is not bound to choose the pattern which will replenish the treasury** and the view of revenue that ratio laid down in McDowell is contrary to Azadi Bachao Andolan is un-sustainable and does not required to refer to a larger bench

Delegated legislation

- Power to impose tax is a legislative power by the constitution and it must be exercised by the legislature having power to make law.
 - **Essential legislative functions** consist of determination of the legislative policy and its formulation as a binding rule of conduct and cannot be delegated by the legislature to any other body for delegated legislation. MCD of Delhi vs Birla Cotton Spinning and weaving Mills 1968 3 SCR 251 Para 28 and 29.
 - Further there **is no unlimited right of delegation** inherent in legislative power itself, what could be delegated is the task of subordinate legislation necessary for implementing the purpose and object of the Act
 - **Even for delegated legislation there must be policy, principles or standards , control , and safeguard** either expressly or by implication for the guidance of subordinate legislative body to check the act of such body
- Meaning of delegated legislation.
 - Delegated Legislation vs Conditional Legislation.
 - Conflict between parent Act and subordinate legislation.
 - Judicial Review of Delegated legislation.
 - Validity of circulars in the interpretation of law.

Checks on delegated legislation

- In the case of **Indian Express Newspapers (Bombay) P. Ltd. Vs UOI 1985 1 SCC 641 Para 79** it was held that power vested in Government is a power (executive) is a power to be exercised in public interest, the court may require the government to exercise that power in a reasonable way in accordance with spirit of constitution.
- Notification issued under Custom Act is required to be laid before parliament does not make any substantial difference as regards the jurisdiction of court to pronounce on its validity.
- In **Lohia Machines Ltd. Vs UOI 1985 2 SCC 197 Para 26** in the context of Income Tax referring to S. 296 of the ITA 1961 (S-534 of ITA 2025). It was observed that every rule made to be led before each house of parliament so that parliament have an opportunity of knowing what the rule is and modification in the rule maybe issued and thereafter modified rule shall be in effect and therefore, parliament has control over rule making authority exercised by CBDT.
- **If there is any conflict between parent act and subordinate legislation**, the subordinate legislation have to give way to parent act. In other words parent act provisions shall prevail , example- if there is any conflict in the particular statute provisions and rule made thereunder, the provisions of act shall prevail.
- **Judicial view of delegated legislation is possible** even if statute is silent. Subordinate legislation does not carry same degree of immunity as enjoyed by statute. Subordinate legislation may be questioned on any of the ground on which principle legislation could be questioned and besides to that such subordinate legislation could be questioned on the ground that I is ultra vires to the principle act provisions. It may also be questioned on the ground that it is contrary to some other statute or on the ground of unreasonable. If subordinate legislation is in question the court has to consider the nature, objects and scheme of instruments as a whole.

Retrospective Delegated legislation

- In the Federation of Indian Mineral Industries vs UOI 2017 16 SCC 186 Para 26. It was held that
- Delegated or subordinate legislation can have retrospective effect if power is contained in the principle act.
- CG or SG cannot make subordinate legislation having retrospective effect unless the current statute expressly or by implication authorized to do so .
- Delegated legislation is ordinarily prospective in nature and any right or liability created for the first time cannot be given retrospective effect.
- A subordinate legislation concerning a fiscal statute, it would not be proper to hold delegated authority to impose tax or fee in absence of express provision

Difference between delegated legislation and conditional legislation

- Delegated legislation rule making power delegated to some subordinate authority which can make rule within the power provided and restrictions of law making whereas in **conditional legislation** the power of legislation exercised by the legislature conditionally – leaving a discretion to external authority about the time and manner of carrying out legislature into effect. In other words. In conditional legislation legislation is complete by the principle body but the only function left to delegate is to apply the law to an area or to determine the time and manner to carry it into effect. Sometimes power given to executive to bring an Act into force or power conferred upon the government to exempt person or properties from operation of enactment are example of conditional legislation.

