



Bombay Chartered Accountants' Society



**RULES OF
INTERPRETATION
OF TAX STATUTES**

**Senior Advocate
Mr. N. M. Ranka**



Foreword

Dear Member,

Senior Advocate Mr. N. M. Ranka, has authored articles on “Rules of Interpretation of Tax Statutes” in the Bombay Chartered Accountants’ Society Journal (BCAJ). He has been practicing advocate and a past president of AIFTP. The said articles were published in four parts from April 2016 to July 2016. We thought of compiling the same into a handy publication to enable members to read /view the articles together .

The publication is a compilation of the four articles published in the BCAJ. It is divided into various topics for ease of reference. The publication will be an e-book available for reference on the BCAS website (www.bcasonline.org)

Hope you find this compilation useful in interpreting of the law. Do send us your views on the same at km@bcasonline.org

Warm Regards

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President

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INTRODUCTION

1. Introduction:

No enactment has been enacted by the Legislature for Interpretation of Statues including on Tax Laws. However, in many an acts, definition clause is inserted to mean a 'word' or 'expression'. Explanations and Provisos are inserted to expand or curtail. No codified rules have been made by the rule making authority or the Legislature. Rules are judge made, keeping due regard of the objects, intent and purpose of the enacted provision. Interpretation is the primary function of a court of law. The Court interprets the provision whenever a challenge is thrown before it. Interpretation would not be arbitrary or fanciful but an honest continuous exercise by the Courts.

1.1. The expression "interpretation" and "construction" are generally understood as synonymous even though jurisprudentially both are distinct and different. "Interpretation" means the art of finding out of true sense of the enactment whereas "Construction" means drawing conclusions on the documents based on its language, phraseology clauses, terms and conditions. Rules for Interpretation of "Tax Laws" are to some extent different than the General Principles of Interpretation of Common Law. Rules of Interpretation which govern the tax laws are being dealt in this series of articles.

2. Particulars in a Statute:

Every enactment normally contains Short title; Long title; Preamble; Marginal notes; Headings of a group of sections or of individual sections; Definition of interpretation clauses; Provisos; Illustrations; Exceptions and saving clauses; Explanations; Schedules; Punctuations; etc. Title may be short or long. Preamble contains the main object. Marginal notes are given. Chapters and Headings are group of sections. In the Finance Bill, Memorandum containing explanation on every clause, intent and purpose for the proposal is given. Central Board of Direct Taxes issues Circulars explaining each clause. Finance Minister in his speech refers to the proposed insertions, amendments, alterations, modifications etc. It is highly desirable to go through such material apart from unmodified provision for proper understanding, pleadings and arguments.

3. Classification of the Statute:



Statute can be of various classifications. Providing date of commencement, territorial jurisdiction, mandatory or directory, object, whether codifying or consolidating or declaratory or remedial or enabling or disabling, penal, explanatory, amending retrospective or retroactive or repeal with savings or curative, corrective or validating. Applicability can be on all the subjects or class of persons or specified territorial area or specified industries etc. Assent of the President is a requisite condition. Rules have to be framed by the rule making authority and to be operative from specified date or notified date.

4. The General Principles of Interpretation:

Broadly, the general principles, as applied from time to time by the Courts are: The literal or grammatical interpretation; The mischief rule; The golden rule; Harmonious construction; The statute should be read as a whole; Construction *ut res magis valeat quam pereat*; Identical expressions to have same meaning; Construction *noscitur a sociis*; Construction *eiusdem generis*; Construction *expression unius est exclusion alterius*; Construction *contemporanea exposition est fortissimo in lege*; etc. Taxation statutes collecting taxes, duty, cess, levies, etc. from the subjects, have to be beneficially and liberally construed in favour of the tax payers. Penal statutes have to be construed strictly and the benefit of doubt to go to the culprit. Penalty provisions are a civil liability, but have to be construed reasonably. Penalty is corrective and not revenue earner. Levy of interest is compensatory and is treated as mandatory. Charge should be specific and there must be satisfaction of the authority issuing show-cause and levying penalty.

4.1. Other statutes in *pari-materia* have to be cautiously applied and if phraseology and intent is identical, may apply. *Ratio decidendi* may also apply. Amending statutes are normally prospective unless specifically stated as retrospective. There are mandatory and directory or conjunctive and disjunctive enactments. There exist internal or external aids to interpretation. There can be retrospective, prospective or retroactive operation of a provision. Many maxims are used for interpretation. While interpreting tax laws 'Double Taxation Avoidance Agreements' have to be considered as supreme and would prevail even if meaning and language in the statute is different and there exists a confrontation. No provision should be in infringement of the Constitution and it should not be violative or unconstitutional but *intravires* – not *ultravires*. Certain issues may be *resintegra* or *nonintegra*.

4.2. There are binding precedents under articles 141 and 226 – 227 of the Constitution of India. Even order of the Income Tax Appellate Tribunal and High Court, other



than the jurisdictional High Court, have to be respected. Judgment of larger bench as well as co-ordinate bench has to be followed unless and until raised issue is referred to the President of the Income Tax Appellate Tribunal or the Chief Justice, as the case may be, for constituting a larger bench. Judgment of the Constitutional Bench prevails over judgments of lower authorities and single benches. However recently it has been noticed that even orders of the Income Tax Appellate Tribunal or Single or Division Bench of High Courts have been referred and considered, if no appeal has been filed by the Revenue and their ratio has been accepted impliedly or explicitly.

4.3. The General Clauses Act, 1897, contains definitions, which are applicable to all common laws including tax laws, unless and until any repugnant or different definition is contained in the definition section of the tax laws. It also contains general rules of construction, which are applied on common law as well as tax laws. Provisions of Civil Law, Criminal Law, Hindu Law, Evidence Act, Transfer of Property Act, Partnership Act, Companies Act and other specific, relevant and ancillary laws equally apply unless until a different provision is enacted in tax statute and such laws expressly excluded. As analysed, about 108 Acts other than tax statutes need be read, referred and relied upon to make an effective representation, knowledge whereof is imperative.

4.4. Ordinances are also issued, which have limited life, till the statute is enacted or for the specified period. Its purpose is to be operative during the intervening period, where after it automatically lapses. Circulars, instructions, directions are issued statutorily as well as internally, which are binding on tax administration, but not on a tax payer. By such circulars, scope of exemption, deduction or allowance can be expanded, even though literal meaning of the relevant provision may be to the contrary; being beneficial to the tax payer.



TAX AND LITIGATION

Tax and Litigation:

Return is filed. Assessment is framed by the assessing authority. First appeal lies with the Commissioner of Income-tax (Appeals), a superior assessing authority. Second appeal lies, and it commences, on appeal to the Income Tax Appellate Tribunal. Income Tax Appellate Tribunal is final fact finding body. Third appeal lies with the Division Bench of the jurisdictional High Court, on substantial question of law and finality is given by the Supreme Court, where an appeal as well as a Special leave Petition can be filed. Appeal is statutory and S.L.P. is discretionary. Scope is larger on SLP. Revisional power is with the Commissioner of Income-tax u/s. 263 as well as 264. Writ remedy can be availed before the jurisdictional High Court, if there is no alternative, effective, efficacious remedy of appeal or if there is lack of jurisdiction or violation of principles of natural justice or perversity or arbitrariness, disturbing conscience of the Court. The Hon'ble High Courts are slow in permitting writ jurisdiction. Even notice u/s.148 can be challenged by writ, on lack of jurisdictional requirements. Substantial disputes can be settled through the medium of Income Tax Settlement Commission and Dispute Resolution mechanism. Interpretation of documents is a substantial question of law as held by the Apex Court in *Unitech Ltd. vs. Union of India* (2016) 381-ITR-456 (S.C.).

. Eminent Jurist Cardozo states, “You may say that there is no assurance that judges will interpret the mores of their day more wisely and truly than other men. I am not disposed to deny this, but in my view it is quite beside the point. The point is rather that this power of interpretation must be lodged somewhere, and the custom of the Constitution has lodged it in the Judges. If they are to fulfill their function as Judges, it could hardly be lodged elsewhere. Their conclusions must, indeed, be subject to constant testing and retesting, revision and readjustment; but if they act with conscience and intelligence, they ought to attain in their conclusions a fair average of truth and wisdom.”

Article 265 of the constitution mandates that no tax shall be levied or collected except by the authority of law. It provides that not only levy but also the collection of a tax must be under the authority of some law. The tax proposed to be levied must be within the legislative competence of the Legislature imposing the tax. The validity of the tax is to be determined with reference to the competence of the Legislature at the time when the taxing law was enacted. The law must be validly enacted i.e. by the proper body which has the legislative authority and in the manner required to give its



Acts, the force of law. The law must not be a colourable use of or a fraud upon the legislative power to tax. The tax must not violate the conditions laid down in the constitution and must not also contravene the specific provisions of the constitution.

