Material relied upon

Relevant Facts in the case
History of ICDS -
Decision of Delhi High Court - chamber of tax consultants [ICDS] -
Relevant Legislative Enactments -

Broad principles relating to Retrospective Legislation
Absence of validation section
Decision of Home Solution
Decision of Essar Teleholdings - -
Decision of Vatika Township (P.) Ltd - -
Decision of Eurotex Industries and Exports Ltd - -
Arguments of Assessee
Arguments of Revenue
Conclusion
Impact of decision of Vegetable Products -
Disclaimer and Damages,
Bibliography

1) It is pertinent to note the words of Justice Patanjali Sastri in the case of Sir Kikabhai Premchand vs CIT on 9 October, 1953 Equivalent citations: 1953 AIR 509, 1954 SCR 214 which still holds the field in the matter of taxable income from artificial valuation

It was conceded that if these assets had been sold at cost price the State could have claimed nothing, for a man cannot be compelled to make a profit out of any particular transaction. It was also conceded that if the silver and stocks had lain where they were,, then again there would have been no advantage to the State because the appellant would have been entitled to enter their closing values at cost at the end of the year. The learned Attorney-General even conceded that if they bad been sold at a loss the appellant would have been entitled to set that off against his other gains, but he said that that is because all those are business transactions and that is the way the law deals with such matters when they occur in the ordinary course of business. But, he argued, when there is a withdrawal and no sale or its equivalent, the matter is different. As this is a business, any withdrawal of the assets is a business matter and the only feasible way of regarding it in a business light is to enter the market price at the date of the withdrawal and whether that happens to favour the assessee or the State is immaterial. We do not agree. It is well recognised that in revenue cases regard must be had to the substance of the transaction rather than to its mere form. In the present case, disregarding technicalities, it is impossible to get away from the fact that the business is owned and run by the assessee himself. In such circumstances we are of opinion that it is unreal and a artificial to separate the business from its owner and treat them as if they were separate entities trading with each other and then by means of a fictional sale introduce a fictional profit which in truth and in fact is non-existent. Cut away the fictions and you reach the position that the man is supposed to be selling to himself and thereby making a profit out of himself which on the face of it is not only absurd but against all canons of mercantile and income-tax law. And worse. He may keep it and not show a profit. He may sell it to another at a loss and cannot be taxed because he cannot be compelled to sell at a profit. But in this purely fictional sale to himself he is compelled to sell at a fictional profit when the market rises in order that he may be compelled to pay to Government a tax which is anything but fictional.

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Consider this simple illustration. A man trades in rice and also uses rice for his family consumption. The bags are all stored in one godown and he draws upon his stock as and when he finds it necessary to do so, now for his business, now for his own use. What he keeps for his own personal use cannot be taxed however much the market rises; nor can he be taxed on what he gives away from his own personal stock, nor, so far as his shop is concerned, can he be compelled to sell at a profit. If he keeps two sets of books and enters in one all the bags which go into his personal godown and in the other the rice which is withdrawn from the godown into his shop, rice just sufficient to meet the day to day demands of his customers so that only a negligible quantity is left over in the shop after each day's sales, his private and personal dealings with the bags in his personal godown could not be taxed unless he sells them at a profit. What be chooses to do with the rice in his godown is no concern of the Income-tax department provided always that he does not sell it or otherwise make a profit out of it. He can consume it, or give it away, or just let it rot. Why should it make a difference if instead of keeping two sets of books he keeps only one ? How can he be said to have made an income personally or his business a profit, because he uses ten bags out of his godown for a feast for the marriage of his daughter ? How can it make any difference whether the bags are shifted directly from the godown to the kitchen or from the godown to the shop and from the shop to the kitchen, or from the shop back to the godown and from there to the kitchen ? And yet, when the reasoning of the learned Attorney-General is pushed to its logical conclusion, the form of the transaction is of its essence and it is taxable or not according to the route the rice takes from the godown to the wedding feast. In our opinion, it would make no difference if the man instead of giving the feast himself hands over the rice to his daughter as a gift for the marriage festivities of her son.

<u>Option to postpone losses – only for scheduled banks</u>

2) Refer circular of RBI in this regard RBI/2017-18/147 DBR.No.BP.BC.102 /21.04.048 /2017-18 dated April 2, 2018 Reproducing the whole circular as it is relevant in totality

All Scheduled Commercial Banks
(Excluding Regional Rural Banks),
Small Finance Banks

Dear Sir/Madam,

Prudential Norms for Classification, Valuation and Operation of Investment Portfolio by Banks – Spreading of MTM losses and creation of Investment Fluctuation Reserve (IFR)

Please refer to Master Circular DBR.No.BP.BC.6/21.04.141/2015-16 dated July 1, 2015 on the captioned subject. Banks are required to mark to market (MTM) the individual scrips in Available for Sale (AFS) at quarterly/more frequent intervals and Held for Trading (HFT) at monthly/more frequent intervals and provide for net depreciation, if any.

<u>*2. With a view to addressing the systemic impact of sharp increase in the yields on Government Securities, it has been decided to grant banks the option to spread provisioning for mark to market (MTM) losses on investments held in AFS and HFT for the quarters ended December 31, 2017 and March 31, 2018. The provisioning for each of these quarters may be spread equally over up to four quarters, commencing with the quarter in which the loss is incurred.*</u>

2.1. Banks that utilise the above option shall make suitable disclosures in their notes to accounts/ quarterly results providing details of

(a) the provisions for depreciation of the investment portfolio for the quarters ended December 2017 and March 2018 made during the quarter/year and

(b) the balance required to be made in the remaining quarters.

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3. Further, with a view to building up of adequate reserves to protect against increase in yields in future, all banks are advised to create an Investment Fluctuation Reserve (IFR) with effect from the year 2018-19, as under:

3.1 An amount not less than the lower of the following:

(a) net profit on sale of investments during the year

(b) net profit for the year less mandatory appropriations shall be transferred to the IFR, until the amount of IFR is at least 2 percent of the HFT and AFS portfolio, on a continuing basis. Where feasible, this should be achieved within a period of 3 years

3.2 A bank may, at its discretion, draw down the balance available in IFR in excess of 2 percent of its HFT and AFS portfolio, for credit to the balance of profit/loss as disclosed in the profit and loss account at the end of any accounting year. In the event the balance in the IFR is less than 2 percent of the HFT and AFS investment portfolio, a draw down will be permitted subject to the following conditions:

(a) The drawn down amount is used only for meeting the minimum CET1/Tier 1 capital requirements by way of appropriation to free reserves or reducing the balance of loss, and

(b) The amount drawn down is not more than the extent the MTM provisions made during the aforesaid year exceed the net profit on sale of investments during that year.

3.3 IFR shall be eligible for inclusion in Tier 2 capital.

Yours faithfully,
(Saurav Sinha)
Chief General Manager-In-Charge

3) It gives scheduled Banks and banks whose time and demand deposits were less than Rs. 100 crores[later another circular was issued], an option to postpone the losses for one quarter of FY 2017-18 to FY 2018-19.

4) This quarter is nothing but the last quarter i.e. quarter ending March 31, 2018 and this facility is not available to co-operative banks. Also the legislative amendment came to be effective with President's assent on 28-Nov-2018 and above mentioned circular was issued on 3-4 April 2018

Following are the respective Scope of ICDS-II and ICDS-VIII.

B. Income Computation and Disclosure Standard II relating to valuation of inventories

Preamble

This Income Computation and Disclosure Standard is applicable for computation of income chargeable under the head "Profits and gains of Business or profession" or "Income from other sources" and not for the purpose of maintenance of books of account.

In the case of conflict between the provisions of Income Tax Act, 1961 ('the Act') and this Income Computation and Disclosure Standard, the provisions of the Act shall prevail to that extent.

Scope

1. This Income Computation and Disclosure Standard shall be applied for valuation of inventories, except:

(a)	*Work-in-progress arising under 'construction contract' including directly related service contract which is dealt with by the Income Computation and Disclosure Standard on construction contracts;*
(b)	*Work-in-progress which is dealt with by other Income Computation and Disclosure Standard;*
(c)	*Shares, debentures and other financial instruments held as stock-in-trade which are dealt with by the Income Computation and Disclosure Standard on securities;*
(d)	*Producers' inventories of livestock, agriculture and forest products, mineral oils, ores and gases to the extent that they are measured at net realisable value;*
(e)	*Machinery spares, which can be used only in connection with a tangible fixed asset and their use is expected to*

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	be irregular, shall be dealt with in accordance with the Income Computation and Disclosure Standard on tangible fixed assets.

Definitions

2(1) The following terms are used in this Income Computation and Disclosure Standard with the meanings specified:

(a)	***"Inventories"** are assets:*
(i)	*held for sale in the ordinary course of business;*
(ii)	*in the process of production for such sale;*
(iii)	*in the form of materials or supplies to be consumed in the production process or in the rendering of services.*
(b)	***"Net realisable value"** is the estimated selling price in the ordinary course of business less the estimated costs of completion and the estimated costs necessary to make the sale.*

2(2) Words and expressions used and not defined in this Income Computation and Disclosure Standard but defined in the Act shall have the meanings assigned to them in that Act.

H. Income Computation and Disclosure Standard VIII relating to securities Preamble

This Income Computation and Disclosure Standard is applicable for computation of income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" and not for the purpose of maintenance of books of account.

In the case of conflict between the provisions of the Income-tax Act, 1961 ('the Act') and this Income Computation and Disclosure Standard, the provisions of the Act shall prevail to that extent.