nature and effect of circular

- Circulars issued represent merely the understanding of statutory provisions. They are to explain the law and to ensure fair enforcement of its provision
- They are not binding upon court. The task of interpretation of law is the exclusive domain of the court.
- Circulars contrary to statutory provisions has really no existence in Law.
- Under Tax Laws imposition of tax consist of liability, quantification of liability, collection and recovery of taxes and government work through senior officers and CBDT/CBIC come into play.
- Circulars issued are executive in character and cannot alter provisions of act. They are binding on the Income Tax Authorities but cannot be enforced adversely against the assessee.
- Circulars cannot even impose on tax payer a burden higher than what is mentioned in the principle act.
- Circulars are external aids to construction

Interpretation of Tax Statutes

Safari Retreats (P.) Ltd Vs. Chief Commissioner of CGST [2024] 167 taxmann.com 73 (SC)

RULES REGARDING THE INTERPRETATION OF TAXING STATUTES

- A **taxing statute must be read as it is with no additions and no subtractions** on the grounds of legislative intendment or otherwise;
- If the language of a taxing provision is plain, the consequence of giving effect to it may lead to some absurd result is not a factor to be considered when interpreting the provisions. **It is for the legislature to step in and remove the absurdity;**
- While dealing with a taxing provision, the principle of **strict interpretation** should be applied
- If **two interpretations of a statutory provision are possible, the Court ordinarily would interpret the provision in favour of a taxpayer and against the revenue**
- In interpreting a taxing statute, **equitable considerations** are entirely out of place
- **A taxing provision cannot be interpreted on any presumption or assumption;**

- A taxing statute has to be interpreted in the light of what is clearly expressed. The **Court cannot imply anything which is not expressed**. Moreover, the Court cannot import provisions in the statute to supply any deficiency
- There is **nothing unjust in the taxpayer escaping if the letter of the law fails to catch him** on account of the legislature's failure to express itself clearly;
- If **literal interpretation is manifestly unjust, which produces a result not intended by the legislature, only in such a case can the Court modify the language;**
- **Equity and taxation are strangers**. But if construction results in equity rather than injustice, such construction should be preferred
- It is not a function of the Court in the fiscal arena to compel the Parliament to go further and do more

- When a word used in a taxing statute is to be construed and has not been specifically defined, **it should not be interpreted in accordance with its definition in another statute that does not deal with a cognate subject.** It should be understood in its **commercial sense.**
- Common parlance theory: Unless defined in the statute itself, the words and expressions in a taxing statute have to be construed in the sense in which the persons dealing with them understand, that is, as per the trade understanding, commercial and technical practice and usage

Interpretation of Charging provisions & machinery provisions

Basic rule of interpretation- Rule of strict interpretation of charging provision or levy provision. **CIT Vs. Shazada Nand & Sons 1966 3 SCR 379 para 10.**

Machinery provision should be so construed as to effectuate the charging section. **India United Mills Ltd Vs. Commissioner of excess profit Tax 1955 1 SCR 810 para 9.** Similar view taken in the case of **Associated Cement Co Ltd vs. CTO 1981 4 SCC 578 para 27.**

- Strict interpretation of charging provision. **Tirath Ram Rajendra Nath v. State of U.P. (1973) 3 SCC 585/ Commissioner of custom Vs. Dilip Kumar & Co. 2018 9 SCC 1 para 15.**
- **Charging provisions or provision imposing penalty in a fiscal statutes** determining the liabilities of a subject to tax one must have **regard to the strict letter of law** and not merely to the spirit of statutes or substance of law. If the case is not covered in the four corner of taxing statutes, no tax can be imposed by inference or analogy or trying to probe into the intension of legislature and by considering the substance of matter.
- **CIT vs. Ajax Products Ltd 1965 1 SCR 700 para 14.** stated that subject is not to be taxed unless charging provision clearly impose the obligation. If the word of statute are precise & unambiguous they must be accepted as declaring the express intension of legislature.
- There is difference between charging provision & machinery provision in tax enactments.

Essential of charging /levy provisions

While Construing revenue act is to give fair and reasonable construction to their language without leaning to one side or other but keeping in mind that no tax can be imposed without words clearly showing an intention to lay the burden and that equitable construction of the words is not possible. The charging section has to be strictly construed **Vodafone International Holding VV vs Union of India 2012 6 SCC 613.**

Purposive construction will be adhered to when literal meaning results in absurdity and it should be interpreted to avoid absurdity and mischief K.P Varghese vs ITO 1981 4 SCC 173 Para 5 and 6. Section 52(2) of I.T Act

Oxford University Press vs CIT 2001 3 SCC 359 Section 10(22), University established in a foreign country is not excluded from ambit of Section 10(22) if it is imparting education in India or some educational activity in India.

