



Interpretation of Statutes: A Treatise

By Shri. Deepak Jain, LL.M

1. Interpretation of statutes – Importance of subject For understanding the provisions of a statute, knowledge to apply the ‘correct’ interpretation, is an essential prerequisite.

In the case of taxing statutes, as in different type of statutes, there are certain bedrock principles on which the interpretation or construction of the particular statute is done by the Courts and Tribunals; and the tax practitioners are required to have the knowledge of these basics in their catalogue to understand the statute and implications of its provisions. Some important aspects relating to ‘Interpretation’ of Taxing Statutes are dealt herein.

2. ‘Interpretation’ and ‘Construction’ – Meaning of

Statutes are embodiments of authoritative formulae and the very words which are used constitute part of law. The interpretation or construction means the process by which the Courts seek to ascertain the intent of the Legislature through the medium of the authoritative form in which it is expressed. The law is deemed to be what the Court interprets it to be. The very concept of ‘interpretation’ connotes the introduction of elements which are necessarily extrinsic to the words in the statute. Though the words ‘interpretation’ and ‘construction’ are used interchangeably, the idea is somewhat different. The term ‘construction’ has been explained in **CWT vs. Hashmatunnisa Begum** [1989] 176 ITR 98 (SC) to mean that something more is being got out in the elucidation of the subject-matter than can be got by strict interpretation of the words used. Judges have set themselves in this branch of the law to try to frame the law as they would like to have it.

Further, **L.J. Denning** in **Seaford Court Estates vs. Asher** [1949] 2 All ER 155 speaks as hereunder:

“A Judge must not alter the material of which the Act is woven but he can and should iron out the creases. When a defect appears, a Judge cannot simply fold his hands and blame the draftsman.

He must set to work on the constructive task of finding the intention of the Parliament and then he must supplement the written words so as to give force and life to the intention of the Legislature.”

The art of correct interpretation would depend on the ability to read what is stated in plain language, read between the lines, read ‘through’ the provision, examining the intent of the Legislature and call upon case laws and other aids to interpretation.



3. Cardinal Rules for interpretation of taxing statutes

3.1 Rule of literal interpretation

This is the most widely used Rule of Interpretation in taxing statutes. Some decisions are given hereunder.

(a) **CIT vs. T.V. Sundaram Iyyengar** [1975] 101 ITR 764 (SC)

If the language of the statute is clear and unambiguous, the Court cannot discard the plain meaning, even if it leads to an injustice.

(b) **CIT vs. Elphinstone Spg & Wvg Mills Co Ltd.** 40 ITR 142 (SC) and **CIT vs. Motors & General Stores Ltd.** 66 ITR 692, 699-700 (SC)

No tax can be imposed on the subject without words in the Act clearly showing an intention to lay a burden upon him. In other words, the subject cannot be taxed unless he comes within the letter of the law. The argument that he falls within the spirit of the law cannot be availed by the Department.

(c) Rowlatt J. in **Cape Brandy Syndicate vs. IRC** [1921] 1 KB 64 approved in **CIT vs. Ajax Products Ltd.** [1965] 55 ITR 741 (SC)

“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 to be implied. One can only look at the language used.” (p. 747)

Thus, when the language of a taxing statute is clear, if an assessee falls within the four corners of the statute, he is to be taxed; if not, no tax is to be levied.

(d) **Citigroup Global Markets India (P.) Ltd. vs. Dy. CIT** [2009] 29 SOT 326 (Mum.)

In this case payment of salary was made and the provisions of section 192 were applicable. The words ‘at the time of payment’ in section 192(1) was interpreted where the ITAT held that the literal meaning is that, it is a point of time when the assessee actually remits the amount either in cash or through bank which is contemplated as actual payment in normal commercial practice. U/s 192 TDS is to deducted at the time of the payment and not when the salary is accrued or credited to the account of the payee. The tax statutes need to be strictly interpreted and the language used by the Legislature should not be unnecessarily stretched in the process of finding the intention of the Legislature. [TDS needs to be deducted u/ss. 194C, 194E, 194H and 194-I at the time of credit or



payment whichever is earlier]. It was held that the assessee's statutory obligation was to deduct the tax at the time of payment or remittance of the salary and, hence, the claim of the expenditure towards the salary payment was not hit by section 40(a)(iii) in the circumstances of the instant case.

(e) **Smt. Tarulata Shyam vs. CIT** [1971] 108 ITR 345 (SC) There is no scope for importing into the statute words which are not there. Such importation would be, not to construe, but to amend the statute. Even if there be a *casus omissus*, the defect can be remedied only by Legislation and not by judicial interpretation.

(f) **Brig. B. Lall vs. WTO** [1981] 127 ITR 308/[1980] 4 Taxman 559 (Raj.)