Part A

Scope

1. This part of Income Computation and Disclosure Standard deals with securities held as stock-in-trade.
2. This part of Income Computation and Disclosure Standard does not deal with:

(a) the bases for recognition of interest and dividends on securities which are covered by the Income Computation and Disclosure Standard on revenue recognition;
(b) securities held by a person engaged in the business of insurance;
(c) securities held by mutual funds, venture capital funds, banks and public financial institutions formed under a Central or a State Act or so declared under the Companies Act, 1956 (1 of 1956) or the Companies Act, 2013 (18 of 2013).

Definitions

3(1) The following terms are used in this part of Income Computation and Disclosure Standard with the meanings specified:

(a) "Fair value" is the amount for which an asset could be exchanged between a knowledgeable, willing buyer and a knowledgeable, willing seller in an arm's length transaction.
(b) "Securities" shall have the meaning assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and shall include share of a company in which public are not substantially interested but shall not include derivatives referred to in sub-clause (ia) of that clause (h).

3(2) Words and expressions used and not defined in this part of Income Computation and Disclosure Standard but defined in the Act shall have the meaning respectively assigned to them in the Act.

Part B

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Scope

1. This part of Income Computation and Disclosure Standard deals with securities held by a scheduled bank or public financial institutions formed under a Central or a State Act or so declared under the Companies Act, 1956 (1 of 1956) or the Companies Act, 2013 (18 of 2013).

Definitions

2(1) The following terms are used in this part of Income Computation and Disclosure Standard with the meanings specified:

(a) "Scheduled Bank" shall have the meaning assigned to it in clause (ii) of the Explanation to clause (viia) of sub-section (1) of section 36 of the Act.

(b) "Securities" shall have the meaning assigned to it in clause (h) of section 2 of the Securities Contract (Regulation) Act, 1956 (42 of 1956) and shall include share of a company in which public are not substantially interested;

2(2) Words and expressions used and not defined in this part of Income Computation and Disclosure Standard but defined in the Act shall have the meaning respectively assigned to them in the Act.

Material relied upon

	Relevant Facts in the case

The assesse is a co-operative society formed under the Maharashtra Co-operative Societies Act, 1950. The assesse is engaged into the business of banking and has appropriate license from Reserve Bank of India.

Thus the assesse is under dual control of

- the Maharashtra Co-operative Societies Act, 1950
- the Banking Regulation Act, 1949

The law that valuation of inventory has to be done as per accounting standard and to be more specific valuation criteria of cost and net realisable value whichever is lower on an item wise basis.

Refer - [1991] 54 Taxman 499 (SC)/[1991] 188 ITR 44 (SC)/ [1991] 91 CTR 108 (SC) [1991] 54 Taxman 499 (SC) SUPREME COURT OF INDIA Commissioner of Income-tax v. British Paints India Ltd.* DECEMBER 13, 1990 - CIVIL APPEAL NOS. 1918-19 OF 1976

	History of ICDS -

A COMMITTEE was constituted on 14-8-2012 for recommendation to Parliament regarding Tax accounting standard for computation of income from business chargeable to tax under the Income Tax Act, 1961

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CBDT issued following Notifications in the Official Gazette on 29th September 2016:

i. Notification No. 86/2016 [S.O. 3078 (E)] dated 29th September 2016 rescinding Notification No. 32/2015 [S.O. 892(E)] dated 31st March 2015
ii. Notification No. 87/2016 [S.O. 3079(E)], dated 2nd September, 2016 notifying the ten ICDS applicable from assessment year 2017-18 onwards.
iii. Notification No. 88 of 2016 dated 29th September 2016

Circular No. 10 of 2017 dated 23rd March 2017 issued by the CBDT (TPL Division) issuing clarifications to the said ICDS.

On November 8, 2017, Delhi High Court in the case of Chamber of Tax Consultants [infra] struck down a vital portion of the said notifications mainly on the basis that, the said changes cannot be brought through a delegated legislation

	Decision of Delhi High Court - chamber of tax consultants [ICDS] -

It is the only specific decision on the virus of the ICDS. Following are the relevant extracts

43. To that extent, Section 145 (2), as amended, has to be read down to restrict power of the Central Government to notify ICDS that do not seek to override binding judicial precedents or provisions of the Act. The power to enact a validation law is an essential legislative power that can be exercised, in the context of the Act, only by the Parliament and not by the executive. If Section 145 (2) of the Act as amended is not so read down it would be ultra vires the Act and Article 141 read with Article 144 and 265 of the Constitution.

***61.** The Petitioners rightly point out that cases not governed by any specific ICDS are to be governed by ICDS-I. CBDT has in ICDS I notified that expected losses and marked-to-market losses are not to be recognized/allowed. It is rightly pointed out by the Petitioners that the concept of prudence is embedded in Section 37 (1) of the Act which allows deduction in respect of expenses "laid out" or "expended" for the purpose of business. The concept of prudence is inherent in this.*

***62.** ICAI too has in para 6.9 of its Technical Guide clarified as under:*
'6.9 Chapter IV-D of the Income Tax Act houses Section 37 which deals with expenditure which is general in nature and not covered within sections 30 to 36. Section 37 covers expenditure laid out or expended wholly and exclusively for the purposes of the business. The phrase "laid down" connotes setting aside or storage for future. The expression "laid out" in Section 37 thus encompasses not only actual outflow of expenses but amounts parked in the present for future settlement. Accordingly, the concept of Prudence is inherent in the business income deductions.'

***63.** Accordingly, the Petitioners are right in their contention that non- acceptance of the concept of prudence in ICDS-I is per se contrary to the provisions of the Act and therefore, cannot be countenanced.*

ICDS II

***64.** ICDS-II pertains to valuation of inventories. In Shakthi Trading Co. v. CIT [2001] 250 ITR 871/118 Taxman 301 (SC) the Supreme Court held that on the dissolution of a firm, where the business of firm is not discontinued and is taken over by other partners, the stock-in-trade of the firm can be valued at cost or market value, whichever is lower. In arriving at the above conclusion, the Supreme Court distinguished the earlier decision in A.L.A. Firm v. CIT [1991] 189 ITR 285/55 Taxman 497 (SC) on the ground that in the case of dissolution of a partnership firm, if the business is*

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discontinued then stock-in-trade has to be valued at market price only. However, if, on dissolution of a firm, the business is not discontinued, stock-in-trade has to be valued at cost or market value whichever is lower.

65. *ICDS-II fails to take into account the two different scenarios aforementioned. It is, therefore, apparent that ICDS-II sidesteps the decision in Shakthi Trading Co. (supra). The ICDS-II insists that the stock-in-trade of the firm in both scenarios would have to be valued at market price irrespective of whether the business discontinues. This would amount to taxing notional income. The counteraffidavit of the CBDT states in para vi (a) that the Supreme Court in Shakthi Trading Co. (supra) was "swayed" by the fact that the business was continuing and that there was no settlement of accounts. This is in fact contrary to the facts in Shakthi Trading Co. (supra). The said decision has been reaffirmed in CIT v. Kwality Steel Suppliers Complex[2017] 395 ITR 1/250 Taxman 23/84 taxmann.com 234 (SC).*

66. *It is contended on behalf of the Respondents that Section 45 (4) of the Partnership Act has itself pointed out the concept of valuation of capital assets at market value at the time of dissolution of the firm. This is however contrary to what has been explained by the Supreme Court in Shakthi Trading Co. (supra). The valuation of inventory at market value upon settlement of accounts of the outgoing partner is distinct from valuation of the inventory in the books of the business which is continuing.*

67. *Section 145A of the Act begins with a non-obstante clause and is independent of Section 145 (2) under which the ICDS has been notified. Section 145A of the Act provides that inventory of goods shall be valued in accordance with the method of accounting regularly employed by the Assessee. Therefore, where the Assessee regularly follows a certain method for valuation of goods then that will govern irrespective of the ICDS notified under Section 145 (2) of the Act.*
68. *The upshot of the above discussion is that ICDS-II is also an attempt to overreach the binding judicial precedents by the device of Notifications issued by the central government. It is an exercise of excessive delegation of legislative power which is impermissible in law.*

ICDS-VIII

94. ICDS VIII pertains to valuation of securities. The method prescribed by the Reserve Bank of India (RBI) for valuation of securities is applicable only to banks, financial institutions, and other financial bodies regulated by the RBI. For other entities, the AS prescribes the valuation of inventories on individual basis.

95. There are two parts of ICDS-VIII; Part A dealt with entities other than scheduled banks and public financial institutions and Part B deals with scheduled banks and public financial institutions. Under Part B, ICDS-VIII has prescribed that recognition of securities should be in accordance with the RBI guidelines. To that extent, it is consistent with the RBI norms. However, for those entities not governed by the RBI to whom Part A of ICDS VIII is applicable, the accounting prescribed by the AS has to be followed. This is different from the ICDS. In effect, such entities will be required to maintain separate records for income tax purposes for every year since the closing value of the securities would be valued separately for income tax purposes and for accounting purposes.

96. It is pointed out that under similar circumstances, ICDS-II which deals with valuation of inventories does not prescribe such a 'bucket approach'. Thus the Respondents themselves have adopted separate approaches at different places for the purpose of valuation of securities. This change is therefore not possible to be effectuated without a corresponding amendment to the Act. To that extent Part A of ICDS-VIII is ultra vires the Act.