No tax can be imposed by any bye-law, rule or regulation unless the 'statute' under which the subordinate legislation is made specifically authorises the imposition and the authorisation must be express not implied. The procedure prescribed by the statute must be followed. Tax is a compulsory exaction made under an enactment. The word tax, in its wider sense includes all money raised by taxation including taxes levied by the Union and State Legislatures; rates and other charges levied by local authorities under statutory powers. Tax includes any 'impost' general, special or local. It would thus include duties, cesses or fees, surcharge, administrative charges etc. A broad meaning has to be given to the word "tax."

Taxes are levied and collected to meet the cost of governance, safety, security and for welfare of the economically weaker sections of the Society. It is well established that the Legislature enjoys wide latitude in the matter of selection of persons, subject-matter, events, etc., for taxation. The tests of the vice of discrimination in a taxing law are less rigorous. It is well established that the Legislature is promulgated to exercise an extremely wide discretion in classifying for tax purposes, so long as it refrains from clear and hostile discrimination against particular persons or classes. In *Jaipur Hosiery Mills (P.) Ltd. vs. State of Rajasthan* (1970) 26-STC-341; the apex court while upholding the classification made on the basis of the value of sold garments, held that the statute is not open to attack on the mere ground that it taxes some persons or objects and not others. The same view has been taken in *State of Gujarat vs. Shri Ambica Mills Ltd.*, (1974) 4-SCC-916. In *ITO vs. N. Takin Roy Rymbai* (1976) 103-ITR-82 (SC); (1976) 1 SCC 916, the apex court held that the Legislature has ample freedom to select and classify persons, districts, goods, properties, incomes and objects which it would tax, and which it would not tax.

With National litigation policy of the Government of India, the Central Board of Direct Taxes issued Instruction No. 5 dated July 10, 2014 and lately in exercise of powers conferred u/s. 268(A) of the Income-tax Act issued Circular dated December 10, 2015 bearing No. 21 of 2015, enhancing monetary limits for an appeal before the Tribunal exceeding tax Rs. 10 lakh, before the High Court exceeding tax Rs. 20 lakh and before the Hon'ble Supreme Court exceeding tax Rs. 25 lakh with specified exceptions. Tax would not include interest. Same limit for penalty appeals. It applies to pending appeals and references. Writs have been excluded. The instruction will



apply retrospectively to pending appeals and appeals to be filed henceforth in High Courts/Tribunals. Pending appeals below the specified tax limits may be withdrawn or not pressed. Appeals before the Supreme Court will be governed by the instructions on this subject, operative at the time when such appeal was filed.

The Hon'ble Bombay High Court in C.I.T. vs. Sunny Sounds Pvt. Ltd. (2016) 281-ITR-443 (Bom.) at 452 observed: "The need for the Central Board of Direct Taxes to issue the December 15, 2015, Circular and to clarify that it would apply retrospectively to govern even pending appeals arose on account of the enormous increase in the number of appeals being filed by the Revenue over the years". It also observed: "This policy of non-filing and of not pressing and/or withdrawing admitted appeals having tax effect of less than Rs. 20 lakh has been specifically declared to be retrospective by the Circular dated December 10, 2015. There is no reason why the circular⁴ should not apply to pending references where the tax effect is less than Rs. 20 lakh as the objective of the Circular would stand fulfilled on its application even to pending references". Ultimately reference application of the Revenue was returned unanswered. The Ahmedabad Bench of I.T.A.T. in Dy. Commissioner vs. Some Textiles & Industries Ltd. and Others (2016) 175-TTJ (Ahd.) 1 by Order dated 15.12.2015 have also held so for pending appeals. Thus cost of the Government has been saved. Fairly large number of pending appeals have been / are being withdrawn. Appeals / References which fall under the Circular as interpreted by the Courts and Tribunals need be brought to the notice of the relevant forum or the concerned Commissioner for its expeditious withdrawal. It is 'Professional Social Responsibility' of each one of us. I have noticed department is slack and is not filing withdrawal applications or providing lists to the I.T.A.T./ High Courts. It is improper.

Regularly at short intervals, Voluntary Disclose or Declaration Schemes and Schemes to reduce / waive outstanding demands like Kar Vivad Samadhan Scheme etc. are introduced. The Finance Bill, 2016 also introduces (1) The Income Declaration Scheme, 2016; (2) The Direct Tax Dispute Resolutions Scheme, 2016, benefit whereof deserves to be availed of by the eligible persons. It is advisable to cut down tax disputes, purchase peace and concentrate on earning income after developing tax culture. Our duty is to guide clients for payment of due and legitimate taxes.

In tax administration, accountability is absent, work culture is missing and slackness is apparent. High pitched additions are made, arbitrarily, capriciously, with perversity and malafides. Corruption is flagrant. The Raja Chelliah report suggested that black marks be given to such officers, whose additions do not stand test of appeal. But the



same was not accepted. However, by the Finance Bill, 2016 some steps towards accountability and expeditious are proposed. Such steps need to be implemented vigorously to usher in discipline. Many more measures are necessary and expedient in the interest of just collection.



CHARGING AND MACHINERY PROVISION

Charging and Machinery Provision:

The rule of construction of a charging section is that before taxing any person, it must be shown that he falls within the ambit of the charging section by clear words used in the section. No one can be taxed by implication. A charging section has to be construed strictly. If a person has not been brought within the ambit of the charging section by clear words, he cannot be taxed at all. The Supreme Court in *CWT vs. Ellis Bridge Gymkhana and Others* (1998) 229 ITR 1 held: “The Legislature deliberately excluded a firm or an association of persons from the charge of wealth-tax and the word “individual” in the charging section cannot be stretched to include entities which had been deliberately left out of the charge.

The charging section which fixes the liability is strictly construed but that rule of strict construction is not extended to the machinery provisions which are construed like any other statute. The machinery provisions must, no doubt, be so construed as would effectuate the object and purpose of the statute and not defeat the same. (See *Whitney vs. Commissioner of Inland Revenue* (1926) AC 37, *Commissioner of Income-tax vs. Mahaliram Ramjidas* (1940) 8-ITR-442 (PC), *India United Mills Ltd. vs. Commissioner of Excess Profits Tax, Bombay* (1955) 27-ITR-20 (SC); and *Gursahai Saigal vs. Commissioner of Income-tax, Punjab* (1963) 48-ITR-1 (SC).

The choice between a strict and a liberal construction arises only in case of doubt in regard to the intention of the Legislature, manifest on the statutory language. Indeed, the need to resort to any interpretative process arises only when the meaning is not manifest on the plain words of the statute. If the words are plain and clear and directly convey the meaning, there is no need for any interpretation. Liberal and strict construction of an exemption provision are, as stated in *Union of India vs. Wood Papers Ltd.* (1991) 83-STC-251 (SC) “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 the 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.”

The Apex Court in *C.I.T. vs. Calcutta Knitwears* (2014) 362-ITR-673 (S.C.) stated: “The courts, while interpreting the provisions of a fiscal legislation, should neither add nor subtract a word from the provisions. The foremost principle of interpretation



of fiscal statutes in every system of interpretation is the rule of strict interpretation which provides that where the words of the statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule". It also observed: "Hardship or inconvenience cannot alter the meaning of the language employed by the Legislature if such meaning is clear and apparent. Hence, departure from the literal rule should only be in very rare cases, and ordinarily there should be judicial restraint to do so" and: It is the duty of the court while interpreting machinery provisions of a taxing statute to give effect to its manifest purpose. Wherever the intention to impose liability is clear, the courts ought not to be hesitant in espousing a common sense interpretation of the machinery provisions so that the charge does not fail. The machinery provisions must, no doubt, be so construed as would effectuate the object and purpose of the statute and not defeat it".



INTERPRETATION OF DOUBLE TAXATION AVOIDANCE AGREEMENTS

Interpretation of Double Taxation Avoidance Agreements:

The principles set out in Vienna Convention as agreed on 23rd May, 1969 are recognised as applicable to tax treaties. Rules embodied in Articles 31, 32 and 33 of the Convention are often referred to in interpretation of tax treaties. Some aspects of those Articles are good faith; objects and purpose and intent to enter into the treaty. Discussion papers are referred to resolve ambiguity or obscurity. These basic principles need to be kept in mind while construing DTAA.

Maxwell on the Interpretation of Statutes mentions the following rule, under the title 'presumption against violation of international law': "Under the general presumption that the legislature does not intend to exceed its jurisdiction, every statute is interpreted, so far as its language permits, so as not to be inconsistent with the comity of nations or the established rules of international law, and the court will avoid a construction which would give rise to such inconsistency, unless compelled to adopt it by plain and unambiguous language. But if the language of the statute is clear, it must be followed notwithstanding the conflict between municipal and international law which results".