The question was about the application of section 16A of the Wealth-tax Act, which empowers the WTO to refer the valuation of any property to the VO of the Government to ascertain the true market value of the property on the date of valuation if he feels that the value declared by the assessee was low. It can be done only during the pendency of a case before the WTO. In this case it was the opinion of the audit that it suspected the value declared to be low and on the basis of such advice, the WTO referred the valuation to the departmental valuer. Since at the time of such reference no case was pending before the WTO, on a writ petition filed by the assessee, it was held that the WTO had no jurisdiction to make such reference. He cannot be allowed to make roving enquiry to make any enhancement in the value of the property. Since the provisions of section 16(1) apply only where a case is pending, it cannot be read for reopening the completed assessment after receipt of the valuation report which was to be received.

It rejected the suggestion that although no case was pending, it would come to be so on reopening of the reassessment. The Court disagreed with the said proposition as it would mean changing the condition for completing the assessment to the condition for reopening the completed assessment, which would mean addition of certain words in the statute which cannot be allowed in interpreting the statute as was held by the Supreme Court in **CED vs. R. Kanakasabai** [1973] 89 ITR 251 (SC) at page 257. (g) **CIT vs. Indian Engg. & Comml. Corpn. (P.) Ltd.** [1993] 201 ITR 723/68 Taxman 39 (SC)

Besides salary, certain commission as percentage of sales was paid to the directors, and the revenue sought to disallow the same being in excess of the provision contained in section 40(a)(v). It was held that the commission paid did not partake of the character of salary, not it partook of the character of perquisite. It is not possible to read something in the provision which, by considering the wordings used, is outside the scope of the provision. The Court is not required to legislate which is the function of the Legislature.

(h) **Keshavji Ravji & Co. vs. CIT** [1990] 49 Taxman 87 (SC)



As long as there is no ambiguity in the statutory language, resort to any interpretative process to unfold the legislative intent becomes impermissible.

3.2 Golden Rule (Doctrine of purposive construction)

If the strict interpretation of the taxing statute is likely to lead to a manifest absurdity, then the golden rule of construction implies that the meaning of the words should be so effected that such an absurdity is avoided. The application of this rule is rather limited in the realm of construction of taxing statutes, since the literal rule would gain precedence over the golden rule and it is often remarked that equity and taxation are strangers – **Grey vs. Pearson** [1857] 6 HL Cas. 61.

3.3 Rule of harmonious construction

When any provision of a taxing statute is interpreted, it must be so constructed that the meaning of such provision must harmonise with the intention of the Legislature behind the provision in particular and the enactment in general – **CIT vs. Chandanben Maganlal** [2002] 120 Taxman 38 (Guj.). However, this would always be subject to the fact that the particular provision, or even the entire enactment, should not be held unconstitutional.

3.4 Doctrine of ‘reading down’

Resort to reading down is done where a legal provision; read literally, seems to offend the Constitutional provisions concerning fundamental rights or is found to be outside the competence of the particular Legislature. Some relevant decisions are given hereunder.

(a) **Sri Venkateshwara Timber Depot vs. Union of India** [1991] 189 ITR 741/155 Taxman 308 (Ori.) The Court construes the provision in question in a limited sense to ensure that its meaning falls within the parameters of constitutionality or is intra vires the powers of the Legislature in question (generally in the case of State Legislatures).

(b) **Arun Kumar vs. UOI** [2006] 155 Taxman 659 (SC) Reading down a provision is based on the premise that to sustain the law by interpretation is the rule. To add further, as held in **Kedar Nath Singh vs. State of Bihar** AIR 1962 SC 955

“The Legislature is presumed to be aware of its limitations and is also attributed an intention not to overstep its limits.”

The Supreme Court in case of **Arun Kumar**, was required to consider the validity of rule 3 of the Income-tax Rules, 1962 as amended vide Notification No. S.O. 940(E), dated September 25, 2001. The substituted rule revised the method of computing valuation of perquisites in the matter of rental accommodation provided by employers to the



employees. It was contended by the writ petitioner that rule 3 is invalid on the ground that the amended rule does not provide for giving an opportunity to the assessee to convince the A.O. that no concession is given by the employer to the employee in respect of accommodation provided and, hence, rule 3, has no application, as the amended rule is arbitrary, discriminatory or ultra vires article 14 and inconsistent with the provisions of section 17(2)(ii).

The Court did not accept the petitioner's contention and has said that (amended) rule 3 is in the nature of a machinery provision and applies only to cases where concession in the matter of rent is involved, respecting any accommodation provided by an employer to his employee. The Court held that the assessee (employee) could contend that there is no concession in the matter of accommodation provided by the employer to the employee and on that basis, claim that rule 3 is not applicable

The doctrine of reading down can be applied if the statute is silent, ambiguous or allows more than one interpretation. But where it is express and clearly mandates to take certain actions, the function of the Court is to interpret it plainly and declare intra vires or ultra vires without adding, altering or subtracting anything therein.