Issue (iii): Constitutional validity of the ICDS, Circular

97. *In exercise of its power to issue Notifications under Section 119 of the Act, the CBDT is meant to clarify the law, not change it. At the highest it can additionally notify the change in rates of depreciation etc. Some of the impugned ICDS, to the extent discussed hereinbefore, however do not merely clarify the existing law. Some of them mandate the applicability of accounting principles, contrary to what is recognised by the Act, for the purpose of computation of income.*

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98. *As already concluded, if the ICDS is permitted, in exercise of the delegated power of the central government under Section 145 (2) of the Act, to override a governing principle recognised by the Act or the Rules or judicial precedents, it would be ultra vires the Act. It would then render the ICDS as an instance of excessive delegation of essential legislative functions. The books of account prepared on the basis of a valid accounting method can be rejected by an AO for not complying with the ICDS. This virtually permits an AO to disregard binding judicial precedents.*
99. *The cases cited at the bar on behalf the Respondents deal with the permissible limits of legislative power. In Harishankar Bagla v. State of M.P. AIR 1954 SC 465 the Supreme Court upheld the validity of a particular provision of the Essential Supplies Act since the said Act was an emergency measure and was intended to provide for the continuance, during a limited period, of powers to control the production, supply and distribution of, and trade and commerce in, certain commodities. The said guiding principles were discernable from the relevant tax statutes itself.*
100*. However, in the present case there are no guiding principles in Section 145 (2) of the Act for the scope and ambit of the delegated power of the central government. As explained by the Madras High Court in CIT v. Standard Triumph Motor Co. Ltd.[1979] 119 ITR 573 (Mad.) Section 145 (1) is only an enabling provision to effectuate the statute. When the rules framed under an Act have to conform to the Act [See Bimal Chandra Banerjee v. State of M.P. [1971] 81 ITR 105 (SC), Director of Inspection v. Pooran Mall & Sons[1974] 96 ITR 390 (SC), CIT v. Taj Mahal Hotel[1971] 82 ITR 44 (SC) a mere notification under Section 119 of the Act cannot go beyond the provision of the Act so as to bring to tax any income not so envisaged by the Act. That a tax cannot be levied by way of an executive action is a settled position (See State of Kerala v. P.J. JosephAIR 1958 SC 296). Tax cannot also be levied by way of administrative instructions as observed by the Supreme Court in Harivansh Lal Mehra v. State of Maharashtra AIR 1971 SC 1130.*

101*. In order to preserve its constitutionality, Section 145 (2) of the Act as amended is required to and is hereby read down to restrict power of the Central Government to notify ICDS that do not seek to override binding judicial proceedings or provisions of the Act.*

Summary of findings

102*. The findings in this judgment may be summarised thus:*

(i)	*Section 145 (2), as amended, has to be read down to restrict power of the Central Government to notify ICDS that do not seek to override binding judicial precedents or provisions of the Act. The power to enact a validation law is an essential legislative power that can be exercised, in the context of the Act, only by the Parliament and not by the executive. If Section 145 (2) of the Act as amended is not so read down it would be ultra vires the Act and Article 141 read with Article 144 and 265 of the Constitution.*
(ii)	*The ICDS is not meant to overrule the provisions of the Act, the Rules thereunder and the judicial precedents applicable thereto as they stand.*
(iii)	*The decision in J.K. Industries Ltd. (supra) is distinguishable in its application to the case on hand.*
(iv)	*ICDS-I which does away with the concept of 'prudence' is contrary to the Act and binding judicial precedents and is therefore unsustainable in law.*
(v)	*ICDS-II pertaining to valuation of inventories and eliminates the distinction between a continuing partnership business after dissolution from one which is discontinued upon dissolution is contrary to the decision of the Supreme Court in Shakthi Trading Co. (supra). It fails to acknowledge that the valuation of inventory at market value upon settlement of accounts of the outgoing partner is distinct from valuation of the inventory in the books of the business which is continuing. ICDS-II is held to be ultra vires the Act and struck down as such.*
(vi)	*The treatment to retention money under Paragraph 10(a) in ICDS-III will have to be determined on a case to case basis by applying settled principles of accrual of income. By deploying ICDS-III in a manner that seeks to bring to tax the retention money, the receipt of which is uncertain/conditional, at the earliest possible stage, irrespective of the facts, the Respondents would be acting contrary to the settled position in law as explained in the decisions referred to in para 68 and to that extent para 10(a) of ICDS-III would be rendered ultra vires.*
(vii)	*Para 12 of ICDS-III read with para 5 of ICDS-IX, dealing with borrowing costs, makes it clear that no incidental income can be reduced from borrowing cost. This is contrary to the decision of the Supreme Court in Bokaro Steel Ltd. (supra) and is therefore struck down.*
(viii)	*Para 5 of ICDS-IV requires an Assessee to recognize income from export incentive in the year of making of the claim if there is 'reasonable certainty' of its ultimate collection. This is contrary to the decision of the Supreme*

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	Court in Excel Industries (supra), and is, therefore, ultra vires the Act and struck down as such.
(ix)	*As far as para 6 of ICDS-IV is concerned, the proportionate completion method as well as the contract completion method have been recognized as valid method of accounting under the mercantile system of accounting by the Supreme Court in Bilhari Investment (P.) Ltd. (supra) and this Court in Manish Build Well (P.) Ltd. and Paras Buildtech India (P.) Ltd. (supra). Therefore, to the extent that para 6 of ICDS-IV permits only one of the methods, i.e., proportionate completion method, it is contrary to the above decisions, held to be ultra vires the Act and struck down as such.*
(x)	*Para 8 (1) of ICDS-IV is not been shown to be contrary to any judicial precedent. There is also no challenge to Section 36(1) (vii) of the Act. Accordingly, para 8 (1) of ICDS-IV is held to be not ultra vires the Act. Its validity is upheld.*
(xi)	*ICDS-VI which states that marked to market loss/gain in case of foreign currency derivatives held for trading or speculation purposes are not to be allowed, is not in consonance with the ratio laid down by the Supreme Court in Sutlej Cotton Mills Ltd. (supra), insofar as it relates to marked to market loss arising out of forward exchange contracts held for trading or speculation purposes. It is, therefore, held to be ultra vires the Act and struck down as such.*
(xii)	*ICDS-VII which provides that recognition of government grants cannot be postponed beyond the date of accrual receipt, is in conflict with the accrual system of accounting. To that extent it is held to be ultra vires the Act and struck down as such.*
(xiii)	*ICDS-VIII pertains to valuation of securities. For those entities not governed by the RBI to whom Part A of ICDS-VIII is applicable, the accounting prescribed by the AS has to be followed which is different from the ICDS. In effect, such entities will be required to maintain separate records for income tax purposes for every year since the closing value of the securities would be valued separately for income taxpurposes and for accounting purposes. To this extent Part A of ICDS VIII is held to be ultra vires the Act and is struck down as such.*

Conclusion

103. *To the extent the specific ICDS as noted hereinbefore have been struck down as ultra vires the Act, the impugned Notification Nos. 87 and 88 dated 29th September 2016 and Circular No. 10 of 2017 issued by the CBDT are also held to be ultra vires the Act and struck down as such.*

104. *The writ petition and the application are disposed of in the above terms with no orders as to costs.*

	Decision of CIT v Smt. Smt. Godavaridevi Saraf [1978] 113 ITR 589 (Bombay)

Summary

When a particular provision of legislation has been declared as ultra-virus by a high court [whether jurisdictional or otherwise] all the authority like Tribunal acting anywhere in country has to respect law laid down by High Court, though of different State, so long as there is no contrary decision of any other High Court on that point

Question then arises what is going to be the effect of a decision of the Madras High Court holding that section 140A(3) is unconstitutional as violative of article 19(1)(f) of the Constitution. A similar question came up for consideration before the Supreme Court in the case of East India Commercial Co. Ltd. v. Collector of Customs, Calcutta, AIR 1962 SC 1893, wherein it was held that an administrative Tribunal cannot ignore the law declared by the highest court in the State. Taking into consideration the provisions of articles 215, 226 and 227 or the Constitution of India, it would be anomalous to suggest that a Tribunal over which the High Court has superintendence can ignore the law declared by that court and start proceeding in direct violation of it. If a Tribunal can do so, all the subordinate courts can equally do so, for there is no specific provision, just A like in the case of the Supreme Court making the law declared by the High Court binding on subordinate courts. It is implicit in the power of supervision conferred on a superior Tribunal that all the Tribunals subject to its supervision should conform to the law laid down by it. Such obedience would also be conducive to their smooth working; otherwise, there would be confusion in the administration of law and respect for law would irretrievably suffer.

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In view of this clear pronouncement of the Supreme Court, it is not controverted by Mr. Joshi on behalf of the revenue that an Income-tax Tribunal sitting at Madras is bound to proceed on the footing that section 140A(3) of the Act is non-existent in view of the pronouncement of the Madras High Court in the case of A.M. Salt Maricar [1973] 90 ITR 116. Actually, the question of authoritative or persuasive decision does not arise in the present case because a Tribunal constituted under the Act has no jurisdiction to go into the question of constitutionality of the provisions of that statute. It should not be overlooked that the Income-tax Act is an All-India statute and if an Income-tax Tribunal in Madras, in view of the decision of the Madras High Court, has to proceed on the footing that section 140A(3) was non-existent, the order of penalty there under cannot be imposed by the authority under the Act. Until a contrary decision is given by any other competent High Court, which is binding on a Tribunal in the State of Bombay, it has to proceed on the footing that the law declared by the High Court, though of another State, is the final law of the land. When the Tribunal set aside the order of penalty it did not go into the question of intra vires or ultra vires. It did not go into the question of constitutionality of section 140A(3). That section was already declared ultra vires by a competent High Court in the country and an authority like an Income-tax Tribunal acting anywhere in the country has to respect the law laid down by the High Court, though of a different State, so long as there is no contrary decision of any other High Court on that question. It is admitted before us that at the time when the Tribunal decided the question, no other High Court in the country had taken a contrary view on the question of constitutionality of section 140A(3). That being the position, it is not possible for us to take the view that the Tribunal in Bombay, when it set aside the order of penalty, went into the question of the constitutionality of that section and gave a finding that it is ultra vires following the decision of the Madras High Court. What the Tribunal really did was that in view of the law pronounced by the Madras High Court it proceeded on the footing that section 140A(3) was non-existent and so the order of penalty passed there under cannot be sustained.

