SOME JUDICIAL OBSERVATIONS

The Income-tax Act directs its attention primarily to the person who receives the income, profits or gains rather than to the ownership or enjoyment thereof ...). It is also worthy of note that in several instances persons who have no proprietary or other right in the income charged to tax are made liable to pay the tax for no other reason than the convenience of assessment and collection.

–Per Patanjali Sastri J. *Dubash's Executors* v *CIT* [1951] 19 ITR 182, 189 (SC).

If a case appears to be governed by either of two provisions, it is clearly the right of the assessee to claim that he should be taxed under that one which leaves him with a lighter burden.

–Per Krishnaswami Ayyangar J. *CIT* v *Bosotto* Bros Ltd [1940] 8 ITR 41, 48 (FB)

The Crown is not entitled to take a mere book-keeping entry as conclusive evidence of the existence of a profit.

–Per Lord Phillimore, *Doughty* v *Commissioner of Taxes* 1927 AC 327, 336 (PC). See also *CIT* v *Shoorji Vallabhdas & Co* [1962] 46 ITR 144, 148 (SC).

In applying the test of commercial expediency to determine whether the expenditure is wholly and exclusively laid out for the purpose of the business, the reasonableness of the expenditure should be considered from the point of view of the businessman and not from the point of view of outsiders including the Income-tax Officer ... The view-point of the businessman is all the more important under the present set-up, when the difficulties of running a business are more pronounced.

–Per Satyanarayana Rao J, *N M Rayaloo Lyer & Sons* v *CIT* [1954] 26 ITR 265, 292.

In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.

–Per Rowlatt J. *Cape Brandy Syndicate* v *IR* [1921] 1 KB 64, 71, 12 TC 358, 366, approved by the House of Lords in *Canadian Eagle Oil Co Ltd* v. *The King* 27 TC 205, 248.

The matter must depend on the wording of the section, and not upon the consequences which follow.

–Per Lord Porter, *Indian Iron & Steel Co. Ltd.* v *CIT* [1943] 11 ITR 328, 339 (PC).

There have been many cases where this matter of capital and income has been debated. There have been many cases which fall upon the borderline: indeed, in many cases it is almost true to say that the spin of a coin would decide the matter almost as satisfactorily as an attempt to find reasons.

–Per Greene MR, *IR* v *British Salmson Aero Engines Ltd* 22 TC 29, 43 (CA), [1939] 7 ITR 245, 252.

In taxation matters it is not necessary to construe documents from their purely legal aspect. It is open to us not merely to look at the documents themselves, but also to consider the surrounding circumstances so as to arrive at a conclusion as to what was the real nature of the transaction from the point of view of two businessmen who were carrying out this transaction. In all taxation matters more emphasis must be placed upon the business aspect of the transaction rather than on the purely legal and technical aspect.

–Per Chagla CJ, *CIT* v *Kolhia Hirdagarh Co Ltd* [1949] 17 ITR 545, 555.

It is trite law that His Majesty's subjects are free, if they can, to make their own arrangements so that their cases may fall outside the scope of the taxing Acts. They incur no legal penalties and, strictly speaking, no moral censure, if, having considered the lines drawn by the Legislature for the imposition of taxes, they make it their business to walk outside them.

–Per Viscount Sumner, *Levene* v *IR* 13 TC 486, 501-2 (HL).

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