(c) Krishna Iyer, J., in **Maharao Saheb Shri Bhim Singhji vs. Union of India** AIR 1981 SC 234 has observed :-

“ . . . reading down meanings of words with loose lexical amplitude is permissible as part of the judicial process. To sustain a law by interpretation is the rule. Courts can and must interpret words and read their meanings so that public good is promoted and power misuse is interdicted. As Lord Denning said: ‘A judge should not be a servant of the words used. He should not be a mere mechanic in the power house of semantics’” (p. 242)

(d) **Sanyasi Rao vs. Govt. of A.P.** [1989] 178 ITR 31 (AP) The constitutional validity of sections 44AC and 206 of the Income-tax Act, was challenged. These sections were introduced in the Income-tax Act by the Finance Act, 1988. Section 44AC (which had since been deleted with effect from April 1, 1993 by the Finance Act, 1992) determined the profits and gains of a buyer from the business in trading in certain specified goods at a given percentage of the purchase price; and section 206C deals with collection and recovery of tax relating thereto. It was contended, inter alia, that section 44AC is an arbitrary and discriminatory provision, the measure of profits and gains prescribed by that section constitutes an unreasonable restriction upon the assessee's fundamental rights guaranteed by sub-clause (g) of clause (1) of article 19 of the Constitution; and that there ought to be income, before tax is levied. The amount collected at source under section 206C is related to the income component of the purchase price. In its judgment, the High Court held that the legislative policy of fixing the rate of profit, as has been done in section 44AC, had to be regarded as in the nature of unreasonable restriction in cases of



some of the assessees. Therefore, section 44AC has to be regarded as violative of Article 19(1)(g) in the cases of some of the petitioners before the Court.

The High Court then considered whether anything can be done to uphold the validity of section 44AC and the court found the solution in “reading down the provision”. The reading down was to the extent that section 44AC shall be read not as an independent provision but as an adjunct to and as explanatory to section 206C; and that it does not dispense with regular assessment altogether with the result that after the tax is collected in the manner provided by section 206C, a regular assessment would be made where the profit and gain of business in goods in question would be ascertained in accordance with sections 28 to 43C.

The High Court’s decision was upheld by the Supreme Court in **Union of India vs. A. Sanyasi Rao** [1996] 219 ITR 330 (SC), saying that section 44AC is a valid piece of legislation and is an adjunct to and explanatory to section 206C.

Legislative response: While the debate about the constitutionality of section 44AC was on, the Government, realising the deficiencies of section 44AC, omitted section 44AC by the Finance Act, 1992 w.e.f. assessment year 1993-94. However section 206C continued as an aid to collect tax at source from the buyers of the products/items covered in the section.

(e) **C.B. Gautam vs. Union of India** [1992] 199 ITR 530 (SC)

The Court had to deal with section 269 UD of the Income-tax Act, which did not contain any provision for an opportunity to the parties to be heard before an order for compulsory purchase of the property under Chapter XX-C of the Incometax Act was made. Therefore, the requirement of an opportunity to show cause before an order for compulsory purchase is made by the Central Government must be read into the provisions of Chapter XX-C, otherwise it would have adverse civil consequences for the parties affected. The provisions were later amended to incorporate the principle of natural justice vide sub-section (1A) of section 269UD by the Finance Act, 1993 from November 17, 1992.

3.5 Rule of beneficial construction

In cases where there are two interpretations possible, the one which is beneficial to the assessee would be preferred. This principle was laid down in a landmark Judgment in **IRC vs. Duke of Westminster** 1936 AC 1 wherein Tomlin LJ. stated that an assessee may arrange his affairs within the bounds of the law so as to minimize the incidence of tax.



(a) **McDowell & Co. Ltd. vs. CTO** [1985] 154 ITR 148 (SC) The Apex Court clamped down on the liberal construction and the pendulum swung to the other extreme, as the Court made fine distinctions between tax evasion, tax avoidance and tax planning and virtually rendered the **Westminster** Principle nugatory. Here the Court followed the interpretation that the letter and spirit of the law must be followed. In this post-McDowell era, the department generally got favourable verdicts and a lot of assessees suffered due to the Courts coming down heavily on tax avoidance measures, which were equated with tax evasion.

(b) **UOI vs. Azadi Bachao Andolan** [2003] 263 ITR 707 (SC)

The case dealt with conflicts between the Indo- Mauritius Double Tax Avoidance Agreement and the Income-tax Act, 1961, it was held that an assessee was entitled to arrange his affairs so as to minimize the incidence of tax, thus, partly confirming the **Westminster** Principle.

(c) **CIT vs. Naga Hills Tea Co. Ltd.** 89 ITR 236, 240 (SC); **CIT vs. Contr ED vs. Kanakasabai** 89 ITR 251, 257 (SC)

Where a literal construction would defeat the obvious intention of the legislation and produce a wholly unreasonable result, the court must “do some violence to the words” and so achieve that obvious intention and produce a rational construction. If the interpretation of a fiscal enactment is open to doubt, the construction most beneficial to the subject should be adopted.