The Tax Statute should clearly and un-ambiguously convey three components of tax laws:

- Subject of Tax i.e charging provision or levy provisions.
- Person Liable to pay Tax.
- Rate of Tax and the valuation or amount on which tax to be paid.

CIT vs Vatika Township Private Limited 2015 1 SCC 1 Para 41.2 and 3 . A Tax Law has to be un-ambiguous and should prescribe the liability to pay tax in clear terms. If provisions of Taxing statute is ambiguous and susceptible to 2 interpretations , the interpretation which favor the subject as against the revenue has to be preferred. In other words benefit of doubt in favor of taxpayer. The court noted that tax laws are clearly in derogation of personal rights and property interests and therefore, subject to strict construction and any ambiguity must be resolved against imposition of tax. Kantian Theory (Moral Rule). Not applicable in tax laws interpretation

Interpretation of Exemption Notification

Doctrine of substantial compliance is a judicial invention, equitable in nature to avoid hardship in cases where a party does all that can reasonably be expected of it but failed or faulted in some minor aspect which cannot be described as essence or substance of requirement. Plea of substantial compliance depends upon facts and circumstances of each case and the purpose and the object to be achieved .

Every Taxing statute including charging, computation and exemption clauses should be interpreted strictly. In the case of ambiguity in charging provisions the benefit goes in favor of Subject/Assessee but the same is not true for exemption notification. **Commissioner of Customs vs Dilip Kumar and Co. 2018 SCC 747.**

Burden of proving applicability of exemption clause is upon the assessee and benefit of any ambiguity must be interpreted in the favor of revenue.

How to read exemption notification?

State of Karnataka

vs

Taghar Vasudeva
Ambrish [2025] 181
taxmann.com 199
(SC) GST case

Residential property
for residential use

- Activity specific exemption not dependent upon person
- Person specific exemption conditional or unconditional .
- liberal and strict construction of an exemption provision are to be invoked at different stages of interpreting it.
- When the question is whether a subject falls in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction. UOI vs Wood paper ltd (1991) taxmann.com 77 (SC)/(1990) 4 SCC 256.
- **Purposive interpretation** is based on three components: language, purpose, and discretion 'of the Court'. where literal interpretation may not serve the purpose or may lead to absurdity golden rule is to follow Purposive interpretation . Legislative intent is important.
- No vested right in tax exemption, they can be modified or withdrawn. Incentives/exemptions are statutory, not absolute rights. **Eurotex industries and exports Limited vs. state of Maharashtra, (2017) 14 SCC 390**

Primary rule is Strict rules of Literal Interpretation

Primary rule to be adopted in interpreting tax legislation is the rule of strict interpretation and in the case of reasonable doubt construction most beneficial to the subject is to be adopted. A taxing statute must be construed reasonably.

In **CIT vs National Taj TRADERS 1980 1 SCC Para 12** , it was noted that it is well settled that fiscal statute to be construed strictly particularly charging provisions, provision imposing penalty.

If strict interpretation give absurd result or undesired working the purpose construction is possible

Mischief Rule or Heydon's Rule of Interpretation

While interpreting statute it must be read in its entirety and to give purposive construction- **Ashok**

Leyland Ltd. Vs State of Tamil Nadu

2004 3 SCC 1 Para 78

Bengal Immunity Co. Ltd. Vs State of Bihar 1955 2 SCR 603 Para 23, we have to consider while interpreting any new law or amendment in the law;

- What was Law before making act or amendment?
- What was mischief and defects for which law does not provide the remedy?
- What was remedy provided by legislature to resolve the mischief ?
- True reasons of remedy and to suppress the mischief and advance the remedy.
- K.P Varghese vs ITO 1981 4 SCC 173 Para 8 speech made by the mover of bill explaining the reason for introduction of bill can be referred to the purpose of ascertaining the mischief short to be remedied by the legislature and the object and purpose for which legislation in enacted

