CTC Study Course on Interpretation of Taxing Statutes

Principles and Rules of Interpretation

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A woman without her man is incomplete.

A woman without her man, is incomplete.

A Woman ! without her, man is incomplete.
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Language of Statute should be read as it is:

- **CIT vs. Sterling Foods (Goa) (1995) 213 ITR 0851 (Bom. HC)**

"As observed by the Supreme Court in Polestar Electronic (Pvt.) Ltd. vs. Addl. CST (1978) 41 STC 409 (SC), if there is one principle of interpretation more well-settled than any other, it is that a statutory enactment must ordinarily be construed according to the plain natural meaning of its language and that no words should be added, altered or modified unless it is plainly necessary to do so in order to prevent a provision from being unintelligible, absurd, unreasonable, unworkable, or totally irreconcilable with the rest of the statute. This rule of literal construction is firmly established and it has received judicial recognition from the Courts in India in numerous cases. Therefore, where the language of the statute is clear and explicit, effect must be given to it, for in such a case the words best declare the intention of the legislature. It is only from the language of the statute that the intention of the legislature must be gathered, for the legislature means no more and no less than what it says. It is not permissible for the Court to speculate as to what the legislature must have intended and then to twist or bend the language of the statute to make it accord with the presumed intention of the legislature. The clear provision of the statute cannot be given an artificial extended meaning by resorting to the so-called principles of interpretation. The duty of the Court always is to find out what the legislature really meant by the expression which it has used. For that purpose, it may consider the context and any other parts of the Act which throw light upon the intention of the legislature. It must not be forgotten that the duty of the Court is to interpret the law made by the legislature with a view to ascertaining its true intention and not to interpret it in a manner which may run counter to the legislative intent and purpose."
Language of Statute should be read as it is:

- **CIT vs. Orissa State Warehousing Corporation (1993) 201 ITR 729 (Orissa HC)**

  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 statutes so as to supply any assumed deficiency. One has to look 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 has to be read in, nothing is to be implied. One can only look fairly at the language used. In a case of reasonable doubt, the construction most beneficial to the subject is to be adopted. But even so, the fundamental rule of construction is the same for all statutes, whether fiscal or otherwise. The underlying principle is that the meaning and intention of a statute must be collected from the plain and unambiguous expression used therein rather than from any notions which may be entertained by the Court as to what is just or expedient.

- **CIT vs. Nestle India Ltd. (2005) ITR 1 (Del. HC)**

  “It is settled canon of interpretation of law that wherever a provision uses plain and simple language free of ambiguity such provision should be given its plain meaning without addition or subtraction of any expression into the language of the provisions.”
CIT vs. Vishwanath (1993) 201 ITR 0920 (All. HC)

**Facts:**
- The assessee (HUF), sold certain agricultural lands allotted to its share on the family partition.
- The agricultural land was brought within the purview of capital asset u/s 2(14) by the FA 1970.
- The assessee offered capital gains, however, the assessee contended that as the agricultural land became a capital asset for the first time on 1st April, 1970, because of the amendment brought about in section 2(14) he claimed market value as on 1st April, 1970 as the cost of acquisition.
- The claim was upheld by AAC and the Tribunal.

**Held:**
- Section 48 & section 49 does not envisage that the capital asset transferred must also be a capital asset on the date of acquisition besides its being capital asset on the date of its transfer.
- Another section which has an important bearing on calculating the capital gain is s. 55 of the Act. Under cl. (ii) of sub-s. (2) of that section, it is provided that, where the capital asset becomes property of the assessee by any of the modes specified in s. 49 and the capital asset becomes property of the previous owner before 1st Jan., 1954, the "cost of acquisition" means the cost of the capital asset to the previous owner or the fair market value of the asset on 1st Jan., 1954, at the option of the assessee.
- The effect of the amendment in S. 2(14) is to bring certain types of agricultural land within the meaning of "capital asset" under the Act, but it does not influence the computation or determination of the taxable gains in terms of the provisions discussed earlier so as to add or detract anything from them. This is what the ITO had held. The appellate authorities including the Tribunal were not justified in interfering with the manner in which the capital gains were computed by the ITO.

The argument of the assessee that the Tribunal has taken an equitable view is of no consequence. In this connection, the classic statement of Rowlatt J. in Cape Brandy Syndicate vs. IRC (1921) 12 Tax Cases 358 : (1921) 1 KB 64 may be recalled where it was observed:

“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 tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.”
A) **Avoiding addition/substitution of word:**

- Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.

- “It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. Similarly it is wrong and dangerous to proceed by substituting some other words for words of the statute. Speaking briefly the court cannot reframe the legislation for the very good reason that it has no power to legislate.” (GP Singh)
Language of Statute should be read as it is – Avoiding addition/substitution of word:

CIT v. N.C. Budharaja & Co. & ANR. ETC. ETC. (SC) (1993) 204 ITR 412

- **Provision**

  S. 80HH(2) This section applies to any industrial undertaking which fulfils all the following conditions, namely:—

  (i) it has begun or begins to manufacture or produce articles after the 31st day of December, 1970 but before the 1st day of April, 1990, in any backward area;

- **Issue involved**

  Whether for the purpose of S. 80HH(2)(i), the construction of dam can be characterized as amounting to manufacturing or producing an article.
Language of Statute should be read as it is - Avoiding addition/substitution of word:

CIT v. N.C. Budharaja & Co. & ANR. ETC. ETC. (SC) (1993) 204 ITR 412

Held

“It is true that a dam is composed of several articles; it is composed of stones, concrete, cement, steel and other manufactured articles like gates, sluices, etc. But to say that the end product, the dam, is an article is to be unfaithful to the normal connotation of the word. A dam is constructed; it is not manufactured or produced. The expressions ‘manufacture’ and ‘produce’ are normally associated with movables—articles and goods, big and small—but they are never employed to denote the construction activity of the nature involved in the construction of a dam or for that matter a bridge, a road or building. ”

Principle applied:

“It is submitted by the counsel for the respondent assessee that since S. 80HH is intended to encourage establishment of industrial undertakings in backward areas for the reason that such establishment leads to development of that area besides providing employment, we must adopt a liberal interpretation which advances the purpose and object underlying the provision. The said principle, however, cannot be carried to the extent of doing violence to the plain and simple language used in the enactment. It would not be reasonable or permissible for the Court to re-write the section or substitute words of its own for the actual words employed by the Legislature in the name of giving effect to the supposed underlying object. After all, the underlying object of any provision has to be gathered on a reasonable interpretation of the language employed by the Legislature.”
Language of Statute should be read as it is - Avoiding addition/substitution of word:
CIT v. Bansal Credits Ltd [2003] 259 ITR 69 (Del)

▶ **Facts:**
- The assessee was a finance company engaged in the business of leasing out commercial vehicles.
- It claimed depreciation at higher rate of 40 per cent on the commercial vehicles leased out by it, which were being actually used in the business of running on hire.
- However, the AO allowed the depreciation at the normal rate of 25% on the ground that the vehicles had been leased out by the assessee and were not being used by the assessee in the business of running them on hire on its own.

▶ **Provision:**
S. 32(1) In respect of depreciation of buildings, machinery, plant or furniture owned by the assessee and used for the purposes of the business or profession, ……

Appendix-1
III. Machinery and Plant

…

(2)(ii) Motor buses, motor lorries and motor taxis used in a business of running them on hire.
Language of Statute should be read as it is - Avoiding addition/substitution of word:
CIT v. Bansal Credits Ltd [2003] 259 ITR 69 (Del)

- **Issue involved:**
  Whether for availing higher rate of depreciation, it is mandatory that the said vehicles are not merely used in a business of running them on hire but the assessee should himself use these vehicles for the said purpose.

- **Principle applied:**
  “The cardinal rule of interpretation is that the statute must be construed according to its plain language and neither should anything be added nor subtracted therefrom unless there are adequate grounds to justify the inference that the Legislature clearly so intended. It is also well-settled that in a taxing statute one has to look merely at what is clearly stated. The meaning and extent of the statute must be collected from the plain and unambiguous expression used therein, rather than from any notions which may be entertained by the court as to what is just or expedient.”
Language of Statute should be read as it is - Avoiding addition/substitution of word:
CIT v. Bansal Credits Ltd [2003] 259 ITR 69 (Del)

- **Held:**
  - The section postulates three basic conditions for grant of depreciation in respect of an asset namely: (i) the existence of assets specified in the section; (ii) it should be owned by the assessee; and (iii) it should be used for the purpose of business or profession.
  - In our opinion, on a plain reading of the section and the relevant entry in the Appendix, it is clear that it is the end user of the specified asset which is relevant for determining the percentage of depreciation. The section requires that the asset should be used for the purposes of assessee's business and the entry in the Appendix refers to the user it should be put to. Apart from the fact that the leasing out of the vehicles is by itself tantamount to hire of vehicles, we are unable to read into any of the afore-noted provisions the requirement that the assets are to be used by the assessee for the purposes of "his" business or profession.
  - Once it is accepted that the leasing out of the vehicles is one of the modes of doing business by the assessee and, in fact, the income derived from such leasing is treated as business income of the assessee, it would be clearly contradictory in terms to hold that the vehicles in question were not used wholly for the purpose of the assessee's business which is one of the requisites stipulated in section 32, apart from the other two conditions which all the assessees indubitably fulfil.
Language of Statute should be read as it is - Avoiding addition/substitution of word:
CIT v. Tara Agencies (2007) 292 ITR 444 (SC)

Provision
S. 35B(1)(a) Where an assessee, being a domestic company or a person (other than a company) who is resident in India, has incurred after the 29th day of February, 1968 whether directly or in association with any other person, any expenditure (not being in the nature of capital expenditure or personal expenses of the assessee) referred to in clause (b), he shall, subject to the provisions of this section, be allowed a deduction of a sum equal to one and one-third times the amount of such expenditure incurred during the previous year.

S. 35B(1A) Notwithstanding anything contained in sub-s. (1), no deduction under this section shall be allowed in relation to any expenditure incurred after the 31st day of March, 1978, unless the following conditions are fulfilled, namely—

(a) the assessee referred to in that sub-section is engaged in—

(i) the business of export of goods and is either a small scale exporter or a holder of an Export House Certificate; or

……

Explanation: For the purpose of this sub-section,—

(a) ‘small scale exporter’ means a person who exports goods manufactured or produced in any small scale industrial undertaking or undertakings owned by him;

……
Language of Statute should be read as it is - Avoiding addition/substitution of word:
CIT v. Tara Agencies (2007) 292 ITR 444 (SC)

- **Issue involved:**
  Whether the activity of purchase and blending of different kinds of tea (processing of tea) for the purpose of export would fall within the ambit of production or manufacturing for availing deduction u/s 35B

- **Principles applied**
  - Since the Legislature in its wisdom has not used the term ‘processing’ in section 35(1)(B) of the Act, it would be erroneous to incorporate the word in the section and then interpret the Statute.
  - The intention of the Legislature has to be gathered from the language used in the statute which means that attention should be paid to what has been said as also to what has not been said.
  - In Union of India v. Deoki Nandan Aggarwal 1992 Suppl. (1) SCC 323, a three-Judge Bench of this court held that it is not the duty of the court either to enlarge the scope of legislation or the intention of the Legislature, when the language of the provision is plain. The court cannot rewrite the legislation for the reason that it had no power to legislate. The power to legislate has not been conferred on the courts. The court cannot add words to a statute or read words into it which are not there.
Language of Statute should be read as it is - Avoiding addition/substitution of word: CIT v. Tara Agencies (2007) 292 ITR 444 (SC)

- In State of Kerala v. Mathai Verghese [1986] 4 SCC 746, this court has reiterated the well settled position that the court can merely interpret the section; it cannot re-write, recast or redesign the section. In interpreting the provision the exercise undertaken by the court is to make explicit the intention of the Legislature which enacted the legislation. It is not for the court to reframe the legislation for the very good reason that the powers to ‘legislate’ have not been conferred on the court.

- Therefore, the legal position seems to be clear and consistent that it is in the bounden duty and obligation of the Court to interpret the statute as it is. It is contrary to all rules of construction to read words into a statute which the legislature in its wisdom has deliberately not incorporated.

**Held:**

- The benefit cannot be extended because the word ‘processing’ has been specifically omitted in the statute.

- On clear construction and interpretation of s. 35B(1A) of the Act, we are clearly of the opinion that the respondent’s activity amounts to "processing" only and the activity does not amount to either "production" or "manufacture". The term "processing" has not been included in s. 35B(1A) of the Act, therefore, the respondent is not entitled for weighted deduction under s. 35B(1A) of the Act.
Language of Statute should be read as it is –

Avoiding addition/substitution of word:

**EXCEPTIONS:**
- Normally the courts would avoid addition or substitution of words where the meaning is plain and unambiguous. However if it is felt that some words are missing then it is permissible to implant the missing words.
Language of Statute should be read as it is – Avoiding addition/substitution of word –

EXCEPTIONS

CIT v. Delhi Race Club (1940) Ltd. [2014] 51 taxmann.com 550 (Delhi)

- **Provision:**
  
  S. 9(1)(vi)

  *Explanation 2.*—For the purposes of this clause, "royalty" means consideration (including any lump sum consideration but excluding any consideration which would be the income of the recipient chargeable under the head "Capital gains") for—

  1. the transfer of all or any rights (including the granting of a licence) in respect of any copyright, literary, artistic or scientific work including films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting, but not including consideration for the sale, distribution or exhibition of cinematographic films; or

- **Issue:**

  Whether payment for live telecast of horse race is a payment for transfer of any ‘copyright’ as such ‘royalty’
Language of Statute should be read as it is – Avoiding addition/substitution of word - EXCEPTIONS

CIT v. Delhi Race Club (1940) Ltd. [2014] 51 taxmann.com 550 (Delhi)

Contention of revenue:

- the use of the words 'literary' and 'artistic' should not be understood to mean the applicability limited to those works as in that case there would have been the word 'in' in between 'Copyright' and 'literary', whereas 'Comma' has been used.