3.6 Charging sections to be strictly construed while benevolent and procedural sections should be liberally construed.

This is a very important and practical rule of interpretation and generally resorted to while interpreting the sections pertaining to incentives, exemptions and deductions where the spirit is to promote exports, increase earnings in foreign convertible exchange, promote industrialisation, infrastructure development etc. A provision for appeal should also be liberally construed.

(a) **CIT vs. Naga Hills Tea Co. Ltd.** 89 ITR 236, 240 (SC); **CIT vs. Contr ED vs. Kanakasabai** 89 ITR 251, 257(SC)

A provision for exemption or relief should be construed liberally and in favour of the assessee even if it results in his obtaining “a double advantage”.

(b) **Gursahai Saigal vs. CIT** 48 ITR (SC) 1



Those sections which impose the charge or levy should be strictly construed; but those which deal merely with the machinery of assessment and collection should not be subjected to a rigorous construction but should be construed in a way that makes the machinery workable.

(c) **Bajaj Tempo Ltd.** 196 ITR 188 (SC):

A provision in a taxing statute granting incentives for promoting growth and development should be construed liberally, and since as provision for promoting economic growth has to be interpreted liberally, the restriction on it too has to be construed so as to advance the objective of the provision and not to frustrate it. While interpreting the various provisions, the Court must not adopt a hyper technical approach and apply cut and dry formula. A pragmatic approach should be adopted so that the object of the introduction/insertion of a particular provision could be achieved.

[Similar views have been expressed in **Juggilal Kamlapat vs. CIT** [1969] 73 ITR 702 (SC), **CIT vs. Strawboard Manufacturing Co. Ltd.** [1989] 177 ITR 431 (SC) at page 434 and **CIT vs. South Arcot District Co-operative Marketing Society Ltd.** 176 ITR 117 (SC) at page 119]

(c) **CIT vs. Poddar Cement (P.) Ltd.** [1997] 226 ITR 625 (SC)

Where there are two possible interpretations of a particular section which is akin to a charging section, the interpretation which is favourable to the assessee should be preferred while construing that particular provision. Reiterating the same view, in the case of **CIT vs. Shaan Finance (P.) Ltd.** [1998] 231 ITR 308 (SC) it has been held that in interpreting a fiscal statute, the Court cannot proceed to make good the deficiencies if there be any. The Court must interpret the statute as it stands and in case of doubt, in a manner favourable to the taxpayer.

(d) **CIT vs. Vegetable Products Ltd** [1973] 88 ITR 192 It has been held that if the Court finds that the language of taxing provision is ambiguous or capable of more meaning than one, then the Court has to adopt the interpretation which favours the assessee.

(e) **Gannon Dunkerly & Co. Ltd. vs. CBDT** 159 ITR 162 (Bom.)

The object of section 80-O is to encourage the export of Indian Technical Know how and augmentation of foreign exchange resources of the country and hence a superficial and narrow interpretation can only defeat the benevolent purpose behind the provision of section 80-O.

3.7 Mischief rule (Heydon's case)



This rule is one of the canons of statutory interpretation and its basis lies in the four aspects outlined below :

(a) What was the common law prior to the enactment of the statute? (b) What was the defect or mischief which the common law failed to rectify? (c) What remedy did the Legislature provide by way of the statute enacted? (d) What was the legislative intent behind such remedy?

The application of the mischief rule would generally be done very rarely in taxing statutes, since a Court would have to exhaust all the other modes and aids to interpretation before applying the 'mischief rule'.

3.8 Construction of penal provisions

There are several penal provisions in taxation statutes and these have special rules of interpretation and notable among these are:

(a) strict construction (b) prospective in operation and not retrospective; thus, any act which is currently not an offence cannot be made one retrospectively by amendment of a penal provision with retrospective effect;

(c) presumption of mens rea (i.e., guilty intention to commit the crime) unless the statute specifically provides for the absence of the same.

To illustrate, concealment of income may be presumed by the department (without mens rea) and the onus of proof lies on the assessee to show that there is no concealment.

(i) **Jarnail Singh vs. ITO** [1989] 179 ITR 426 (P&H); **CIT vs. Gangaram Chapolia** [1976] 103 ITR 613 (Ori.)(FB)

To bring an act under the provisions of section 276C, the action of the person concerned has to be a wilful attempt to evade any tax, penalty or interest chargeable or imposable under the Act. The word 'wilful' imparts the concept of mens rea, and if mens rea is absent, no offence under this section is made out.

(ii) **CIT vs. Ram Rup Kishan** [1992] 193 ITR 129 (P&H); **J.M. Shah vs. ITO** [1996] 218 ITR 38 (Mad.)

As per section 277, the intention of the Legislature in incorporating the words 'and which he knows or believes to be false, or does not believe to be true' is quite obvious. It is that a prosecution will not follow in every case where a wrong statement is made and it will have to be judged as to whether the assessee harboured mens rea or not.