AIDS to Interpretation

Internal AIDS of Interpretation

External Rate of INTERPRETATION

- For the purpose of interpretation it is essential to know the intention of legislature- Commissioner of Customs vs Dilip Kumar and Co. 2018 9 SCC 1 Para 18.
- Internal and External Aids to constructions come into play only when language of statute is unambiguous and not clear.
- Internal aids to construction are long title, preamble, the heading, marginal note, punctuations, illustrations, definitions, proviso, explanation, examples, schedules etc.
- External aids to construction are parliamentary debate, representation to select or other committee, dictionary, meaning of word in common parlance. But dictionary meaning could be looked into only when particular word not defined in the statute. A word may have different meaning so only contextual meaning to be taken
- Courts to take judicial notice of course of proceedings in the parliament assuming of course that it is relevant- Section 57(4) of Indian Evidence Act , 1872 Lok Shiksha Trust vs CIT 1976 1 SCC 254 Para 33,34.
- Circulars issued soon after introduction of Finance Bill or Income Tax act is in the nature of **contemporanea exposition**, are legitimate aids in the construction of provisions of new law

Ascertain whether statute is substantive or clarificatory in nature?

- ❑ While determining the nature of Act, regard must be had to substance rather than to form- CIT vs Podar Cement Pvt. Ltd. 1997 5 SCC 482 Para 51.
- ❑ An Act to explain earlier act, is an explanatory act, generally passed to supply Causa Omission or to clear doubt in the previous act .
- ❑ A curative or declaratory of previous law retrospective operation is generally intended. Generally the legislature used the word clarificatory or declaratory or declaration etc.

Interpretation of Tax Statutes and International Treaties

Commissioner of Customs vs G.M Exports 2016 1 SCC 1991 Para 23.

Article 51(C) of the Constitution of India The State shall endeavour to—

(c) foster **respect for international law and treaty obligations** in the dealings of organised peoples

with one another; and

(d) encourage settlement of international disputes by arbitration.

If there is no international treaty with India, if there is any conflict between domestic law and international law, domestic law will prevail.

If India is a signatory to international treaty and statute past pursuant to said treaty, the statute must be interpreted to resolve ambiguity consistent with provision of treaty.

Where India is signatory to International Treaty and statute made in furtherance of such treaty, the interpretation should be construed on the broad principle of acceptance rather than domestic precedent.

Where statute is made to enforce a treaty obligation the meaning of any ambiguity in the statute must be construed in the same sense as treaty.

S. 159(7) of ITA 2025 for interpretation of terms used in the treaty and act.

- a. Refer the term assigned in the treaty.
- b. Word defined in ITA 2025 . Section 2 and at the end of each chapter.
- c. Word neither defined in Treaty nor defined in Act refer to meaning assigned in notification.
- d. Refer to central act related to taxes
- e. Any other central law.
- f. Refer to Central General Clause Act.

Law of Precedence

Exception - Article 142

Article 141 of the Constitution of India.

Ratio decidendi.

Obiter Dicta

Stare Decisis and Principle of Judicial Discipline

Doctrine of Per-incuriam.

Article 142

The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe

In the **State of Punjab vs Rafiq Masih 2014 8 SCC 883 Para 12** , it was observed that Article 142 is supplementary in Nature. It is a power that gives preference to equity over law. It is a Justice oriented approach as against the strict rigours of Law. Since it is in view of peculiar facts and circumstances and therefore do not comprise the ratio decidendi and therefore, lose the binding precedences and therefore, any judgments under A. 142 is outside the preview of A. 141.

Article 141

The law declared by the Supreme Court shall be binding on all courts within the territory of India.

What is binding upon the court is ratio decidendi of the judgement which is the essence of a decision and the principle upon which case is decided, which has to be ascertained in relation to the subject matter of the decision.

How to find out ratio decidendi?

- In the case of State of Gujrat vs Utility Welfare Association of People 2018 6 SCC 21 Para 103.
- As per para 103. In order to test whether a particular proposition of law is to be treated as the ratio decidendi of the case, the proposition is to be inversed, i.e., to remove from the text of the judgment as if it did not exist. If the conclusion of the case would still have been the same even without examining the proposition, then it cannot be regarded as the ratio decidendi of the case. This test has been followed to imply that the ratio decidendi is what is absolutely necessary for the decision of the case.

