

# Dictionary Meaning

When to apply?

Term is not defined in the statute

AND

Term is not interpreted by the courts

Ordinary meaning is similar to commercial parlance ?

Yes

No

Ordinary meaning in accordance with context ?

Yes

No

Trade parlance in accordance with context ?

Yes

No

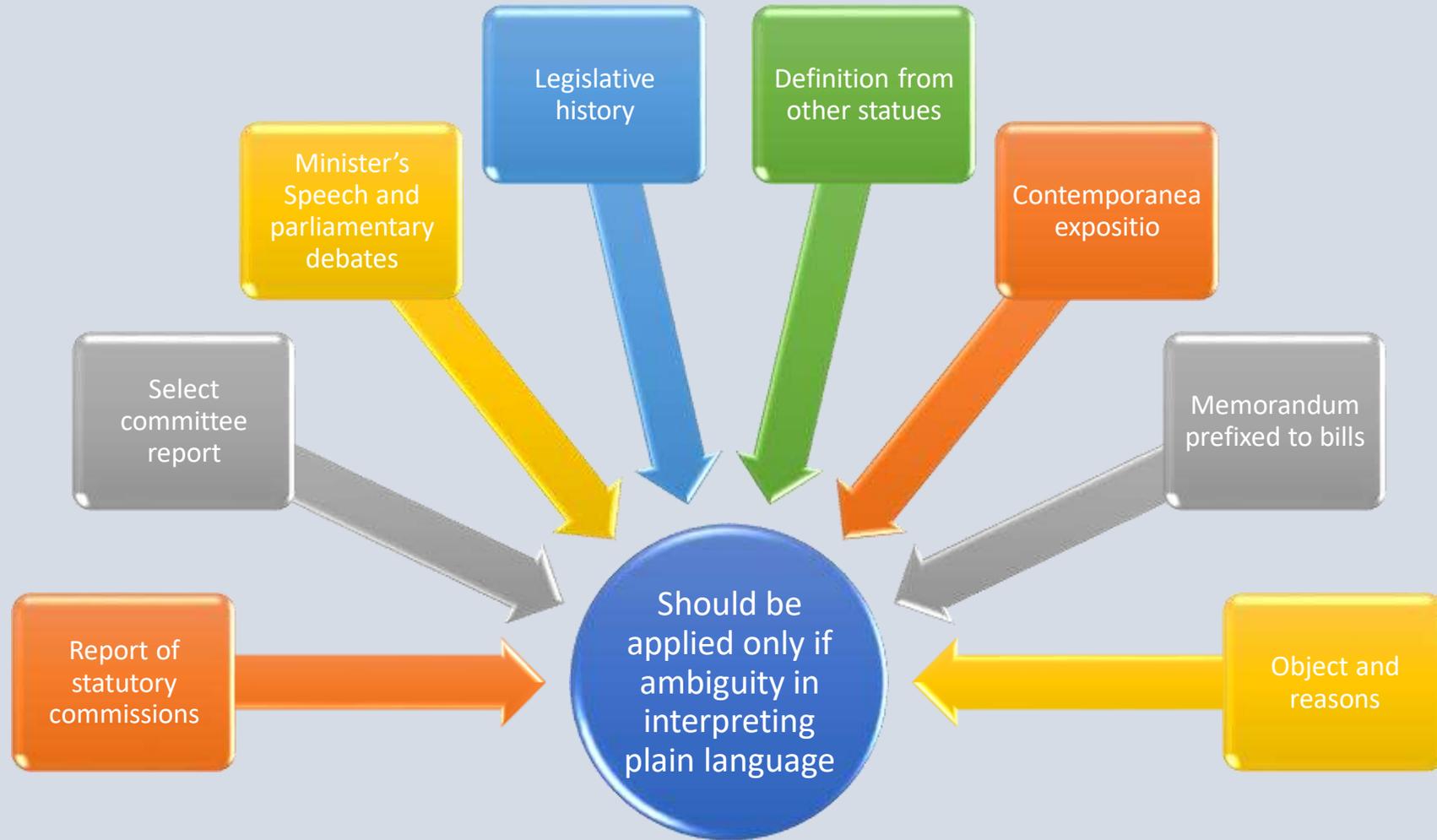
Consider ordinary meaning of dictionary