3.9 Rule of ‘ejusdem generis’ or noscitur a sociis The Rule is that the meaning of a general word is restricted by the special words appearing along with it. To illustrate:

“If a man tells his wife to go to the market to buy vegetables, fruits, groceries and anything else she needs, the ‘anything else’ would be taken to mean food and grocery items due to the rule of ejusdem generis and not cosmetics or other feminine accessories.”

Thus, the meaning of a word must be taken by the company it keeps (Rule of noscitur a sociis). In the case of **CIT vs. Raj Kumar** [2009] 181 Taxman 155 (Del.) regarding Deemed dividend under section 2(22)(e) of the Income-tax Act, 1961, the word ‘advance’, which appears in company of word ‘loan’ was interpreted. Section 2(22)(e) reads as “any payment by a company, not being a company in which the public are substantially interested, of any sum (whether as representing a part of the assets of the company or otherwise) [made after the 31st day of May, 1987, by way of advance or loan to a shareholder,]

It was held that advance can only mean such advance which carries with it an obligation of repayment. A trade advance, which is in nature of money transacted to give effect to a commercial transaction, cannot be treated as ‘deemed dividend’ falling within ambit of provisions of section 2(22)(e). Rule of noscitur a sociis was applied.

3.10 Rule of ‘expressio unius est exclusio alterius’

This rule means that where there are two mutually exclusive items, the inclusion of one would implicitly mean the exclusion of the other.

The above rules are the most basic rules of interpretation and the Courts use them along with certain Acts like the General Clauses Act, 1897 and the State General Clauses Act, to ascertain meanings of words not defined in the Act.

3.11 External aids to interpretation

The Court may also use certain external aids like works of prominent authors, dictionaries, legislative debates, etc., to interpret a statute correctly. Relevance of Finance Minister’s speech to interpret tax statutes: The words of the statute do themselves best declare the intention of the law given. It is only if there is any ambiguity in the language, in understanding the intention of the Legislature, that the aid can be taken of the proceedings in the Parliament including the aims and objects of the Act. Section 57 of the Evidence Act not only enables but enjoins the duty upon the Courts to take judicial notice of the course of proceedings in the Parliament. In **Sole Trustee, Loka Shikshana Trust vs. CIT** [1975] 101 ITR 234 (SC), it was held that:



“if the real meaning and purpose of the words used cannot be understood at all satisfactorily reference can be made to the past history of legislation on the subject and the speech of the mover of the amendment who was, undoubtedly, in the best position to explain what defect in the law the amendment had sought to remove. If the reason given by him only elucidates what is also deducible from the words used in the amended provision, we do not see why we should refuse to take it into consideration as an aid to a correct interpretation. . . . Interpretation of a statutory provision is always a question of law on which the reasons stated by the mover of the amendment can only be used as an aid in interpretation if we think, as I do in the instant case, that it helps us considerably in understanding the meaning of the amended law. We find no bar against such a use of the speech.”
(p. 252)

There is no bar in resorting to or referring to speech of FM. Interpretation of a statute being an exercise in the ascertainment of meaning, every thing which is logically relevant should be admissible – **Chunnihal Onkarmal (P.) Ltd. vs. UOI** [1996] 221 ITR 459 (MP); **K.P. Varghese vs. ITO** [1981] 131 ITR 597 (SC); **CIT vs. M.K. Vaidya** [1997] 224 ITR 186 (Kar.); **CIT vs. Export India Corporation (P.) Ltd.** [1996] 219 ITR 461 (P&H); **Ganji Krishna Rao vs. CIT** [1996] 220 ITR 654 (AP); **Addl. CIT vs. Sarvaraya Textiles Ltd.** [1982] 137 ITR 369 (AP) Contrary decisions where it is held that FM’s Speech is not admissible: In the cases of **CIT vs. Bhandari Machinery Co. (P.) Ltd.** [1998] 231 ITR 294 (Del.); **Aswini Kumar Ghose vs. Arabinda Bose** AIR 1952 SC 369; **State of Travancore, Cochin vs. Bombay Company Ltd.** AIR 1952 SC 366; **CWT vs. Yuvraj Amrinder Singh** [1985] 156 ITR 525 (SC); **B.R. Sound-n-Music vs. O.P. Bhardwaj** [1988] 173 ITR 433 (Bom.), it was held that:

“The speeches made by the members of the House in the course of the debates are not admissible as external aids to the interpretation of a statutory provision. A statute, as passed by Parliament, is the expression of the collective intention of the Legislature as a whole, and any statement made by the individual, albeit a Minister, of the intention and objects of the Act cannot be used to cut down the generality of the words used in the statute.

The Statement of Objects and Reasons, seeks only to explain what reasons induced the mover to introduce the Bill in the House and what objects he sought to achieve. But those objects and reasons may or may not correspond to the objective, which the majority of members had in view when they passed it into law. The Statement of Objects and Reasons appended to the Bill should be ruled out as an aid to the construction of a statute. Strictly speaking, even the speech of the Finance Minister and Notes on Clauses do not lend support to the view taken by the Tribunal.”