In *John N. Gladden vs. Her Majesty the Queen*, the Federal Court observed: "Contrary to an ordinary taxing statute, a tax treaty or convention must be given a liberal interpretation with a view to implementing the true intentions of the parties. A literal or legalistic interpretation must be avoided when the basic object of the treaty might be defeated or frustrated insofar as the particular item under consideration is concerned." The Federal Court in *N. Gladden vs. Her Majesty the Queen* 85 D.T.C. 5188 said: "'The non-resident can benefit from the exemption regardless of whether or not he is taxable on that capital gain in his own country. If Canada or the U.S. were to abolish capital gains completely, while the other country did not, a resident of the country which had abolished capital gains would still be exempt from capital gains in the other country."

An important principle which needs to be kept in mind in the interpretation of the provisions of an international treaty, including one for double taxation relief, is that treaties are negotiated and entered into at a political level and have several considerations as their bases. Commenting on this aspect of the matter, David R. Davis in *Principles of International Double Taxation Relief*, points out that the main



function of a Double Taxation Avoidance Treaty should be seen in the context of aiding commercial relations between treaty partners and as being essentially a bargain between two treaty countries as to the division of tax revenues between them in respect of income falling to be taxed in both jurisdictions.

The benefits and detriments of a double tax treaty will probably only be truly reciprocal where the flow of trade and investment between treaty partners is generally in balance. Where this is not the case, the benefits of the treaty may be weighted more in favour of one treaty partner than the other, even though the provisions of the treaty are expressed in reciprocal terms. This has been identified as occurring in relation to tax treaties between developed and developing countries, where the flow of trade and investment is largely one way. Because treaty negotiations are largely a bargaining process with each side seeking concessions from the other, the final agreement will often represent a number of compromises, and it may be uncertain as to whether a full and sufficient quid pro quo is obtained by both sides." And, finally, "Apart from the allocation of tax between the treaty partners, tax treaties can also help to resolve problems and can obtain benefits which cannot be achieved unilaterally.

The Supreme Court in Vodafone International Holdings B.V. vs. Union of India (2012) 341-ITR-1 (SC) observed: "The court has to give effect to the language of the section when it is unambiguous and admits of no doubt regarding its interpretation, particularly when a legal fiction is embedded in that section. A legal fiction has a limited scope and cannot be expanded by giving purposive interpretation particularly if the result of such interpretation is to transform the concept of chargeability. It also reiterated and declared "All tax planning is not illegal or illegitimate or impermissible". McDowell's case has been explained and watered down.

Tax treaties are intended to grant tax relief and not to put residents of a contracting country at a disadvantage vis-a-vis other taxpayers. Section 90(2) of the Income-tax Act lays down that in relation to the assessee to whom an agreement u/s. 90(1) applies, the provisions of the Act shall apply to the extent they are more beneficial to that assessee. Circular No. 789 dated April 13, 2000 (2000) 243-ITR-(St.) 57 has been declared as valid in Vodafone International Holdings B.V. vs. UOI (2012) 341 ITR 1) SC) at 101. The Supreme Court in C.I.T. vs. P.V.A.L. Lulandagan Chettiar (2004) 267-ITR-657 (SC) has held : "In the case of a conflict between the provisions of this Act and an Agreement for Avoidance of Double Taxation between the Government and a foreign State, the provisions of the Agreement would prevail over those of the Act.



The Jaipur Bench of I.T.A.T. (TM) in Modern Threads Case 69-ITD-115 (TM) relying on the Circular dated 2.4.1982 held that the terms of DTAA prevail. It also observed: “The tax benefits are provided in the DTAA as an incentive for mutual benefits. The provisions of the DTAA are, therefore, required to be construed so as to advance its objectives and not to frustrate them. This view finds ample support from the decision of the Hon’ble Supreme Court in the case Bajaj Tempo Ltd. vs. CIT 196-ITR-188 and CIT vs. Shan Finance Pvt. Ltd. 231-ITR-308”. The Bangalore Bench in IBM World Trade Corp. vs. DIT (2012) 148 TITJ 496 held that the provisions of the Act or treaty whichever is beneficial are applicable to the assessee.



“EXPLANATION” AND “PROVISO”

1. Explanation:

The normal principle in construing an Explanation is to understand it as explaining the meaning of the provision to which it is added. The Explanation does not enlarge or limit the provision, unless the Explanation purports to be a definition or a deeming clause. If the intention of the Legislature is not fully conveyed earlier or there has been a misconception about the scope of a provision, the Legislature steps in to explain the purport of the provision; such an Explanation has to be given effect to, as pointing out the real meaning of the provision all along. If there is conflict in opinion on the construction of a provision, the Legislature steps in by inserting the Explanation, to clarify its intent. Explanation is normally clarificatory and retrospective in operation. However, the rule governing the construction of the provisions imposing penal liability upon the subject is that such provisions should be strictly construed. When a provision creates some penal liability against the subject, such provision should ordinarily be interpreted strictly.

1.1. The orthodox function of an Explanation is to explain the meaning and effect of the main provision. It is different in nature from a proviso, as the latter excepts, excludes or restricts, while the former explains or clarifies and does not restrict the operation of the main provision. An Explanation is also different from rules framed under an Act. Rules are for effective implementation of the Act whereas an Explanation only explains the provisions of the section. Rules cannot go beyond or against the provisions of the Act as they are framed under the Act and if there is any contradiction, the Act will prevail over the Rules. This is not the position vis-à-vis the section and its Explanation. The latter, by its very name, is intended to explain the provisions of the section; hence, there can be no contradiction. A section has to be understood and read hand in hand with the Explanation, which is only to support the main provision, like an example does not explain any situation, held in *N. Govindaraju vs. I.T.O.* (2015) 377-ITR-243 (Karnataka).

1.2. Ordinarily, an Explanation is introduced by the Legislature for clarifying some doubts or removing confusion which may possibly arise from the existing provisions. Normally, therefore, an Explanation would not expand the scope of the main provision and the purpose of the Explanation would be to fill a gap left in the statute, to suppress a mischief, to clear a doubt or as is often said to make explicit what was implicit as held in *Katira Construction Ltd. vs. Union of India* (2013) 352-ITR-513 (Gujarat).



2. Proviso:

A proviso qualifies the generality of the main enactment by providing an exception and taking out from the main provision, a portion, which, but for the proviso would be part of the main provision. A proviso, must, therefore, be considered in relation to the principal matter to which it stands as a proviso. A proviso should not be read as if providing by way of an addition to the main provision which is foreign to the principal provision itself. Indeed, in some cases, a proviso may be an exception to the main provision though it cannot be inconsistent with what is expressed therein and, if it is, it would be ultra vires the main provision and liable to be struck down. As a general rule, in construing an enactment containing a proviso, it is proper to construe the provisions together without making either of them redundant or otiose. Even where the enacting part is clear, it is desirable to make an effort to give meaning to the proviso with a view to justifying its necessity.

2.1. A proviso to a provision in a statute has several functions and while interpreting a provision of the statute, the court is required to carefully scrutinise and find out the real object of the proviso appended to that provision. It is not a proper rule of interpretation of a proviso that the enacting part or the main part of the section be construed first without the proviso and if the same is found to be ambiguous only then recourse may be had to examine the proviso. On the other hand, an accepted rule of interpretation is that a section and the proviso thereto must be construed as a whole; each portion throwing light, if need be, on the rest. A proviso is normally used to remove special cases from the general enactment and provide for them specially.

2.2. A proviso must be limited to the subject-matter of the enacting clause. It is a settled rule of construction that a proviso must prima facie be read and considered in relation to the principal matter to which it is a proviso. It is not a separate or independent enactment. “Words are dependent on the principal enacting words to which they are tacked as a proviso. They cannot be read as divorced from their context” (Thompson vs. Dibdin, 1912 AC 533). The rule of construction is that prima facie a proviso should be limited in its operation to the subject-matter of the enacting clause. To expand the enacting clause, inflated by the proviso, is a sin against the fundamental rule of construction that a proviso must be considered in relation to the principal matter to which it stands as a proviso. A proviso ordinarily is but a proviso, although the golden rule is to read the whole section, inclusive of the proviso, in such manner that they mutually throw light on each other and result in a harmonious



construction” as observed in: Union of India & Others vs. Dileep Kumar Singh (2015) AIR 1421 at 1426-27.