Consider the meaning in accordance to context

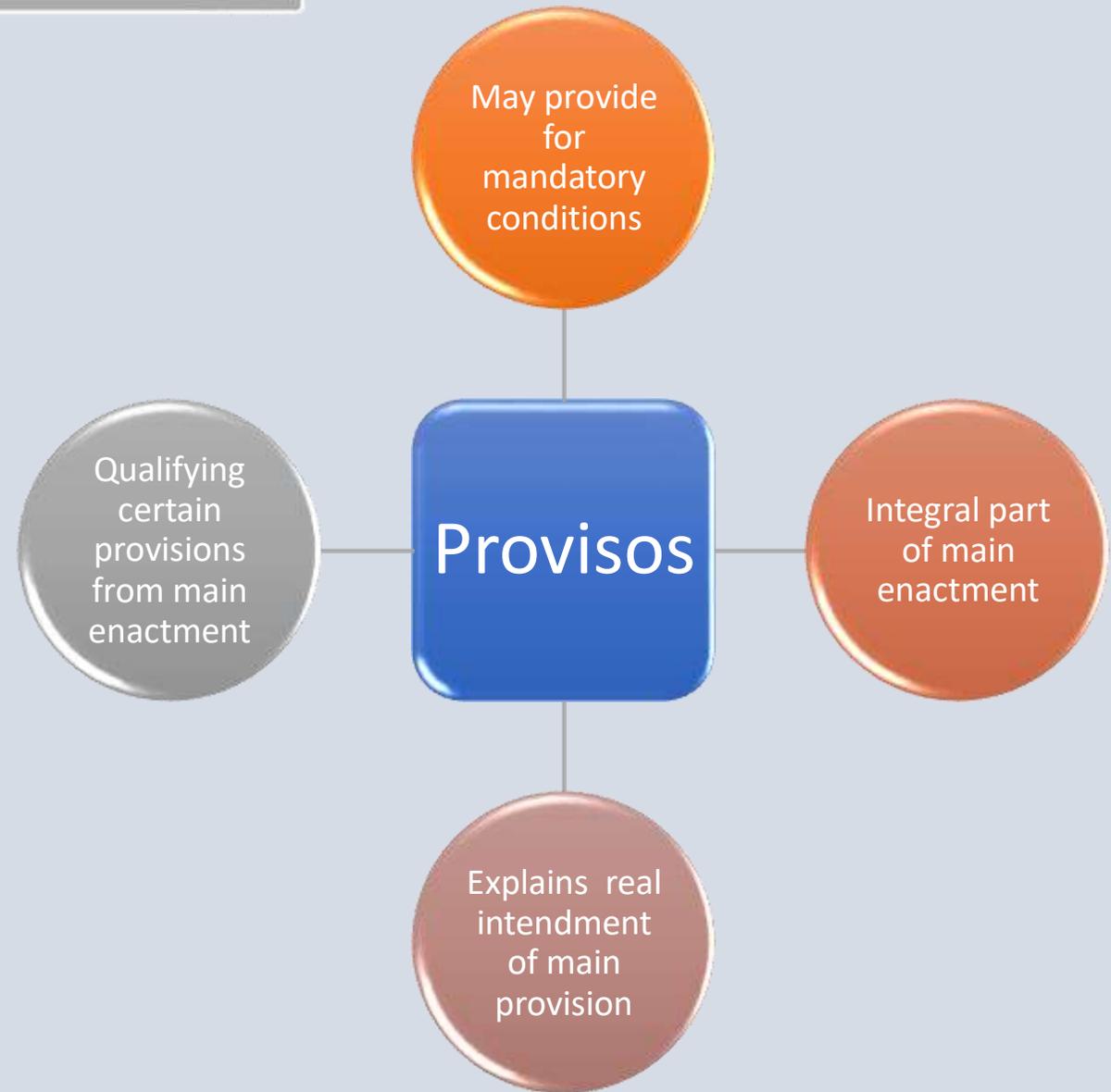
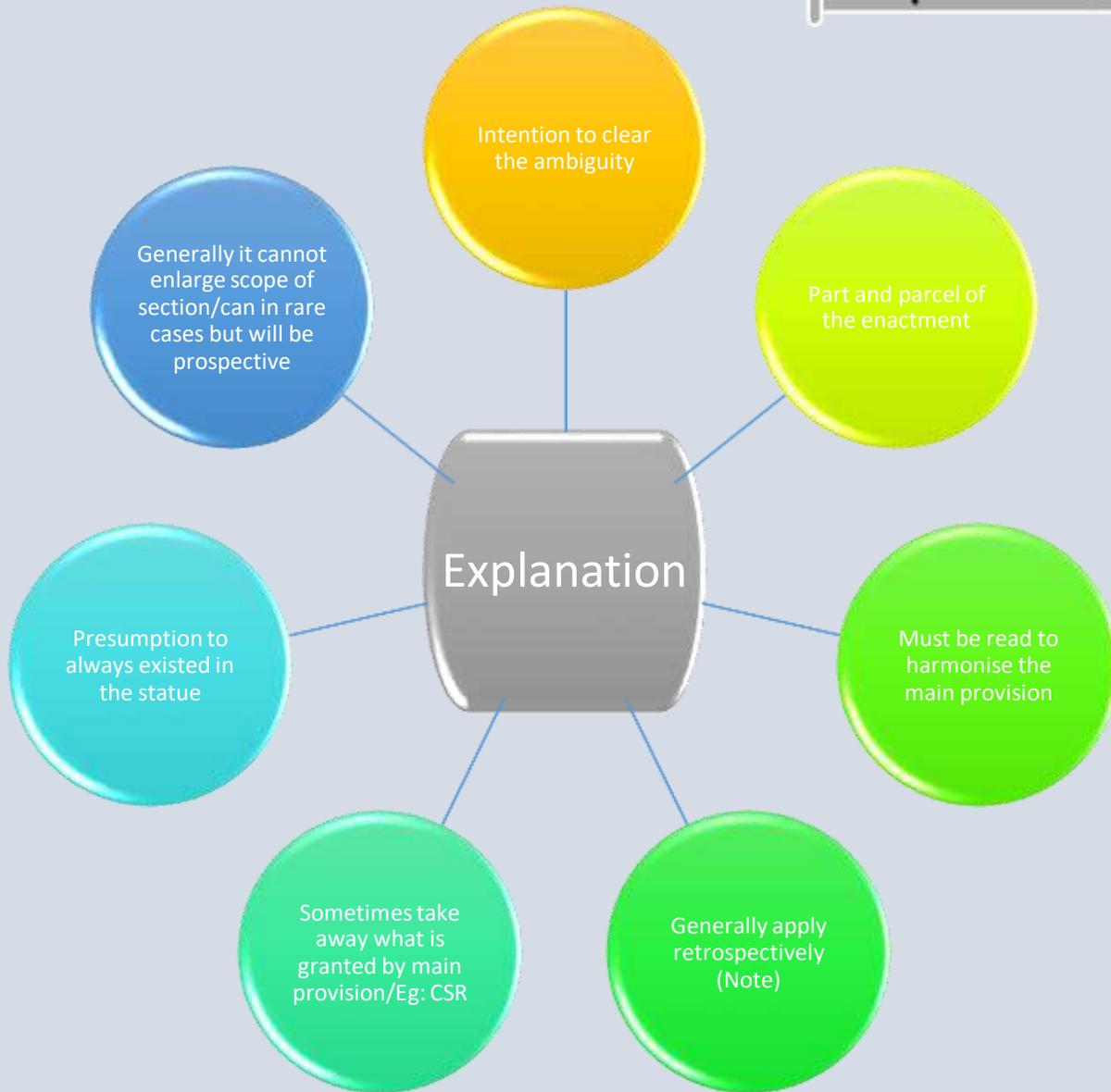
Consider Trade parlance meaning