[also see **Express Newspapers (P.) Ltd. vs. UOI** AIR 1958 SC 578, para 173; **State of West Bengal vs. UOI** AIR 1963 SC 1241, para 13].

3.12 Generalia Specialibus Non Derogant : General provisions must yield to the special provision

Generally speaking, the sections in the Act do not overlap one another and each section deals only with the matter specified therein and goes no further. If a case appears to be governed by either of two provisions, it is clearly the right of the assessee to claim that he should be assessed under the one, which leaves him with a lighter burden.

The literal meaning of the expression ‘Generalia Specialibus Non Derogant’ is that general words or things do not derogate from the special. The Courts have held the expression to mean that when there is a conflict between a general and special provision, the latter shall prevail as held in the cases of **CIT vs. Shahzada Nand and Sons** 60 ITR 392 (SC) and **UOI vs. Indian Fisheries (P.) Ltd.** AIR 1966 SC 35, or the general provisions must yield to the special provision.

Where there is a conflict between two statutes:

The general rule to be followed in case of a conflict between two statutes is that a later statute abrogates the earlier (‘leges posteriores priores contrarias abrogant’) and the well-known exception is that general legislations do not derogate special legislations.

Partnership Act vs. Income Tax Act: The above maxim was applied when the questions relating to assessments of a firm and its partners arose under the Income-tax Act, 1961 where the dissolution of the firm and its succession was held to be governed by the Special Act viz., the Income-tax Act and not the Partnership Act. The Karnataka High Court has held in the case of **CIT vs. Shambul Nathalal & Co.** [1984] 145 ITR 329 (Kar.) that when the Legislature has deliberately made a specific provision to cover a particular situation, for the purpose of making an assessment of a firm under the Income-tax Act, there is no scope for importing the concept and the provisions of the Partnership Act. The legal position of a firm under the income-tax law is different from that under the general law of partnership in several respects.

Claim as Donation u/s 80G or Business Expenses u/s 37(1): In **Jaswant Trading Co. vs. CIT** 212 ITR 24 (Raj); 128 CTR 306; 85 Taxman 639 (Raj.) the Rajasthan High Court held that the provisions of section 37 are general in nature and the provisions of section 80G are specific. Applying the maxim generalia specialibus non derogant if an amount is liable for deduction under section 80G it cannot be claimed under the general provisions of section 37(1).

3.13 Mimansa Rules of Interpretation



In **Ispat Industries Ltd. vs. Commissioner of Customs** (2006) 202 ELT 561 (SC), Hon'ble Justice Markandey Katju has referred to the Mimansa Rules of Interpretation of the ancient times while deciding an appeal under the Customs Tariff Act, 1975. The issue for decision involved the interpretation of section 14 of the Customs Act and some relevant rules, especially Rule 9(2)(a) of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988. The decision required consideration of deeming provisions in a statute, legal fictions, how decisions are to be taken, when two interpretations of a provision/rule are possible, how the principle (primary) and subordinate legislations work and similar other related issues. According to the Court, every legal system has a hierarchy of laws. Whenever there is conflict between a norm in a higher layer in this hierarchy and a norm in a lower layer, the norm in the higher layer will prevail. The hierarchy in our country has the Constitution of India right at the top. Next comes the statutory law, which may be either the Parliamentary law or law made by the State Legislature. Third is delegated or subordinate legislation, which may be in the form of rules and regulations made under the Act. And last in the hierarchy are administrative orders or executive instructions. The theory of the eminent positivist jurist Kelsen (The Pure Theory of Law) [see Kelsen's '**The General Theory of Law and State**'], were relied on. On the basis of existing rules of interpretation generally followed by Courts, the Court has summarized the position with respect to statute and rules, as hereunder –

(a) If there are two possible interpretations of a rule, one which serves the object of a provision in the parent statute and the other, which does not, the former has to be adopted because adopting the latter will make the rule ultra vires the Act. (b) The Act falls in the second layer in this hierarchy, the rules made under the Act fall in the third layer. Hence, if there is any conflict between the provisions of the Act and the provisions of the Rules, the former will prevail.

Rules and notification – Rules made under the Act have the same force as the sections in the Act. But no exercise of the rule-making power can affect control or detract from the full operative effect of the provisions of the sections. Any rule, which purports to do so, would be ultra vires and void. - *Hukumchand Mills Ltd vs. State of MP* 52 ITR 583, 589 (SC).

3.14 Miscellaneous

(a) Definition clause – In **CIT vs. The Hindu** 18 ITR 237, 250; **CIT vs. Srinivasan & Gopalan** 23 ITR 87 (SC) it was held that a definition or interpretation clause, which extends the meaning of a word, should not be construed as taking away its ordinary meaning. Further, such a clause should be so interpreted as not to destroy the basic concept or essential meaning of the expression defined, unless there are compelling words to the contrary.



(b) **Undefined words** – Words, which are not specifically defined, must be taken in their legal sense or their dictionary meaning or their popular or commercial sense as distinct from their scientific or technical meaning, unless a contrary intention appears.

