

Particular Principles

Acquiescence

- There can be no estoppel against the statute. Deduction has to be allowed even if not claimed by the assessee fully. **Parakh & Co (India) Ltd 29 ITR 661 (SC).**
- Where a notice issued by the AO is invalid and without jurisdiction, its invalidity will not be cured merely because the assessee received the notice or complied with it or acted upon it and it will still be open to the assessee to contest the validity of the notice. Only patent lack of jurisdiction is not cured by acquiescence but that a latent one and also somewhat differently, that what can be waived is the irregularity of proceeding, not its nullity. **Chunilal Kushaldas 93 ITR 369 (Guj HC)**

Admission by counsel

- A counsel is engaged only to argue the case and not provide any evidence so mere submission made by him cannot be treated as proof of fact. However, any fact admitted by the counsel on behalf of the client can be used as evidence against the client.

Agreement between two parties

- Agreement whereby one party undertakes the liability of income-tax of other, would not bind the revenue. Revenue may proceed against the person who is liable.

Shall Vs May

- It is not conclusive that shall always denotes mandatory and may always denotes discretionary. It is based on the context of the provision. May used in procedural provision is usually directory.
- Shall used in the machinery provision has to be interpreted in such a way to make it workable. It cannot be strictly construed.
- In section 220(6), may word is used which means it is the discretion of the AO. However, the discretion has to be exercised judicially.

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Year

All the provisions of the Act would apply as prevailing on the 1st day of the AY. Same apply with the rules also. However, if the rules are not made public on the date of the enacting the rule, the date of making it public would be the date of effect. **Ratnam Pillai's case.**

The above provision would not apply in the case of penalty. Law prevalent on the date of commitment of offence would apply. **Brij Mohan 120 ITR 1 (SC)**

Consideration of subsequent events in appeal

An appeal is in the nature of a rehearing, and the appellate authorities, in moulding the relief to be granted, are entitled to take into account even facts and circumstances and changes in law which happened after the Assessing Officer completed the assessment.

Facts emerging subsequently should also be considered while deciding the appeal. **Straw Products 68 ITR 227 (SC)**

Accounting treatment

Accounting treatment of particular transaction in the books of account would not be conclusive. Once there is a specific provision in the law, method of accounting would not be considered for the purpose of computation of taxable income.

However, in case no specific provision in the law exists for a particular transaction, then the guidance from the accounting standards should be considered. **Hela Holdings 263 ITR 129 (Cal HC)**

Charging and machinery provisions

Charging section must be strictly construed and machinery provisions has to be liberally interpreted so as to make it workable.

The charging sections and machinery sections (computation provisions) together are integrated code and in case computation provisions could not be applied, the charging provisions would also fail.

Particular Principles- Circulars



Particular Principles

Contract to defraud revenue – not enforceable

- In case certain income is concealed in the agreement, it could not be enforceable.

Court cannot re-write agreement

- The court can only take the words of the agreement as stand and apply them to the new situation which has arise.
- A deed is to be read and construed as a whole, effect being given, when possible to all the parts thereof, and no part of it should be ignored unless it is so inconsistent with the rest of it that no meaning can be given to it. The intention of the parties has to be gathered from the general form of the deed as well as from the whole of its contents.
- However, the court may look into the surrounding circumstances to know what the agreement is dealing with and thereby understand it.
- Department generally rely on McDowell case and say the agreement is sham or colorable device to evade tax.

Exemption, deduction and relief

- First it is required to be strictly construed for the conditions attached to enter into exemption provisions and once the exemption is granted then the provision has to be construed liberally to provide such exemption, deduction or relief.
Raja Benoy Kumar Sahas Roy 32 ITR 466 (SC)

Double Taxation

- It is a well settled principle that the double taxation on the same income in the hands of the same person is against the law.
- It has been pointed out that the Constitution does not contain any prohibition against double taxation, nor is there any other enactment which interdicts such taxation. It was thus held that, if, in express words, the legislature sanctions double taxation, it is not open to any one thereafter to invoke the general principle that the subject cannot be taxed twice over. **Ch Atchiaiah 218 ITR 239 (SC)**

Protective Assessments

- Protective assessments is recognised by Supreme Court in **Lalji Haridas Vs ITO 43 ITR 387**.
- However, either substantive or protective assessment will stand finally. Recovery is not possible from both. Tax paid in one case to be adjusted against the other.