	Relevant Legislative Enactments -

Later the Finance Bill, 2018 was proposed amendment to sections 145A, 36(1), 40A in this regard on 1-February-2018.

The Finance Bill received the assent of President on 28-March-2018. It is very difficult for an assesse to come to know of this fact on the same day.

This news was available on 29-Mar-2018 but 29-30 March-2018 was a bank holiday. 31-March-2018 was 5th Saturday on which the bank was working but the securities market were closed.

Thus it practically closed all the opportunities for the assesse to take any appropriate action as a consequence of the legislative amendment.

Section 145A and section 145B BEFORE amendment by the Finance Act, 2018

Method of accounting in certain cases.

145A. *Notwithstanding anything to the contrary contained in section 145,—*

(a) the valuation of purchase and sale of goods and inventory for the purposes of determining the income chargeable under the head "Profits and gains of business or profession" shall be—

(i) in accordance with the method of accounting regularly employed by the assessee; and

(ii) further adjusted to include the amount of any tax, duty, cess or fee (by whatever name called) actually paid or incurred by the assessee to bring the goods to the place of its location and condition as on the date of valuation.

Explanation.—For the purposes of this section, any tax, duty, cess or fee (by whatever name called) under any law for the time being in force, shall include all such payment notwithstanding any right arising as a consequence to such payment;(b) interest received by an assessee on compensation or on enhanced compensation, as the case may be, shall be deemed to be the income of the year in which it is received.]*

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145B – not in existenance

Section 145A and section 145B AFTER amendment by the Finance Act, 2018

[Method of accounting in certain cases.

145A. *For the purpose of determining the income chargeable under the head "Profits and gains of business or profession",—*

(i) the valuation of inventory shall be made at lower of actual cost or net realisable value computed in accordance with the income computation and disclosure standards notified under sub-section (2) of section 145 ;

(ii) the valuation of purchase and sale of goods or services and of inventory shall be adjusted to include the amount of any tax, duty, cess or fee (by whatever name called) actually paid or incurred by the assessee to bring the goods or services to the place of its location and condition as on the date of valuation;

(iii) the inventory being securities not listed on a recognised stock exchange, or listed but not quoted on a recognised stock exchange with regularity from time to time, shall be valued at actual cost initially recognised in accordance with the income computation and disclosure standards notified under sub-section (2) of section 145 ;

(iv) the inventory being securities other than those referred to in clause (iii), shall be valued at lower of actual cost or net realisable value in accordance with the income computation and disclosure standards notified under sub-section (2) of section 145:

Provided *that the inventory being securities held by a scheduled bank or public financial institution shall be valued in accordance with the income computation and disclosure standards notified under sub-section (2) of section 145 after taking into account the extant guidelines issued by the Reserve Bank of India in this regard:*

Provided further *that the comparison of actual cost and net realisable value of securities shall be made category-wise.*

Explanation 1.—For the purposes of this section, any tax, duty, cess or fee (by whatever name called) under any law for the time being in force, shall include all such payment notwithstanding any right arising as a consequence to such payment.

Explanation 2.—For the purposes of this section,—

(a) "public financial institution" shall have the meaning assigned to it in clause (72) of section 2 of the Companies Act, 2013 (18 of 2013);

(b) "recognised stock exchange" shall have the meaning assigned to it in clause (ii) of Explanation 1 to clause (5) of section 43;

(c) "scheduled bank" shall have the meaning assigned to it in clause (ii) of the Explanation to clause (viia) of sub-section (1) of section 36.

Taxability of certain income.

145B. *(1) Notwithstanding anything to the contrary contained in section 145, the interest received by an assessee on any compensation or on enhanced compensation, as the case may be, shall be deemed to be the income of the previous year in which it is received.*

(2) Any claim for escalation of price in a contract or export incentives shall be deemed to be the income of the previous year in which reasonable certainty of its realisation is achieved.

*(3) The income referred to in sub-clause (*xviii*) of clause (*24*) of section 2 shall be deemed to be the income of the previous year in which it is received, if not charged to income-tax in any earlier previous year.*

Memorandum to Finance Bill 2018 in this aspect reads as follows

Amendments in relation to notified Income Computation and Disclosure Standards.

At present , section 145 of the Act empowers the Central government to notify Income Computation and Disclosure Standards (ICDS). In pursuance the central government has notified ten such standards effective from 1st April 2017 relating to Assessment year 2017-18. ***These are applicable to all assesses*** *(other than an individual or a Hindu undivided family who are not subject to tax audit under section 44AB of the said Act) for the purposes of computation*

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of income chargeable to income-tax under the head "Profits and gains of business or profession" or "Income from other sources".

In order to bring certainty in the wake of recent judicial pronouncements on the issue of applicability of ICDS, it is proposed to —

(v) amend section 145A of the Act to provide that, for the purpose of determining the income chargeable under the head "Profits and gains of business or profession,—

(a)...
(b) ....
(c) ..
(d) ..

However, a large number of taxpayers have already complied with the provisions of ICDS for computing income for assessment year 2017-18. In order to regularise the compliance with the notified ICDS by a large number taxpayers so as to prevent any further inconvenience to them,

It is proposed to bring the amendments retrospectively with effect from 1st April, 2017 i,e the date on which the ICDS was made effective and will, accordingly, apply in relation to assessment year 2017-18 and subsequent assessment years

Legislation has recorded a factual finding that a large number of taxpayers have already complied with ICDS for FY 2016-17.

In view of above, the amendment seeks to achieve following objectives

To bring certainty in the wake of recent judicial pronouncements
To avoid any further inconvenience that may cause to large number of tax payers.

Parallel Amendment to section 36(1) and section 40A which will have impact while considering the effect of section 145A.

Amendment of section 36.
10. In section 36 of the Income-tax Act, in sub-section (1), after clause (*xvii*), the following clause shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 2017, namely:—
"(*xviii*) marked to market loss or other expected loss as computed in accordance with the income computation and disclosure standards notified under sub-section (2) of section 145.".

Amendment of section 40A.
11. In section 40A of the Income-tax Act, after sub-section (12) [as omitted by section 17 of the Finance Act, 1992 (18 of 1992)], the following sub-section shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 2017, namely:—

"(13) No deduction or allowance shall be allowed in respect of any marked to market loss or other expected loss, except as allowable under clause (*xviii*) of sub-section (1) of section 36.".

Thus the legislature has ensured that the valuation of inventory will happen in accordance with section 145 and can not get influenced by any other section.

	Broad principles relating to Retrospective Legislation -

a) A Statute is retrospective when it takes away or impairs any vested right acquired under the existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect of transactions or considerations already past.

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b) There is a rule against retrospectivity. Unless provided in the Statute, the law is always presumed to be prospective in nature. There cannot be any implicit inference of any retrospective operation of law. The retrospective operation must be clear and unambiguous.
c) A Statute is not retrospective because a part of the requisites for its action is drawn from a time antecedent to its passing.
d) A Statute dealing with procedure is retrospective and its provisions apply to the proceedings pending at the time of its enactment.
e) If the amendment is purely procedural and affects the machinery for collecting the tax rather than the tax itself, it would operate retrospectively.
f) The procedure provided in section *18(1)(a)* of the W.T. Act, 1957, as amended with effect from April 1, 1965, would be applicable to proceedings for the imposition of penalty initiated after the amending Act came into force.
g) Where some provisions of a Statute of procedure affect vested rights, they are prospective in operation, unless there is an indication in the Statute to the contrary.
h) Statutes dealing with substantive rights are generally prospective. The provisions whereby existing rights are affected or new burdens are imposed are not to be applied retrospectively in the absence of express enactment or necessary intendment.
i) Amendment to Law after 1st April, affecting tax liabilities for the AY beginning from that date during the currency of the AY does not apply to that AY, unless specifically so stated.
j) However, continuing default and not a default of one time, can be dealt with under the new law if the default continues even after the new law comes into effect.
k) An authority once seized of a matter lawfully would have jurisdiction to deal with it. Its jurisdiction cannot be divested by a later amendment to law taking away its jurisdiction, unless the amendment expressly or impliedly takes away that right with retrospective effect.
l) A Statute would operate retrospectively when the intent that it should so operate clearly appears from a consideration of the Act as a whole or from the terms thereof which unqualifiedly give the Statute a retrospective operation or imperatively require such a construction or negative the idea that it is to apply only to future cases.
m) If the court is in doubt whether the Statute is intended to operate retrospectively, it should resolve the doubt against such an operation.
n) The retrospective operation must be justified on proper and cogent grounds. Retroactivity of taxing statutes, however, raises constitutional issues. Whenever the validity of a retrospective provision is considered, it should be found whether such provisions defeat reasonable expectations of those who are affected by the statute.
o) A declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective.
p) Therefore, *Explanation*, clause *(a)*, to section 263(1) of the Income-tax Act, 1961, makes it clear that it was enacted to remove doubts. Though the *Explanation* came into force from October 1, 1984, the amending Act, being declaratory, must be held to be retrospective.
q) A declaratory provision is enacted to explain an earlier Act, or to supply an obvious omission or to clear up doubts as to the meaning of existing provisions or is curative for removing the defects or omissions in the existing provisions.
r) Therefore, it is not necessary that an express provision alone should reflect retrospectivity. The presumption against retrospectivity can be rebutted by necessary implication in cases where amendment is sought to cure an acknowledged evil for the benefit of the community as a whole.
s) There is a subordinate rule that a Statute or a section in it is not be construed to have larger retrospective operation than its language renders it necessary.
t) Degree of retrospectivity of the Statute should be spelt out from provisions of Statute itself. General principle, that appeal is continuation of original proceedings, must yield to limited terms of statute.