- The joining of 'literary' and 'artistic' by coma to 'Copyright' in the said clause is to include every item of determined Copyright irrespective of the category viz. literary, artistic, dramatic, musical works etc. besides including literary and artistic where Copyright is either not yet been determined or is subject matter of contesting claims in litigation or the term of Copyright of which has since been expired.
**Language of Statute should be read as it is – Avoiding addition/substitution of word - EXCEPTIONS**

**CIT v. Delhi Race Club (1940) Ltd. [2014] 51 taxmann.com 550 (Delhi)**

**Principles applied:**

- We know the limitation of the Court in adding and rejecting a word in the provision and the statute. Presumption is there that the legislature inserted every part of the statute for a purpose with an intention that every part thereof should have effect. At the same time, it is also a settled law that a construction which attracts redundancy, will not be accepted except for compelling reasons. Where alternative lies between either supplying by implication, words which appear to have been accidentally omitted or adopting a construction depriving certain existing words of all meaning, it is permissible to supply the words [Ref. M.J Exports Ltd. v. CEGAT AIR 1992 SC 2014]. It is also settled position of law that a purposive construction may also enable reading of words by implication when there is doubt about the meaning and ambiguity persists. In such circumstances, we should examine the purpose which the Parliament intended to achieve. Justice G.P.Singh in his principles of Statutory Interpretation, 11th Edition at Page 75 has stated as under:

  "In discharging its interpretative function, the Court can correct obvious errors and so in suitable case the Court will add words or omit words or substitute words. But before interpreting statute in this way, the Court must abundantly sure of three matters: (i) the intended purpose of statute or provision in question; (ii) that by inadvertence the Draftsman and Parliament failed to give effect to that purpose in the provision in question; and (iii) the substance of the provision Parliament would have made although not necessarily the precise words Parliament would have used had the error in the bill being noticed."
Language of Statute should be read as it is – Avoiding addition/substitution of word - EXCEPTIONS

CIT v. Delhi Race Club (1940) Ltd. [2014] 51 taxmann.com 550 (Delhi)

Held:

A perusal of clause (v) as reproduced above would reveal that consideration for transfer of all or any rights in respect of any 'copyright' and the word 'copyright' is followed by the words 'literary', 'artistic' or 'scientific work'. It also exists in other works like dramatic, musical etc. It is not in dispute that 'copyright' exists in literary and artistic work. It also exists in other works like dramatic, musical etc. If the intention of the legislature was to include other works like dramatic, musical etc. the legislature would have said so or would not have qualified the word 'copyright' with the words 'literary' and 'artistic' as the word 'copyright' encompasses in itself all the categories of work. Having not done, it is a case of 'Expressio Unis'. (The mention of one thing is the exclusion of the other). We also note that the word 'copyright' does not synchronize with the word 'literary', 'artistic' as they are the works in which 'copyright' exists. The provision if read as suggested by the revenue to that extent would be meaningless. We, are thus of the view that the provision would be more meaningful if the word 'in' is read by implication in between the words 'copyright' and 'literary'.

The broadcast/live telecast is not a work within the definition of section 2(y) of the Copyright Act and also that broadcast/live telecast doesn't fall within the ambit of Section 13 of the Copyright Act, it would suffice to state that a live telecast/broadcast would have no 'copyright'.

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Language of Statute should be read as it is

B) Casus omissus – Sampat Iyengar

- Casus Omissus is an application of the principle that matter which should have been, but has not been provided for in a statute cannot be supplied by courts, as to do so will be legislation and not construction.
  - Hansraj Gupta v Dehra Dun Mussoorie Electric Tramway Co Ltd AIR 1933 PC 63, 65
  - Narayanaswami (S) v Panneerselvam (G) AIR 1972 SC 2284, 2289

- It is not open to court to add something or read something in statute on basis of some supposed intendment of statute.
Language of Statute should be read as it is - Casus omissus

- It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the legislature itself. The question is not what may be supposed and has been intended but what has been said. While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of the process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. The legislative casus omissus cannot be supplied by judicial interpretative process.

- Padmasundara Rao (Decd.) & Ors. vs. State of Tamil Nadu & Ors. (2002) 255 ITR 147 (SC)
Language of Statute should be read as it is - *Casus omissus*

**Heilgers Development & Construction Co. (P.) Ltd. v. DCIT [2013] 32 taxmann.com 147 (Kolkata - Trib.)**

- **Provisions:**

  S.50C(1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed [or assessable] by any authority of a State Government (hereafter in this section referred to as the 'stamp valuation authority') for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed [or assessable] shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer.

- **Facts:**

  - The assessee sold two commercial premises for Rs. 1.39 crore and Rs. 72 lakhs, whereas the Stamp Duty values were Rs. 1.44 crore and Rs. 79 lakh respectively. The assessee claimed that market rates had increased due to long gap of 7 to 9 months between date of agreement and date of conveyance, but did not produce any official confirmation of enhanced rates in the interim period from Stamp Valuation Authority. Therefore, Assessing Officer treated the stamp duty value as the sale consideration under section 50C.

  - Assessee contended that where difference in Stamp Duty Value and stated sale consideration was less than 15 per cent of stamp duty value, provisions of section 50C could not be invoked, even though no such tolerance band was prescribed in the statute.
Held:

When a provision for tolerance band is not prescribed in the statute, it cannot be read into the statutory provisions of section 50C, no matter howsoever desirable such a provision be, even if that be so. What the provisions of section 50C clearly require is that when stated sales consideration is less than Stamp Duty Valuation for purposes of transfer, the stamp duty value will be, subject to the safeguards built in the provision itself, taken as the sales consideration for the purposes of computing capital gains.

Principles applied:

Casus omissus, which broadly refers to the principle that a matter which has not been provided in the statute but should have been there, cannot be supplied by the Tribunal, as to do so will be clearly beyond the call and scope of its duty which is only to interpret the law as it exists.
EXCEPTION:

A casus omissus cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the Statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute.

This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature.

- Polestar Electronic Pvt Ltd v CST (Addl) AIR 1978 SC 897 : (1978) 41 STC 409 (SC)
- CIT v Vaidyanathan (KS) (1985) 153 ITR 11 (Mad)(FB)
- CIT v Bakhear Ahamed & Co (1996) 221 ITR 574 (Mad)
- CIT v RKBK Ltd (2011) 331 ITR 269 (Cal)
CIT v. Bakhear Ahamed & Co. [1996] 221 ITR 574 (Mad.)

“Even though the casus omissus cannot be readily inferred, it has to be inferred when a literal construction of a particular section leads to manifestly absurd results which could not have been intended by the Legislature…. No doubt in A.V. Fernandez v. State of Kerala [1957] 9 STC 561, AIR 1957 SC 657 it was observed that construing fiscal statutes, one must have regard to the strict letter of the law and not merely to the spirit of the statute or the substance of the law. But where such literal interpretations lead to absurd result cassus omissus could be inferred”
C) Avoiding rejection of word:

As on the one hand, it is not permissible to add words or to fill in a gap or lacuna, on the other hand effort should be made to give meaning to each and every word used by the Legislature…… The Legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the Legislature will not be accepted except for compelling reasons.

EXCEPTION:

At times the intention of the Legislature is clear but the unskillfulness of the draftsman in introducing certain words in the statute results in apparent ineffectiveness of the language. Since courts strongly lean against reducing a statute to a futility. It is permissible in such cases to reject the surplus words to make the statute effective and workable.
Provisions:
Para 11 of 2011 circular:
This instructions will apply to appeals filed on or after 9th February 2011. However, the cases where appeals have been filed before 9th February 2011 will be governed by the instructions on this subject, operative at the time when such appeal was filed.

Facts:
- The revenue filed appeal on 13-10-2010. It was not in dispute that the tax effect involved in appeal exceeded Rs. 4 lakh which was the threshold limit permitting the revenue to prefer appeal before the High Court as provided by CBDT, in its instruction dated 15/05/2008.
- However, such tax effect did not exceed Rs. 10 lakh, a revised limit provided by the Board in its later instructions dated 9-2-2011.
- Assessee contended that though at the time of filing of the appeal the limits prescribed by the Board in its instructions of 2008 applied, however, the revised limits contained in the instructions of 2011 should be applied when the appeal was taken up for hearing.
Principles applied:
When the language is plain, it is not open for the Court to reject the expression used by the draftsman and adopt some other interpretation not borne out from the plain language of the statute or the document.

Held:
The instructions of 2011 provide revised monetary limits permitting the revenue to file appeals before the Tribunal, High Court and Supreme Court. Paragraph 11 thereof clearly provides that such instructions will apply to appeals filed on or after 9-2-2011. It is further made clear that cases where appeals have been filed before 9-2-2011 will be governed by the instructions on the subject operative at the time when such appeal was filed. Any other interpretation to make the instructions of 2011 applicable to all pending appeals would not be permissible and would be doing violation to the plain language used in the instructions.

Paragraph 11 of the instructions of 2011 is unambiguous and makes the instructions applicable only from a certain date and not to all pending appeals. The cardinal rule of interpretation is that any document or statute should be interpreted on the basis of language used by reading the statute or the document as it is avoiding any addition or substitution of words. Courts while interpreting would also avoid rejection of any word used in the document or the statute.
Rule of 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.
  - CIT v. Sundaram Iyengar & Sons Pvt Ltd. (TV) (1975) 101 ITR 764 (SC)
  - CIT v. Ajax Products Ltd. (1965) 55 ITR 741 (SC)
  - Keshavji Ravji & Co v. CIT (1990) 183 ITR 1 (SC)
  - Baldeep Singh v UOI (1993) 199 ITR 628 (P&H)
  - CIT v Budharaj & Co (NC) (1993) 204 ITR 412 (SC)
  - CIT v Madan Parnami Family Trust (2004) 269 ITR 16 (Raj)
  - Great Eastern Exports v. CIT (2011) 332 ITR 14 (Del.)

- The normal rule of interpretation is that the intention of the legislature is to be gathered primarily from the words used by the statute.
  - CIT v Sodra Devi (1957) 32 ITR 615 (SC)
  - Tarulata Shyam v CIT (1977) 108 ITR 345 (SC)
The function of the Court is to gather the intention of the legislature from the words used by it and it would not be right for the Court to attribute an intention to legislature, which though not justified by the language used by it, accords with what the court conceives to be reasons for the enactment and to bend the language of the enactment so as to carry out such presumed intention of the legislature for the court to do so would be overstep its limit.

- CIT v. Hardware Exchange (1991) 190 ITR 61 (Gau)
- Punjab State Civil Supplies Corporation Ltd v. CIT (1993) 200 ITR 355 (Del)

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

- Karnataka State Financial Corporation v CIT (1985) 174 ITR 206 (Kar)
- ITO v Abdul Razak (1990) 181 ITR 414,426 (AP)
- CED v. Sileshkumar R Mehta (1990) 181 ITR 10 (Mad)
- CIT v. Jhabarmal Agarwalla (1992) 195 ITR 351 (Gau)
- CIT v. Vishwanath (1993) 201 ITR 729 (Ori0
- Dakshinamoorthy Mudaliar (VM) v. TRO (1993) 202 ITR 946 (Mad)
- CIT v. Cement Distributors Ltd. (1994) 208 ITR 355 (Del)
Rule of Literal Construction

**EXCEPTION TO LITERAL CONSTRUCTION:**

If, however, there is some ambiguity in the terms of a provision, recourse can and must be made to surrounding circumstances and constitutional principles and practice.

- CIT v. Sodra Devi (1975) 32 ITR 615 (SC)

It is not permissible first to create an artificial ambiguity and then try to resolve it by resort to some general principle.

- CIT v. Indian Bank Ltd (1965) 56 ITR 77 (SC)
- CED v. Kanakasabai (1973) 89 ITR 251 (SC)

However, in case of Goodyear India Ltd. v. State of Haryana (1991) 188 ITR 402 (SC), Apex Court held that a reasonable construction should be followed and literal construction should be avoided if it defeats the manifest purpose and object of the statute.
**Facts:**
- The assessee, an individual, was carrying on business in purchase and sale of groundnut oil and was also running an oil mill.
- A firm was constituted by the assessee’s wife and another person and the three minor sons of the assessee were also admitted to the benefits of partnership.
- In the relevant assessment years, the income of the assessee’s wife and minor children from the said firm was included in the computation of the total income of the assessee under section 16(3).
- The assessee claimed set off of the loss carried forward from the earlier assessment year against the profits of his own business as also the share income of his wife and minor children.
- The ITO rejected the assessee's claim for set off so far as it related to the share income of his wife and minor children.