(c) **Legal fiction** – In **CIT vs. Godavari Sugar Mills Ltd** 63 ITR 310, 315-6 (SC) it was held that the word “deemed” is apt to include the obvious, the uncertain and the impossible. A legal fiction has to be carried to its logical conclusion. However, in **CIT vs. Vadilal Lallubhai** 86 ITR 2, 8 (SC) it was held that the fiction operates only within the field of the definite purpose for which the fiction is created.

(d) **Marginal notes** – Marginal notes to the sections cannot control the construction of the statute – **CIT vs. Ahmedbhai Umarbhai** 18 ITR 472, 487 (SC); **Chandroji Rao vs. CIT** 77 ITR 743, 745-6 (SC)], but they may throw light on the intention of the legislature – **CIT vs. Vadilal Lallubhai** 86 ITR 2,11 (SC).

(e) **Punctuation** – Punctuation may assist in arriving at the correct construction of a statutory provision.

(f) **Retrospective effect of rules and notifications** – An authority cannot make rules or issue notifications adversely affecting the assessee’s rights with retrospective effect, unless the statute, whether expressly or by necessary intendment, empowers the authority to do so – **ITO vs. Ponnoose** [1970] 75 ITR 174 (SC). This principle received statutory recognition in section 295(4) w.e.f. 18.8.1974 inserted by Direct Taxes (Amendment) Act, 1974.

(g) **A completed assessment may be reopened or rectified** – A completed assessment may be reopened u/s 147 or rectified u/s 154 – **Venkatachalam vs. Bombay Dyeing & Manufacturing Co Ltd.** 34 ITR 143 (SC), if the relevant provisions of the law are amended with appropriate retrospective effect.

(h) **Necessity of speaking orders** - Where under the provisions of the Act an authority is empowered to grant approval or exemption, and the taxpayer has a right to claim it on fulfillment of the statutory conditions, the authority is bound to pass a speaking order and give reasons in support of its finding that the taxpayer is not entitled to the approval or exemption. The appellate and revisional authorities likewise must pass speaking orders. In fact Article 141 of the Constitution of India also mandates this.

(i) **Double taxation not permitted** – In **Jain Bros vs. Union of India** 77 ITR 107, 112 (SC) it has been broadly stated the principle of the Income-tax Act is to charge all income with tax, but in the hands of the same person only once. There could be double taxation if the legislature distinctly enacted it.



CIT vs. Murlidhar Jhawar & Purna Ginning & Pressing Factory 60 ITR 95 (SC) – If an association or unregistered firm is taxed in respect of its income, the same income cannot be charged again in the hands of the members individually and vice versa. **Nagappa vs. CIT** 73 ITR 626, 633 (SC) – Trust income cannot be taxed in the hands of the settlor and also in the hands of the trustee or the beneficiary. **T.N.K. Govindraju Chetty & Co. (P) Ltd. vs. CIT** [1964] 51 ITR 731 (Mad.) – The same person can be taxed both as individual as well as the karta of his family but same income cannot be charged twice over in the hands of the same person is well settled. There is rule of law that income which has borne tax in the hands of a particular individual becomes wholly immune from tax in all its subsequent devolutions or passage to another person.

4. Doctrine of Stare Decisis and Uniformity of construction of Precedents

4.1 Doctrine of Stare Decisis

‘Stare decisis’ is a Latin phrase which means ‘to stand by decided cases’ or ‘to uphold precedents’. Doctrine of stare decisis is a general maxim which states that when a point of law has been decided, it takes the form of a precedent which is to be followed subsequently and should not normally be departed from.

By virtue of Article 141 of the Constitution of India, the judgments pronounced by the Supreme Court have the force of law and are binding on all the Courts in India. However, the Supreme Court itself is free to review its earlier decision and depart from it if the situation so warrants.

The Madras High Court in **Peirce Leslie & Co. vs. CIT** [1995] 216 ITR 176 (Mad.) observed that the doctrine of stare decisis is one of the policy grounded on the theory that security and certainty require that accepted and established legal principles, under which rights may accrue, be recognised and followed, though later found to be not legally sound, but whether a previous holding of the Court shall be adhered to or modified, or over-ruled, is within the Court’s discretion under the circumstances of a case before it.

Income Tax Act, being a Central Act of Parliament, uniformity of construction by the various High Courts should be followed unless there are overriding reasons for taking a divergent view.

4.2 High Court decisions

Whether binding in nature and binding on whom –

Though there is no express provision in the Constitution like Article 141, in respect of the High Courts, the Tribunals within the jurisdiction of a High Court are bound to follow its



judgments as the High Court has the power of superintendence over them under Article 227 of the Constitution.

The Supreme Court in **East India Commercial Co. Ltd. vs. Collector of Customs** AIR 1962 SC 1893 has observed:

“ . . . We, therefore, hold that the law declared by the highest court in the State is binding on authorities or Tribunals under its superintendence, and that they cannot ignore it” (p. 1905)

In **K.N. Agrawal vs. CIT** [1991] 189 ITR 769 (All.) it was observed that the orders of the Tribunal and the High Court are binding upon the A.O.