RETROSPECTIVE, PROSPECTIVE OR RETROACTIVE

Retrospective, Prospective or Retroactive:

It is a well-settled rule of interpretation hallowed by time and sanctified by judicial decisions that, unless the terms of a statute expressly so provide or necessarily require it, retrospective operation should not be given to a statute, so as to take away or impair an existing right, or create a new obligation or impose a new liability otherwise than as regards matters of procedure. The general rule as stated by Halsbury in volume 36 of the Laws of England (third edition) and reiterated in several decisions of the Supreme Court as well as English courts is that "all statutes other than those which are merely declaratory or which relate only to matters of procedure or of evidence are prima facie prospective" and retrospective operation should not be given to a statute so as to effect, alter or destroy an existing right or create a new liability or obligation unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only.

In *Hitendra Vishnu Thakur vs. State of Maharashtra*, AIR 1994 S.C. 2623, the Supreme Court held: (i) A statute which affects substantive rights is presumed to be prospective in operation, unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible is presumed to be retrospective in its application, should not be given an extended meaning, and should be strictly confined to its clearly defined limits. (ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal, even though remedial, is substantive in nature; (iii) Every litigant has a vested right in substantive law, but no such right exists in procedural law. (iv) A procedural statute should not generally speaking be applied retrospectively, where the result would be to create new disabilities or obligations, or to impose new duties in respect of transactions already accomplished. (v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication. This principle stands approved by the Constitution Bench in the case of *Shyam Sunder vs. Ram Kumar* AIR 2001 S.C. 2472.

It has been consistently held by the Supreme Court in *CIT vs. Varas International P. Ltd.* (2006) 283-ITR-484 (SC) and recently, that for an amendment of a statute to be construed as being retrospective, the amended provision itself should indicate either



in terms or by necessary implication that it is to operate retrospectively. Of the various rules providing guidance as to how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bedrock, that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as *lex prospicit non respicit* : law looks forward not backward. As was observed in *Phillips vs. Eyre*³, a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated, when introduced for the first time to deal with future acts, ought not to change the character of past transactions carried on upon the faith of the then existing laws as observed in *CIT vs. Township P. Ltd.* (2014) 367-ITR-466 at 486.

If a legislation confers a benefit on some persons, but without inflicting a corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the legislators' object, then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given a retrospective effect. This exactly is the justification to treat procedural provisions as retrospective. In the *Government of India & Ors. vs. Indian Tobacco Association*, (2005) 7-SCC-396, the doctrine of fairness was held to be a relevant factor to construe a statute conferring a benefit, in the context of it to be given a retrospective operation. The same doctrine of fairness, to hold that a statute was retrospective in nature, was applied in the case of *Vijay vs. State of Maharashtra* (2006) 6-SCC-289. It was held that where a law is enacted for the benefit of community as a whole, even in the absence of a provision the statute may be held to be retrospective in nature. Refer *CIT vs. Township P. Ltd.* (2014) 367-ITR-466 at 487. In my view, in such circumstances, it would have a retroactive effect.

In the case of *CIT vs. Scindia Steam Navigation Co. Ltd.* (1961) 42-ITR-589 (SC), the court held that as the liability to pay tax is computed according to the law in force at the beginning of the assessment year, i.e., the first day of April, any change in law affecting tax liability after that date though made during the currency of the assessment year, unless specifically made retrospective, does not apply to the assessment for that year. Tax laws are clearly in derogation of personal rights and



property interests and are, therefore, subject to strict construction, and any ambiguity must be resolved against imposition of the tax.

There are three concepts: (i) prospective amendment with effect from a fixed date; (ii) retrospective amendment with effect from a fixed anterior date; (iii) clarificatory amendments which are retrospective in nature; and (iv) an amendment made to a taxing statute can be said to be intended to remove “hardships” only of the assessee, not of the Department. In ultimate analysis in *CIT vs. Township P. Ltd.* (2014) 367-ITR-466 at 496-497 (SC), surcharge was held to be prospective and not retrospective.

The presumption against retrospective operation is not applicable to declaratory statutes. In determining, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is ‘to explain’ an earlier Act, it would be without object unless construed retrospectively. An explanatory Act is generally passed to supply an obvious omission or to clear up doubt as the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law, retrospective operation is generally intended. An amending Act may be purely declaratory to clear a meaning of a provision of the principal Act, which was already implicit. A clarificatory amendment of this nature will have retrospective effect. It is called as retroactive.



“MAY OR SHALL” AND “MANDATORY OR DIRECTORY”

1. May or Shall:

The use of the word “shall” in a statutory provision, though generally taken in a mandatory sense, does not necessarily mean that in every case it shall have that effect, that is to say, unless the words of the statute are punctiliously followed, the proceeding or the outcome of the proceeding would be invalid. On the other hand, it is not always correct to say that where the word “may” has been used, the statute is only permissive or directory in the sense that non-compliance with those provisions will not render the proceedings invalid. The user of the word “may” by the legislature may be out of reverence. The setting in which the word “may” has been used needs consideration, and has to be given due weightage.

1.1. When a statute invests a public officer with authority to do an act in a specified set of circumstances, it is imperative upon him to exercise his authority in a manner appropriate to the case, when a party interested and having a right to apply moves in that behalf and circumstances for exercise of authority are shown to exist. Even if the words used in the Statute are prima facie enabling, the courts will readily infer a duty to exercise power which is invested in aid of enforcement of a right – public or private – of a citizen. When a duty is cast on the authority, that power to ensure that injustice to the assessee or to the revenue may be avoided must be exercised. It is implicit in the nature of the power and its entrustment to the authority invested with quasi-judicial functions. That power is not discretionary and the Officer cannot, if the conditions for its exercise were shown to exist, decline to exercise power conferred as held by the Supreme Court in *L. Hirday Narain vs. I.T.O.* (1970) 78 I.T.R. 26.

1.2. Use of the word “shall” in a statute ordinarily speaking means that the statutory provision is mandatory. It is construed as such, unless there is something in the context in which the word is used which would justify a departure from this meaning. Where an assessee seeks to claim the benefit under a statutory scheme, he is bound to comply strictly with the conditions under which the benefit is granted. There is no scope for the application of any equitable consideration when the statutory provisions are stated in plain language. The courts have no power to act beyond the terms of the statutory provision under which benefits have been granted to a tax payer. The provisions contained in an Act are required to be interpreted, keeping in view the well recognised rule of construction that procedural prescriptions are meant for doing substantial justice. If violation of the procedural provision does not result in denial of fair hearing or causes prejudice to the parties, the same has to be treated as directory



notwithstanding the use of word 'shall', as observed in *Shivjee Singh vs. Nagendra Tiwary* AIR 2010 S.C. 2261 at 2263.

1.3. In certain circumstances, the word 'may' has to be read as 'shall' because an authority charged with the task of enforcing the statute needs to decide the consequences that the Legislature intended to follow from failure to implement the requirement. Hence, the interpretation of the two words would always depend on the context and setting in which they are used.

2. Mandatory or Directory:

It is beyond any cavil that the question as to whether the provision is directory or mandatory would depend upon the language employed therein. (See *Union of India and others vs. Filip Tiago De Gama of Vedem Vasco De Gama*, (AIR 1990 SC 981: (1989) Suppl. 2 SCR 336). In a case where the statutory provision is plain and unambiguous, the Court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom. In *E. Palanisamy vs. Palanisamy (Dead) by Lrs. And others*, (2003) 1 SCC 122), a Division Bench of the Supreme Court observed: "The rent legislation is normally intended for the benefit of the tenants. At the same time, it is well settled that the benefits conferred on the tenants through the relevant statutes can be enjoyed only on the basis of strict compliance with the statutory provisions. Equitable consideration has no place in such matter."

2.1. The Court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot rewrite or recast legislation. It is also necessary to determine that there exists a presumption that the Legislature has not used any superfluous words. It is well settled that the real intention of the legislation must be gathered from the language used. It may be true that use of the expression 'shall or may' is not decisive for arriving at a finding as to whether statute is directory or mandatory. But the intention of the Legislature must be found out from the scheme of the Act. It is also equally well settled that when negative words are used, the courts will presume that the intention of the Legislature was that the provisions are mandatory in character.



“STARE DECISIS”, “SUBJECT TO” AND “NON-OBSTANTE”

1. Stare Decisis:

To give law a finality and to maintain consistency, the principle of stare decisis is applied. It is a sound principle of law to follow a view which is operating for a long time. Interpretation of a provision rendered years back and accepted and acted upon should not be easily departed from. While reconsidering decisions rendered a long time back, the courts cannot ignore the harm that is likely to happen by unsettling the law that has been settled. Interpretation given to a provision by several High Courts without dissent and uniformly followed; several transactions entered into based upon the said exposition of the law; the doctrine of stare decisis should apply or else it will result in chaos and open up a Pandora's box of uncertainty.