**Issue involved:**
Whether the assessee would be entitled to carry forward and set off of the losses against the share income of the assessee's wife and minor children under section 24(2) of the Indian Income-tax Act, 1922
Rule of Literal Construction - EXCEPTION

**Provision:**

S.24(2) Where any assessee sustains a loss of profits or gains in any year, being a previous year not earlier than the previous year for the assessment for the year ending on the 31st day of March, 1940, in any business, profession or vocation, and the loss cannot be wholly set off under sub-section (1), so much of the loss as is not so set off or the whole loss where the assessee had no other head of income shall be carried forward to the following year, and

(i) where the loss was sustained by him in a business consisting of speculative only against the profits and gains, if any, of any business in speculative transactions carried on by him in that year;

(ii) where the loss was sustained by him in any other business, profession or vocation, it shall be set off against the profits and gains, if any, of any business, profession or vocation carried on by him in that year; provided that the business, profession or vocation in which the loss was originally sustained continued to be carried on by him in that year; and

(iii) if the loss in either case cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following year and so on but no loss shall be so carried forward for more than eight years:
Rule of Literal Construction - EXCEPTION

- **Principle applied**

Now where the plain literal interpretation of a statutory provision produces a manifestly unjust result which could never have been intended by the Legislature, the Court might modify the language used by the Legislature so as to achieve the intention of the Legislature and produce a rational construction. The task of interpretation of a statutory provision is an attempt to discover the intention of the Legislature from the language used. If the purpose of a particular provision is easily discernible from the whole scheme of the Act which, in the present case, was to counteract, the effect of the transfer of assets so far as computation of income of the assessee was concerned, then bearing that purpose in mind, the intention should be found out from the language used by the Legislature and if strict literal construction leads to an absurd result, i.e., result not intended to be subserved by the object of the legislation found out in the manner indicated above, then if other construction is possible apart from strict literal construction, then that construction should be preferred to the strict literal construction. Though equity and taxation are often strangers, attempts should be made that these do not remain so always so and if a construction results in equity rather than in injustice, then such construction should be preferred to the literal construction.
Rule of Literal Construction - EXCEPTION


Held:

To set off the carried forward loss of the assessee, 3 conditions are required to be fulfilled under section 24(2)

(1) the loss must be loss in a business, (2) the business profession or vocation in which the loss was originally sustained must be continued to be carried on by the assessee in the year in which the carried forward loss was sought to be set off; and (3) the business, profession or vocation against the profits of which set off was claimed must have been carried on by the assessee in that year.

where the wife or minor children carries on a running business, the right to carry forward the loss in the running business would be available to the wife or minor child if they themselves were assessed but the right would be completely lost if the individual in whose total income the loss is to be included is not permitted to carry forward the loss under section 24(2) since that would be the result of the strict literal construction, it is apparent that that could not have been the intent of the Parliament. Therefore, where section 16(3) operates, the profit or loss from a business of the wife or minor child included in the total income of the assessee should be treated as the profit or loss from a 'business carried on by him' for the purpose of carrying forward and set off under section 24(2).
The assessee, in the instant case, was entitled to set off the loss carried forward from the previous years, against the share income of the wife and minor children from a firm, in which he was not a partner, included in the total income of the assessee under section 16(3).
Rule of Literal Construction-
Natural/Ordinary/Grammatical meaning

- **Natural/Ordinary/Grammatical meaning:** Exact meaning to be preferred over loose meaning

- There is presumption that words are used in an Act of Parliament correctly and exactly and not loosely and inexacty i.e. exact meaning to be preferred over loose meaning

- The words of a statute are first understood in their natural, ordinary or popular sense and phrases and sentences are construed according to their grammatical meaning, unless that leads to some absurdity or unless there is something in the context, or in the object of the statute to suggest the contrary.
Rule of literal construction - Natural/Ordinary/Grammatical meaning

- **Provision**
  S. 5(1)(iii) of Wealth-tax Act:

  Exemptions in respect of certain assets.—(1) Wealth-tax shall not be payable by an assessee in respect of the following assets, and such assets shall not be included in the net wealth of the assessee
  
  (iii) any one building in the occupation of a Ruler declared by the Central Government as his official residence under Paragraph 13 of the Merged States (Taxation Concessions) Order, 1949, or Paragraph 15 of the Part B States (Taxation Concessions) Order, 1950

- **Facts:**

  The assessee was owner of a palace which was declared as his official residence as Ruler, the assessee claimed exemption of the palace under section 5(1)(ii). The WTO held that the palace having consisted of number of buildings, the assessee would be entitled to exemption only in respect of the building or the portion of the building which was in his occupation, and not of the buildings which had been let out. He, accordingly, brought to wealth-tax the estimated value of the buildings let out.
Rule of literal construction - Natural/Ordinary/Grammatical meaning


**Principle applied:**

- It is a cardinal principle of construction that the words of a statute are first understood in their natural, ordinary or popular sense and phrases and sentences are construed according to their grammatical meaning unless that leads to some absurdity or unless there is something in the context or in the object of the statute to suggest the contrary. It has been often held that the intention of the Legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, additional support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided. Obviously, the aforesaid rule of construction is subject to exceptions, just as it is not permissible to add words or to fill in a gap or lacuna. Similarly, it is of universal application that efforts should be made to give meaning to each and every word used by the Legislature.

- In case of taxing statute, it has been held by the Supreme Court that one must have regard to the strict letter of the law and if the revenue satisfies the Court that the case fall strictly in the provisions of law, the subject can be taxed.
Rule of literal construction - Natural/Ordinary/Grammatical meaning


- Held:
  - This being the position, a fair reading of section 5(1)(iii) would reveal that only the building or the part of the building in occupation of the Ruler which has been declared by the Central Government to be the official residence, will not be included in the net wealth of the assessee. The contention of the assessee that once a building had been declared as the official residence and a portion of the said building was under his occupation, then the said building should come under the purview of section 5(1)(iii) even if the substantial portion of the same had been rented out by him to the tenant or for any other purpose, would make the expression 'in the occupation of a Ruler' redundant and those words in the provision would not have its play.
  - The buildings which were let out were not in the occupation of the assessee within the meaning of section 5(1)(iii) and, hence, the value thereof was includible in the net wealth of the assessee.
Rule of literal construction -Technical words to be understood in technical sense

- **Technical words to be understood in technical sense**

“It is often said that a word, apart from having a natural, ordinary or popular meaning (including other synonyms i.e. literal, grammatical and primary), may have a secondary meaning which is less common e.g. technical or scientific meaning.” (GP Singh)

Technical words, where we find them, must have their technical sense ascribed to them and not their popular sense.

- Special Commissioners of Income-tax v Pemsel 3 TC 53, 94 (HL)
- CIT v Gaekwar Foam & Rubber Co Ltd. (1959) 35 ITR 662,667 (Bom)
- Mohamed Noorullah v. CIT (1961) 42 ITR 115 (SC)
- CGT v. Getti Chettiar (NS) (1971) 82 ITR 599 (SC)

If the Legislature has used an expression which has acquired a technical meaning and such expression is used ordinarily in the context of a particular branch of law, it must be assumed that because of its constant use the Legislature must have deemed to have used such expression in a particular sense as is understood when used in a similar context.
In the case of Holt and Company (supra) the question for consideration was as to what was the meaning of a “Beer House”? The defendant Collyer was a lessee of a shop and he had entered into a covenant to the benefit of which the plaintiffs were entitled, not to use the same as “a public house, tavern, or beerhouse.” The defendant admitted to have opened the shop as a grocer’s shop and had taken out a licence to sell beer there by retail, not to be drunk on the premises. The question which came up at the trial was as to whether such a use of the shop was a breach of the covenant. Fry, J. stated that the principle upon which words are to be construed in instruments is very plain - where there is a popular and common word used in an instrument, that word must be construed \textit{prima facie} in its popular and common sense. If it is a word of a technical or legal character, it must be construed according to its technical or legal meaning. If it was a word which was of a technical and scientific character, then it must be construed according to that which is its primary meaning, namely, its technical and scientific meaning. Fry, J. further stated that no evidence can be allowed to be given as regards the secondary meaning of the word unless the Court was satisfied from the instrument itself or from the circumstances of the case that word should be construed not in its popular or primary signification but according to its secondary intention. While considering the meaning of the word ‘beerhouse’, he observed that a beerhouse was a place where beer was sold to be consumed on the premises whereas the beershop was a place where the beer was sold to be consumed off the premises. The word “beerhouse” had obtained a technical meaning and, therefore, must be so taken. In ordinary usage and ordinary parlance where beer was sold at a grocer’s shop either by wholesale or retail, it could not be called a beerhouse, when the principal business carried on in that shop was that of a grocer and the business of the trade of beer was merely ancillary to that business of a grocer.
Rule of literal construction - Technical words to be understood in technical sense

i. Special meaning in trade, business, etc.

If there is no meaning attributed to the expressions used in the particular enacted statute, then these should be judged and analysed on the basis of how these expressions are used in the trade or industry or in the market or, in other words, how these are dealt with by the people who deal in them, provided that there is a market for these types of goods. This principle is well-known as classification on the basis of trade parlance. This is an accepted form of construction. It is a well-known principle that if the definition of a particular expression is not given, it must be understood in its popular or common sense, *viz.*, in the sense how that expression is used everyday by those who use or deal with those goods.
Rule of literal construction - Special meaning in trade, business, etc.

Expressions which are not defined in the statute should be construed from the commercial point of view having regard to well-known concepts in trade and commerce.

- CIT v. Stanton & Stavely (Overseas) Ltd. (1984) 146 ITR 405 (Cal.)
- Gao Electrodes Ltd (R) v. CIT (1988) 173 ITR 351 (Ker)
- Shanker Construction Co v. CIT (1991) 189 ITR 463 (Kar)
- Akash Films v. CIT (1991) 190 ITR 32 (Kar)
- Santosh Enterprises v. CIT (1993) 200 ITR 353 (Kar)
Rule of literal construction - Special meaning in trade, business, etc.

Challapali Sugar Ltd. v. CIT [1975] 98 ITR 167 (SC)

Facts:
The assessee-company had borrowed considerable sums of money for the installation of machinery and plant. During the period prior to the commencement of its business the assessee paid certain amount as interest and claimed that while calculating depreciation admissible to the assessee, the interest paid should be treated as part of the cost of the machinery and plant to the assessee.

On reference, the High Court held that where a plant is constructed out of borrowed money, the interest on the loan up to the date of the commencement of the business could not be capitalised or treated as part of the actual cost of the plant.

Held:
As the expression "actual cost" has not been defined, it should, be construed in the sense which no commercial man would misunderstand. For this purpose it would be necessary to ascertain the connotation of the expression in accordance with the normal rules of accountancy prevailing in commerce and industry. The word "cost", as observed on page 424 of Simon's Taxes, 3rd Edn. Vol. B, is not synonymous with "price". Other items of expenditure, such for instance as freight or warehouse charges or insurance, must in certain cases be added to the price. The accepted accountancy rule for determining the cost of fixed assets is to include all expenditure necessary to bring such assets into existence and to put them in working condition. In case money is borrowed by a newly started company which is in the process of constructing the erecting its plant, the interest incurred before the commencement of production on such borrowed money can be capitalised and added to the cost of the fixed assets which have been created as a result of such expenditure. This rule of accountancy should, be adopted for determining the actual cost of the assets in the absence of any statutory definition or other indication to the contrary....
ii. **Legal sense of word**

- It is well established that the words which express a legal concept must have attributed to them their legal meaning.

- On the same principle when words acquire technical meaning because of their consistent use by the Legislature in a particular sense or because of their authoritative construction by superior courts, they are understood in that sense when used in a similar context in subsequent legislation. This is also sometimes referred to as the legal sense of such words. When a word has acquired a special connotation in law, dictionaries cease to be helpful in interpreting that word. The context, may, however, show that the Legislature intended to use the word in its literal sense and not in its legal sense.
Rule of literal construction- Legal sense of word
Thomas Cook (India) Ltd. v. JCIT [2006] 103 ITD 119
(Mumbai Trib)

▶ **Provisions:**

S. 80HHC. (1) Where an assessee, being an Indian company or a person (other than a company) resident in India, is engaged in the business of export out of India of any goods or merchandise to which this section applies, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction to the extent of profits, referred to in sub-section (1B), derived by the assessee from the export of such goods or merchandise.

▶ **Facts:**

▶ The assessee-company engaged in the business of tour operator as well as dealing in foreign currency, bought/sold foreign currency and whenever excess foreign currency was accumulated, it dispatched the same physically to credit Swiss (Bank)

▶ The assessee could use such money for meeting its requirement in foreign countries and when ever, it had needed the fund, it had remitted the same to India from such NOSTRO account.

▶ The assessee claimed deduction under section 80HHC *qua* the convertible foreign exchange brought to India out of its foreign account.

▶ The Assessing Officer, however, rejected the said claim, *inter alia*, on the ground that foreign exchange is a mode of payment and could not be considered as goods for claiming deduction under section 80HHC.
Rule of literal construction- Legal sense of word
Thomas Cook (India) Ltd. v. JCIT [2006] 103 ITD 119 (Mumbai Trib)

- **Issue involved:**
  Whether for the purpose of claiming deduction u/s 80HHC, ‘currency’ can be classified as ‘goods’

- **Principle applied:**
  - Where a word or an expression has been defined in a particular enactment, it is presumed that the Legislature was aware of such legal meaning of that word or expression while enacting a subsequent legislation and, therefore, if such word or an expression is not defined in the subsequent legislation, then the meaning of such word or expression has to be understood in that legal sense in which it was used in the earlier enactment.
  
  - In case of ambiguity if two interpretations are possible, then the Court should accept the one which serves the purpose or object of the Act than the construction which defeats or frustrates such purpose or object.
Rule of literal construction- Legal sense of word

Thomas Cook (India) Ltd. v. JCIT [2006] 103 ITD 119 (Mumbai Trib)

Held:
(Based on 1st principle)

There is no dispute that in order to avail deduction under section 8HHC, the assessee is required to prove two conditions namely (i) that the assessee had exported goods or merchandise to a country outside India and (ii) the sale proceeds have been bought into India in convertible foreign exchange. In the instant case, the stand of the assessee was that the word ‘goods’ should be understood in the widest possible sense and, therefore, the foreign currency exported by him through the custom clearance should be considered as ‘goods’ within the scope of section 80HHC, while the stand of the department was that foreign exchange is a mode of payment and could not be considered as goods for claiming deduction under section 80HHC. The word ‘goods’ has not been defined in the Act but it has been legally defined in the Sale of Goods Act.

A perusal of the definition of the word ‘goods’ as given under section 2(7) of the said Act clearly shows that money has been excluded from the meaning of the word ‘goods’. The word ‘money’ has not been defined either in the Sale of Goods Act, or in the Act. No other enactment had been brought to notice defining the word ‘money’. Therefore, the general meaning of such word has to be taken into consideration.

A perusal of the definitions of the word ‘money’ as given in various dictionaries would clearly reveal that money is considered mainly as a medium of exchange for making the payment. It may also be noted that in the said definitions, currency has always been considered as ‘money’. Therefore, the currency, whether local or foreign exchange, would always amount to money. Similarly, the word ‘currency’ has always been considered as money in the commercial world as well as in the popular sense. Therefore, foreign currency does amount to money and, therefore, cannot be considered as ‘goods’ in the legal sense as defined in the Sale of Goods Act.

The word ‘goods’ in section 80HHC would not include foreign currency.
Rule of literal construction - Legal sense of word
Thomas Cook (India) Ltd. v. JCIT [2006] 103 ITD 119 (Mumbai Trib)

Based on 2nd principle

- Section 80HHC is a code by itself and was enacted with the sole purpose to promote the export of goods produced in India and to augment the foreign exchange reserve in order to improve the Indian economy. The ultimate purpose was to increase the foreign exchange reserves so that the Government may discharge its foreign debts in foreign currency. If the contention of the assessee that foreign exchange amounts to goods, is accepted, then it would frustrate and defeat the purpose or object of section 80HHC inasmuch as it would deplete the foreign exchange reserve by sending the same to outside countries. The object of section 80HHC would be achieved only when the word ‘goods’ is held to exclude money including foreign exchange. Thus, the interpretation, which serves the purpose and object of the enactment would be given preference. Even on that ground, ‘foreign exchange’ cannot be considered as ‘goods’ for the purpose of section 80HHC.