Consider the meaning in accordance to context

# Other External Aids of Construction



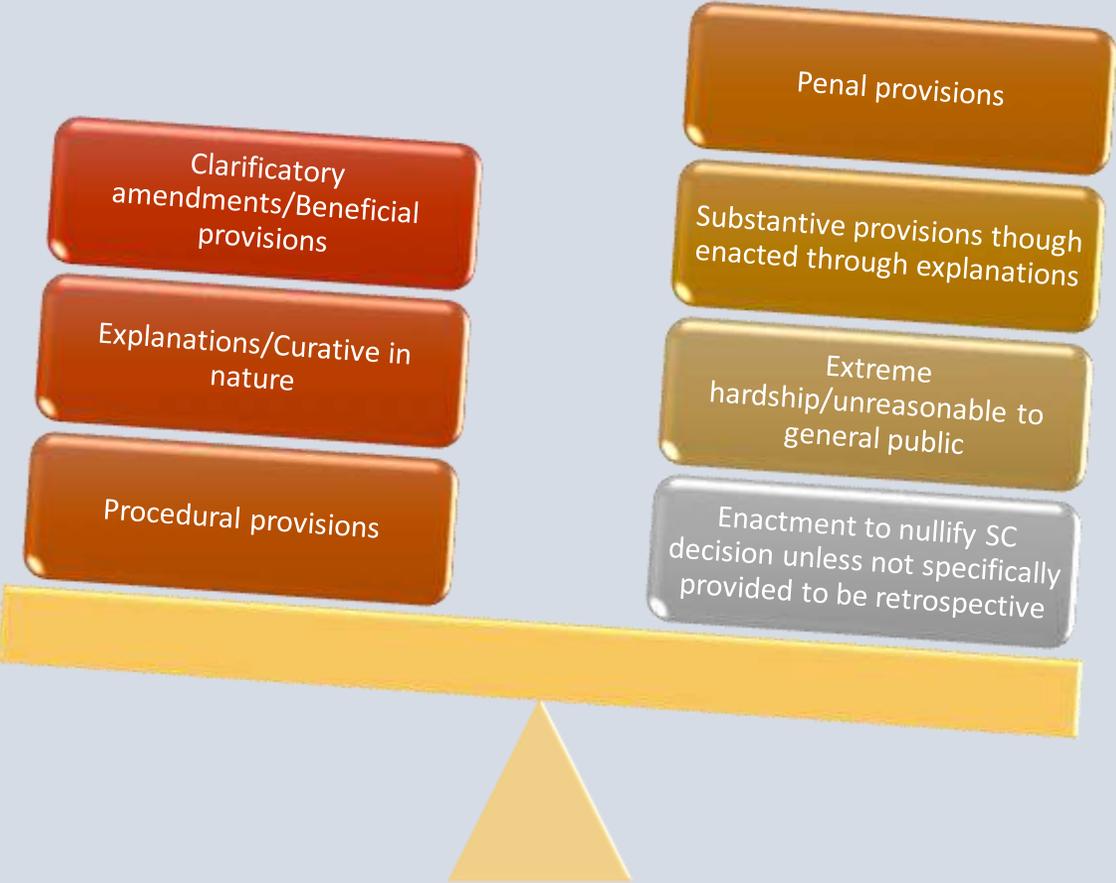
# Explanation and Proviso



# Retrospective Vs Prospective

Retrospective

Prospective



# Retrospective Vs Prospective

## Power to make retroactive laws

- Unless there are compelling reasons for making a retrospective amendment in public interest, such a retrospective amendment is not injected since it runs the risk of being declared unreasonable or arbitrary and violative of Articles 14 and 19(1)(e) of the Constitution of India. But the legislature has power to make laws with retroactive force. Such retroactive operation may be expressed *totidem verbis* as 'shall have effect and shall be deemed for all purposes to have had effect as if had ordinarily been enacted or by any other words which would manifest a clear intention to retroact.
- When the law is amended with retrospective effect, the court has to apply such retrospectively amended law as if it were in force at all material times.
- In the case of Mithilesh Kumari 177 ITR 97 (SC), the provision was made retrospective by treating it as retro-active and applicable for all the past transactions.
- The objection of H.M. Seervai with the decision in Mithlesh Kumari's case was that it violated the mandate in Article 20(1) against ex post facto law, since the decision had the effect of upsetting concluded transactions, but the courts have generally understood that the bar against retrospectivity is only in matters of criminal law and that civil liability could be imposed retrospectively. The Supreme Court in subsequent decisions had diluted the extreme view taken in Mithlesh Kumari's case as in Rebti Devi's case by limiting its retrospectivity to matters not pending in the courts at the time the law was enacted.

