



ORIGINAL RESEARCH PAPER

Law

CONSIDERATION GUIDING THE INTERPRETATION OF TAX STATUTES

KEY WORDS:

R.R.NANDIGA
RUBAVARSHINI

Student

ABSTRACT

This paper deals with the ancient maxim that taxing statutes have to be construed strictly with special reference. It focuses on the various dilutions to the rule of strict construction. Tax avoidance through artificial devices — holding companies, subsidiaries, treaty shopping and selling valuable properties indirectly by entering into a maze of framework agreements- has become a very lucrative industry today.

Introduction:

Taxation is statutory. No tax is levied and picked up except in step with the authority of law. There's business enterprise legislation once a year abundant of it ready in nice secrecy and underneath server pressured of your time, and it directly affects the general public. This legislation is difficult and elaborate due to Byzantine prepositions it's to specific, and therefore the verity of circumstances and conditions within which it falls to be applied and therefore the refined distinctions it embodies so as to aim to cater expressly for them. Consequently, the body of tax statutes as whole is voluminous and complicated in structure likewise as in idea and expression. There's another excuse for the business enterprise legislation being advanced and sophisticated. In fact, taxes area unit as advanced as life. The moralist needs simple taxes, however taxes cannot simply be simple, if we tend to recall the theme of special bearer bonds for swabbing up black cash. They can not merely be easy. The bourgeois demands sensible taxes, however financially history proves that it's impossible to create them sensible. Exemption Notifications got to be strictly construed; if exemption is on the market on yielding with sure conditions, conditions got to be complied with; plea of 'substantial compliance' depends upon facts of every Statute imposing taxes or financial burdens area unit strictly construed. The logic behind this principle is that imposition of taxes is additionally thrust (a form) of imposition of penalty which may solely be obligatory if the language of the statute without ambiguity says so.

These embody a shift to purposive construction, external aids, machinery provisions, exemptions and evasions. The aim is to collect a way of what might be driving the judiciary to dilute the rule of strict construction and therefore the implications of an equivalent. Minimisation through artificial devices holding firms, subsidiaries, pact looking and mercantilism valuable properties indirectly by moving into a maze of framework agreements has become a awfully profitable business these days. An oversized part of the financial gain of the massive 5' line of work and practice companies derives from minimisation schemes that flourish within the name of tax designing. Their lawfulness has agitated courts in Republic of India and abroad for a protracted time. In 1985, a 5-judge bench of the Supreme Court within the McDowell case settled the question resolutely, observing: in this terribly country wherever the phrase tax avoidance' originated, the judicial angle towards [it] has modified and therefore the smile, misanthropical or maybe fondtho' it would are at just once, has currently frozen into a deep frown. The courts are now concerning themselves not merely with the genuineness of a transaction, but with [its] intended effect for fiscal purposes. No one can now get away with a tax avoidance project with the mere statement that there is nothing illegal about it. In our view, the proper way to construe a taxing statute, while considering a device to avoid tax is ... to ask ... whether the transaction is a device to avoid tax, and whether the transaction is such that the judicial process may accord its approval to it. It is neither fair nor desirable to expect the legislature to ... take care of every device and scheme to avoid taxation, the ruling added. It is up to the Court ... to determine the nature of the new and sophisticated legal devices to avoid tax ... expose [them] for what they really are and refuse to give judicial benediction.

Legitimate tax planning:

Despite such a clear pronouncement, recent judgments of smaller Supreme Court benches have gone back to calling artificial tax avoidance devices legitimate tax planning. Though the Income Tax Act obliges even non-residents to pay tax on incomes earned in India, many foreign institutional investors avoided paying taxes citing the Double Taxation Treaty with Mauritius. This treaty says a company will be taxed only in the country where it is domiciled. All these FIs, though based in other countries and operating exclusively in India, claimed Mauritian domicile by virtue of being registered there under the Mauritius Offshore Business Activities Act (MOBA). Companies registered under MOBA are not allowed to acquire property, invest or conduct business in Mauritius.

Yet these Post Box Companies' claimed to be domiciled there and the I-T department allowed them to get away with claiming the benefits of the treaty for many years. Given the benign attitude of the Indian tax authorities and the fact that there was no capital gains tax and virtually no tax at all on these companies in Mauritius, most FIs and most of the foreign investment in India, by 2000, came to be routed through Mauritius. The party finally ended when a proactive tax officer tried to stop this blatant evasion. Relying on McDowell, he lifted the corporate veil of MOBA companies to determine their place of management and actual place of residence. Since this happened to be in different countries in Europe or North America, the relevant Double Tax Avoidance treaty became the one between India and that country. Of these treaties provided for capital gains to be taxed wherever the gains had increased. Since the gains increased in Republic of India, he levied capital gains tax on these FIs.

Tax systems in India:

The legal system of British Republic of India mirrored characteristics of a standard agriculture economy. Revenues of the central government were dominated by custom duties as domestic needs for factory-made merchandise were dominated by custom duties as domestic needs for factory-made merchandise were met largely from imports, mainly from United Kingdom of Great Britain and Northern Ireland and alternative commonwealth countries. Import duties were levied on all most all things of imports whereas major things subject to export duties were jute and tea within which Republic of India enjoyed close to monopoly within the world market. Numerous custom and tariff enactments were passed from time to time.

Principle of interpretation:

Principle of interpretation that have evolved square measure those supported plain which means of the words used and their meaning and people supported the intention or purpose of the assembly.