- Since that condition was not satisfied, the assessee was not entitled to deduction under section 80HHC.
Rule of literal construction- Legal sense of word

- Copyright has to be read in the context of Copyright Act – DDIT v. Reliance Industries Ltd. [2016] 69 taxmann.com 311 (Mumbai - Trib.)
Regard to Subject & Object- General

**Rule in Heydon’s case/Purposive Construction/Mischief Rule**

“When the material words are capable of bearing two or more constructions the most firmly established rule for construction of such words of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) is the rule laid down in Heydon’s case which has now attained the status of a ‘classic’. The rule which is also known as ‘purposive construction’ or ‘mischief rule’, enables consideration of four matters in construing an Act:

(i) What was the law before the making of the Act,
(ii) What was the mischief or defect for which the law did not provide,
(iii) What is the remedy that the Act has provided and
(iv) What is the reason of the remedy.

The rule then directs that the courts must adopt that construction which ‘shall suppress the mischief and advance the remedy’.”
Rule in Heydon’s case/Purposive Construction/Mischief
Rule
CIT v. Sodra Devi [1957] 32 ITR 615 (SC)

 Provision:
Section 16(3) of the Act provides:

"In computing the total income of any individual for the purpose of assessment, there shall be included—

(a) so much of the income of a wife or minor child of such individual as arises directly or indirectly—

(i) from the membership of the wife in a firm of which her husband is a partner;

(ii) from the admission of the minor to the benefits of the partnership in a firm of which such individual is a partner;

(iii) from assets transferred directly or indirectly to the wife by the husband otherwise than for adequate consideration or in connection with an agreement to live apart; or

(iv) from assets transferred directly or indirectly to the minor child, not being a married daughter, by such individual otherwise than for adequate consideration; and

(b) so much of the income of any person or association of persons as arises from assets transferred otherwise than for adequate consideration to the person or association by such individual for the benefit of his wife or a minor child or both".
Rule in Heydon’s case/Purposive Construction/Mischief Rule

CIT v. Sodra Devi [1957] 32 ITR 615 (SC)

- **Issue:**
  - Whether the word "individual" in section 16(3)(a)(ii) of the Act includes also a female and the income of the minor sons derived from a partnership to the benefits of which they have been admitted is liable to be included in the income of the mother who is a member of that partnership.

- **Facts:**
  - A partnership was entered into between the assessee and her three major sons. The three minor sons of the assessee were admitted to the benefits of the partnership. The revenue sought to include the income falling to the share of three minor sons to the total income of the assessee.
Rule in Heydon’s case/Purposive Construction/Mischief Rule

CIT v. Sodra Devi [1957] 32 ITR 615 (SC)

**Held:**

- The words used in sub-clauses (i) and (ii) are specific and refer only to ‘her husband’ and ‘the husband’ as ‘such individual’, the words used in sub-clauses (ii) and (iv) leave it indefinite as to which is meant by the words ‘such individual’ whether a male and/or a female of the species.

- If the words used in all these four sub-clauses were to be harmoniously read and the two cases which are mentioned in sub-clauses (i) and (iii) are not to be read differently from the cases mentioned in sub-clauses (ii) and (iv) the only way in which the words ‘such individual’ as used in sub-clauses (ii) and (iv) could be understood would be to read them as confined to a male of the species and not including the female.

- The very manner in which all the four sub-clauses have been grouped together in section 16(3)(a) of 1922 Act and the manner in which the expression ‘for the benefit of his wife, a minor child or both’ is used in section 16(3)(b) of 1922 Act renders the words ‘any individual’ or ‘such individual’ ambiguous.

- The evil which was sought to be remedied by Act IV of 1937 was the one resulting from the widespread practice of husbands entering into nominal partnerships with their wives and fathers admitting their minor children to the benefits of the partnerships of which they were members. This evil was sought to be remedied by the enactment of section 16(3) of 1922 Act. If this background of the enactment of section 16(3) of 1922 Act is borne in mind, there is no room for any doubt that howsoever that mischief was sought to be remedied by the amending Act, the only intention of the Legislature in doing so was to include the income derived by the wife or a minor child, in the computation of the total income of the male assessee, the husband or the father, as the case may be, for the purpose of assessment. If that was the position, howsoever wide the words ‘any individual’ or ‘such individual’ as used in section 16(3) and section 16(3)(a) of 1922 Act may appear to be so as to include within their connotation the male as well as the female of the species taken by themselves, these words in the context could only have been meant as restricted to the male and not including the female of the species.
In accordance with judgment of majority, it was to be held that on a true construction of the provisions of section 16(3)(a) of the Act, the income of the three minor sons of the assessee was not liable to be included in her total income.

**Principle applied:**

"It is a sound rule of construction of a statute firmly established in England as far back as 1584 when Heydon's case (supra) was decided that

'............for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:—

1st. what was the common law before the making of the Act,

2nd. what was the mischief and defect for which the common law did not provide,

3rd. what remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth, and

4th. the true reason of the remedy; and then the office of all judges is always to make such construction as shall supress the mischief, and advance the remedy, and to supress subtle inventions and evasions for continuance of the mischief, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act."
Rule in Heydon’s case/Purposive Construction/Mischief Rule
DCIT v. Geoservices Eastern Inc (Mum Trib) [1995] 55 ITD 227 (BOM.)

 Provision:

S. "44BB. (1) Notwithstanding anything to the contrary contained sections 28 to 41 and sections 43 and 43A, in the case of an assessee being a non-resident, engaged in the business of providing services or facilities in connection with, or supplying plant and machinery on hire used, or to be used in the prospecting for, or extraction or production of, mineral oils, a sum equal to ten per cent of the aggregate of the amounts specified in sub-section (2) shall be deemed to be the profits and gains of such business chargeable to tax under the head ‘Profits and gains of business or profession’.

(2) The amounts referred to in sub-section (1) shall be the following, namely:—

(a) the amount paid or payable (whether in or out of India) to the assessee or to any person on his behalf on account of the provision of services and facilities in connection with, or supply of plant and machinery on production of, mineral oils in India; and

(b) the amount received or deemed to be received in India by or on behalf of the assessee on account of the provision of services and facilities in connection with, or supply of plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils outside India."
Rule in Heydon’s case/Purposive Construction/Mischief Rule
DCIT v. Geoservices Eastern Inc (Mum Trib) [1995] 55 ITD 227 (BOM.)

▶ **Issue:**
Whether within sweep of section 44BB it is not open to assessee to follow cash system of accounting and as such, income of assessee, had to be assessed on accrual basis only

▶ **Facts:**
The assessee was a non-resident company engaged in prospecting for, or extraction of, or production of, mineral oils. The assessee offered income for taxation computed on the basis of cash system of accounting but in the audit report the amount was reflected on the accrual basis. The Assessing Officer did not accept the system followed by the assessee. He held that as per the scheme of section 44BB the income had to be assessed on accrual basis only. He, therefore, brought to tax the amount of gross receipt as reflected in the audit report.

▶ **Held:**
Testing the section on the touchstone of Heydon’s Rule, we find that prior to the insertion of section 44BB good many complications were involved in the computation of the taxable income of a non-resident tax-payer engaged in the business of providing services and facilities in connection with or supply of plant and machinery on hire, used or to be used in the exploration and exploitation of mineral oils.

As a measure of simplification section 44BB was inserted in the Income-tax Act, providing for determination of income of such tax-payer at 10 per cent of the aggregate of certain amounts.
Section 44BB begins with a non obstante clause. Sub-section (2)(a) of section 44BB deals with the amount paid or payable to the assessee. The language of the section indicates that receipts are to be taxed on the accrual basis. This section was inserted by the Finance Act, 1987. It is a piece of retroactive legislation and effect was given from 1-4-1983. Therefore, during the relevant assessment year mandate of section is to be followed. As per the section, the sum equal to 10 per cent of the aggregate of the amounts specified in sub-section (2) shall be deemed to be profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession". Sub-section (2) deals with the amounts paid or payable whether in or out of India and also the amount received or deemed to be received in India. This, in our opinion, refers to the amount received on accrual basis.
Purposive Construction

- Statutes should be given what has become known as a purposive construction, that is to say that the courts should identify the ‘mischief’ which existed before passing of the statute and then if more than one construction is possible, favour that which will eliminate the mischief so identified.

- To interpret a statute in a reasonable manner the court must place itself in the chair of a reasonable legislator/author. So done the rules of purposive construction of the Act in such a manner as to see that the object of the Act is fulfilled.
Purposive Construction:
Sashikant Laxman Kale v. UOI [1990] 52 Taxman 352 (SC)

► Provision:
Sec. 10 in Chapter III deals with "incomes not included in total income".

"(10C) any payment received by an employee of a public sector company at the time of his voluntary retirement in accordance with any scheme which the Central Government may, having regard to the economic viability of such company and other relevant circumstances, approve in this behalf."

► Object of s. 10(10C):
There is a definite purpose for its enactment. One of the purposes is streamlining the public sector to cure it of one of its ailments of overstaffing which is realised from experience of almost four decades of its functioning. In view of the role attributed to the public sector in the sphere of national economy, improvement in the functioning thereof must be achieved in all possible ways. A measure adopted to cure it of one of its ailments is undoubtedly a forward step towards promoting the national economy. The provision is an incentive to the unwanted personnel to seek voluntary retirement thereby enabling the public sector to achieve the true object indicated.
Facts:
The petitioners challenged the constitutional validity of section 10(10C) on the contention that denial of exemption of VRS compensation received to an employee of a private sector company amounted to an invidious distinction between public sector employees and private sector employees in the matter of taxation and was arbitrary and unintelligible amounting to hostile discrimination.

Held:
“…keeping in view the true object of the impugned enactment, there is no doubt that employees of the private sector who are left out of the ambit of the impugned provision do not fall in the same class as employees of the public sector and the benefit or the fall-out of the provision being available only to the public sector employees cannot render the classification invalid or arbitrary.”
The Golden rule implies that the words of a statute will as far as possible be construed according to their ordinary, plain, and natural meaning but if a strict interpretation of a statute would lead to an absurd result then the meaning of the words should be so construed so as to lead to the avoidance of such absurdity.

If the conclusion reached by applying the literal rule is contrary to the intention of Parliament regard should be given to the object and purpose of the introduction of a particular provision in the Income-tax Act.

A further corollary to this rule is that in case there are multiple constructions to effect the Golden rule the one which favours the assessee should always be taken. This rule is also known as the Rule of Reasonable Construction.

However the application of this rule in the interpretation of taxing statutes is rather limited since the literal rule is more often applicable and it is oft remarked that equity and taxation are strangers.
**Golden Rule**

**Vidya Investment & Trading Co. v UOI**

[2014] 43 taxmann.com 1 (Karnataka)

- **Provision:**
  
  Section 10: Incomes not included in total income
  
  Section 10 (2A): - in the case of a person being a partner of a firm which is separately assessed as such, his share in the total income of the firm.
  
  Explanation:— For the purposes of this clause the share of a partner in the total income of a firm separately assessed as such shall, notwithstanding anything contained in any other law, be an amount which bears to the total income of the firm the same proportion as the amount of his share in the profits of the firm in accordance with the partnership deed bears to such profits.

- **Facts:**
  
  - Assessee partner derived profit from the firm on which exemption was claimed u/s 10(2A).
  - The profits of the firm included dividend which was exempt in the hands of firm u/s 10(34), LTCG on sale of equity oriented Mutual fund exempted u/s 10(36)
  - The AO contended that by virtue of Explanation to S.10(2A), the total income shall mean the taxable income of the firm and accordingly, the incomes which are exempt in the hands of firm would be taxed in the hands of the partners.

- **Issue:**
  
  Whether a partner of firm is entitled to claim exemption under section 10(2A) on share of profit of firm which includes exempted income on which tax has not been paid by the firm.
**Conclusion:**

The expression total income of a firm in the explanation would not mean taxable income but will be gross total receipts of the firm.

Object of sub-section (2A) of section 10 is to avoid double taxation vis-à-vis, the profits of the firm, which is distributed in the hands of the partners. **It does not mean** that income which is taxed in the hands of the firm is taxable in the hands of the partners and on the same principle, when the income is not taxed in the hands of the firm, it becomes taxable in the hands of the partner.

The Assessing Officer has given a literal interpretation to the explanation to sub-section (2A) of section 10, which is contrary to the object of section 10. Having regard to the principles of statutory interpretation, it is abundantly clear that a reasonable construction of a taxing statute ought to be preferred over a literal construction, if the latter defeats the manifest purpose and object of the statute. Such a reasonable construction of the explanation to sub-section (2A) of section 10 with respect to its placement in Chapter III, does not envisage taxation of the shares of profits of the firm at the hands of the partners.
Golden Rule
PCIT v. IDMC Ltd. [2017] 78 taxmann.com 285 (Gujarat)

► Provision:
S. 32(1)(iia) in the case of any new machinery or plant (other than ships and aircraft), which has been acquired and installed after the 31st day of March, 2005, by an assessee engaged in the business of manufacture or production of any article or thing or in the business of generation or generation and distribution of power, a further sum equal to twenty per cent of the actual cost of such machinery or plant shall be allowed as deduction under clause (ii).

► Issue:
Is the assessee entitled to additional depreciation under Section 32(1)(iia) of the IT Act on the machinery purchased before 31.03.2005, but installed after 31.03.2005?
Facts:

The assessee purchased the plant and machinery on 12-2-2004. However, certain damaged parts of the machinery were replaced by the supplier at Germany on 13-12-2004 and, therefore, the said machinery could be installed on 15-4-2005. The assessee claimed additional depreciation under section 32(1)(iia) on the said plant and machinery.

According to the Assessing Officer, as plant and machinery on which the additional depreciation was claimed was not acquired and installed during the year under consideration, twin conditions of acquisition and installation had not been satisfied and, thus, the assessee was not entitled to depreciation at 20 per cent under section 32(1)(iia).
Held:

The purpose and object of section 32(1)(iia) seems to be to give a boost to the manufacturing sector by allowing the deduction of a further sum equal to 20 per cent (prior to amendment - 15 per cent) of the actual cost of such machinery or plant acquired and installed. Therefore, underlying object and purpose is to encourage the industries by permitting the assessee setting up the new undertaking/installation of new plant and machinery to claim the benefit of additional depreciation.