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u) Penal Statutes which have the effect of increasing penalties for current offences will be prospective because of Article 20 of the Constitution.
v) Right of appeal is a substantive right and not merely a procedure.
w) The Legislature has power to make laws with retroactive force. Retroactive expressions may be expressed *"totidem verbis"* as "shall have effect and shall be deemed for all purposes to have had effect as if had ordinarily been enacted".

Explanation of Various terms

x) *Substantive:* It relates to issue of substance as approach to form or procedure. It affects rights, duties, cause of actions. Substantive law is that part of law which creates and defines rights, regulates the rights, duties and the power of the parties. The remedy to the violation of substantive rights is also part of substantive law
y) According to the Oxford Dictionary of Law, retrospective (or retroactive) legislation is:
"Legislation that operates on matters taking place before its enactment, *e.g.*, by penalizing conduct that was lawful when it occurred. There is a presumption that statutes are not intended to have retroactive effect unless they merely change legal procedure."

Under its entry for 'retrospective' Stroud's Judicial Dictionary of Words and Phrases outlines the principle:
"*nova constitution futuris formam imponere debet, non-proeteritis"*, that is unless there be clear words to the contrary statutes do not apply to a past, but to a future, state or circumstance".

Declaratory Statutes: A Declaratory Act may be defined as an Act to remove doubts existing as to the common law or to the meaning or to the effect of any Statute. Various expressions are used to manifest the intention that amendment is declaratory in character. For example, "it is declared that", "to explain", "shall be deemed always to have meant", "shall be deemed never to be included", "for the removal of doubts". Declaratory amendments only lays down the law as it was previously existing.

Procedural Statutes: They provide method or procedure for enforcing rights, or the modes or the conditions of the application of the law.

Penal Statute: A penal statute is the one which imposes a pecuniary penalty or other punishment for an offence. Laws relating to imposition of fines and enforcing forfeitures are penal statutes.

Absence of validation section

Another important facet of the amendment is that, there is no validation section approving the validity the retrospective amendment.

Supreme Court in the case of The State of Karnataka & Ors. V The Karnataka Pawn Brokers Assn. & Ors. - CIVIL APPEAL NO. 5793 OF 2008 dated March 15, 2018 observed as follows

22. On analysis of the aforesaid judgments it can be said that the Legislature has the power to enact validating laws including the power to amend laws with retrospective effect. However, this can be done to remove causes of invalidity. When such a law is passed the Legislature basically corrects the errors which have been pointed out in a judicial pronouncement. Resultantly, it amends the law, by removing the mistakes committed in the earlier legislation, the effect of which is to remove the basis and foundation of the judgment. If this is done, the same does not amount to statutory overruling.

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23. However, the Legislature cannot set at naught the judgments which have been pronounced by amending the law not for the purpose of making corrections or removing anomalies but to bring in new provisions which did not exist earlier. The Legislature may have the power to remove the basis or foundation of the judicial pronouncement but the Legislature cannot overturn or set aside the judgment, that too retrospectively by introducing a new provision.

The legislature is bound by the mandamus issued by the Court. A judicial pronouncement is always binding unless the very fundamentals on which it is based are altered and the decision could not have been given in the altered circumstances. The Legislature cannot, by way of introducing an amendment, overturn a judicial pronouncement and declare it to be wrong or a nullity.

What the Legislature can do is to amend the provisions of the statute to remove the basis of the judgment.

	Decision of Home Solution

This decision of Delhi high court, full bench may be treated as lead decision because later on multiple high courts have either after referring to this decision or without referring to this decision have come to the same conclusion.

There was an amendment by the Finance Act, 2010 with retrospective effect from 1-4-2007 to the Finance Act, 1994 [chapter V] as follows

(h) in sub-clause (zzzz),—
(i) for the portion beginning with the words "to any person" and ending with the words "business or commerce", the following shall be substituted and shall be deemed to have been substituted with effect from the 1st day of June, 2007, namely:—
"to any person, by any other person, by renting of immovable property or any other
service in relation to such renting, for use in the course of or, for furtherance of, business
or commerce.";
(ii) in Explanation 1, after item (iv), the following item shall be inserted, namely:—
"(v) vacant land, given on lease or license for construction of building or temporary structure at a later stage to be used for furtherance of business or commerce;";

Most importantly, service tax on renting of vacant land was introduced for the first time.

Relevant portion of judgement of Delhi High Court is reproduced hereinbelow. The amended portion is marked with colour.

5. *After the said decision was rendered, Section 65(90)(a) and Sections 65 and 66 were amended. For the purpose of better appreciation, the provision that existed prior to the Finance Act, 2010 and post amendment by the Finance Act, 2010 are produced below in a tabular form :*

PRIOR TO FINANCE ACT, 2010	***POST AMENDMENT BY FINANCE ACT, 2010***	
"Section 65(90a) "renting of immovable property" includes renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the course or furtherance of business or commerce but does not include-	*"Section 65(90a) "renting of immovable property" includes renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the course or furtherance of business or commerce but does not include-*	
"Section 65(105) "taxable service" means any service provided or to be provided -	*"Section 66(105) "taxable service" means any service provided or to be provided -*	

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....(zzzz) to any person, by any other person in relation to renting of immovable property for use in the course or furtherance of business or commerce.		....(zzzz) to any person, by any other person, by renting of immovable property **or any other service in relation to such renting,** for use in the course of or furtherance of business or commerce.	
Explanation 1. - For the purposes of this sub-clause, "immovable property" includes-		Explanation 1. - For the purposes of this sub-clause, "immovable property" includes-	
(iv)	in case of a building located in a complex or an industrial estate, all common areas and facilities relating thereto, within such complex or estate,	(iv)	in case of a building located in a complex or an industrial estate, all common areas and facilities relating thereto, within such complex or estate,
		(v)	**Vacant land, given on lease or license for construction of**
			building or temporary structure at a later stage to be used for furtherance of business or commerce;

Be it noted, the amendments have been brought with retrospective effect.

Judgement

68. When premises is taken for commercial purpose, it is basically to subserve the cause of facilitating commerce, business and promoting the same. Therefore, there can be no trace of doubt that an element of value addition is involved and once there is a value addition, there is an element of service.

69. In view of our aforesaid analysis, we are disposed to think that the imposition of service tax under Section 65(105)(zzzz) read with Section 66 is not a tax on land and building which is under Entry 49 of List II. What is being taxed is an activity, and the activity denotes the letting or leasing with a purpose, and the purpose is fundamentally for commercial or business purpose and its furtherance. The concept has to be read in conjunction. As we have explained that service tax is associated with value addition as evolved by the judgments of the Apex Court, the submission that the base of the said decisions cannot be taken away by a statutory amendment need not be adverted to. Once there is a value addition and the element of service is involved, in conceptual essentiality, service tax gets attracted and the impost gets out of the purview of Entry 49 of List II of the Seventh Schedule of the Constitution and falls under the residuary entry, that is, Entry 97 of List I.

70. In view of our conclusion, the decision in the first Home Solution case does not lay down the law correctly inasmuch as in the said decision, it has been categorically laid down that even if a building/land is let out for commercial or business purposes, there is no value addition. Being of this view, we overrule the said decision.

71. The next limb of attack is with regard to the retrospective applicability of the provision. The learned counsel for the petitioners have submitted that the tax and the penalty could not have been imposed with retrospective effect. It is worth noting that the Parliament, keeping in view the first Home Solution case, substituted sub-clause (zzzz) in the present incarnation and gave retrospective effect to cure the deficiency. It is well settled in law that it is open to the legislature to pass a legislation retrospectively and remove the base on which a judgment is delivered. The said view has been stated in Bakhtawar Trust and Others v. M.D. Narayan and Others, (2003) 5 SCC 298. In the said case, in paragraphs 20 and 26, it has been held thus :

"20. In Vijay Mills Company Ltd. and Ors. v. State of Gujarat and Ors., (1993) 1 SCC 345, it was held -
"18. From the above, it is clear that there are different modes of validating the provisions of the Act retrospectively, depending upon the intention of the legislature in that behalf. Where the Legislature intends that the provisions of the Act themselves should be deemed to have been in existence from a particular date in the past and thus to validate the actions taken in the past as if the provisions concerned were in existence from the earlier date, the Legislature makes the said intention clear by the specific language of the validating Act. It is open for the legislature to change the very basis of the provisions retrospectively and to validate the actions on the changed basis. This is exactly what has been done in the present case as is apparent from the provisions of Clauses (3) and (5) of the Amending Ordinance corresponding to Sections 2 and 4 of the Amending Act 2 of 1981. We have already referred to the effect of Sections 2 and 4 of the amending Act. The effect of the two provisions, therefore, **is not only to validate with retrospective effect the rules already made** but also to amend the provisions of Section 214 itself to read as if the power to make rules with retrospective effect were always available under Section 214 since the said section stood amended to give

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such power from the time the retroactive rules were made. The legislature had thus taken care to amend the provisions of the Act itself both to give the Government the power to make the rules retrospectively as well as to validate the rules which were already made.

x xx x

26. Where a legislature validates an executive action repugnant to the statutory provisions declared by a court of law, what the legislature is required to do is first to remove the very basis of invalidity and then validate the executive action. In order to validate an executive action or any provision of a statute, it is not sufficient for the legislature to declare that a judicial pronouncement given by a court of law would not be binding, as the legislature does not possess that power. A decision of a court of law has a binding effect unless the very basis upon which it is given is so altered that the said decision would not have been given in the changed circumstances."