Foreign decisions

- Supreme Court in the case of Visakhapatnam Port Trust has recognised that the foreign decision will also have persuasive value.

Schedules

- Entries in the schedules to the Income-tax Act should be construed liberally. **Vijay Spinning Mills 143 ITR 64 (AP)**

Particular Principles

Res-judicata and consistency

- This is a principle whereby any issue settled in any previous year should be automatically applicable in the succeeding years. In other words, any position adopted by the revenue authorities in any earlier year has to be mandatorily adopted in the succeeding years.
- There is no res-judicata and estoppel against the Income-tax law. It means each year is self-contained year and provisions of law are of paramount importance.
- However, principle of consistency is a well-settled principle which means if any position is adopted in any previous year by the revenue authorities after due verification and there is no change in the facts in the succeeding years, then position should be applied consistently. This does not mean that there is an estoppel against law. If any treatment in any earlier year was purely against the provisions of the law, then it cannot be applied in the subsequent years even though the facts are the same. **Radhasaomi Satsang (SC)**

Promissory estoppel

- This principle means that if any party (including government) promises or makes a representation which becomes a cause of action by the other party and such action is detrimental to the other party and later on the first party withdraws such representation or does not fulfil the promise, then doctrine of promissory estoppel comes to the rescue of the other party.
- The promisor is bound by its promise and promise may not be with consideration. **Anglo-Afghan Agencies Ltd AIR 1968 (SC) and Motilal Padmapat Sugar Mills 118 ITR 326 (SC)**.
- However, it may be noted that public interest is of paramount importance. Govt may renege from its representation if it can prove that such change in position is for public interest.
- Further, this doctrine is not for legislative and statutory powers of the govt, but applicable to administrative and executive powers. There is no estoppel against existing legislation.

Wednesbury principle

- This is also known as theory of legitimate expectation. As per this principle, importance is required to be given to the practice followed. If the revenue authorities are treating a particular issue in a particular manner, then it is expected that same issue in any other case would also be dealt in the similar manner.
- If the tax payer is able to prove that with respect to a issue, revenue authorities have taken a particular position in any other case with similar facts, then such tax payer may plead that his case should also be treated in the similar manner. **Mint Panchsheel Colony 278 ITR 640 (ALL)**.

Vested rights cannot be divested

- Where a right is vested under the law, unless it is specifically nullified by a retrospective legislation, such vested rights do not get divested.
- This presumption under the law has been set out by the Courts. **Govinddas Vs ITO 103 ITR 123**

Approbate and Reprobate

- This principle means that a party cannot accept and reject the same document. A person is said to approbate and reprobate where he takes advantage of one part of a document and rejects the rest.
- In other words, a person cannot blow hot and cold at the same time. **CIT v. V. MR. P. Firm Muar, AIR 1965 SC 1216 (1221): (1965) 1 SCR 815**

FORM Vs SUBSTANCE

Case	Description
IRC Vs Adam (1928) 14 TC 34, 41	Both form and substance has to be considered by the dept. Only assuming the substance would be fatal to the legal proceedings.
IRC Vs Fleming and Co (Machinery Ltd.) (1951) 33 TC 57	<p>Assessee sole selling agent got compensation of 5320 pounds for termination of the agency, 590 pounds for abstaining for competing and 800 pounds for transfer of explosive stores and magazines to the manufacturer. The dept only considered 2nd and 3rd item as capital and 1st as revenue reason being assessee had 8 agencies and termination of 1 agency was considered to be a normal trading risk. Assessee contended the total receipt as capital.</p> <p>If attention was concentrated upon the business substance of the transaction, the payment, no doubt could be a capital payment. But if attention was concentrated upon the form, the payment should be used as a revenue payment. The parties having covenanted in a particular form for the distinct considerations, it was not permissible to ignore the legal effect of the documents entered into between the parties. The parties themselves intended to measure the compensation payable in respect of each of the three items. Hence, it was not legitimate to look behind the form and the strict legal effect flowing from the same by an appeal to the doctrine of substance.</p>