It is the case on behalf of the revenue that on literal interpretation of the provision of section 32(1)(iia), while framing the deduction as further depreciation under section 32(1)(iia), the assessee must have acquired and installed new plant and machinery on which the additional depreciation is claimed after 31-3-2005.

If the submission on behalf of the revenue is accepted (based on literal interpretation), it will lead to an absurd and unjust result and the purpose and object of granting the additional depreciation will be frustrated. If the contention on behalf of the revenue is accepted, in that case, the assessee shall never get the additional depreciation as provided under section 32(1)(iia). The purpose and object of granting additional depreciation under section 32(1)(iia) is to encourage the industries by permitting the assessee setting up the new undertaking/installation of new plant and machinery and to give a boost to the manufacturing sector by allowing additional depreciation deduction. The provisions of section 32(1)(iia) are required to be interpreted reasonably and purposively as the strict and literal reading of section 32(1)(iia) would lead to an absurd result denying the additional depreciation to the assessee though admittedly the assessee has installed new plant and machinery.
Golden Rule
PCIT v. IDMC Ltd. [2017] 78 taxmann.com 285 (Gujarat)

**Principles applied:**

- The Assessing Officer has given a literal interpretation to the explanation to sub-section (2A) of section 10, which is contrary to the object of the amendment made to section 10. However, having regard to the principles of statutory interpretation, it is abundantly clear that a reasonable construction of a taxing statute ought to be preferred over a literal construction, if the latter defeats the manifest purpose and object of the statute. Such a reasonable construction of the explanation to sub-section (2A) of section 10 with respect to its placement in Chapter III, does not envisage taxation of the shares of profits of the firm at the hands of the partners.

- Explanation cannot be given a literal interpretation, so as to defeat the object of the amendment made to the Act. The object of the amendment is to make it clear that the distribution of profits and gains of a firm in the hands of the individual partners shall not be considered to be income of the partners and therefore, not includable while computing the total income of the partner under the Act.
Regard to Consequences

- If the language used is capable of bearing more than one construction, in selecting the true meaning regard must be had to the consequences resulting from adopting the alternative constructions. A construction that results in hardship, serious inconvenience, injustice, absurdity or anomaly or which leads to inconsistency or uncertainty and friction in the system which the system purports to regulate has to be rejected and preference should be given to that construction which avoids such results.

- However, this rule has no application when the words are susceptible to only one meaning and no alternative construction is reasonably open.
Hardship, inconvenience, injustice, absurdity, anomaly to be avoided

In selecting out of different interpretations the court will adopt that which is just, reasonable and sensible rather than that which is non of those things as it may be presumed that the Legislature should have used the word in that interpretation which least offends our sense of justice.

If the grammatical construction leads to some absurdity or some repugnance or inconsistency with the rest of the instrument, it may be departed from so as to avoid that absurdity and inconsistency.

Similarly, a construction giving rise to anomalies should be avoided.

Where the language if a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence.
Hardship, inconvenience, injustice, absurdity, anomaly to be avoided
DCIT v. S. Venkat Reddy [2013] 32 taxmann.com 324 (Hyderabad - Trib.)

► Provision:

Sec 5OC of the Income Tax Act, 1961 which reads as under:

"Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer.

► Issue:

Whether, where transfer was completed in terms of section 2(47) by giving possession of property on date of sale agreement, but registration was delayed on bona fide reasons, stamp duty value on date of sale agreement and not on date of registration can be adopted for computing capital gains?

► Held:

If the transfer is completed in terms of section 2(47)(v) by giving the possession of the property in terms of the sale agreement and SRO rate as on this date was considered in the sale agreement and if the registration was delayed on bona fide reasons which was beyond the control of the assessee and the sale deed executed is only a legal formality, then, stamp duty value on date of sale agreement was required to be adopted for computing capital gains.
Hardship, inconvenience, injustice, absurdity, anomaly to be avoided

CIT v. H.S. Shivarudrappa (1993) 200 ITR 1(Kar)

If it is a case of considering the respective hardships or inconveniences, of the Revenue and of the assessee, Court should lean in favour of the assessee and interpret the provision accordingly.

**Provision:**

S. 41 (2) Where any building, machinery, plant or furniture which is owned by the assessee and which was or has been used for the purposes of business or profession is sold, discarded, demolished or destroyed and the moneys payable in respect of such building, machinery, plant or furniture, as the case may be, together with the amount of scrap value, if any, exceed the written down value, so much of the excess as does not exceed the difference between the actual cost and the written down value shall be chargeable to income-tax as income of the business or profession of the previous year in which the moneys payable for the building, machinery, plant or furniture became due:
Facts:
The assessee, an individual, was owner of two buses, which were acquired by the Government of Karnataka in the year 1976. For the first bus, compensation of Rs. 1,15,574 was awarded. Out of that, Rs. 20,000 was paid on 12-3-1976 and the balance was payable in eight annual instalments of Rs. 11,410.90 each payable on the 30th of January of each calendar year commencing from 30-1-1978. For the second bus, compensation of Rs. 69,687 was awarded on 27-9-1980 and out of that Rs. 20,000 was paid on 7-3-1977. The balance was payable in eight equal instalments of Rs. 6,210 each payable on 30th of January of each calendar year commencing from 30-1-1978. The ITO computed the profits for the assessment year 1981-82 under section 41(2), in respect of the above two buses, considering the entire compensation awarded namely Rs. 1,15,574 and Rs. 69,687 respectively.

Issue:
The issue before the Court was to identify the previous year i.e. the year in which on sale of the asset, the moneys payable becomes due. In other words, the year in which sale consideration becomes due to be paid is to be considered as previous year.

Arguments by revenue:
- on determination of the compensation, the money became payable and due; the postponement of the payment under the instalments would not make any difference
- if the assessee's interpretation of section 41(2) is accepted, it would render the working of it impracticable, and the assessee is likely to escape the levy
Hardship, inconvenience, injustice, absurdity, anomaly to be avoided
CIT v. H.S. Shivarudrappa (1993) 200 ITR 1(Kar)

**Held:**

- Under section 41 (2) a fiction is created to rope in the excess amount received on sale for taxation as a profit chargeable to tax. It is chargeable to income-tax as income of the business of the previous year in which the moneys payable for the asset became due. Money payable for the asset is either the compensation determined in the case of compulsory acquisition or the price for the sale of the asset in the case of an ordinary sale.

- In the case of compulsory acquisition, compensation has to be determined and only then it becomes payable, subject to any statutory terms governing the acquisition. In the instant case, compensation had to be determined and it was accordingly determined. However, payment of compensation was postponed statutorily; it was to be paid in instalments. It could not be said in the instant case that on the determination of the compensation, same became 'due'.

- Money payable becomes due for payment on the date when it is to be paid; such a date is usually called 'due date'. Unless the money payable is due, its recovery cannot be enforced; creditor cannot demand for the payment, unless it is ‘due’.

- The impracticability or the difficulty in collecting the levy by itself is no ground to interpret the taxing provision differently from what it conveys. Where the moneys were to be paid in instalments the charge may not be attracted until the moneys, which had fallen due for payment exceed the written down value; the charge itself has to be spread over during the years in which the amounts representing the ‘excess’ referred to in s. 41(2) are received. If it is a case of considering the respective hardships or inconveniences, of the Revenue and of the assessee, Court should lean in favour of the assessee and interpret the provision accordingly.
Hardship, inconvenience, injustice, absurdity, anomaly to be avoided
S. Hidhayathullah Sahib vs. CIT (1986) 158 ITR 20 (Mad)

- **Provision:**
  Sec. 2(14)(iii)(a) is as follows:

  (iii) agricultural land in India, not being land situate- (a) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee), town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year;

- **Facts:**
  The assessee had sold his agricultural lands situated in a village within the limits of a municipality and claimed that the capital gains arising therefrom was exempt because the land could not be classified as 'capital asset' for the reason that the village (area) in which it was situated had a population of less than 10,000. The ITO, however, brought to tax the said capital gains on the ground that the land was situated in an area within the limits of a municipality whose population was more than 10,000.
Hardship, inconvenience, injustice, absurdity, anomaly to be avoided

S. Hidhayathullah Sahib vs. CIT (1986) 158 ITR 20 (Mad)

Issue:
- agricultural lands in Periakuppam village which had a population of less than 10,000 constitute a capital asset within the meaning of s. 2(14)
- population referred in s. 2(14)(iii)(a) refers to ‘municipality’ and not to ‘area’ comprised in it

Held:
- A close reading of section 2(14)(iii)(a) seems to suggest that it is the population of the municipality that has to be taken into account and not the population of any area within the municipality. The language used in sub-clause (iii) is somewhat misleading, and the expression ‘which has a population of not less than ten thousand’ appears to be intended to qualify only the ‘area’ and not the ‘municipality’.
- However, it is not possible to go only by the language used in the provision without having regard to the object and intendment of the provision.
- If the Legislature meant to fix a minimum limit of population for any area within a municipality or cantonment board, it would have specified a particular area such as a village, ward, street, etc. Since the Legislature has left the area in a municipality undefined, it could not have prescribed a limit of population for such an unspecified or indefinite area within a municipality. It may be that a municipality may comprise of many villages, wards and streets and each assessee may claim that the limit of population is provided with reference to a village, ward or street. In such an event, the section will have no uniform application and will lead to many anomalies.
- It is necessary to avoid such an interpretation which will lead to anomalies and make the section invalid….. capital gains arising out of the sale of the land could not be exempted in the instant case.
Inconsistency and repugnancy to be avoided

A statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute. Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between a section and other parts of the statute. It is the duty of the courts to avoid “a head on clash” between two sections of the same Act and whenever it is possible to do so to construe provisions which appear to conflict so that they harmonise.

The provisions of one section of a statute cannot be used to defeat those of another unless it is impossible to effect reconciliation between them.
 provision:

S. 35B(1)

(a) Where an assessee, being a domestic company or a person (other than a company) who is resident in India, has incurred after the 29th day of February, 1968 whether directly or in association with any other person, any expenditure (not being in the nature of capital expenditure or personal expenses of the assessee) referred to in clause (b), he shall, subject to the provisions of this section, be allowed a deduction of a sum equal to one and one-third times the amount of such expenditure incurred during the previous year

(b) The expenditure referred to in clause (a) is that incurred wholly and exclusively on—

(iii) distribution, supply or provision outside India of such goods, services or facilities, not being expenditure incurred in India in connection herewith or expenditure (wherever incurred) on the carriage of such goods to their destination outside India or on the insurance of such goods while in transit;

(viii) performance of services outside India in connection with, or incidental to, the execution of any contract for the supply outside of such goods, services or facilities;
Inconsistency and repugnancy to be avoided

- Facts:
  - The assessee derived income from export and made a claim for weighted deduction under section 35B in respect of sea freight for transportation of the goods from India to their destination.
  - The assessee submitted that once the expenditure was incidental to the execution of the contract for supply of goods, notwithstanding exclusion of clause (iii), the claim would be covered by clause (viii).

- Issue:
  Whether deduction of expenditure not allowed under specific section 35B(1)(b)(iii) can be allowed under general section 35(1)(b)(viii)?
Revenue's Contention:

Assessing Officer and the appellate authority declined the claim for the deduction on the ground that perusal of sub-clause (iii) shows that any expenditure incurred on carriage of goods to other destination outside India has clearly been excluded from the purview of weighted deduction under section 35B. Expenditure on sea freight clearly falls under this category.

Sub-clause (viii) entitles an assessee to claim weighted deduction on expenses incurred on performance of service outside India in connection with or incidental to execution of any contract for supply outside India of such goods, services or facilities. This appears to be in respect of residuary expenses which are not dealt with in earlier clauses. When sea freight has been specifically made ineligible for weighted deduction under sub-clause (iii) above, it cannot be allowed under the general provisions of sub-clause (viii). According to us, a general provision cannot override a specific provision.
Inconsistency and repugnancy to be avoided

Principles applied:
The following principles of interpretation are well-settled:

(i) A statute has to be read as a whole and effort should be to give full effect to all the provisions;
(ii) Interpretation should not render any provision redundant or nugatory;
(iii) The provisions should be read harmoniously so as to give effect to all the provisions;
(iv) If some provision specifically deals with a subject-matter, the general provision or a residual provision cannot be invoked for that subject.

The provisions of one section of a statute cannot be used to defeat those of another 'unless it is impossible to effect reconciliation between them'. The same rule applies in regard to sub-sections of a section. In the words of Gajendragadkar J.: 'The sub-sections must be read as parts of an integral whole and as being interdependent; an attempt should be made in construing them to reconcile them if it is reasonably possible to do so, and to avoid repugnancy.'
Held:

Applying the principle of inconsistency and repugnancy, permitting the expenditure under clause (viii) would render exclusion thereof under clause (iii) nugatory. Such an interpretation cannot be accepted.

We are, thus, unable to accept the interpretation that the assessee will be entitled to deduction under clause (viii) in respect of the claim specifically disallowed under clause (iii) of section 35B(1) of the Act.
The rule of construction is well settled that when there are in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This is what is known as the rule of harmonious construction.

The expression used in a statute should ordinarily be understood in the sense in which it is best harmonious with the object of the statute and which effectuates the object of the legislature.

Sarkar (BB) v CIT (1981) 132 ITR 150 (Cal.)
CIT v Superintending Engineer, Upper Sileru (1985) 152 ITR 753 (AP)
CIT v Associated Finance Co Ltd. (1992) 195 ITR 742 (Cal.)
Provisions:

Section 22 provides as under:

"Income from house property. — The annual value of property consisting of any buildings or lands appurtenant thereto of which the assessee is the owner, other than such portions of such property as he may occupy for the purposes of any business or profession carried on by him the profits of which are chargeable to income-tax, shall be chargeable to income-tax under the head 'Income from house property'."

The relevant portion of Sec 23 states:

"the annual value as determined under this sub-section shall, —

....

so, however, that the income in respect of any residential unit referred to in clause (a) or clause (b) is in no case a loss"

Section 24

“(1) Income chargeable under the head "Income from the house property" shall, subject to the provisions of sub-section (2), be computed after making the following deductions, namely:

....

(vi) where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital?"
Section 71

“(1) Where in respect of any assessment year the net result of the computation under any head of income other than "Capital gains" is a loss and the assessee has no income under the head "Capital gains", he shall, subject to the provisions of this Chapter, be entitled to have the amount of such loss set off against his income, if any, assessable for that assessment year under any other head.”