1.1. The Supreme Court referring to *Muktul vs. Manbhari*, AIR 1958 SC 918; and relying upon the observations of the Apex Court in *Mishri Lal vs. Dharendra Nath* (1999) 4 SCC 11, observed in *Union of India vs. Azadi Bachao Andolan* (2003) 263 ITR at 726: “A decision which has been followed for a long period of time, and has been acted upon by persons in the formation of contracts or in the disposition of their property, or in the general conduct of affairs, or in legal procedure or in other ways, will generally be followed by courts of higher authority other than the court establishing the rule, even though the court before whom the matter arises afterwards might be of a different view.”

2. Subject to and Non-obstante:

It is fairly common in tax laws to use the expression ‘Notwithstanding anything contained in this Act or Other Acts’ or ‘Subject to other provisions of this Act or Other Acts’. The principles governing any non obstante clause are well established. Ordinarily, it is a legislative device to give such a clause an overriding effect over the law or provision that qualifies such clause. When a clause begins with “Notwithstanding anything contained in the Act or in some particular provision/provisions in the Act”, it is with a view to give the enacting part of the section, in case of conflict, an overriding effect over the Act or provision mentioned in the non obstante clause. It conveys that in spite of the provisions or the Act mentioned in the non-obstante clause, the enactment following such expression shall have full operation. It is used to override the mentioned law/provision in specified circumstances.



2.1 The Apex court in *Union of India vs. Kokil (G.M.)* AIR 1984 SC 1022 stated : “It is well known that a non -obstante clause is a legislative device which is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions.” In *Chandavarkar Sita Ratna Rao vs. Ashalata S. Guram*, AIR 1987 SC 117, it observed : “A clause beginning with the expression ‘notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract’ is more often than not appended to a section in the beginning with a view to give the enacting part of the section, in case of conflict an overriding effect over the provision of the Act or the contract mentioned in the non obstante clause. It is equivalent to saying that in spite of the provision of the Act or any other Act mentioned in the non-obstante clause or any contract or document mentioned in the enactment following it will have its full operation, or that the provisions embraced in the non-obstante clause would not be an impediment for an operation of the enactment. The above principles were again reiterated in *Parayankandiyal Eravath Kanapravan Kalliani amma vs. K. Devi* AIR 1996 SC 1963 and are well settled.

2.2 The distinction between the expression “subject to other provisions’ and the expression “notwithstanding anything contained in other provisions of the Act” was explained by a Constitution Bench of the Supreme Court in *South India Corporation (P.) Ltd. vs. Secretary, Board of Revenue* (1964) 15 STC 74. About the former expression, the court said while considering article 372: “The expression ‘subject to’ conveys the idea of a provision yielding place to another provision or other provisions to which it is made subject.” About the non obstante clause with which article 278 began, the court said: “The phrase ‘notwithstanding anything in the Constitution’ is equivalent to saying that in spite of the other articles of the Constitution, or that the other articles shall not be an impediment to the operation of article 278.”



RULE OF CONSISTENCY, RESJUDICATA & ESTOPPEL

Rules of Consistency, Resjudicata & Estoppel :

The principle of consistency is a principle of equity and would not override the clear provisions of law. It is well accepted that each assessment year is separate and if a particular aspect was not objected to in one year, it would not fetter the Assessing Officer from correcting the same in a subsequent year as the principles of res judicata are not applicable to tax proceedings. In Radhasaomi Satsang the Supreme Court held that (page 329 of 193-ITR) : "where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year". As is apparent from the said decision, the rule of consistency has limited application – where a fundamental aspect permeates through several assessment years; the said aspect has been found as a fact one way or the other; and the parties have not challenged the said finding and allowed the position to sustain over the years. Clearly, the said principle will have no application where the position canvassed militates against an express provision of law as held by Delhi High Court in Honey Enterprises vs. C.I.T. (2016) 381-ITR-258 at 278.

In Radhasaomi itself, the Supreme Court acknowledged that there is no res judicata, as regards assessment orders, and assessments for one year may not bind the officer for the next year. This is consistent with the view of the Supreme Court that there is no such thing as res judicata in income-tax matters' (Raja Bahadur Visheshwara Singh vs. CIT (1961) 41-ITR- 685 (SC); AIR 1961 SC 1062). Similarly, erroneous or mistaken views cannot fetter the authorities into repeating them, by application of a rule such as estoppel, for the reason that being an equitable principle; it has to yield to the mandate of law. A deeper reflection would show that blind adherence to the rule of consistency would lead to anomalous results, for the reason that it would endanger the unequal application of laws, and direct the tax authorities to adopt varied interpretations, to suit individual assesseees, subjective to their convenience – a result at once debilitating and destructive of the rule of law. The rule of consistency cannot be of inflexible application.

Res judicata does not apply in matters pertaining to tax for different assessment years because res judicata applies to debar courts from entertaining issues on the same cause of action whereas the cause of action for each assessment year is distinct. The courts will generally adopt an earlier pronouncement of the law or a conclusion of fact



unless there is a new ground urged or a material change in the factual position. The reason why courts have held parties to the opinion expressed in a decision in one assessment year to the same opinion in a subsequent year is not because of any principle of *res judicata* but because of the theory of precedent or precedential value of the earlier pronouncement. Where the facts and law in a subsequent assessment year are the same, no authority whether quasi-judicial or judicial can generally be permitted to take a different view. This mandate is subject only to the usual gateways of distinguishing the earlier decision or where the earlier decision is *per incuriam*. However, these are fetters only on a co-ordinate Bench, which, failing the possibility of availing of either of these gateways, may yet differ with the view expressed and refer the matter to a Bench of superior jurisdiction. In tax cases relating to a subsequent year involving the same issues as in the earlier year, the court can differ from the view expressed if the case is distinguishable as *per incuriam*, as held by the Apex Court in *Bharat Sanchar Nigam Ltd. vs. Union of India* (2006) 282-ITR-273 (SC) at 276-277.

Estoppel normally means estopped from re agitating same issue. However, it is settled position in law that there cannot be an estoppel against a statute. There is no provision in the statute which permits a compromise assessment. The above position was indicated by the apex court in *Union of India vs. Banwari Lal Agarwal* (1999) 238-ITR-461 (S.C.).



“ACTUS CURIAE NEMINEM GRAVABIT”

Actus Curiae Neminem gravabit :

An act of the Court should not prejudice anyone and the maxim actus curiae neminem gravabit is squarely applicable. It is the duty of the Court to see that the process of the court is not abused and if the court's process has been abused by making a statement and the same court is made aware of it, especially a writ court, it can always recall its own order, for the concession which forms the base is erroneous. It is a well settled proposition of law that no tax payer should suffer on account of inadvertent omission or mistake of an authority, because to do justice is inherent and dispensation of justice should not suffer. It is equally well settled that any order on concession has no binding effect and there is no waiver or estoppel against statute.



SAME WORD IN DIFFERENT STATUTES

1. Same word in different statutes:

In interpreting a taxing statute, the doctrine of "aspect" legislation must be kept in mind. It is a basic canon of interpretation that each statute defines the expressions used in it and that definition should not be used for interpreting any other statute unless in any other cognate statute there is no definition, and the extrapolation would be justified as held by Kerala High Court in *All Kerala Chartered Accountants' Association vs. Union of India & Others* (2002) 258-ITR-679 at 680. "A particular word occurring in one section of the Act having a particular object, cannot carry the same meaning when used in a different section of the same Act, which is enacted for a different purpose. In other words, one word occurring in different sections of the same Act can have different meanings, if the objects of the two sections are different and they operate in different fields as held by the Supreme Court in *J.C.I.T. vs. Saheli Leasing and Industries Ltd.* (2010) 324-ITR-170 at 171.

"The words and expressions defined in one statute as judicially interpreted do not afford a guide to the construction of the same words or expressions in another statute unless both the statutes are *pari materia* legislations or it is specifically provided in one statute to give the same meaning to the words as defined in another statute as held in *Jagatram Ahuja vs. C.I.T.* (2000) 246-ITR-609 at 610 (SC).

2. Rules to yield to the Act:

Rules are made by the prescribed authority, while Act is enacted by the Legislature; hence rules are subservient to the Act and cannot override the Act. If there is conflict the Act would prevail over the rules. Rules are subordinate legislation. Subordinate legislation does not carry the same degree of immunity as enjoyed by a statute passed by a competent Legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned; in addition, it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned in the ground that it is inconsistent with the provisions of the Act, or that it is contrary to some other statute applicable in the same subject-matter. It may be struck down as arbitrary or contrary to the statute if it fails to take into account vital facts which expressly or by necessary implication are required to be taken into account by the statute or the Constitution. Subordinate legislation can also be questioned on the ground that it is manifestly arbitrary and unjust. It can also be questioned on the ground that it violates article 14 of the



Constitution of India as held in J. K. Industries Ltd. and Another vs. Union of India
(2008) 297-ITR-176 at 178-179.