Obiter Dicta

- This is pronouncement of law which are not part of ratio decidendi.
- It is opinion of judges not necessary to a judgement and therefore of no binding effect.
- In CIT vs Vazir Sultan & Sons (2007) 5SCC 428. it was noted that the obiter Dicta of the court are entitle to considerable weight.

Stare Decisis & Judicial Discipline

The purpose of this doctrine is to have predictability of judicial decisions & to avoid uncertainty.

Judicial discipline required that order of higher appellate authority should be followed by subordinate authority, if there is any objection the remedy is to prefer appeal before higher authority this is to avoid undue harassment to the assessee and chaos in administration of tax laws.

A departure required to refer the matter to the Chief Justice to constitute a larger bench, a bench of lesser quorum can not disagree or dissent from the view of law taken by bench of larger quorum.

- In **Shanker Raju Vs. Union of India (2011) 2 SCC 132** para 10. it is to be noted that it is a settled principle of law that a judgement which has held the field for a long time should not be unsettled. In other words the courts to stand by the decision & not to disturb what is settled. The logic is to maintain consistency & uncertainty. The guiding philosophy is that a view which has held the field for a long time should not be disturbed only because another view is possible.
- **Krishna Kumar Vs. Union of India (1990) 4 SCC 207** para no 33. Stare Decisis principle is to adhere to the precedent & not to unsettle things which are settled & this is the basic of Article 141

Per Incurium

- It is a rule to relax the rule of Stare Decisis. Incuria literally means carelessness.
- Per Incurium is those decisions given in ignorance or forgetfulness of some statutory provisions or authority binding on court concerned or a statement of law caused by inadvertence or conclusion arrived without application of mind or proceeded without any reasoning or found on account of demonstrably wrong.
- MCD vs Gurnam Kaur 1989 1 SCC 101 para 11. A decision should be treated as given per Incurium when it is given in the ignorance of terms of statute or of a rule having force of statute.
- Sundeep Kumar Bafna vs State of Maharashtra 2014 16 SCC 623 para 19. A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a Co-equal or Larger Bench; or if the decision of a High Court is not in consonance with the views of this Court. It must immediately be clarified that the per incuriam rule is strictly and correctly applicable to the ratio decidendi and not to obiter dicta. It is often encountered in High Courts that two or more mutually irreconcilable decisions of the Supreme Court are cited at the Bar. We think that the inviolable recourse is to apply the earliest view as the succeeding ones would fall in the category of per incuriam

Assessment

- Rule of law – A V Dicy.
- Element of rule of law – 1. principle of natural justice. 2. no one can be judge in his own case. 3 reasoned order
- Evidence – original , direct, primary , documentary evidence first priority if not possible secondary, oral , circumstantial evidence etc
- Additional evidence is not a default rule but exception in certain circumstances.
- Draft order of SCN before any adverse order
- Time limit
- Jurisdiction
- Prescribed procedure and approval
- Mistake of facts and law.

Reassessment

prevalent law for issuance of notice is the law on the date of issuance of notice. Time barred notice under old law cant be issued after amendment in law.

New time limit for issuance of notice prospectively otherwise jurisdiction can be challenged.

- **GKN Driveshafts (India) Ltd. Vs ITO [2002] 125 Taxman 963 (SC)** file ITR in response to notice u/s 148 and ask for reason for reopening, AO is bound to provide reason and raise objection against reopening and AO is bound to dispose of objection by speaking order. Applicable if notice u/s 148A not received before notice u/s 148.
- **Union of India vs. Ashish Agarwal [2022] 138 taxmann.com 64 (SC):** Reassessment notice if issued on or after 1-4-2021 under unamended section 148, needs to be set aside; however, same being a bona fide mistake, notice should not be set aside, rather deemed to have been issued under substituted section 148A using power under article 142 of the constitution of India to balance interest of revenue and the assessee both.
- **Union of India Vs. Rajeev Bansal [2024] 167 taxmann.com 70 (SC)**

Thank You

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