***72.** In State of Himachal Pradesh v. Narain Singh, (2009) 13 SCC 165, it has been held that it would be permissible for the legislature to remove a defect in earlier legislation and the defect can be removed both retrospectively and prospectively by legislative action and the previous actions can be validated.*

***73.** On the question of penalty due to non-payment of tax, it is open to the government to examine whether any waiver or exemption can be granted. It may be noted that the appeal against Home Solutions-I is pending before the Supreme Court but the operation of the said judgment has not been stayed.*

***74.** Quite apart from the above, as we have overruled the first Home Solution case, we are disposed to think that the provisions would operate from 2007 and the amendment brought by the Parliament is by way of ex abundanti cautela.*

***75.** In view of the aforesaid analysis, we proceed to enumerate our conclusions in seriatim as follows :*

(a) The provisions, namely, Section 65(105)(zzzz) and Section 66 of the Finance Act, 1994 and as amended by the Finance Act, 2010, are intra vires the Constitution of India.

(b) The decision rendered in the first Home Solution case does not lay down the correct law as we have held that there is value addition when the premises is let out for use in the course of or furtherance of business or commerce and it is, accordingly overruled.

(c) The challenge to the amendment giving it retrospective effect is unsustainable and, accordingly, the same stands repelled and the retrospective amendment is declared as constitutionally valid.

***76.** Consequently, the writ petitions, being sans substratum, stand dismissed without any order as to costs.*

Also Refer following high court judgements which ruled in similar manner on above issue.

- Bombay High Court in the case of 2011 (23) S.T.R. 561 (Bom.) RETAILERS ASSOCIATION OF INDIA Versus UNION OF INDIA

- Madhya Pradesh High Court in the case of 2012 (25) S.T.R. 231 (M.P.) - ENTERTAINMENT WORLD DEVELOPERS LTD. Versus UNION OF INDIA Writ Petition No. 12499 of 2010, decided on 21-9-2011

- PUNJAB & HARYANA in the case of 2010 (20) S.T.R. 737 (P & H) SHUBH TIMB STEELS LIMITED Versus UNION OF INDIA C.W.P. No. 11597 of 2010 (O & M), decided on 22-11-2010

	Decision of Essar Teleholdings - -

The purpose for which section 14A was introduced was given in the explanatory memorandum issued with the Finance Bill, 2001.

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Section 14A being retrospective in operation with effect from 1-4-1962, was being used by the Assessing Officers for reopening the assessments.
A Proviso was inserted by the Finance Act, 2002 to validate the
Later the Finance Act, 2006 amended the structure of section 14A.

Income-tax Rules, 1962 were amended by notification dated 24-3-2008 by which rule 8D was inserted.

The only question to be considered and answered is as to whether Rule 8D of 1962 Rules is prospective in operation as held by the High Court or it is retrospective in operation and shall also be applicable in the assessment year in question as contended by the revenue.

The methodology for determining amount of the expenditure in addition to income not includable in total income was for the first time prescribed by rule 8D as was envisaged in section 14A sub-section (2) and sub-section (3).

Rule 8D was inserted by notification dated 24-3-2008. It is, however, well settled that the mere date of enforcement of statutory provisions does not conclude that the statute is prospective in nature. The nature and content of statute have to be looked into to find out the legislative scheme and the nature, effect and consequence of the statute.

The submissions which have been much pressed by the revenue is that the section 14A being clarificatory in nature having retrospective operation, rule 8D, which is a machinery provisions have also to be held to be retrospective to make machinery provisions workable.

In view of opinion as expressed above, dismissal of the appeal by the High Court is fully sustainable. As held above, the rule 8D is prospective in operation and could not have been applied to any assessment year prior to assessment year 2008-09.

	Decision of Vatika Township (P.) Ltd - -

Facts

The Finance Act, 2002 inserted proviso to levy surcharge on tax payable with a retrospective effect with respect to tax liability arising out of cases in which the search is initiated under section 132 or the requisition is made under section 132A."

Thus it is an increase in liability which the tax department has found out and which otherwise would have been evaded.

A division bench of Supreme Court in the case of *CIT* v. *Suresh N. Gupta* [2008] 297 ITR 322/166 Taxman 313 (SC) treated this retrospective amendment as curative

Judgment in Suresh N. Gupta
19. As already noticed above, this very proviso to Section 113 of the Act came up for interpretation in *Suresh N. Gupta's* case (*supra*) and the Division Bench of this Court took the view that this proviso is clarificatory in nature as it simply clarifies the date with reference to which the rate of surcharge is payable, namely, the surcharge levied by the Central Act and applicable in the assessment year relevant to the previous year in which the search is initiated. It would be advisable to take note of the reasons which prevailed with the Bench to come to the aforesaid conclusion, inasmuch as it is the ratio of this judgment which was doubted by the Bench making the reference to the larger Bench.
20. The Court in *Suresh N. Gupta's* case (*supra*) formulated two points for consideration, viz.;

"1.		Whether on the facts and circumstances of this case, the Finance Act, 2001 was applicable to "block assessment" under Chapter XIVB in respect of search carried out on January 17, 2001?

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2.		Whether the proviso inserted in Section 113 by the Finance Act, 2002, is clarificatory?"

The constitution bench overruled *Suresh N. Gupta's* Judgment and observed as follows.
37. In the case of *CIT* v. *Scindia Steam Navigation Co. Ltd.* [1961] 42 ITR 589, this Court held that as the liability to pay tax is computed according to the law in force at the beginning of the assessment year, i.e., the first day of April, any change in law affecting tax liability after that date though made during the currency of the assessment year, unless specifically made retrospective, does not apply to the assessment for that year.

Answer to the Reference

38. When we examine the insertion of proviso in Section 113 of the Act, keeping in view the aforesaid principles, our irresistible conclusion is that the intention of the legislature was to make it prospective in nature. This proviso cannot be treated as declaratory/statutory or curative in nature. There are various reasons for coming to this conclusion which we enumerate hereinbelow:

Reasons in Support

39. (*a*) The first and foremost poser is as to whether it was possible to make the block assessment with the addition of levy of surcharge, in the absence of proviso to Section 113? In *Suresh N. Gupta's* case (*supra*) itself, it was acknowledged and admitted that the position prior to the amendment of Section 113 of the Act whereby the proviso was added, whether surcharge was payable in respect of block assessment or not, was totally ambiguous and unclear. The Court pointed out that some assessing officers had taken the view that no surcharge is leviable. Others were at a loss to apply a particular rate of surcharge as they were not clear as to which Finance Act, prescribing such rates, was applicable. It is a matter of common knowledge and is also pointed out that the surcharge varies from year to year. However, the assessing officers were in-determinative about the date with reference to which rates provided for in the Finance Act were to be made applicable. They had four dates before them viz.:

(*i*)	Whether surcharge was leviable with reference to the rates provided for in the Finance Act of the year in which the search was initiated; or
(*ii*)	the year in which the search was concluded; or
(*iii*)	the year in which the block assessment proceedings under Section 158BC of the Act were initiated; or
(*iv*)	the year in which block assessment order was passed.

Thus, it was a conscious decision of the legislature, even when the legislature knew the implication thereof and took note of the reasons which led to the insertion of the proviso, that the amendment is to operate prospectively. Learned counsel appearing for the assessees sagaciously contrasted the aforesaid stipulation while effecting amendment in Section 113 of the Act, with various other provisions not only in the same Finance Act but Finance Acts pertaining to other years where the legislature specifically provided such amendment to be either retrospective or clarificatory. In so far as amendment to Section 113 is concerned, there is no such language used and on the contrary, specific stipulation is added making the provision effective from 1st June, 2002.

(*e*) There is yet another very interesting piece of evidence that clarifies the provision beyond any pale of doubt, viz. understanding of CBDT itself regarding this provision. It is contained in CBDT circular No.8 of 2002 dated 27th August, 2002, with the subject "Finance Act, 2002 - Explanatory Notes on provision relating to Direct Taxes". This circular has been issued after the passing of the Finance Act, 2002, by which amendment to Section 113 was made. In this circular, various amendments to the Income Tax Act are discussed amply demonstrating as to which amendments are clarificatory/retrospective in operation and which amendments are prospective. For example, explanation to Section 158BB is stated to be clarificatory in nature. Likewise, it is mentioned that amendments in

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Section 145 whereby provisions of that section are made applicable to block assessments is made clarificatory and would take effect retrospectively from 1st day of July, 1995. When it comes to amendment to Section 113 of the Act, this very circular provides that the said amendment along with amendments in Section 158BE, would be prospective i.e. it will take effect from 1st June, 2002.

(*f*) Finance Act, 2003, again makes the position clear that surcharge in respect of block assessment of undisclosed income was made prospective. Such a stipulation is contained in second proviso to sub-section (3) of Section 2 of Finance Act, 2003. This proviso reads as under:

"**Provided further** that the amount of income-tax computed in accordance with the provisions of section 113 shall be increased by a surcharge for purposes of the Union as provided in Paragraph A, B, C, D or E, as the case may be, of Part III of the First Schedule of the Finance Act of the year in which the search is initiated under section 132 or requisition is made under section 132A of the income-tax Act."
Addition of this proviso in the Finance Act, 2003 further makes it clear that such a provision was necessary to provide for surcharge in the cases of block assessments and thereby making it prospective in nature. The charge in respect of the surcharge, having been created for the first time by the insertion of the proviso to Section 113, is clearly a substantive provision and hence is to be construed prospective in operation. The amendment neither purports to be merely clarificatory nor is there any material to suggest that it was intended by Parliament. Furthermore, an amendment made to a taxing statute can be said to be intended to remove 'hardships' only of the assessee, not of the Department. On the contrary, imposing a retrospective levy on the assessee would have caused undue hardship and for that reason Parliament specifically chose to make the proviso effective from 1.6.2002.

40. The aforesaid discursive of ours also makes it obvious that the conclusion of the Division Bench in *Suresh N. Gupta's* case (*supra*) treating the proviso as clarificatory and giving it retrospective effect is not a correct conclusion. Said judgment is accordingly overruled.

41. As a result of the aforesaid discussion, the appeals filed by the Income Tax Department are hereby dismissed. Appeals of the assessees are allowed deleting the surcharge levied by the assessing officer for this block assessment pertaining to the period prior to 1st June, 2002.
Analysis-: When an amendment of levying a surcharge in the case of a seach has been held ultra-virus.