LITERAL INTERPRETATION & CASUS OMISSUS

1. Literal Interpretation & Casus Omissus :

The principles of interpretation are well-settled:

- (i) a statute has to be read as a whole and the effort should be to give full effect to all the provisions;
- (ii) interpretation should not render any provision redundant or nugatory;
- (iii) the provisions should be read harmoniously so as to give effect to all the provisions;
- (iv) if some provision specifically deals with a subject-matter, the general provision or a residual provision cannot be invoked for that subject as held in *C.I.T. vs. Roadmaster Industries of India (P) Ltd.* (2009) 315-ITR-66 (P&H). Except where there is a specific provision of the Income-tax Act which derogates from any other statutory law or personal law, the provision will have to be considered in the light of the relevant branches of law as held in *C.I.T. vs. Bagyalakshmi & Co.* (1965) 55-ITR-660 (SC).

1.1. When the language of a statute is clear and unambiguous, the courts are to interpret the same in its literal sense and not to give a meaning which would cause violence to the provisions of the statute, as held in *Britania Industries Ltd. vs. C.I.T.* (2005) 278-ITR-546 at 547 (SC). It is a well settled principle of law that the court cannot read anything into a statutory provision or a stipulated condition which is plain and unambiguous. A statute is an edict of the Legislature. The language employed in a statute is the determinative factor of legislative intention. While interpreting a provision the court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the Legislature to amend, modify or repeal it, if deemed necessary. Legislative casus omissus cannot be supplied by judicial interpretative process.

A casus omissus ought not to be created by interpretation, save in some case of strong necessity" as held in *Union of India vs. Dharmendra Textiles Processors and Others* (2008) 306-ITR-277 at page 278 (SC).

1.2. If the construction of a statutory provision on its plain reading leads to a clear meaning, such a construction has to be adopted without any external aid as held in *C.I.T. vs. Rajasthan Financial Corporation* (2007) 295-ITR-195 (Raj F.B.). A taxing



statute is to be construed strictly : in a taxing statute one has to look merely at what is said in the relevant provision. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. There is no room for any intendment. There is no equity about a tax. In interpreting a taxing statute the court must look squarely at the words of the statute and interpret them. Considerations of hardship, injustice and equity are entirely out of place in interpreting a taxing statute as held in *Ajmera Housing Corporation and Another vs. C.I.T.* (2010) 326-ITR-642 (SC).

1.3. In construing a contract, the terms and conditions thereof are to be read as a whole. A contract must be construed keeping in view the intention of the parties. No doubt, the applicability of the tax laws would depend upon the nature of the contract, but the same should not be construed keeping in view the taxing provisions as held in *Ishikawajima – Harima Heavy Industries Ltd. vs. Director of Income-tax* (2007) 288-ITR-408 (SC). The provisions of a section have to be interpreted on their plain language and not on the basis of apprehension of the Department. A statute is normally not construed to provide for a double benefit unless it is specifically so stipulated or is clear from the scheme of the Act as held in *Catholic Syrian Bank Ltd. vs. C.I.T.* (2012) 343-ITR-270 (SC). Where any deduction is admissible under two Sections and there is no specific provision of denial of double deduction, deduction under both the sections can be claimed and deserves to be allowed.

1.4. It is cardinal principle of interpretation that a construction resulting in unreasonably harsh and absurd results must be avoided. The cardinal principle of tax law that the law to be applied has to be the law in force in the assessment year is qualified by an exception when it is provided expressly or by necessary implication. That the law which is in force in the assessment year would prevail is not an absolute principle and exception can be either express or implied by necessary implication as held in *C.I.T. vs. Sarkar Builders* (2015) 375-ITR-392 (SC)

1.5. The cardinal rule of construction of statutes is to read the statute literally that is, by giving to the words used by legislature their ordinary natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning the Court may adopt the same. But if no such alternative construction is possible, the Court must adopt the ordinary rule of literal interpretation. It is well known rule of interpretation of statutes that the text and the context of the entire Act must be looked into while interpreting any of the expressions used in a statute The Courts must look to the object, which the statute



seeks to achieve while interpreting any of the provisions of the Act. A purposive approach for interpreting the Act is necessary.

1.6. It is a settled principle of rule of interpretation that the Court cannot read any words which are not mentioned in the Section nor can substitute any words in place of those mentioned in the section and at the same time cannot ignore the words mentioned in the section. Equally well settled rule of interpretation is that if the language of statute is plain, simple, clear and unambiguous then the words of statute have to be interpreted by giving them their natural meaning as observed in *Smita Subhash Sawant vs. Jagdishwari Jagdish Amin* AIR 2016 S.C. 1409 at 1416.

2. Two interpretations – one favourable to the tax payer to be adopted.

It is well settled, if two interpretations are possible, then invariably the court would adopt that interpretation which is in favour of the taxpayer and against the Revenue as held in *Pradip J. Mehta vs. C.I.T.* (2008) 300-ITR-231 (SC). While dealing with a taxing provision, the principle of 'strict interpretation' should be applied. The court shall not interpret the statutory provision in such a manner which would create an additional fiscal burden on a person. It would never be done by invoking the provisions of another Act, which are not attracted. It is also trite that while two interpretations are possible, the court ordinarily would interpret the provisions in favour of a taxpayer and against the Revenue as held in *Sneh Enterprises vs. Commissioner of Customs* (2006) 7-SCC-714.



DOCTRINE OF EJUSDEM GENERIS

Doctrine of Ejusdem generis :

Birds of the same feather fly together. The rule of ejusdem generis is applied where the words or language of which in a section is in continuation and where the general words are followed by specific words that relates to a specific class or category. The Supreme Court in the case of C.I.T. vs. Mcdowel and Company Ltd. (2010 AIR SCW 2634) held : "The principle of statutory interpretation is well known and well settled that when particular words pertaining to a class, category or genus are followed by general words are construed as limited to things of the same kind as those specified. This rule is known as the rule of ejusdem generis. It applies when :

- (1) the statute contains an enumeration of specific words;
- (2) the subjects of enumeration constitute a class or category;
- (3) that class or category is not exhausted by the enumeration;
- (4) the general terms follow the enumeration; and
- (5) there is no indication of a different legislative intent. The maxim ejusdem generis is attracted where the words preceding the general words pertain to class genus and not a heterogeneous collection of items as held in the case of Housing Board, Haryana (AIR 1996 SC 434). Same view has been iterated in Union of India vs. Alok Kumar AIR 2010 S.C. 2735.

General words in a statute must receive general construction. This is, however, subject to the exception that if the subject-matter of the statute or the context in which the words are used, so requires a restrictive meaning is in permissible to the words to know the intention of the Legislature. When a restrictive meaning is given to general words, the two rules often applied are *noscitur a sociis* and *ejusdem generis*. *Noscitur a sociis* literally means that the meaning of the word is to be judged by the company it keeps. When two or more words which are susceptible of analogous meaning are coupled together, they are understood to be used in their cognate sense. The expression *ejusdem generis* - "of the same kind or nature" – signifies a principle of construction whereby words in a statute which are otherwise wide but are associated in the text with more limited words are, by implication given a restricted operation and are limited to matters of the same class of genus as preceding them.



“MUTATIS MUTANDIS” & “AS IF”

"Mutatis Mutandis" & "As if":

Earl Jowitt's 'The Dictionary of English Law 1959) defines 'mutatis mutandis' as 'with the necessary changes in points of detail'. Black's Law Dictionary (Revised 4th Edn, 1968) defines 'mutatis mutandis' as 'with the necessary changes in points of detail, meaning that matters or things are generally the same, but to be altered when necessary, as to names, offices, and the like..... 'Extension of an earlier Act mutatis mutandis to a later Act, brings in the idea of adaptation, but so far only as it is necessary for the purpose, making a change without altering the essential nature of the things changed, subject of course to express provisions made in the later Act. It is necessary to read and to construe the two Acts together as if the two Acts are one and while doing so to give effect to the provisions of the Act which is a later one in preference to the provisions of the Principal Act wherever the Act has manifested an intention to modify the Principal Act.

"The expression "mutatis mutandis" itself implies applicability of any provision with necessary changes in points of detail. The phrase "mutatis mutandis" implies that a provision contained in other part of the statute or other statutes would have application as it is with certain changes in points of detail as held in R.S.I.D.I. Corpn. vs. Diamond and Gen Development Corporation Ltd. AIR 2013 SC 1241.