## Rules against retroactivity

- Matters other than relating to procedure, evidences, declaratory, curative, explanatory are prospective unless by express words or necessary implication it appears that it was the intention of the legislature.
- Retrospective amendment of a provision must not be only for the purpose of nullifying a judgment where there was no lacuna or defect pointed out in the parent Act. Kardicoppal Estate vs State of Karnataka 266 ITR 20 (Karn.)
- Retrospective operation would not be available for a matter which was already time barred (Varkey Jacob and Co 275 ITR 146 (ker)). It is in this view, it was held that the benefit of extension of period of relief would not be available for those undertakings for which the period of eligibility of five years had ended before the extension of period from five to ten years, since even a retrospective amendment is not retrospective enough to grant life to a dead concession.

## Retrospectivity-when inferred and not inferred

- Retrospectivity should not be inferred lightly and the intention to make provision retrospective must be clearly spelt out by the legislation. Where it is intended to overcome a judicial decision, the power cannot be used to subvert the decision without removing the statutory basis of the decision.
- If such defect or lacuna is allowed to persist, a mere Validation Act could not serve its purpose, so that no liability can be imposed before the date of such Validation Act as ruled by the Supreme Court in Camaji & Co (D.) v State of Mysore. It was this decision, which was followed in Bentley's case, where there was merely a declaration by way of explanation for the removal of doubts, to the effect that post dissolution receipt of firm or an association will be liable for agricultural income-tax without removing the defect in the main provision, which was pointed out by the court. It is only the removal of the defect or lacuna along with the retrospective amendment, that would validate the past actions of the authorities. The law was followed in Kardicoppal Estate v State of Karnataka<sup>1</sup>, where the High Court in interpretation of the provision limiting the right to set off of loss in respect of returns filed within the specified time under the Karnataka Agricultural Income tax Act, 1957 pointed out that the legislation not to permit such set off for belated return retrospectively could not have retrospective effect, because its earlier decision was rendered by an interpretation following the decision of the Apex Court in CIT v Kulu Valley Transport Co (P) Ltd and not because of any lacuna in law.

# Retrospective Vs Prospective

## Retrospectivity and pending matters

- it is necessary that the statute should, in express terms, apply the new provisions to pending actions. It would be enough, even if there be no reference to pending actions, if the necessary intendment of the Act is to affect pending causes of action.
- It is immaterial in which court the action is pending, whether in the court of first instance or on appeal (In respect of benami transactions, though Benami Transactions (Prohibition) Act,1998 was held to be retroactive, it was decided it cannot affect pending matters in Rebti Devi v Ram Dutt.)

## Reasonableness of retrospective legislation

- Whenever the validity of a retrospective provision is considered, it should be found whether such provisions defeat reasonable expectations of those who are affected by the statute. The retrospective operation must be justified on proper and cogent grounds.

## Effect on existing rights and liabilities

- In general, when the law is altered during the pendency of an action, the rights of the parties are decided according to the law as it existed when the action was begun, unless the new statute shows a clear and explicit intention to vary such law.
- In the absence of such an indication, a new law cannot be understood as disturbing vested rights already existing on the date of the enactment of the new law.
- But it is settled law that the principle of the finality of the orders or the sanctity of the existing rights cannot be effectively invoked in cases where a provision has received retroactive operation.

## Beneficial Provision

- Where a provision is one of relaxation meant for avoiding penalisation of the assessee, it should be interpreted even retrospectively in a "fair, just and equitable manner as was decided in CITV Rajinder Kumar in the context of the amendment permitting deduction for delayed welfare dues as long as tax deduction has been made before the due date for filing return though delayed.

## Other Internal Aids

Meaning from other statute or other provision of same statute

- Supreme Court in *CIT vs Venkateswara Hatcheries (P) Ltd* held that meaning ascribed to a similar provision in another statute or another provision of a similar nature in the same statute is not conclusive for interpretation. The court was deciding on the interpretation of manufacture or production of an article.