	Decision of Eurotex Industries and Exports Ltd - -

IT is a case under Maharashtra Value Added Tax Act, 2002. Brief underlying facts of the case are as follows.

The Government of Maharashtra granted exemption from collecting and paying sales tax / VAT tax to certain units in backward areas.
Thus the unit holders did not charge, collect or pay the sales tax.
Later by retrospective amendment, the exemption benefit was curtailed.

<u>Arguments of Assessee</u>

The benefit of VAT exemption would be available in respect of the entire production of the industrial unit and not merely a proportionate part thereof. These industrial units were, therefore, disabled and prevented from recovering any VAT on any part of their production, as that would have been illegal and would in fact have constituted a criminal offence. If the same amendment had been made in the year 2005 itself, the industrial units would have availed of the VAT exemption benefit over a longer period of time and from 2005 onwards would have recovered from their customers VAT on an appropriate proportion of their total production.

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He argued that the only reason or justification given by the respondents for the retrospective amendment is that the State Government was losing a considerable amount of revenue. This is only because a huge amount of capital investment was made in the extremely backward areas of Maharashtra in response to the State Government's Incentive Scheme. The State Government, thus, fully realised all its objectives and goals under the Incentive Scheme. To then do a somersault and make a significant reduction of the Scheme benefits is entirely unfair, arbitrary and unreasonable. Further, the twin effects of the retrospective amendment are that, first, the industrial units are permanently denied a portion of the exemption benefit to which they are entitled by reason of the capital investment made by them, though the exemption period has years to go before it lapses. Secondly, the industrial units are permanently denied of any opportunity to recover the amount of VAT from their customers only because they were disabled and effectively prevented from recovering it in the relevant period. It is, therefore, submitted that the retrospective amendment is arbitrary, unreasonable and oppressive and, therefore, violates the appellant's fundamental rights under Articles 14 and 19(1)(g) of the Constitution.

14) He argued that where the Government has created the situation which makes it illegal or impossible for a manufacturer/dealer to recover sales tax/VAT from its customers, then no demand for amount of tax can be raised, as held in West Bengal Hosiery Association & Ors. v. State of Bihar & Anr., (1988) 4 SCC 134 and British Physical Lab India Ltd. v. State of Karnataka & Anr., (1999) 1 SCC 170. In this behalf, he pointed out that throughout the period 2005 to 2009, the appellant and other industries covered by the said exemption, were entitled to claim sales tax exemption benefit on the entire turnover of their respective expanded undertakings, only because no Rule was framed by the State Government, firstly under Section 41BB of the Sales Tax Act and thereafter under Section 85 of the VAT Act. Consequently, the appellant and other industries were effectively disabled and prohibited from recovering sales tax or VAT on any part of their turnover. In fact, if the appellant recovered sales tax on any part of its turnover from its customers, the appellant would have been guilty of a criminal offence under the VAT Act. It is the respondents who are completely responsible for this state of affairs, which could have been put an end to forthwith by merely framing a Rule under Section 41 BB or Section 93. Accordingly, the appellant availed tax exemption on 100% of the turnover of its expanded undertaking and passed on the benefit of exemption to the appellant's customers. In the process, the appellant exhausted its entire tax exemption benefit calculated at 130% of its total fixed capital investment, long before the expiry of the appellant's 15 year exemption period which ended only in 2015. Immediately after exhausting its sales tax exemption benefit limit, the appellant started recovering VAT from its customers and paying over the same to the tax authorities.

15) The learned senior counsel also argued that the exact effect and impact of the impugned retrospective amendment made in 2009 with effect from April 01, 2005 needs to be clearly understood, as under:

(a) The total exemption benefit to which a manufacturer was entitled was, in any event, limited to 130% of the total eligible Fixed Capital Investment in the expansion, which could be availed of over a long period of 15 years. The effect of the retrospective amendment is that an undertaking which had already availed of the exemption benefit on 100% of its turnover will, as a result of the retrospective amendment, forfeit absolutely a slice of its exemption benefit entitlement, for no fault committed by it at all.

(b) If the said amendment had been made on April 01, 2005 itself (by the simple method of issuing a Rule under Section 93), then the appellant would have availed of tax exemption only on the proportionate portion of its turnover and would have recovered VAT on the balance (taxable) portion of its turnover. As a consequence of the impugned retrospective amendment, the appellant is permanently denied not only a slice of its exemption entitlement (based on its capital investment) but also denied permanently the opportunity to recover VAT from its customers on that proportion of its turnover which is taxable.

(c) There is no warrant or justification at all for the said double adverse impact on all the industries in question. All of them, including the appellant, have duly carried out everything that was expected of them under the prevailing law. They made huge capital investments in the most backward districts of the State of Maharashtra and added

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significantly to the production and turnover of their undertakings and, thereby, greatly expanded the tax base of the State of Maharashtra.

(d) Counsel for the State of Maharashtra gave no explanation or justification at all for the retrospective amendment except to say that it was for correction of an error or anomaly, which, as already pointed out, was an unstateable argument.

16) Mr. Anil Shrivastav, learned counsel who appeared in Civil Appeal No. 4499 of 2016 additionally argued that the retrospective amendment vide Amendment Act 2009 does not seek to remove an ambiguity or to correct a cause of invalidity but, in essence, seeks to impose a fresh levy of tax on the appellant for the first time, which is unreasonable and arbitrary and is, therefore, liable to be struck down as being ultra vires the Constitution of India. His submission in this behalf was that the High Court failed to consider that the sole purpose of the amendment made from retrospective effect was to neutralize the effect of the judgment dated July 27, 2009 and the orders dated October 13, 2008 and June 19, 2009 of the Bombay High Court, which was not permissible. He also submitted that Legislature cannot legislate with the sole object of neutralising or over-ruling the decision of the Court.

Another submission of Mr. Shrivastav was that vested rights were created in favour of the appellant and also Doctrine of Promissory Estoppel was applicable in the present case and these aspects precluded the Legislature to make the amendment retrospectively.

He referred to number of judgments on the aforesaid propositions.

Argument of Government

18) Learned counsel for the State refuted the aforesaid submissions of the counsel for the appellants and pleaded that well reasoned judgment of the High Court does not require to be interfered with. He argued that from the very beginning, the legislative intent was to allow benefit under Package Scheme of Incentives only on proportionate basis which was reflected in Section 41BB of the Sales Tax Act as well as Section 93 of the MVAT Act. Under these Sections, the State Government was required to formulate the modality for proportionately restricting the grant of benefits under a Package Scheme of Incentives by prescribing the ratio for computing the part of the turnover of sales and purchase of a unit eligible for such benefits. He pointed out that though no Rules prescribing this ratio were framed by the State Government, instead the Commissioner of Sales Tax issued administrative circular dated January 17, 1998 in this behalf which was quashed by the Courts as impermissible on the ground that 'in the absence of any provision under the 1993 scheme and alternatively, in the absence of any ratio prescribed by the State Government by framing Rules, it was not open to the Deputy Commissioner of Sales Tax to direct the assessee to avail the incentives under the 1993 scheme in proportion to the production attributable to the newly acquired fixed assets.' Referring to the aforesaid quoted portion, learned counsel submitted that the High Court recognized the existence of the legislative intent to restrict the benefits but concluded that there was a lacuna/anomaly in effectuating that intent by not framing any Rules. It is for this reason VAT Act was amended in the year 2009 with retrospective effect to cure the aforesaid deficiency. According to the learned counsel, such a move was within the competence of State Legislature and very much permissible in law. He also referred to various judgments showing that not only Legislature is empowered to enact a law, including a fiscal statute, either prospectively or retrospectively, but Legislature is also empowered to nullify the effect of a judicial decision by changing the law retrospectively by removing the basis on which the decision was founded. The learned counsel emphasised that it is in the public interest to restrict the benefits given under a Package Scheme of Incentives in any year to the proportion of additional capital investment as this balances the burden of tax amongst various sectors and prevents an unsustainable drain of financial resources of the State.

The Legislature in enacting the Validating Act has, in its wisdom, decided that the grant of benefits on a pro rata or proportionate basis is in public interest and subserves the objective of the Package Scheme of Incentives. The Validating Act not only carries out the intent and purpose of Section 93, as originally framed, but also subserves the underlying objectives of the Package Scheme of Incentives as a means of benefiting public interest as well as the State

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and safeguards against these objectives being nullified by the imposition of a huge financial loss on the State. Another submission of the counsel for the State was that a retrospective enactment cannot be impugned on the ground that the retrospective levy did not afford any opportunity to the dealers to pass on the tax to consumers, as held in Hiralal Ratanlal v. State of Uttar Pradesh,

Conclusion

34) The aforesaid judgment has been followed by this Court in Assistant Commissioner of Agricultural Income Tax & Ors. v. Netley 'B' Estate & Ors., (2015) 11 SCC 462. To the same effect is the judgment of this Court in R.C. Tobacco (P) Ltd. v. Union of India, (2005) 7 SCC 725.

35) Adverting to the arguments of Mr. Ganesh, it may be mentioned at the outset that no such submissions were raised in the High Court. The thrust of the argument of Mr. Ganesh was that this amendment has rendered the industrial units disbelieved and prevented them from recovery of VAT on any part of their production. There has to be a factual foundation for such an argument. In any case, we do not find any merit in the argument. It was specifically pointed out by the learned counsel for the respondent that all these appellants have availed the proportionate benefit which was permissible under the statutory provision. The intention now is to claim benefit on the entire turnover of their respective expanded undertaking which was, in any case, not permissible. Furthermore, such an argument of not able to pass on the burden on the consumer is untenable. Way back in the year 1961, a Constitution Bench of this Court in J.K. Jute Mills Co. Ltd. v. State of Uttar Pradesh, AIR 1961 SC 1534 laid down the following principle:

"(i) Where there is a sale of goods, the state legislature is competent to impose a tax and, subject to constitutional limitations, such a tax can be imposed even on sales which have taken place prior to the enactment:

"But where the transaction is one of sale of goods as known to law, the power of the State to impose a tax thereon is plenary and unrestricted subject only to any limitation which the Constitution might impose, and in the exercise of that power, it will be competent to the legislature to impose a tax on sales which had taken place prior to the enactment of the legislation."