Facts:
The assessee paid Rs. 13,211, Rs. 22,159 and Rs. 18,018 by way of interest on loan taken for purchase/construction of property during the assessment years 1976-77, 1977-78 and 1978-79 in accordance with S.24 and claimed a loss under the head income from house property. It thereafter claimed that this loss had to be set off against the income derived from business in respect of the three assessment years which was disallowed by the AO.

Issue:
Was the assessee entitled to set off the loss relating to house property against the income under the other heads in respect of the three assessment years?
Held:

The revenue contended that under section 23, it has been specifically provided that there shall be 'in no case a loss', and that being so, the assessee was not entitled to claim any set off. It was not possible to accept this contention. It is undoubtedly true that if section 23 is read in isolation, it appears that the Parliament had contemplated that while determining the annual value of the property, the question of loss would not arise. However, the stipulation in section 24 regarding deduction of interest paid on the capital for acquiring the house property cannot be ignored. Still further, section 71 clearly postulates the setting off of loss against income. If the loss can be set off against the income on account of capital gains as envisaged under the provisions, there seems to be no rationale for denying a similar relief in respect of the income from other sources.

Section 24 clearly contemplates the deduction of interest from the income. Still further, section 71 postulates the setting off of this amount from the other income.

The provisions of a statute have to be harmoniously construed. This rule is equally applicable to a taxing statute. In fact, a liability to pay can be foisted on the assessee only when it is clearly made out from the express provisions of the Act. Not otherwise.
When reconciliation not possible; Avoiding uncertainty and friction in the system which the Statute purports to regulate

In case of conflict between two sections of the same Act a more logical approach is reconcile the two and if not possible, determine which is the leading provision, and which is the subordinate provision and which must give way to other.

CIT v. Roadmaster Industries [2009] 315 ITR 66 (Punjab & Haryana) (Slide No. 82 S.35B(1)(iii) & (vii) i.e. freight expenses in connection with carriage of goods to destination outside India)
Strict Construction – Taxing/Fiscal Statute

Introduction

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 to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.

- V P Theatre v State of Punjab (1990) 185 ITR 429 (P&H)
- CIT v. Vishwanath (1993) 201 ITR 920 (All)
- Lakshmi Bai (HH) v CWT (1994) 206 ITR 688 (SC)

In construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law. If the revenue satisfies the court that the case falls strictly within the provisions of the law, the subject can be taxed. If, on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the Legislature and by considering what was the substance of the matter.
Strict Construction

Sampat Iyenger

If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be; on the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible in any statute, which is called an equitable construction, certainly, such a construction is not admissible in taxing statute where you can simply adhere to the words of the statute.
Provision:

Sec. 41(2) insofar as it is relevant is in the following terms:

"41(2) Where any building, machinery, plant or furniture which is owned by the assessee and which was or has been used for the purposes of business or profession is sold, discarded, demolished or destroyed and the moneys payable in respect of such building, machinery, plant or furniture, as the case may be, together with the amount of scrap value, if any, exceed the written down value, so much of the excess as does not exceed the difference between the actual cost and the written down value shall be chargeable to income-tax as income of the business or profession of the previous year in which the moneys payable for the building, machinery, plant or furniture became due:

The expression "moneys payable" found in the sub-section has been defined to have the same meaning as in sub-s. (1A) of s. 32 [vide Explan. 2 to s. 41(2A)]. The Explan. to s. 32(1A) defines "moneys payable" in the following terms:

(i) "moneys payable", in respect of any structure or work, includes:

(a) any insurance or compensation moneys payable in respect thereof;

(b) where the structure or work is sold, the price for which it is sold:.."

Issue:

There was any profit assessable under section 41(2) of the Income-tax Act, 1961 by the Insurance company exercising its option under the policy to replace the damaged aircraft with an aircraft of same make and type.
Strict construction
CIT vs. Kasturi & Sons Ltd. (1999) 237 ITR 0024 (SC)

Facts:
- The assessee-company insured its aircraft and as per the terms of the insurance policy, he would get replacement of the aircraft in the event of loss or damage in an accident.
- On accident of aircraft, the insurer gave aircraft to company.
- The revenue held that difference between original cost and WDV as profits taxable in hands of the assessee u/s 41(2).
- The term ‘moneys payable’ as used in sections 32(1) and 41(2) included any amount received from the insurance company in any form.
- However, High Court deleted the addition made.

Held:
- The principle that a taxing statute should be strictly construed is well settled.
- It is obvious that the Legislature had deliberately used the word ‘moneys’ in the provisions of sections 41(2) and 32(1A). Wherever the Legislature intended to refer to payment in kind other than cash or money, it has taken care to provide specifically therefor. For example in section 41(1) itself, the Legislature had used the expression ‘whether in cash or in any other manner whatsoever.
- When the Legislature has instead of using any word such as ‘benefit’ used only the term ‘money’, it can refer only to money as under-stood in the ordinary common parlance.
- Hence, the word ‘money’ used in section 41(2) has to be interpreted only as actual money or cash and not as any other thing or benefit which could be evaluated in terms of money.
Strict Construction:
Philip John Plasket Thomas v. CIT [1963] 49 ITR 97 (SC)

Provision:
16. Exemptions and exclusions in determining the total income.

(3) In computing the total income of any individual for the purpose of assessment, there shall be included—

(a) so much of the income of a wife or minor child of such individual as arises directly or indirectly—

(iii) from assets transferred directly or indirectly to the wife by the husband otherwise than for adequate consideration or in connection with an agreement to live apart; or

Issue:
The question was as to construction of section 16(3)(a)(iii) of the Income-tax Act, 1922 which permits the inclusion in computing the total income of the husband, so much of the income of a wife as arises from assets transferred directly or indirectly to the wife by the husband otherwise than for adequate consideration.

Held:
It was held that for the application of the above provision the relation of husband and wife must exist at the time when income accrues to the wife and also at the time when the transfer of assets is made. Income accruing to a wife from assets transferred to her prior to the marriage could not, therefore, be taken into account for computing the total income of the husband even in respect of any period after the marriage. It was observed by S.K.Das, J. that the provision in question "creates an artificial income and must be strictly construed"
Strict Construction:

Words not to be stretched against the tax payer.

- The courts are not justified in straining the language of a particular provision in order to hold a subject liable to tax
  - Kothari (Madras) Ltd v ITO (1989) 177 ITR 538 (Mad)
  - CIT v Straw Board Mfg Co Ltd (1975) 98 ITR 78 (Punj)
  - Broach Co-op Bank Ltd v CIT (1949) 17 ITR 489, 491 (Bom)
  - Thakkar (JC) v CIT (1955) 27 ITR 658 (Bom)
  - CIT v Bosotto Bros Ltd. (1940) 8 ITR 41, 48 (Mad)
  - Kothari (HC) v CIT (1951) 20 ITR 579 (Mad)
  - CIT v. Ellis C Reid (1930) 5 ITC 100 (Bom)
  - Re Bijay Singh Dudhuria (1930) 4 ITC 151 (Cal)
Strict Construction - Words not to be stretched against the tax payer.
Vidharbha Irrigation Development Corporation v. ACIT [2005] 278 ITR 521 (Bom.)

Provision:
S. 10 Income not included in total income.

(20A) any income of an authority constituted in India by or under any law enacted either for the purpose of
dealing with and satisfying the need for housing accommodation or for the purpose of planning,
development or improvement of cities, towns and villages, or for both

Facts:

Vidarbha Irrigation Development Corporation is a "development authority" within the meaning of section
10(20A) of the Income-tax Act, 1961. The Corporation is established for the purpose of planning, development
or improvement of cities, towns and villages and the moment such an authority is constituted, its income is
exempted under section 10(20A) of the Income-tax Act. The assessee-corporation is established and
incorporated for promotion and operation of some irrigation projects in Vidarbha region.

The assessee-corporation is established to perform sovereign functions of the State Government, which the
State Government was performing before the appointed date through its irrigation department.

Issue:
Whether assessee was entitled to exemption u/s 10(20A)
Assesse's Contention:
The requirement under section 10(20A) of the Income-tax Act is that the assessee-corporation must be established with the object of planning, development or improvement of cities, towns and villages and once it is proved that the activities which the corporation is required to carry out and sovereign functions, which it discharges result in development or improvement of cities, towns and villages, the provisions of the said section are attracted and, therefore, the corporation is not liable to pay tax on the income it earns.

Revenue's Contention:

In order to get exemption provided under section 10(20A) of the Income-tax Act, it must be an authority, which is constituted by or under any law and the law must be for the purpose of either satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages. Admittedly, the Vidarbha Irrigation Development Corporation Act is not enacted for the purpose of dealing with and satisfying the need for housing accommodation. Further, argument of the assessee that it is carrying on development and improvement of towns and villages through irrigation and water supply is erroneous. Merely supplying of certain commodities does not amount to "development or improvement".

The Tribunal had not considered the provisions of the VIDC Act according to which the corporation is established with the object of carrying out planning and development, which ultimately has resulted in improvement of cities, towns and villages and merely looking at the preamble to VIDC Act, disallowed the exemption to assessee u/s 10(20A)
Strict Construction - Words not to be stretched against the tax payer.
Vidharbha Irrigation Development Corporation v. ACIT [2005] 278 ITR 521 (Bom.)

Held/Conclusion:

The Appellate Tribunal gave undue weightage to the preamble of the VIDC Act while analysing the object and purpose of the assessee-corporation and did not consider the provisions of VIDC Act.

The taxing statute is to be construed strictly. There is no room for any intendment. There is no equity and presumption about tax. Nothing is to be read in and nothing is to be implied. One can only look fairly at the language used in the statute. In other words, while construing fiscal statute, regard must be had to the strict letter of law and if the court is satisfied that the case falls strictly within the ambit of the relevant provisions of the taxing statute, tax liability under such provisions must be imposed. It is, therefore, evident that while interpreting tax statute, the function of the court of law is not to give words in the statute a strained and unnatural meaning to cover and extend its applicability to the areas not intended to be covered under the said statute. Similarly, it is well settled that the taxing authorities cannot ignore the legal character of the transactions and are required to impose tax on the basis of substance of the matter.

It is no doubt true that the preamble of the statute though gives the purpose and object of the statute, however, it will be impermissible to ignore the substantive provisions of the statute and rely only on the preamble for deriving the purpose and object for which the statute is enacted, particularly when the language of the provisions of the statute is clear, unambiguous and capable of conveying the meaning intended to be given to such provisions by the Legislature.

As per the provisions of VIDC Act, the corporation is empowered to make expenditure on the objects for which it is constituted and accordingly, the corporation is established for the purpose of planning, development or improvement of cities, towns and villages.

It is, therefore, evident that if the authority is constituted under enactment, either for satisfying the need for housing accommodation or for planning, development or improvement of cities, towns and villages or for both, income of such authority is exempted from tax under section 10(20A) of the Income-tax Act.
Strict Construction

- **Ambiguous words to be construed in favour of taxpayer/accused**
  - If a section in a taxing statute is of doubtful and ambiguous meaning it must be resolved in favour of the subject.
  - If two views are possible, the view which is favourable to the assessee must be accepted most particularly in case of penalty provisions.
Strict construction - Ambiguous words to be construed in favour of taxpayer/accused

Birla Cement Works v. CBDT [2001] 115 Taxman 359 (SC)

** Provision: **

194C. Payments to contractors and sub-contractors.—(1) Any person responsible for paying any sum to any resident (hereinafter in this section referred to as the contractor) for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and……

Explanation III.—For the purposes of this section, the expression 'work' shall also include:

(c) carriage of goods and passengers by any mode of transport other than by railways

** Issue:**

Whether the Explanation III to Sec 194C amended by the Finance Act, 1995 was only clarificatory and hence retrospective or it made applicable the provisions of section 194C to the types of contracts in question for the first time from the date of insertion of the Explanation.
Strict construction - Ambiguous words to be construed in favour of taxpayer/accused

Birla Cement Works v. CBDT [2001] 115 Taxman 359 (SC)

- **Held:**
  - Contrary views have been taken by High Courts
  - Two interpretations were reasonably possible on the question whether the contract for carrying of goods would come or not within the ambit of the expression 'carrying out any work'. One of the two possible interpretations of a taxing statute, which favours the assessee and which has been acted upon and accepted by the revenue for a long period, should not be disturbed except for compelling reasons. Further, there were no compelling reasons to hold that Explanation III inserted in section 194C with effect from 1-7-1995 was clarificatory or retrospective in operation. Section 194C before insertion of Explanation III was not applicable to transport contracts, i.e., contracts for carriage of goods.
Strict Construction:

- **Hardship and equitable construction to be ignored**
  - It is well settled that in the field of taxation, hardship or equity has no role to play in determining eligibility to tax and it is for the legislature to determine the same.
  - In the case of Rajasthan Rajya Sahakari Spinning & Ginning Mills Federation Ltd v. DCIT, Jaipur (2014) 11 SCC 672 it was held that the benefit available to companies u/s 72A of the Act, of having the losses of an amalgamating company carried forward and set off against the profits of the amalgamated company cannot be applied to co-operative societies in the absence of specific provision to that effect. Accordingly, equitable construction shall be ignored.

- **Exception:**
  - Considerations of hardship, injustice or anomalies do not play any useful role in construing taxing statutes unless there be some real ambiguity.

  PCIT v. IDMC Ltd. [2017] 78 taxmann.com 285 (Gujarat) [Refer slide 69]
Strict Construction:

- **Evasion of Statutes**
  - It is not the function of the Court of law to give to words a strained and unnatural meaning to cover loopholes through which the evasive taxpayer may find escape or to tax transactions which, had the Legislature thought of them, would have been covered by appropriate words (GP Singh)
  - It may thus be taken as a maxim of tax law, which although not to be overstressed ought not to be forgotten that, the subject is not to be taxed unless the words of the taxing statute unambiguously impose the tax on him.
  - In construing provisions designed to prevent tax evasion, if the Legislature uses words of comprehensive import, the Courts cannot proceed on an assumption that the words were used in a restricted sense so as to defeat the avowed object of the Legislature.
  - In interpreting a provision to plug leakage and prevent tax evasion a construction which would defeat its purpose should be eschewed and a construction which preserves its workability and efficacy should be preferred.
Strict Construction – Evasion of Statutes
CIT v. L.N. Horkeri [1986] 162 ITR 513 (Kar.)