In **State of A.P. vs. CTO** [1988] 169 ITR 564 (AP), it was held that it is not permissible for the authorities and the Tribunals to ignore the decisions of the High Court or to refuse to follow the decisions of the High Court on the pretext that an appeal is pending in the Supreme Court or that steps are being taken to file an appeal. The Court then made the following important and bold observations:

“ . . . If any authority or the Tribunal refuses to follow any decision of this High Court on the above grounds, it would be clearly guilty of committing contempt of this High Court and is liable to be proceeded against.” (p. 572)

4.3 Position in regard to different Benches of the same High Court

The position in regard to the different Benches of the same High Court is as follows :

- A Single Judge or a Division Bench order of a High Court is binding on the single Judge of the same High Court.
- It is obligatory on the part of a Division Bench to follow the decision of another Division Bench of equal strength or a Full Bench of the same High Court.
- Judicial propriety requires a Single Judge to follow and apply earlier Division Bench judgment of the same Court which is very much binding on him sitting as a Single Judge of the same High Court.
- Where a Single Judge does not subscribe to the views expressed in a Single Judge’s order or Division Bench’s order of the same High Court, he should place the papers before the Chief Justice to enable him to constitute a larger Bench to examine the question.



– Similarly where a Division Bench differs from another Division Bench of the same High Court, it should refer the case to a larger Bench.

The above position has been culled out from **CIT vs. Thana Electricity Supply Ltd.** [1994] 206 ITR 727 (Bom.). **CIT vs. Hari Nath & Co.** [1987] 168 ITR 440 (All.); **Super Spg. Mills Ltd. vs. CIT** [1993] 199 ITR 832 (Mad.); **Koduru Venkata Reddy vs. LAO** [1988] 170 ITR 15 (AP); **Sundarjas Kanyalal Bhatija vs. Collector** [1990] 183 ITR 130 (SC).

4.4 Whether decision of a High Court extends beyond its territorial jurisdiction

In **Patil Vijaykumar vs. UOI** [1985] 151 ITR 48 (Kar.) it was observed that –

“ . . . But we wish to add that although a decision of another High Court is not binding on this Court, we see no reason for not accepting, with respectful caution, any help they can give in the elucidation of questions which arise before this Court.” (p. 60)

It is a well-settled position that decision rendered by a High Court is not binding on other High Courts or the Tribunals or authorities beyond its territorial jurisdiction. At best, its decision can have persuasive value.

In **Benoy Kumar Sahas Roy** 32 ITR 466 (SC) it was held that a decision of a High Court would have binding force in the State in which the Court has jurisdiction but do not have binding force outside that State.

Contrary decisions: However, the courts have also held that normally, more so, in regard to the Income-tax Act, which is a piece of all India legislation, if any High Court has construed any section or rule, that interpretation should be followed by the other High Court unless there are compelling reasons to depart from that view - **Peirce Leslie & Co.’s case** (supra); **CIT vs. Deepak Family Trust No. 1** [1994] 72 Taxman 406 (Guj.); **CIT vs. Alcock Ashdown & Co. Ltd.** [1979] 119 ITR 164 (Bom.); and **Sarupchand Hukamchand, In re** [1945] 13 ITR 245 (Bom.).

4.5 When a precedent ceases to be binding

The Andhra Pradesh High Court in **CIT vs. B.R. Constructions** [1993] 202 ITR 222 states that a precedent ceases to have a binding force in the following situations –

(i) if it is reversed or over-ruled by a higher court; (ii) when it is affirmed or reversed on a different ground; (iii) when it is inconsistent with the earlier decisions of the same rank; (iv) when it is sub silentio (non-speaking judgment) (v) when it is rendered per incuriam (decision decided without referring to a statutory provision or a precedent).



4.6 Obiter dicta are not binding

Word 'Obiter' means 'by the way', 'in passing', 'incidentally'. Obiter dictum is the expression of opinion stated in the judgment by a Judge on a question immaterial to the ratio decidendi. However, these are of persuasive value. They are unnecessary for the decision of a particular case.

In **Mohandas Issardas vs. Santhanam (A.N.)** AIR 1955 Bom. 113 it was held that it would be incorrect to say that every opinion of the Supreme Court would be binding on the High Courts. Only the opinion expressed on a question that arose for the determination of a case is binding.

5. Conclusion

The degree of strictness and literal construction applied by the Courts swung like the proverbial pendulum to extremes. The above is a very basic overview of the rules of interpretation of taxing statutes and is intended to give an insight into the various methods employed by the Courts to ascertain the meaning of legal provisions. To conclude, one must strive hard to read between the lines by using the interpretative techniques, since one must bear in mind the words of **LJ. Denning** who stated that

“it would be idle to expect every statutory provision to be drafted with divine prescience and perfect clarity”.

Reproduced with permission from the AIFTP Journal, April 2010