(ii) Though ordinarily a sales tax is intended to be passed on to the buyer, the power of the legislature is not conditional on the burden being passed on:

"It is no doubt true that a sales tax is, according to accepted notions, intended to be passed on to the buyer, and provisions authorising and regulating the collection of sales tax by the seller from the purchaser are a usual feature of sales tax legislation. But it is not an essential characteristic of a sales tax that the seller must have the right to pass it on to the consumer, nor is the power of the legislature to impose a tax on sales conditional on its making a provision for sellers to collect the tax from the purchasers. Whether a law should be enacted, imposing sales tax, or validating the imposition of sales tax, when the seller is not in a position to pas it on to the consumer, is a matter of policy and does not affect the competence of the legislature. This question is concluded by the decision of this court in Tata Iron & Steel Co. Ltd. v. State of Bihar, (1958) SCR 1355: (AIR 1958 SC 452)."

(iii) The legislature has a plenary power, subject to constitutional limitations to enact a law which is prospective or retrospective:

"The power of a legislature to enact a law with reference to a topic entrusted to it, is, as already stated, unqualified subject only to any limitation imposed by the Constitution.

In the exercise of such a power, it will be competent for the legislature to enact a law, which is either prospective or retrospective."

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36) It would also be pertinent to point out that in R.C. Tobacco (P) Ltd. case, this Court authoritatively pronounced the fact that the dealer upon whom the tax is imposed is not in a position to pass on tax on the consumers, is of no relevance to the competence of the legislature. Following observations in this behalf may be noted:

"48. The petitioners who were admittedly in Group A have refuted this and contend that their relationship with the large cigarette companies was on a principal-to-principal basis and that under their agreements they alone would be liable to pay the excise duty now demanded by the respondents under Section 154.

49. We are not in a position to determine the disputes raised. However, we cannot lose sight of the fact that although excise duty like other indirect taxes may be passed on to the customer of the goods under the law as it now stands, it is the manufacturer of the excisable goods to whom the Excise Authorities will look for payment.

How the manufacturer will adjust its liability with its customers does not concern the respondents nor can they be asked to recover their dues from persons who may have ultimately taken over the responsibility to pay the excise duty as a result of an agreement with the manufacturer. (See in this connection State of Rajasthan v. J.K. Udaipur Udyog Ltd. [(2004) 7 SCC 673] SCC at p. 692.)"

37) It would also be relevant to point out that in R.C. Tobacco (P) Ltd., this Court upheld recission of an exemption notification with retrospective effect as originally framed notification has not provided sufficient safeguards that would have ensured the achievement of the object underlying the policy of incentives. The Court held that it was permissible to rectify a defective expression of object of the policy by a retrospective amendment.

"26. The exemption notifications were issued under Section 5-A of the Central Excise Act, 1944 as a delegate of Parliament. In a cabinet form of Government, the executive is expected to reflect the views of the legislature. It would be impossible for the legislatures to deal in detail and cater to the innumerable problems which may arise in implementing a statute. When the power of subordinate legislation is conferred by Parliament in certain matters it can only lay down the policy and guidelines and expect that what is done by the executive is in keeping with such policy. It does of course retain control over its delegate and can exercise that control by repealing the action of the delegate. [Sita Ram Bishambhar Dayal v. State of U.P., (1972) 4 SCC 485 : 1974 SCC (Tax) 294 : (1972) 2 SCR 141; M.K. Papiah & Sons v. Excise Commr., (1975) 1 SCC 492 : 1975 SCC (Tax) 128] Consequently, if the executive has failed to carry out the object of Parliament, such control may be exercised by retrospectively enacting what the executive ought to have achieved."

38) In view of the aforesaid factual and legal discussion, reliance by Mr. Ganesh on the judgments of this Court in West Bengal Hosiery Association & Ors. is totally untenable as they are not applicable in the context of this case.

39) We, thus, do not find any merit in any of these appeals as we find that High Court has appropriately dealt with the issue upholding the validity of the impugned amendment.

As a result, these appeals fail and are dismissed with cost.

	Impact of decision of Vegetable Products -

Whenever there is a situation that, while interpreting taxation laws, genuinely two views are possible, the view as favourable to the assesse should be adopted.

But the difficulty in this case is, as mentioned earlier, the expression used is not "tax" but "the tax". That expression can be reasonably understood as referring to the expression earlier used in the provision, namely, "the amount of the tax, if any, payable" by the assessee. At any rate, the provision in question is capable of more than one reasonable interpretation. Two High Courts, namely, Calcutta and Mysore, have taken the view that the expression "the tax" in section 271(1)(a)(i) refers to "the tax, if any, payable" (by the assessee) mentioned in the earlier part of the section. It

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is true that the Lahore and Delhi High Courts have taken a different view. But the view taken by the Calcutta and Mysore High Courts cannot be said to be untenable view. Hence, particularly in view of the fact that we are interpreting, not merely a taxing provision but a penalty provision as well, the interpretation placed by the Calcutta and Mysore High Courts cannot be rejected. Further, as seen earlier, the consequences of accepting the interpretation placed by the revenue may lead to harsh results.
For the reasons mentioned above, this appeal is dismissed with costs.

	Definition of Category

If one refers to the definition of category as given by RBI, it is substantially the same as above. Additionally RBI has clarified that the bifurcation of securities into HTM, AFT, AFS is only a classification and does not or can not amount to categories.

Refer Circular with Ref DBOD.BP.BC.44/21.04.141/2003-04 dated November 12, 2003 with subject Prudential guidelines on banks' investment in non-SLR securities. Reproducing Appendix II

Prudential guidelines on management of the non-SLR investment portfolio by banks – Disclosures requirements - (vide paragraph 14 of the Guidelines)
Banks should make the following disclosures in the 'Notes on Accounts' of the balance sheet in respect of their non-SLR investment portfolio, with effect from the financial year ending 31 March 2004.

i) Issuer composition of Non SLR investments
(Rs. in crore)

No.	Issuer	Amount	Extent of private placement	Extent of 'below investment grade' securities	Extent of 'unrated' Securities	Extent of 'unlisted' securities
(1)	**(2)**	**(3)**	**(4)**	**(5)**	**(6)**	**(7)**
1	PSUs					
2	FIs					
3	Banks					
4	Private corporates					
5	Subsidiaries/ Joint ventures					
6	Others					
7	Provision held towards depreciation		X X X	X X X	X X X	X X X
	Total *					

NOTE: *1. * Total under column 3 should tally with the total of investments included under the following categories in Schedule 8 to the balance sheet:*

a. *Shares*
b. *Debentures & Bonds*
c. *Subsidiaries/ joint ventures*

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d. *Others*

2. Amounts reported under columns 4, 5, 6 and 7 above may not be mutually exclusive.

ii) Non performing Non-SLR investments

Particulars	***Amount (Rs. Crore)***
Opening balance	
Additions during the year since 1st April	
Reductions during the above period	
Closing balance	
Total provisions held	

In such a case, HTM, AFT, AFS can not be treated as categories for the purposes of second proviso.

Apparent discrepancy in the definition

An important contrast emerges out of proposed section definition of 'securities' as defined in section 145A (iii) and in para 3(1)(b) of ICDS VIII. Whereas the tax standard defines securities as defined under Securities Contracts (Regulations) Act, 1956, the definition used in the proposed section states that securities listed but not regularly quoted on a recognized stock exchange shall be covered.

Accordingly, one may infer that the bucket approach of valuation shall not apply on regularly traded listed securities.

But it will defeat the purpose of the proviso and make the proviso infructuous.

Disclaimer and Damages

Relating to Damages

a) In case, where the client suffers any losses / damages due to reliance on the opinion, our liability is restricted only to the fees paid by the client.

Relating to Audience of the opinion

b) The opinion is valid only in respect of the client and for the financial year / transaction / scheme / arrangement etc. mentioned in the opinion.

c) This opinion is strictly private and confidential. It is meant only for the client.

d) It may not be shared with any other person except as provided by any law for the time being in force.

Relating to Facts of the case-:

e) The firm does not take any responsibility regarding completeness, relevance and accuracy of the facts. The same have been provided to us by the client and relied upon by us.

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f) We are under no obligation to update it with the changes in the law. The opinion is valid only on the date of signing of the same.

Resources employed-:

g) We have subscribed to various cases reporting agencies to remain updated at any given point of time. But it is an accepted fact that not all the cases are reported.

h) There may be a time lag in the date on which a decision of a court is pronounced or a notification is notified or a circular is issued and the date on which it is reported by the cases reporting agency.

i) More than the correctness of the ultimate conclusion, it is the process of reaching to that conclusion has been considered more important. An attempt is made to make it easily discernible form the opinion.

j) The firm does not take any responsibility for impact of such unreported case(s) or delayed reported cases / notifications / circulars, if any.

Approach adopted for forming opinion

k) Law is a vibrant and ever changing phenomenon. Every effort will be made to take into consideration relevant factors influencing the case.

l) The firm's opinion represents their view on the subject matter. The firm will, as far as possible, in their opinion, will draw attention to decided case laws taking other view as well.

m) It is reasonable and possible that another person may have another opinion for the same facts and with application of same law in force.

n) In such case, it will not be treated as negligence / mis-conduct on our part.

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