**Provision:**

s. 64. Income of individual to include income of spouse, minor child, etc.—(1) In computing the total income of any individual, there shall be included all such income as arises directly or indirectly—

(iii) to a minor child of such individual from the admission of the minor to the benefits of partnership in a firm."

**Facts:**

The assessee had two minor sons who were admitted to the benefits of partnership in a firm. The assessee had no separate income of his own. He, therefore, did not include in his own return the share income accruing to his minor sons. The ITO thought that it was illegal to exclude the minors' income. He assessed the share income of the two minors in the hands of the assessee as required under section 64(1)(iii). The AAC held that since there was no separate income of the assessee to be assessed, section 64(1)(iii) had no application to bring to tax the minors income in the hands of the assessee. The Tribunal agreed with the AAC's views, and observed that for the application of section 64(1)(iii) there should first be computation of total income of the assessee and then minor's income would fall for inclusion.
Held:

Clause (iii) of sub-section (1) of section 64 provides that in computing the total income of an individual there shall be included all such income as arises directly or indirectly to a minor child of such individual from the admission of the minor to the benefits of partnership in a firm. Under subsection (1) there shall be computation of 'the total income of any individual'. In other words, what is required to be done thereunder is to compute the total income of an individual and while computing it, the income of the minors arising from the benefits of partnership in a firm should be included. The income of the individual in the context does not necessarily mean the profits. It may mean also losses. To put it in mathematical terms, the total income of any individual may be 'plus income' or 'nil income' or 'minus income'.

The income in order to come within the purview of that definition may comprise 'profits and gains' representing both positive or negative profits or it may be 'nil profit'. It may not be, therefore, proper to state that if an individual has got nil income, the minor's income shall not be included in his total income. Such an interpretation would defeat the purpose of section 64(1). On the contrary, the aforesaid interpretation would not effectuate the intention of the Legislature.

If the interpretation put by the Tribunal was accepted, then it may be possible for an individual to so manage his affairs as to distribute his income to his minor child or wife and avoid tax. The Courts should avoid such interpretation as would defeat the intent and purpose of the legislation. Therefore, the Tribunal was not justified.
**Provision:**
S. 64. (1) In computing the total income of any individual, there shall be included all such income as arises directly or indirectly:

(iv)......to the spouse of such individual from assets transferred directly or indirectly to the spouse by such individual otherwise than for adequate consideration or in connection with an agreement to live apart."

**Facts:**
The contention on behalf of the assessee is that the High Court in answering the question failed to appreciate the true scope and purport of the law of gift relating to Muslims. According to the Islamic law in order to effect a gift by the husband to the wife all that is necessary is to make an oral declaration and no registered deed is necessary. The gift in these cases was made in consideration of love and affection that the husband had for his wife.

**Held:**
Section 64(1) was inserted to prevent evasion of tax. It must be construed in a way to achieve its object and not to frustrate it. The section is attracted where it is found that the assets have been transferred directly or indirectly to the wife by the husband. But if it is shown that the transfer was for adequate consideration or in connection with an agreement to live apart, this section will not be attracted. It is not the case of the assessee that the transfer was for adequate consideration. There was no finding to show that the transfer was in connection with an agreement to live apart. Therefore, the provisions of section 64 are clearly attracted in the facts of these cases. In that view of the matter, it is not necessary to go into any further question about the validity of the gift in accordance with the personal law of the donor.
Strict Construction

Penal Provision/Statutes

- A provision to impose a penalty does not necessarily convey that penalty must be imposed in all cases.
- A penalty provision has to be interpreted by applying the golden rule of literal construction and before a penalty can be levied the procedure laid down in the Act must be complied with.
- A penal provision enacted to meet tax evasion are subject to the rule of strict construction and it is for the revenue to prove that conditions laid down for imposition of penalty are satisfied.
- The penal provisions should always be construed strictly in favour of the tax payer. An interpretation which avoids penalty would be preferred.
  - CIT v Sunadaram Iyengar & Sons (P) Ltd (TV) (1975) 101 ITR 764 (SC)
  - ITO v Kaysons India (2000) 246 ITR 489 (P&H)
- Where two views are possible, the view in favour of the assessee should be adopted.
  - CIT v. Vegetable Products Ltd. 1973 88 ITR 192 (SC)
Strict Construction:

▶ **Common sense approach may be taken**
  
  ▶ Too hypertechnical or legalistic approach should be avoided unless required by express language of any section or compelling circumstances of any particular case so that the inference at the same time is benevolent and justice oriented.

S. 78 Carry forward and set off of losses in case of change in constitution of firm or on succession.—

(1) Where a change has occurred in the constitution of a firm, nothing in this Chapter shall entitle the firm to have carried forward and set off so much of the loss proportionate to the share of a retired or deceased partner computed in accordance with section 67 as exceeds his share of profits, if any, of the previous year in the firm, or entitle any partner to the benefit of any portion of the said loss which is not apportionable to him under section 67.

(2) Where any person carrying on any business or profession has been succeeded in such capacity by another person otherwise than by inheritance, nothing in this Chapter shall entitle any person other than the person incurring the loss to have it carried forward and set off against his income."
Strict Construction - Common sense approach may be taken

Smt. Saroj Aggarwal v. CIT [1985] 23 Taxman 76 (SC)

Facts:
Three brothers, P, H and G, members of a joint Hindu family, were carrying on business in partnership. P died leaving his widow, the assessee, who joined the partnership in which her late husband was a partner four days after his death. The assessee adopted a son S. S had been admitted to the benefits of partnership. It had become necessary for fresh deed of partnership to be executed. It altered the proportionate share of profits and loss which became necessary due to admission to the benefits of partnership of some minor partners. P, since deceased, while he was a partner had an unabsorbed loss of a certain amount from speculation suffered as a partner of the firm. For the relevant assessment year, the assessee was entitled to a share in the speculation profits made by the firm. The assessee contended that the speculation losses of the earlier years should be allowed to be set off against the speculation profits of the relevant assessment year. The ITO rejected the assessee's claim.

Issue:
The sole question involved in this appeal was whether the assessee become a partner and such succeeded by inheritance, i.e., did the wife get her right by inheritance or by entering into a fresh deed of partnership with the existing partners or other partners?
Conclusion:

Where it is possible to draw two inferences from the facts and where there is no evidence of any dishonest or improper motive on the part of the assessee, it would be just and equitable to draw such inference in such a manner that would lead to equity and justice. Too hypertechnical or legalistic approach should be avoided in looking at a provision which must be equitably interpreted and justly administered.

It is true that there must be succession by inheritance. But it is possible in a particular case without any express provision either in the deed or in writing to infer from the conduct of the parties that there was succession, and if such a view is possible in spite of the absence of express provision, such an inference could be and should be drawn. Courts should, whenever possible, unless prevented by the express language of any section or compelling circumstances of any particular case, make a benevolent and justice oriented inference. Facts must be viewed in the social milieu of a country. In the instant case the wife, the assessee, of the deceased partner P, could not get out of the obligation to share in the partnership and she had indeed the right to share in the partnership. Similarly the other partners did not have any right to deny her that right.

Thus, it was a case of succession by inheritance and the assessee was entitled to the set off of speculation losses brought forward from earlier years against the speculation profits of the relevant assessment year.

Where any person carrying on any business or profession has been succeeded in such capacity by another person otherwise than by inheritance, nothing in this Chapter shall entitle any person other than the person incurring the loss to have it carried forward and set off against his income.”
Strict Construction:

- **Application of language to developments in science and technology to be permitted**
  - Creative interpretation had been resorted to by the Court so as to achieve a balance between the age old and rigid laws on the one hand and the advanced technology, on the other.
  - The Judiciary always responds to the need of the changing scenario in regard to development of technologies.
  - An interpretation of a provision which renders certain other provisions redundant or otiose cannot be accepted.

Application of language to developments in science and technology to be permitted

Collector of Customs and Central Excise and others vs. M/s. Lekhraj Jessumal & Sons & Anr. [AIR 1997 SC 145] (SC)

- **Facts:**
  - The respondent had imported miniaturised switches/reed switches which it used in the manufacturing of its final product i.e. hearing aids.
  - The Customs authorities denied the respondent the concessional rate of import duty on the ground that its import license did not cover such miniature/reed switches and that the words “switches” has to be understood to mean only those switches which were generally used in the manufacturing of hearing aids prevalent at the time of publication of Import Policy of the relevant year.

- **Held:**
  - The Apex Court upheld the decision of the Karnataka HC wherein it was held that such an interpretation overlooked that industry was not static and that there was continuous technical progress therein. New processes and new methods developed from time to time and new material and components or types of components superseded others. It was unreasonable to give a static interpretation to words used in a tariff schedule ignoring the rapid march of technology and that since reed switches would improve the performance of hearing aid, it would be covered under the tariff entry and therefore eligible for the concessional rate.
  - Progress cannot be stifled by an over-rigid interpretation of Import Policy or Customs tariff. Both must be read as they stand on the date of importation and whatever is reasonably covered thereby must be allowed to be imported regardless of the fact that it was not in existence or even contemplated when the policy or tariff was formulated.
Liberal Construction vs Literal Construction

- The Legislature speaks its mind by use of the correct expression and unless there is any ambiguity in the language of the provision, the court should adopt literal construction if it does not lend to absurdity.

- Therefore, the first question to be posed is whether there is any ambiguity in the language used. If there is none, it would mean the language used, speaks the mind of Parliament and there is no need to look somewhere else to discover the intention or meaning.
Provision:

The word "dividend" has been defined under the Act in Section 2(22). It reads as under:—

Definitions.

2. In this Act, unless the context otherwise requires,—

(22) "dividend" includes—

(e) 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, being a person who is the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than ten per cent of the voting power, or to any concern in which such shareholder is a member or a partner and in which he has a substantial interest (hereafter in this clause referred to as the said concern)] or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits;
Facts:
BDPL was a closely held company. It advanced money to its sister concern and a shareholder who was having 99 per cent of equity share capital of BDPL. The recipient of those advances were the assessees in the instant case. Aforesaid amount were treated as dividend u/s 2(22)(e). Funds were given by BDPL to procure the land in the name of the directors and hold the same in the form of capital asset and then transfer back to the company after obtaining conversion order; and that since the funds were not given for individual benefit of directors, deemed dividend was not applicable.

Issue:
"Whether any payment by a company by way of advance or loan to a shareholder or to any concern made under Section 2(22) (e) of the Income Tax Act, 1961, to the extent to which the company possessed the accumulated profits includes a trade advance and constitutes deemed dividend ?"

Contention of Revenue:
Revenue contended that the word "any payment" includes even a trade advance or monies lent or advanced by way of business expedience or commercial expedience.

M/s. BDPL is not in the business of money lending and therefore, any payment made by the said company to these assessees is deemed to be a dividend and liable to tax.
**Held:**

The purpose of the insertion of sub-clause (e) of Section 2(22) of the Act was to bring within the tax net accumulated profits which are distributed by closely held companies to his shareholders in the form of loans to avoid payment of dividend distribution tax under Section 115-O of the Act.

If the intention of such advance or loan is to avoid payment of dividend distribution of tax under Section 115-O of the Act, such a payment by a company certainly constitutes a deemed dividend. But if such a payment is made firstly not out of accumulated profits and secondly even if it is out of accumulated profits, but as trade advance as a consideration for the goods received or for purchase of a capital asset which indirectly would benefit the company advancing the loan, such advance cannot be brought within the word 'advance' used in the aforesaid provision. The trade advance which is in the nature of money transacted to give effect to commercial transactions would not fall within the ambit of the provisions of Section 2(22)(e) of the Act.

Principle of purposive interpretation should be taken recourse to. If a literal interpretation is given to the said words, it means all trade advances are to be taxed as deemed dividend. If such an interpretation is placed, it would lead to absurdity. That was not the intention of the legislature in enacting the aforesaid provision. Even if the accumulated profit which ought to have been paid to the shareholders as the dividend paid to a sister concern for the purpose of acquisition of capital assets or as a consideration for the goods received which is required for carrying on the business, it would not fall within the definition of Section 2(22)(e) of the Act as the object was not to pay the said amount to the shareholders after avoiding payment of dividend distribution tax under Section 115-O of the Act.
If a payment is made by way of trade or business, advance or loan, clause (e) of Sub-section (2) of Section 22 of the Act is not at all attracted and the question of applying the aforesaid clause (ii) would not arise and therefore, we do not see any substance in the said contention.
Principles of liberal/beneficial construction

- It is a crucial rule of interpretation of statutes that the words of the statute should be given a sensible meaning so as to make them effective.

- A construction which would defeat the very object of the Legislature should be avoided.

  - CIT v Horkeri (LN) (1986) 162 ITR 513 (Kar.)
  - Sunil Srivastava v UOI (1984) 145 ITR 356 (Pat.)
Facts:
The gross dividend income of the assessee, a charitable trust, was Rs. 3,49,696. The net dividend received by it after deduction of tax at source was Rs. 2,72,722. The assessee, in its return of income, did not include the amount of the tax deducted at source on the ground that the amount deducted at source had not been received and could not be applied by the assessee for the objects of the trust. The entire amount that was received by the assessee after deduction of tax at source had been spent for charitable purposes. The ITO rejected the assessee's contention and included the amount of TDS as the taxable income of the assessee. The Tribunal referred to a circular issued by the CBDT on 19-6-1968, and held that 'income' under section 11 is to be understood in the commercial sense and as the assessee had not obtained any refund of tax in the relevant year of account, the amount of tax deducted at source could not be treated as the assessee's income for the purpose of section 11.

Issue:
The question is whether "income" in section 11(1)(a) will include the amount of tax that has been deducted at source since the same is deemed to be the income received u/s 198.

Beneficial Construction
CIT v. Jayashree Charity Trust [1986] 159 ITR 280 (Cal.)
Beneficial Construction
CIT v. Jayashree Charity Trust [1986] 159 ITR 280 (Cal.)

Provision:

Section 11(1)(a), as it stood at the material time, was as under

"11.(1) Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income—

(a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated for application to such purposes in India, to the extent to which the income so accumulated is not in excess of twenty-five per cent, of the income from the property or rupees ten thousand, whichever is higher

Section 198 provides that the amounts deducted by way of income-tax shall be deemed to be "income received".

Central Board of Direct Taxes in Board's Circular No. 5-P (LXX-6) dated May 19, 1968.