Case	Description
Saunders Vs Pilcher (1949) 2 ALL ER 1097	<p>Assessee bough freehold land comprising inter-alia cherry orchard for 5500 pounds. The sale was inclusive of cherry orchard and the assessee valued cherry orchard at 2500 pounds. Assessee sold the cherrys at 2903 pounds and deducted 2500 pounds as cost of purchase.</p> <p>The revenue denied the expenses as it considered total cost as capital expenditure. The court laid down that if the assessee would have bought the cherry orchard first and then the freehold land then it would have better for the assessee as it could be treated as cost of sales. However, the agreement was for the freehold land and the cherry orchard was part of that. Accordingly, the total cost was treated as capital expenditure.</p>
IRC Vs Ramsay and various decisions	<p>The courts in England held that one has to look at the whole transaction to ascertain the true character of the payment. In so doing one must pay due regard to the terms and legal effect of any formal legal documents employed. One may also have regard to extrinsic evidence, not to contradict the terms and effect of those formal legal documents, but to supplement them in throwing light on the true nature of the whole transaction If the transaction involves a series of preconceived steps, the performance of each of which is dependent on the others being carried out in accordance with a common intention of the parties, the nature and effect of the whole scheme may have to be taken into consideration in determining the nature of annual payments.</p>

Case	Description
Chockalingam Chettiar and sons Vs CIT (1941) 9 ITR 278 (Mad.)	<p>Thus, in one case, the assessee had two mortgages on same property, first for Rs. 40,000 and second for Rs 10,850. When the principal amount and interest thereon on the first mortgage became 71,220, the taxpayer waived off a sum of 21,220 and instituted a suit for recovery of 50,000 only, as the property in question was not worth more than 50,000. He also wrote off the entire sum due on the second mortgage. The income tax authorities treated the above suit as, in substance, for recovery of the sums due on the two mortgages after writing off only 850. It was held that legally it was not so and that a consideration of the substance of the matter was out of question. The assessee was, therefore, allowed to deduct the whole of 10,850 on the second mortgage as a loss.</p>
CIT Vs Provident Investment Co Ltd (1957) 32 ITR 190	<p>By a tripartite agreement between the assessee, the managed company and a third party, the assessee relinquished its managing agency and the managed company agreed to appoint the third party as its managing agents. The question was whether the assessee could be said to have transferred its managing agency, a capital asset and the question was answered in the negative. The Supreme Court observed that while it was open to the court to ignore the form of a transaction, it was not open to the court to overlook or ignore the true legal position that arises out of a document in which the parties have chosen to embody the transaction. Court also said that surrounding circumstances may be looked, however, understanding the true nature of transaction should be of utmost priority.</p>

Case	Description
CIT Vs Sir Homi Mehta (1955) 28 ITR 928 (Bom) (Note 1)	Firm had transferred its business to a private limited company for a consideration satisfied by issue of shares in the company to the partners of the firm. The Bombay High Court held that since the same persons were interested in the firm and the company, the transfer, though in form, effected by one legal entity in favour of another, was in substance a case of mere adjustment of rights which resulted in no taxable profits at all.
Kikabhai Premchand Vs CIT (1953) 24 ITR 506, 509 (SC)	The above view was strengthened by this case law which ruled that one cannot earn profit from himself.
Contrary case to above: CIT Vs Motors and General stores (P) Ltd. (1967) 66 ITR 692 (SC)	The department could either accept the documents as representing a genuine transaction or reject it on valid and substantial grounds which are tenable in law, but they cannot, while accepting that it is a genuine transaction, rewrite the document contrary to what the parties have in fact effected, or give a construction by reference inadmissible in evidence or go behind the transaction. SC said "It is therefore obvious that it is not open to the income tax authorities to deduce the nature of the document from the purported intention by going behind the document or to consider the substance of the matter or to accept it in part and reject it in part or to rewrite the document merely to suit the purpose of revenue."