The expression "as if", is used to make one applicable in respect of the other. The words "as if" create a legal fiction. By it, when a person is "deemed to be" something, the only meaning possible is that, while in reality he is not that something, but for the purposes of the Act of legislature he is required to be treated that something, and not otherwise. It is a well settled rule of interpretation that, in construing the scope of a legal fiction, it would be proper and even necessary, to assume all those facts on the basis of which alone, such fiction can operate. The words "as if", in fact show the distinction between two things and, such words must be used only for a limited purpose. They further show that a legal fiction must be limited to the purpose for which it was created. "The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs". "It is now axiomatic that when a legal fiction is incorporated in a statute, the court has to ascertain for what purpose the fiction is created. After ascertaining the purpose, full effect must be given to the statutory fiction and it should be carried to its logical conclusion. The court has to assume all the facts and consequences which are



incidental or inevitable corollaries to giving effect to the fiction. The legal effect of the words 'as if he were' in the definition of owner in section 3(n) of the Nationalisation Act read with section 2(1) of the Mines Act is that although the petitioners were not the owners, they being the contractors for the working of the mine in question, were to be treated as such though, in fact, they were not so", as held in *Rajasthan State Industrial Development and Investment Corporation vs. Diamond and Gem Development Corporation Ltd.* AIR-2013-1241 at 1251.



APPROBATE AND REPROBATE

Approbate and Reprobate:

A party cannot be permitted to "blow hot-blow cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract, or conveyance, or of an order, he is estopped from denying the validity of, or the binding effect of such contract, or conveyance, or order upon himself. This rule is applied to ensure equity, however, it must not be applied in such a manner, so as to violate the principles of, what is right and, of good conscience. It is evident that the doctrine of election is based on the rule of estoppel the principle that one cannot approbate and reprobate is inherent in it. The doctrine of estoppel by election is one among the species of estoppels in pais (or equitable estoppel), which is a rule of equity. By this law, a person may be precluded, by way of his actions, or conduct, or silence when it is his duty to speak, from asserting a right which he would have otherwise had.



LEGAL FICTION – DEEMING PROVISION

Legal Fiction - Deeming Provision:

Legislature is competent to create a legal fiction, for the purpose of assuming existence of a fact which does not really exist. In interpreting the provision creating a legal fiction, the Court is to ascertain for what purpose the fiction is created and after ascertaining this, the Court is to assume all those facts and consequences which are incidental or inevitable corollaries to the giving effect to the fiction. This Court in *Delhi Cloth and General Mills Company Limited vs. State of Rajasthan* : (AIR 1996 SC 2930) held that what can be deemed to exist under a legal fiction are facts and not legal consequences which do not flow from the law as it stands. When a statute enacts that something shall be deemed to have been done, which in fact and in truth was not done, the Court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to.

It would be quite wrong to carry this fiction beyond its originally intended purpose so as to deem a person in fact lawfully here not to be here at all. The intention of a deeming provision, in laying down a hypothesis shall be carried so far as necessary to achieve the legislative purpose but no further. "When a Statute enacts that something shall be deemed to have been done, which, in fact and truth was not done, the Court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to". "If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents, which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it.... The Statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs". In *The Bengal Immunity Co.Ltd. vs. State of Bihar and Others* AIR 1955 SC 661, the majority in the Constitution Bench have opined that legal fictions are created only for some definite purpose.

In *State of Tamil Nadu vs. Arooran Sugars Ltd.* AIR 1997 SC 1815 : the Constitution Bench, while dealing with the deeming provision in a statute, ruled that the role of a provision in a statute creating legal fiction is well settled, and eventually, it was held that when a statute creates a legal fiction saying that something shall be deemed to have been done which in fact and truth has not been done, the Court has to examine and ascertain as to for what purpose and between which persons such a statutory fiction is to be resorted to and thereafter, the courts have to give full effect to such a



statutory fiction and it has to be carried to its logical conclusion. The principle that can be culled out is that it is the bounden duty of the court to ascertain for what purpose the legal fiction has been created. It is also the duty of the court to imagine the fiction with all real consequences and instances unless prohibited from doing so. That apart, the use of the term 'deemed' has to be read in its context and further the fullest logical purpose and import are to be understood. It is because in modern legislation, the term 'deemed' has been used for manifold purposes. The object of the legislature has to be kept in mind.



HARMONIOUS CONSTRUCTION

1. Harmonious Construction:

It is well settled that the provisions of a statute must be read harmoniously together. However, if this is not possible then it is settled law that where there is a conflict between two sections, and one cannot reconcile the two, one has to determine which is the leading provision and which is the subordinate provision, and which must give way to the other. A legislative instrument must be construed on the prima facie basis that its provisions are intended to give effect to harmonious goals. Where conflict appears to arise from the language of particular provisions, the conflict must be alleviated, so far as possible, by adjusting the meaning of the competing provisions to achieve that result which will best give effect to the purpose and language of those provisions while maintaining the unity of all the statutory provisions. Reconciling conflict provisions will often require to determine which is the leading provision and which the subordinate provision, and which must give way to the other. Only by determining the hierarchy of the provisions will it be possible in many cases to give each provision the meaning which best gives effect to its purpose and language while maintaining the unity of the statutory scheme.

2. Construction of a document:

A document, as is well known, must be read in its entirety. When character of a document is in question, although the heading thereof would not be conclusive, it plays a significant role. Intention of the parties must be gathered from the document itself but therefore circumstances attending thereto would also be relevant; particularly when the relationship between the parties is in question. For the said purpose, it is essential that all parts of the deed should be read in their entirety. A document as is well known, must primarily be construed on the basis of the terms and conditions contained therein. It is also trite that while construing a document the court shall not supply any words which the author thereof did not use.



RATION DECENDI, THE WORDS AND EXPRESSIONS

Ratio decendi, the words and expressions:

It is a well settled principle of law that the decision on an interpretation of one statute can be followed while interpreting another provided both the statutes are in pari materia and they deal with identical scheme. However, the definition of an expression in one statute cannot be automatically applied to another statute whose object and purpose are entirely different. One should not place reliance on decisions without discussing how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they were words in a legislative enactment. Judicial utterances are made in the setting of the facts of particular cases. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.

For reliance on the words and expressions defined in one statute and applying to the other statute it has also to be seen as to whether the aim and object of the two legislation, is similar. When the word is not so defined in the Act it may be permissible to refer to the dictionary to find out the meaning of that word as it is understood in the common parlance. But where the dictionary gives divergent or more than one meaning of a word, in that case it is not safe to construe the said word according to the suggested dictionary meaning of that word. In such a situation, the word has to be construed in the context of the provisions of the Act and regard must also be had to the legislative history of the provisions of the Act and the scheme of the Act. It is a settled principle of interpretation that the meaning of the words, occurring in the provisions of the Act must take their colour from the context in which they are so used. In other words, for arriving at the true meaning of a word, the said word should not be detached from the context. Thus, when the word; read in the context conveys a meaning, that meaning would be the appropriate meaning of that word and in that case we need not rely upon the dictionary meaning of that word.



DISCRETION

Discretion :

Many provisions confer discretion on the Court or the Authority. Discretion should be exercised judiciously as a judicial authority well versed in law. In Halsbury's Laws of England, it has been observed: "A statutory discretion is not, however, necessarily or, indeed, usually absolute; it may be qualified by express and implied legal duties to comply with substantive and procedural requirements before a decision is taken whether to act and how to act. Moreover, there may be a discretion whether to exercise a power, but; no discretion as to the mode of its exercise; or a duty to act when certain conditions are present, but a discretion how to act. Discretion may thus be coupled with duties".

Discretion, in general, is the discernment of what is right and proper. It denotes knowledge and prudence, that discernment which enables a person to judge critically of what is correct and proper united with caution; nice discernment, and judgment directed by circumspection; deliberate judgement; soundness of judgment; a science or understanding to discern between falsity and truth between wrong and right, between shadow and substance, between equity and colourable glosses and pretences, and not to do according to the will and private affections of persons. When it is said that something is to be done within the discretion of the authorities, that something is to be done according to the rules of reason and justice, not according to private opinion; according to law and not humour. It is to be not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man, competent to the discharge of his office ought to confine; himself. (See S.G. Jaisinghani vs. Unkon of India and other AIR 1967 SC 1427.

The word 'discretion' standing single and unsupported by circumstances signifies exercise of judgement, skill or wisdom as distinguished from folly, unthinking or haste; evidently therefore a discretion cannot be arbitrary but must be a result of judicial thinking. The word in itself implies vigilant circumspection and care; therefore, where the Legislature concedes discretion it also imposes a heavy responsibility to exercise it soundly and properly.



OTHER CONSIDERATIONS

1. Other Considerations:

Recourse to construction or interpretation of statute is necessary when there is ambiguity, obscurity or inconsistency therein and not otherwise. An effort must be made to give effect to all parts of statute and unless absolutely necessary, no part thereof shall be rendered surplus or redundant. True meaning of a provision of law has to be determined on the basis of what provides by its clear language, with due regard to the scheme of law. Scope of the legislation on the intention of the Legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute. It is also well settled that a beneficent provision of legislation must be liberally construed so as to fulfill the statutory purpose and not to frustrate it.