4. Where the trust derives income from house property, interest on securities, capital gains, or other sources, the word "income" should be understood in its commercial sense, i.e., book income, after adding back any appropriations or applications thereof towards the purposes of the trust or otherwise, and also after adding back any debits made for capital expenditure incurred for the purposes of the trust or otherwise.
Beneficial Construction
CIT v. Jayashree Charity Trust [1986] 159 ITR 280 (Cal.)

Held:

The words of a statute must be construed so as to give a sensible meaning to them. The words ought to be construed ut res magis valeat quam pereat. The entire object of section 11 is to grant immunity to the income of a charitable trust from income-tax. The immunity, however, is confined "to the extent to which such income is applied to such purposes in India."

If a portion of the income of a charitable trust is not applied for charitable purposes or is accumulated beyond the permitted limit, that portion will not qualify for the immunity from taxation under section 11. This exclusion from the immunity must be confined to the real income of the trust.

The amount of income which is taken away by deduction at source under section 194 is not available to the trust for application to charitable purposes.

What is deemed to be income can neither be spent nor accumulated for charitable purpose. "Application" or "accumulation" can only be of real income which has actually been received by an assessee. The deeming provisions of section 198 should not be construed in a way to frustrate the object of section 11. The entire income that has been actually received by the assessee has been applied for charitable purpose.

The immunity from taxation that has been granted by section 11 cannot be denied to the assessee on the ground that the notional income remains unspent or unaccumulated for the purpose of charity. This view is supported by Circular No. 5-P (LXX-6) dated 19-5-1968 issued by CBDT’s. The said circular made it clear that the word 'income' in section 11(1)(a) must be understood in a commercial sense.
In the instant case, the entire income of the trust, in the commercial sense, had been spent for the purpose of charity. There was no reason to deny the benefit of exemption granted by section 11 to that portion of the income which had been taken away by deduction at source on the ground that the amount had not been spent or accumulated for the purpose of charity.
The Supreme Court in the following cases applied liberal construction:

- **CIT v. Strawboard Mfg. Co. Ltd.** [1989] 177 ITR 431 (SC). When a provision is made in the context of a law providing for concessional rates of tax for the purpose of encouraging an industrial activity, a liberal construction should be put up upon the language of the statute.

- **CBDT v. Aditya V. Birla** [1988] 170 ITR 137 (SC). There is no warrant to restrict the meaning of the expression “remuneration” to salary received by an employee abroad.

- **CIT v. South Arcot Distt. Co.-operative Marketing Society Ltd.** [1989] 176 ITR 117 (SC). Having regard to the object with which the provision has been enacted, it is apparent that a liberal construction should be given to the language of the provision.
Beneficial Construction

- Strict interpretation would not apply to machinery provisions. Fiscal statutes should be construed strictly as applicable only to taxing provisions, such as charging provisions or a provision imposing penalty and not to those parts of the statute which contain machinery provisions.

- The rule is that that construction should be preferred which makes the machinery workable and not in any way to make it unworkable.
Facts:

The assessee-company was deriving income from hotel business in the relevant previous year. It claimed deduction under section 80HHD as per the certificate of the auditors filed in Form 10CCAD, and the same was allowed by the Assessing Officer. Subsequently, the Commissioner found that the receipts in convertible foreign exchange had not been verified by the auditors but were taken as certified by the management. He, accordingly, held that the condition envisaged by section 80HHD(6) was not fulfilled and, therefore, the claim of the assessee was not admissible. The Commissioner, was of the view that the report should have contained a certificate to the effect that the deduction had been correctly claimed by the assessee. He observed that in the absence of application of mind by the auditors and proper verification, the said certificate could not be relied upon and that since condition under section 80HHD(6) was not fulfilled, the order of the Assessing Officer was erroneous and prejudicial to the interest of revenue as the claim of the assessee was not admissible. Accordingly, he withdrew the claim of the assessee.
Machinery provisions not to be construed strictly
Rambagh Palace Hotel (P.) Ltd. v. DCIT [2003] 87 ITD 163 (DELHI)

Section 80HHD(6):

The deduction under sub-section (1) shall not be admissible unless the assessee
furnishes in the prescribed form, along with the return of income, the report of an
accountant, as defined in the Explanation below sub-section (2) of section 288,
certifying that the deduction has been correctly claimed on the basis of the amount of
convertible foreign exchange received by the assessee for services provided by him to
foreign tourists [, payments made by him to any assessee referred to in sub-section
(2A)] and the payments received by him in Indian currency as referred to in
the Explanation[1] to sub-section (2).]
Held:

It is well-settled principle of law that where the provisions of statute are unambiguous, then their natural and plain meaning should be adopted and nothing can be added to or subtracted from such provisions. It is also well-settled principle of interpretation that the incentive provisions should be interpreted liberally in the manner so as to achieve the object of the legislation and not in the manner which may defeat such objects. However, where the deduction to be allowed is based on the fulfilment of certain condition, then rule of strict interpretation has to be applied. A distinction has to be made between the conditions which are the foundation for making the claim and the conditions which are provided to facilitate the assessment. The former is substantive condition without the fulfilment of which deduction cannot be allowed and, therefore, strict rule of interpretation is to be applied. However, the latter is procedural or machinery one and, therefore, the provisions regarding such conditions should be construed liberally. Provision of sub-section (6), though compliance is mandatory, should be liberally construed. If, on such consideration, report is found to be defective, then considering the principle of natural justice, an opportunity should be afforded to the assessee to remove such defect.

The assessee could not be denied deduction on account of any lapse on the part of the auditors. The report was duly furnished with the return and thereby, the provisions of sub-section (6) were complied with.

Accordingly, the Commissioner was not justified in withdrawing the claim.
Remedial/welfare/beneficial statutes

- Welfare statutes require liberal construction. *Statutes made for public good should be liberally construed. Beneficial statutes should not be construed too restrictively.*

- If a section is capable of two constructions, that construction should be preferred which fulfils the policy of the Act, and is more beneficial to the persons in whose interest the Act has been passed.

- Beneficial enactments should be given a liberal and purposive interpretation so as to fulfil the object of the legislation and comply with the legislative intent.
Liberal Construction - Remedial/welfare/beneficial statutes

- CIT, vs. Ranka & Ranka - [2012] 19 taxmann.com 65 (Kar)
  - If only the instruction No.3/11 had been made applicable to the pending cases also, as laid down in the National Litigation Policy, the object of the policy would have been fulfilled. One of the ways of giving effect to the said policy is to make that instruction applicable retrospectively to all pending appeals as on the date of the circular. It would substantially serve the object of the policy.
**Liberal Construction**

*That interpretation is to be preferred by which benefit is extended*

- If the interpretation of a fiscal enactment is open to doubt, the construction most beneficial to the subject should be adopted
- When two interpretations are possible, the view which is favourable to the assessee is always to be preferred
That interpretation is to be preferred by which benefit is extended
Bajaj Tempo Ltd. vs. CIT (1992) 196 ITR 188 (SC)

Section 15C is extracted below:

15C. Exemption from tax of newly established industrial undertakings. —

(1) Save as otherwise hereinafter provided, the tax shall not be payable by an assessee on so much of the profits or gains derived from any industrial undertaking to which this section applies as do not exceed six per cent per annum on the capital employed in the undertaking, computed in accordance with such rules as may be made in this behalf by the Central Board of Revenue.

(2) This section applies to any industrial undertaking which —

(i) is not formed by the splitting up, or the reconstruction, of business already in existence or by the transfer to a new business of building, machinery or plant previously used in any other business:
That interpretation is to be preferred by which benefit is extended
Bajaj Tempo Ltd. vs. CIT (1992) 196 ITR 188 (SC)

Facts:
- The assessee-company was formed for exploiting the manufacturing licence issued by the Government to the promoter company.
- The assessee-company entered into an agreement with the promoter company to secure and take over from the promoter company the rights under the licence to manufacture tempo vehicles and to take over the factory registered under the name of AREF as a going concern with its assets, liabilities, machinery power, quotas, etc. The agreement between the assessee-company and the promoter company provided that the transferee, being the assessee-company, shall be in possession of the premises of the factory and the building on payment of monthly rent as a lessee. Tools and implements of nominal value were also transferred to it. In assessment proceedings, the assessee claimed benefit of partial exemption from payment of tax as it was a new undertaking. The ITO rejected the claim holding that even though the undertaking was new it was not entitled to the benefit as it was formed by splitting up of business already in existence and also because it was formed by transfer to new business of the building and machinery previously used in other business.
That interpretation is to be preferred by which benefit is extended
Bajaj Tempo Ltd. vs. CIT (1992) 196 ITR 188 (SC)

- **Held:** A provision in a taxing statute granting incentives for promoting growth and development should be construed liberally. Since a provision intended 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 section and not to frustrate it. Under clause (i) of sub-section (2) of section 15C formation of the undertaking by splitting up or reconstruction of an existing business by transfer to the undertaking of building, raw material or plant used in any previous business results in denial of the benefit contemplated under sub-section (1).

In the instant case, the ITO found that tools and implements worth Rs. 3,500 used in earlier business were transferred to the assessee which comprised machines which were of a very minor nature. On plain reading, the effect of such transfer was operation of the clause and denial of benefit to the assessee. But that would be denial of very purpose for which the provision was enacted. The Legislature by clause (i) of sub-section (2) of section 15C intended to control any attempt or effort to abuse the benefit intended for new undertaking by change of label. The intention was not to deny benefit to genuine new industrial undertaking but to control the mischief which might have otherwise taken place. If the value of transferred machinery was nominal, it could not result in denial of benefit to assessee. Adopting literal construction in such cases would have resulted in defeating the very purpose of section 15C. Therefore, it became necessary to resort to a construction which is reasonable and purposive to make the provision meaningful. Initial exercise, therefore, should be to find out if the undertaking was new. Once this test is satisfied, then clause (i) should be applied reasonably and liberally in keeping with the spirit of section 15C(1).
In the instant case, a fact which could not be disputed even by the ITO was that tools and implements worth Rs. 3,500 were transferred to it from the previous firm. Technically speaking, it was transfer of material used in previous business. One could say as was vehemently urged by the revenue that where the language of the statute was clear there was no scope for interpretation. The words of a statute are undoubtedly the best guide. But if their meaning gets clouded, then the Courts are required to clear the haze. Sub-section (2) advances the objective of sub-section (1) by including in it every undertaking except if it is covered by clause (i) for which it is necessary that it should not be formed by transfer of building or machinery. The restriction or denial of benefit arises not by transfer of building or material to the new company but from the fact that it should not be formed by such transfer. That is the key to the interpretation. The formation should not be by such transfer. The emphasis is on formation and not on use. Therefore, it was not every transfer of building or material but the one which could be held to have resulted in formation of the undertaking.

Building, machinery or plant used previously in other business should not result in the undertaking being formed by it.

In the instant case, the part played by taking the building on lease was not dominant in the formation of the company. Thus, the assessee was entitled to partial exemption under section 15C.
That interpretation is to be preferred by which benefit is extended

**Issue:**
Whether, the depreciation was applicable on the written down value of the cost of construction of roads in the factory premises on the footing that they constitute building?

**Held:**

- The Act from the very nature of things cannot absolutely be cast upon logic. It is to be read and understood according to its language. If the plain reading of the language compels the Court to adopt an approach different from that dictated by any rule of logic the Court may have to adopt it.

- Logic alone will not be determinative of a controversy arising from a taxing statute. Equally common sense is stranger and incompatible partner to the Act. It does not concern itself with the principles of morality or ethics. It is concerned with the very limited question as to whether the amount brought to tax constitutes the income of the assessee.

- It is equally settled law that if the language is plain and unambiguous one can only look fairly at the language used and interpret it to give effect to the legislative intention. Nevertheless tax laws have to be interpreted reasonably and in consonance with justice adopting purposive approach. The contextual meaning has to be ascertained and given effect to. A provision for deduction, exemption or relief should be construed reasonably and in favour of the assessee. The object being that in computation of the net income, the statute provides deductions, exemptions or depreciation of the value of the capital assets from taxable income. Therefore, 'building' which has not been specifically defined to include road in the Act must be taken in the legal sense.
That interpretation is to be preferred by which benefit is extended

- While amending Income-tax 4th Amendment Rules, 1983, the rule-making authority accepted that interpretation, consistently made by various High Courts that 'building' included roads and also elongated bridges, culverts, wells, tube-wells as building. The contention of the revenue that unless the Act itself was amended, the rules would not cut down the meaning of the word 'building' was without substance. The inclusive definition of the building to include roads, etc., enlarges the scope of section 32 and does not whittle down its effect.

- Therefore, the roads laid within the factory premises as links or which provided approach to the buildings were necessary adjuncts to the factory buildings to carry on the business activities of the assessee and would be 'building' within the meaning of section 32.
**Liberal Construction**

- **Rule of beneficial construction is not applied:**
  
  i. *where result would be re-legislation of a provision by addition, subtraction or alteration of words and violence would be done to the spirit of the provision;*
  
  ii. *where there is no ambiguity in a provision.*
Condonation of delay principles – liberal approach

- The prayer for condonation of delay has to be treated in a liberal manner so that the appellant is not deprived of having its case adjudicated upon merits, essential for the rendition of justice between the parties.

- The words ‘sufficient cause’ must generally receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fides is imputable.

- Prima Paper & Engineering (P.) Ltd v. CIT [2014] 41 taxmann.com 240 (Bombay)
Presumptions/Considerations in Interpretation of Statutes

GP Singh

- There is a presumption that the Legislature does not exceed its jurisdiction, and the burden of establishing that the Act is not within the competence of the Legislature, or that it has transgressed other constitutional mandates, such as those relating to fundamental rights, is always on the person who challenges it vires.

- A statute is construed so as to make it effective and operative on the principle expressed in the maxim ‘ut res magis valeat quam pereat’ i.e. trying to construe a law in a way to make sense, rather than void it.

- Thus, there is general principle to Income-tax Acts that either the source from which the taxable income is derived should be within the territorial limits of the country imposing the tax or the person whose income is to be taxed should be resident there.

- Even when the legislative competence is not restricted on considerations of territorial nexus, it is presumed that statutes are not intended, in the absence of contrary language or clear implication, to operate on events taking place or persons outside the territories to which the statutes are expressed to apply.

THANK YOU !