Case	Description
CIT Vs Kharwar (BM) (1969) 72 ITR 603 (SC)	<p>In this case, the firm transferred the machinery to the company in which same partners had similar holdings in the company. It was argued by the assessee that there is no real profit to the firm as it is just readjustment of the right of the partners in the firm. However, SC laid down that firm and company are two separate entities and firm has earned more than the WDV of the machinery. There is a profit earned as per the form of the transaction. SC said "It is now well settled that the taxing authorities are not entitled in determining whether a receipt is liable to be taxed to ignore the legal character of the transaction which is the source of the receipt and to proceed on what they regard as the Substance of the matter..... The taxing authority is entitled and indeed is bound to determine the true legal relation resulting from a transaction. If the parties chosen to conceal by a device the legal relation it is open to the taxing authority to unravel the device and determine the true character of the relationship. But the legal effect of a transaction cannot be displaced by probing into the substance of the transaction."</p>
CIT Vs Keshavlal Lallubhai Patel (1965) 55 ITR 637 (SC)	<p>In this case assessee transferred the properties to the common hotchpotch of his HUF and later there was a partition among various members of the family. Dept. urged that it was an indirect transfer by the assessee to his sons. SC laid down that it is not so as per the substance of the transaction. One more point may be taken in this case is that the sons always had a vested right over the ancestral property and its division just improves their rights over the property. So no transfer is made.</p>

Case	Description
Duke of Westminster Vs IRC (1936) 19 TC 490, 521 (HL)	The taxing authorities are not required to put on blinkers while looking at the documents produced before them. They are entitled to look into the surrounding circumstances to find out the reality of the recitals made in those documents. The principle that the form of the transaction will be given effect to will apply only when the documents between the parties have been entered into bona fide and are intended to be operative according to their tenor. Where, on the other hand, the documents are not intended to be acted upon but are merely a cloak to conceal different transactions, the question of the legal effect of the documents cannot arise.
CIT Vs Oberoi Hotels P. Ltd (2011) 334 ITR 293 (Cal)	Where the assessee sustained a loss to the extent of 8.6 crores on transfer of losing business in distribution of bottled beverages under a license from Pepsicola and had set off such loss against its long-term capital gains of 4 crore, the AO questioned the loss as one prompted by tax planning. In his view, the assessee could have waited for some more time before transfer of the losing business, since in his view, the assessee could have revived its business by investing a further amount of 9 to 10 crores. The Tribunal could not accept such fanciful arguments and found that the transaction was a genuine one and cannot be lightly brushed aside by characterizing it as a colorable one, It is in this view, the High Court upheld the order of the Tribunal on this point.

Particular Principles

Logic under taxation laws

- Logic alone will not determine the controversy arising from a taxing statute. If the plain language compels the court to adopt an approach different from that of the rule of logic, the court may have to adopt it. *Azam Bahadur Vs ETO* (1972) 83 ITR 92 (SC)

Morality and ethics under Tax laws

- The view that the Tax avoidance can be immoral is no longer a good law. *Union of India Vs Azadi Bachao Andolan* (2003) 263 ITR 706 (SC)

Judicial Discretion

- The AO must weigh the evidences placed before him, however insufficient or inadequate it may be, and after weighing all the pros and cons, he must arrive at fair conclusions. The exercise of the discretion must be fair and honest, though it may involve certain amount of guesswork. The exercise of the discretion must be in accordance with the principle of natural justice (*CIT Vs Sivakasi Match Exporting Co* (1964) 53 ITR 204 (SC))

Onus

- Onus is on the revenue to treat a particular income as taxable. *Janaki Ram Bahadur Ram Vs CIT* (1965) 57 ITR 21 (SC).
- Onus is on the assessee to claim a particular income as exempt. *K. Goerge Thomas Vs CIT* (1985) 156 ITR 412 (SC)
- Assessee must prove the source of the receipt *Kale Khan Mohammed Vs CIT* (1963) 50 ITR 1 (SC)
- Once the assessee provide evidences to revenue or vice versa, the onus shifts to the other party. *Best and Co (P) Ltd.* (1966) 60 ITR 11 (SC)