In Asian nation [Bharat] [Asian country] [Asian nation] jurisprudence provides a helpful set of cases for exploring the informative approaches of the judiciary in India. Some general observations created by the courts square measure 1st mentioned before analyzing the cases on totally different approaches. Interpretation of statute implies that the court has got to ascertain the facts and

so interpret the law to use to such facts. it's the perform of the assembly to mention what shall be the law and it's for the court to mention that what the law is. wherever the language is obvious and unambiguous and admits of only 1 which means absolute confidence of construction of statute arises for the statute speaks for itself. Interpretation of statutes to render justice is primary perform of the judiciary. the foremost common rule of interpretation is each [that each] a {part of} the statute should be understood during a harmonious manner by reading and construing every part of it along.

Strict construction:

A close or slim reading and interpretation of a statute or writing. Judges square measure typically known as upon to form a construction, or interpretation, of Associate in Nursing unclear term in cases that involve a dispute over the term's legal significance. The common law tradition has created varied precedents, maxims, and rules that guides the judges in construing statutes or personal written agreements like contracts. Strict construction happens once ambiguous language is given its precise and technical which means, and no alternative equitable concerns or cheap implications square measure created.

A choose might create a construction providing the language is ambiguous or unclear. If the language is obvious and clear, a choose should apply the PLAIN which means of the language and can't contemplate alternative proof that may amendment the which means. If, however, the choose finds that the words turn out absurdity, Ambiguity, or a concreteness ne'er supposed, the plain which means doesn't apply and a construction is also created.

Principle of strict construction:

The manner during which the Income-Tax Act has been written leaves nice scope for proceedings. For this purpose, principles of interpretation need to be applied. These principles themselves aren't unerring and would rely on the facts of every case. the 2 well-settled principles of interpretation, as applicable in heavy statutes, are:

- There isn't any equity in tax, and also the principle of strict or literal construction applies in decoding tax statutes. Hence, on the plain language of the statute, if the assessee is entitled to 2 advantages, he has got to be granted each these benefits; and
- If there square measure 2 cheap interpretations of heavy statutes, the one that favors the assessee has got to be accepted.

The classical rule: strict construction of heavy statutes:

The classical rule with reference to the development of heavy statutes is that they must be strictly construed. it's a well-established rule which will be derived to common law in European nation and has been foreign into the Indian system similarly. A person mustn't be taxed unless there square measure clear words indicating that purpose. each statute should be browse consistent with the natural construction of its words. during a heavy statute, it's solely what's clearly aforementioned that must be checked out. concerns guiding the interpretation of heavy statutes cannot embody equity or presumptions. Nothing should be browse in or implicit. within the interpretation of heavy statutes, the language of the statute is that the solely factor which will be fairly checked out.

This has been the classical approach towards the interpretation of tax statutes as followed in European nation similarly as in Asian nation. The explanation for the strict construction of heavy statutes lies within the incontrovertible fact that they impose monetary burdens. Therefore, in some sense, they operate as penalties. it's on the premise of this that clear and unambiguous language is needed so as to form out a charge of tax.

IRC V. THE DUKE OF City of Westminster :

In this case, the respondent i.e. Duke of City of Westminster, covenanted to pay his gardener Associate in Nursing yearly total for a amount of seven years while not prejudice to the

remuneration received by the gardener for his services. The Duke then sought-after to deduct such payments so as to establish his total nonexempt financial gain for surtax. The Revenue i.e. Appellant but sought-after to point out these payments as payments of earnings or wages and impose tax on it.

Conclusion:

Thus, it might be ended from the on top of that the strict rule of construction was galvanized by a desire to balance the powers of the individual against the State and forestall the State from penalizing the individual unnecessarily. However, economic developments have shifted the balance against the State and in favour of corporations, UN agency have at their disposal wide resources and tax experience. it's no surprise then that the majority of the dilutions, like purposive construction and evasion appear to favour the Revenue. The dilutions represent an exact compromise which they'll cause varied issues in statutory interpretation however still the rule of strict construction still holds a dominant position within the interpretation of heavy statutes.

1. Fifth year, B.AB.L(HONS), SAVEETHA UNIVERSITY, Mail: rnrbrb@gmail.com, PH: 8939425213
2. This book has been updated with the important judicial pronouncements of the Supreme Court till March 2014 and it is very useful to study the interpretation of statutes.
3. <http://www.legalservicesindia.com/article/article/interpretation-of-taxing-statute-as-strict-construction-and-exemption-1451-1.html>
4. http://www.academia.edu/6827785/PROJECT_FOR_THE_SUBJECT_Interpretation_of_Statutes_CONSIDERATIONS_GUIDING_THE_INTERPRETATION_OF_TAX_STATUTES_With_Special_Reference_to_Vodafone_Judgment
5. <http://infochangeindia.org/corporate-responsibility/analysis/whats-really-at-stake-in-the-vodafone-tax-case.html>
6. <http://www.lawyersclubindia.com/articles/CARDINAL-RULES-FOR-INTERPRETATION-OF-TAX-STATUTES-2730.asp#.VmgVbNlrJkg>

References:

BOOKS:

1. Bhattacharya .T., The Interpretation of Statutes, Central Law Agency, 9th Edition.

WEBSITES REFERRED:

2. www.legalservicesindia.com³
3. www.academia.edu⁴
4. www.infochangeindia.org⁵
5. www.lawyersclubindia.com⁶