1.1. In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can look fairly at the language used.” This view has been reiterated by the Supreme Court time and again. In *State of Bombay vs. Automobile and Agricultural Industries Corporation* (1961) 12 STC 122, the court said (page 125) : “But the courts in interpreting a taxing statute will not be justified in adding words thereto so as to make out some presumed object of the Legislature..... If the Legislature has failed to clarify its meaning by the use of appropriate language, the benefit thereof must go to the taxpayer. It is settled law that in case of doubt, that interpretation of a taxing statute which is beneficial to the taxpayer must be adopted.”

1.2. To the extent not prohibited by the statute, the incidents of the general law are attracted to ascertain the legal nature and character of a transaction. This is quite apart from distinguishing the “substance” of the transaction from its “form”. The court is not precluded from treating what the transaction is in point of fact as one in point of law also. To say that the court could not resort to the so-called “equitable construction” of a taxing statute is not to say that, where a strict literal construction leads to a result not intended to subserve the object of the legislation another construction, permissible in the context, should not be adopted. In this respect, taxing statutes are not different from other statutes.



1.3. A public authority cannot be stopped from doing its duty, but can be estopped from relying on a technicality as said by the Lord Denning. Francis Bennion in his *Statutory Interpretation*, “Unnecessary technicality: Modern courts seek to cut down technicalities attendant upon a statutory procedure where these cannot be shown to be necessary to the fulfilment of the purposes of the Legislation.”

1.4. The definition section of the Act in which various terms have been defined, if it opens with the words “in this Act, unless the context otherwise requires” would indicate that the definitions, which are indicated to be conclusive may not be treated to be conclusive if it was otherwise required by the context. This implies that a definition, like any other word in a statute, has to be read in the light of the context and scheme of the Act as also the object for which the Act was made by the legislature. While interpreting a definition, it has to be borne in mind that the interpretation placed on it should not only be not repugnant to the context, it should also be such as would aid the achievement of the purpose which is sought to be served by the Act. A construction which would defeat or was likely to defeat the purpose of the Act has to be ignored and not accepted.

1.5. In *Raja Jagdambika Pratap Narain Singh vs. C.B.D.T.* (1975) 100-ITR-698, Supreme Court held that “equity and income-tax have been described as strangers”. The Act, in the very nature of things, cannot be absolutely cast upon logic. It is to be read and understood according to its language. If a plain reading of the language compels the court to adopt an approach different from that dictated by any rule of logic, the court may have to adopt it, vide *Azam Jah Bahadur (H.H. Prince) vs. E.T.O.* (1972) 83- ITR-82 (SC). Logic alone will not be determinative of a controversy arising from a taxing statute. Equally, common sense is a stranger and an incompatible partner to the Income-tax Act. It does not concern itself with the principles of morality or ethics. It is concerned with the very limited question as to whether the amount brought to tax constitutes the income of the assessee. It is equally settled law that if the language is plain and unambiguous, one can only look fairly at the language used and interpret it to give effect to the legislative intention. Nevertheless, tax laws have to be interpreted reasonably and in consonance with justice adopting a purposive approach. The contextual meaning has to be ascertained and given effect to. A provision for deduction, exemption or relief should be construed reasonably and in favour of the assessee.

1.6. When a word is not defined in the Act itself, it is permissible to refer to dictionaries to find out the general sense in which that word is understood in



common parlance. However, in selecting one out of the various meanings of a word, regard must always be had to the context, as it is a fundamental rule that ‘the meaning of words and expressions used in an Act must take their colour from the context in which they appear.’”

1.7. When a recognized body of accountants, such as the Institute of Chartered Accountants of India, after due deliberation and consideration publishes certain material for its members, one can rely upon it. The meaning given by the Institute clearly denotes that in normal accounting parlance the word “turnover” would mean “total sales”. The sales would definitely not include scrap which is either to be deducted from the cost of raw material or is to be shown separately under a different head. There is no reason not to accept the meaning of the term “turnover” given by a body of accountants, having statutory recognition. If all accountants, auditors, businessmen, manufacturers normally interpret the term “turnover” as sale proceeds of the commodity in which the business unit is dealing, there is no reason to take a different view, as held in *C.I.T. vs. Punjab Stainless Steel Industries* (2014) 364-ITR-144 (SC).

1.8. The principle of statutory interpretation embodies the policy of the law, which is in turn based on public policy. The court presumes, unless the contrary intention appears, that the legislator intended to conform to this legal policy. A principle of statutory interpretation can therefore be described as a principle of legal policy formulated as a guide to legislative intention.

1.9. Justice P. N. Bhagwati in *Francis Coralie Mullin vs. Administrator, Union Territory of Delhi*, AIR 1981 S.C. 746 ‘emphasized the importance of reading the text of the Constitution in a progressive manner in tune with the social reality and to serve the cause of impoverished sections of humanity : “The principle of interpretation which requires that a constitutional provision must be construed, not in a narrow and constricted sense, but in a wide and liberal manner so as to anticipate and take account of changing conditions and purposes so that constitutional provision does not get atrophied or fossilized but remains flexible enough to meet the newly emerging problems and challenges....”

2. Some Words & Doctrines:

(i) “Profit” : means the gross proceeds of a business transaction less the costs of the transaction. Profits imply a comparison of the value of an asset when the asset is acquired with the value of the asset when the asset is transferred and the difference



between the two values is the amount of profit or gain made by a person. E.D. Sassoon and Company Ltd. vs. CIT (1954) 26-ITR-27 (SC).

(ii) “Without Prejudice” : The term “without prejudice” means (i) that the cause of the matter has not been decided on merits, (ii) that fresh proceedings according to law were not barred, as held in Superintendent (Tech.I) Central Excise, I.D.D. Jabalpur vs. Pratap Rai (1978) 114- ITR-231 (SC). It signifies that the mere filing of a return will not be allowed to be used against the assessee implying its admission. “Without prejudice” implies future rectification in accordance with law, as held in C.W.T. vs. Apar Ltd. (2004) 267-ITR-705 (Bom.).

(iii) “Sums Paid” : The context in which the expression “sums paid by the assessee” has been used makes the legislative intent clear that it refers to the amount of money paid by the assessee as donation, as held in H.H. Sri Rama Verma vs. C.I.T. (1991) 187-ITR-303 (SC).

(iv) “Presumption” : A presumption is an inference of fact drawn from other known or proved facts. It is a rule of law under which courts are authorized to draw a particular reference from a particular fact. It is of three types, (i) “may presume”, (ii) “shall presume” and (iii) “conclusive proof”. “May presume” leaves it to the discretion of the court to make the presumption according to the circumstances of the case. “Shall presume” leaves no option with the court not to make the presumption. The court is bound to take the fact as proved until evidence is given to disprove it. In this sense such presumption is also rebuttable. “Conclusive proof” gives an artificial probative effect by the law to certain facts. No evidence is allowed to be produced with a view to combating that effect. In this sense, this is an irrebuttable presumption- as held in P.R. Metrani vs. C.I.T. (2006) 287-ITR-209 (SC) at 211.

(v) “Suo Moto” : “Means of own accord or on its own motion. However the Judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to “the primordial necessity of order in the social life”. Wide enough in all conscience is the field of discretion that remains” as observed by Benjamin N. Cardozo in the legal classic “The Nature of the Judicial Process”.



(vi) Doctrine of lifting Veil : The doctrine of 'piercing the veil' is applied to reach at reality, substance and avoid façade. It can be invoked if the public interest so requires or if there is allegation of violation of law by using the device of corporate entity or when the corporate personality is being blatantly used as a cloak for fraud or improper conduct or where the protection of public interests is of paramount importance or where the Company has been formed to evade obligations imposed by law or to evade an existing obligation to circumvent a statute or to avoid a welfare legislation etc. State of Rajasthan vs. Gotam Lime Khanij Udhog Pvt. Ltd. - AIR 2016 S.C. 510.

3. Conclusion:

General principles of interpretation of Law including the Tax Laws are to protect a citizen against the excesses of the Executive, Administration, Corrupt authority, erring individuals and the Legislature. It is an aid to protect and uphold 'enduring values' enshrined in the Constitution and Laws enacted by the Parliament/Legislatures. It is to assist, to arrive at the real intention, object and purpose for which Laws are enacted and to make life of each citizen worth living. Let the hopes of the framers of the Constitution and the father of Nation, Mahatma Gandhi, inspire all Constitutional functionaries, Judges, Jurists, Members of Tribunals, Advocates, Chartered Accountants and the people of India to preserve their freedom and mould their lives on sound principles of interpretation of Laws. Endeavour should be to deliver justice, which is a divine act.