Principle of Mutuality

Case	Description
CIT Vs Bankipur Club Ltd (1997) 226 ITR 97 (SC)	<p>Transactions solely with or as between its members is requirement of the principle of mutuality. However, there may be incidental activity with non-members if not tainted by commerciality as decided by the Supreme Court in Bankipur Club (also in Chelmsford club case) approving the decision in Ranchi Club Ltd, where the club had income from bank deposits. The Supreme Court itself decided in Cawnpore Club Ltd, that where surplus funds of a mutual association was deposited with a bank, it should not come in the way of exemption as was pointed out with reference to the income from bank deposits.</p> <p>This view as regards incidental activity with non-members was also taken by the Supreme Court in Chelmsford Club. The Delhi High Court has decided in respect of such interest on bank deposit, that it is not barred from the benefit of the principle of mutuality in Delhi Gymkhana Club. In the light of the Supreme Court decision, the decision of the other High Courts, which have taken narrower view as in CIT v Bangalore Club, Madras Gymkhana Club, Common Effluent Treatment Plant (Thane Belapur), Amar Singh Club, would be no longer good law.</p>

Case	Description
New York Life Insurance Co Vs Style's (1889) 2 TC 460	The fund should fulfil the Cardinal requirement that all the contributors to the common fund must be entitled to participate in the surplus and that all the participators in the surplus must be contributors do the common fund. In other words, there must be complete identity between the contributors and participators.
Sports club of Gujarat Ltd (1988) 171 ITR 504 (Guj)	Where a bona fide members of golf club was bound under a clause in its lease to admit non-members to play in its course on payment of fees, was held that, as, for tax purposes, the club carried on a concern or business, the fees received from visitors after apportioning the total expenses of the club on common items falling to the visitors should be regarded as profits.
CIT Vs Kovur Textiles and Co (1982) 136 ITR 61 (AP)	Businessman joined the chit from financing its business and incurred loss which was claimed as business expenditure. This loss was allowed by the AP High Court thereby denying the concept of mutuality to the facts.

Doctrine of overriding title: Sitaldas Tiratdas (SC), Sunil J Kinariwala (SC). Every contractual terms may lead to some obligations, however that does not mean that all the receipts are diverted. The obligations which which has to be complied before reaching that income/receipt to the assessee or in other words diverted before it accrued to the assessee, would only be treated as diversion of income. Obligation to apply the income once it reaches the assessee would only be application of such income.

Real Income Theory

Case	Description
CIT Vs Shoorji Vallabhdas & Co (1962) 46 ITR 144 (SC)	Income tax is leviable on income. If income does not result at all, then there cannot be any tax though, in book-keeping, an entry is made about a hypothetical income.
Godhra Electricity Vs CIT (1997) 225 ITR 746 (SC)	Due on the basis of enhanced rates of electricity was held not to accrue as the same was litigated and accordingly could not be realised.
Neo Trust Vs ITO (2015) 372 ITR 546 (Guj)	It was held that beneficiary of a discretionary trust cannot be assessed as he has no right to receive any income except at the discretion of the trustee unlike the right of the beneficiary in the specific trust. Option to assess either trust (trustee) or beneficiary would not arise in this case as only trust is liable to be assessed under the law.
Chemosyn Ltd Vs ACIT ITAT Mum	When a development agreement with a developer was substituted by the developer by entering into a tripartite agreement with the third party, where consideration also got substituted, it is only what is realisable under the substituted agreement which is taxable.

Telescoping and Peak Credit Theory

Case	Description
CIT Vs Manick and sons (1969) 74 ITR 1 (SC) and Banwarilal Bansidhar (229 ITR 229 (All))	<p>The concept of two additions reduced to one, where it is justified, is known as telescoping. In other words, out of the two additions, one addition is telescoped by the larger addition.</p> <p>It was held that when gross profit rate is applied, it would cover everything and no separate addition is warranted in relation to that business. It was held that estimated gross profit would cover the unexplained investments.</p>
Naresh Kohli Vs CIT (2005) 277 ITR 496 (P&H)	<p>Peak credit is also a type of telescoping where only the peak credit in the bogus account is considered for addition and not all the credits and withdrawals.</p>