Incorporation of section of other statute

- It is trite law that where a later statute incorporates provisions of a former statute by reference, the later statute is read in a manner as if the provisions of the former statute were "bodily transposed into it". This rule would also be equally applicable while interpreting the provisions of a statute which incorporates by reference other provisions of the same statute. *Surana Steels SC*.

Omission of provision in the statute

- Where there is an omission of a provision even if there is a substitution by another provision, the omitted section should be treated as not having been part of the statute at any point of time. This is the principle followed in *Rayala Corporation*, for income tax purposes also, in the context of omission of section 276DD providing for prosecution for violation of section 269SS it was held that consequent to omission, all the pending proceedings should abate because of the effect of the omission as held in *General Finance Co (SC)*.

Effective date of amendment

- The normal rule is that the law which prevails is the law as on 1st April of the assessment year. What applies is the law of the assessment year for the income of the previous year. The same principle applies even in respect of amendments to the Rules, so that an amendment to depreciation schedule with effect from 2nd April 1983 cannot apply for AY 1983-84, It can apply only from A.Y. 1984-85. However, a rule which has not been made public could not be treated as effective before it was made public as held in a sales tax case in *CIT v Ratnam Pillai*.

# Subsidiary Internal Aids to Construction

## Other Internal Aids to Construction

It helps to determine whether provision is prospective or retrospective

### Notes on Clauses

It only indicates the drift of the section. Provides clue to the meaning and purpose of section

### Marginal Notes

Comma, semicolon etc. have to be carefully looked into

### Punctuation marks

It indicates to what particular instances the enactment is intended to apply

### Preamble

These would not be conclusive factors for interpreting the statute if the language and grammatical construction of a particular provision is unambiguous

### Title of Chapter

May be looked into to ascertain the general scope of the provision

### Heading in section

It may provide clue to understand the section

### Long title

Would function similar to the preamble

### Non-obstante clause

This provision overrides the other provisions of the Act

# Rules of Construction

## Casus Omissus

- Courts only interpret the law and cannot supply the omissions.

## Ejusdem Generis

- In order to attract the principle of ejusdem generis, it is essential that it distinct genus or category must be discernible in the words under examination

## Noscitur a sociis

- This is wider in application. It has to be understood literally to mean that the words in an expression have to be judged by the company they keep.

## Generalia specialibus non derogant

- Specific provision would override the general provisions.

## Common law Rule

- Income tax law would override the common law. Eg: 2(47)(vi)

## Strict construction

- There is no room for intendment, equity and presumption to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used

## Rules of Construction

### Harmonious construction

- In case of two or more conflicting provisions, interpretation should be such as neither rendered otiose.
- Same as above for two fiscal statues

### Beneficial interpretation

- In case of doubt or ambiguity in the provision, benefit of doubt must go to the assessee.

### Literal Construction

- If the language of the statute is clear and unambiguous and if two interpretations are not reasonably possible, the plain meaning of the words should not be discarded.

### Provision mandatory/directory

- where the time limit is concerned with mere procedure, it should ordinarily be taken to be directory to and not to be treated as a substantive requirement, which would defeat the very purpose of the relief.

## Rules of Construction

### Constitutionality presumption

Any law made by the Parliament should be assumed to be consistent with the Constitution, unless it could be established otherwise because ultra vires cannot be lightly inferred.

### Purposive/reasonable interpretation

Intention of the legislature is of utmost importance. In case of ambiguity, objective of the legislature has to be analysed.

### Fiction on fiction

While full effect must be given to a fiction, it cannot be extended beyond the purpose for which it was created. Fiction cannot be imported into another fiction.

### Stare decisis

Judicial discipline has to be followed. Adhering to judicial hierarchy is imperative.

### Unsettling settled law

Supreme Court should not differ from its earlier decision merely because a contrary view appeared preferable. But, if the previous decision is plainly erroneous, there is a duty of the court to say so and not perpetuate the mistake

### Special leave petition

The dismissal of special leave petition in timeline without speaking order, would neither merge nor operate even as an argument in favour or against the other.