

Tax Laws: Reading Between The Lines

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Interpretation of any law demands careful application of mind and the rules of interpretation of statutes. Tax laws being part of statutory law, the general rules governing interpretation of statutes also govern interpretation of taxing statutes. However, due to certain peculiar characteristics of taxing statutes, there are certain particular rules which govern interpretation of a taxing statute.

RULES GOVERNING INTERPRETATION OF TAX LAWS

Rule of strict construction: "In interpreting a taxing statute, equitable considerations are entirely out of place. No taxing statutes can be interpreted on any presumption or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed, it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any assumed efficiency". (S.T.O. Vs. Modi Sugar Mills AIR 1961 SC. 1047).

One can infer that as tax laws impose liability on the subject, they have to be strictly construed. The subject is not to be taxed, unless the words of the taxing statute unambiguously impose the tax.

THEORY OF FORM AND SUBSTANCE

□ It is well settled that when a transaction is arranged in one form known to law, it will attract tax liability while, if it is entered into in another form which is equally lawful, it may not. In considering, therefore, whether a transaction attracts tax or not, the form of the transaction put through by the assessee is to be considered, and not the substance thereof. The transaction should however be genuine and not merely a colourable device.

□ In deciding whether the transaction is a genuine or colourable one, it will be open to the authorities to pierce the corporate veil and look, behind the legal facade, at the reality of the transaction.

□ Where the terms of a transaction are embodied in a document, it should not be construed only in its formal or technical aspect. While the words used should be looked at, too much importance should not be attached to the name or label given by the parties and the document should be interpreted so as to accord with the real intention of the parties as appearing from the instrument.

CONSTRUCTION IN FAVOUR OF THE SUBJECT

□ If two constructions of a provision of a statute are possible, the construction in favour of the assessee has to be accepted. If a section in a taxing statute is of doubtful and ambiguous meaning, it must be resolved in favour of the assessee.

However, this principle is applicable only if two constructions are reasonably possible.

□ Courts have always held that where two views or methods are possible, the view or the method which is beneficial to the tax payer shall be adopted in the absence of any specific provisions to the contrary - CIT Vs Vegetable Products Ltd., 88 ITR 192 (SC). The Central Board of Direct Taxes has also classified in circular No 26 dt. 07.07.1955 that where there are more than one source for set off; the assessee can adopt the most beneficial method of set off.

PRINCIPLES OF RESJUDICATA AS APPLIED TO TAX CASES

□ The strict doctrine of resjudicata is not applicable to tax matters. The reasons being each assessment year' being independent of others, all issues relevant to a particular assessment year could be considered and decided, irrespective of the fact that the same issues arose in the earlier years. The question at issue before tax authorities is distinct and separate in respect of each assessment year; and the conclusion arrived at in respect of one year cannot preclude either the department or the assessee from seeking to depart from it in a subsequent year.

□ In matters of taxation, there is no Resjudicata. The privilege of taking different or consistent position is not confined to the Department. It is equally open to the assessee to raise different contentions in subsequent years, But it has been held that the previous decision or contention is a relevant piece of evidence, and if some, additional evidence is available a different conclusion could be reached.

CONSTRUCTION AGAINST DOUBLE TAXATION

There is always a presumption against double taxation. Broadly stated the principle of a taxing statute is to charge income or wealth or estate etc. only once in one hand. Accordingly such construction is preferred which avoids double taxation, However, there would be double taxation if the legislature distinctly enacted it, such as both the firm and partners,

The joint operation of different statutes may however result in liability to two different taxes,

DIRECT TAXES INTEGRATED SCHEME

Where there are different statutes in pari materia though made at different times, they will be taken and construed together as one system and explanatory to one another: This principle applies with greater force in case of taxing statutes like income-tax, Gift Tax, Wealth Tax which bear an intimate connection with one another (Verghese Vs. CIT, 131 ITR 597 ; CIT Vs. Ranga Pai, 100 ITR 413. Accordingly, it has been held that rules of valuation prescribed under one Act have to be applied to valuation issues under one Act, See 141 ITR 802 (Bom) and 96 ITR 87 (Mys) and 155 ITR 637.

CIRCULARS OF THE DEPARTMENT

□ The Central Board of Direct Taxes under Section 119 of the income-tax Act, 1961, has power, inter alia, to tone down the rigor of the law and ensure a fair enforcement of its provisions, by issuing circulars, It is a beneficial power given to the Board for proper administration of fiscal law so that undue hardship may not be caused to the assessee and the fiscal laws may be correctly applied.

□ While a circular of the Board will be binding upon an Assessing Officer in matters relating to the general interpretation of any provisions of the statute, the circulars cannot override judicial decisions rendered on the statute. Gee Industrial Syndicate Ltd., vs. CBDT, 166 ITR 88(Del). The executive instructions may supplement but not supplant the rules-State of Maharashtra Vs. Jagannath Achyut Karandikar, AIR 1989, 1133 (SC). A circular does not bind an appellate authority, the Tribunal or Courts. However, circular can be used by courts as an external aid to interpret a provision of law-K.P. Varghese Vs. ITO 131 ITR 597 (Sc).