



# SATURDAY INTERNATIONAL TAX GYAN !!!

## #taxmadeeasy

### Back to Basic Principles

SITG No. 241



**If two views possible,  
view which is  
favourable to  
taxpayer should be  
adopted**

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# Introduction

- ❖ The principle of adopting a taxpayer-friendly view in tax laws arises when laws or agreements are ambiguous and allow for multiple interpretations.
- ❖ In such cases, courts and tribunals prefer the interpretation that benefits the taxpayer. This approach ensures fairness, promotes compliance, and fosters trust in the taxation system.
- ❖ It also aligns with the broader goals of international taxation agreements, such as DTAAs (Double Taxation Avoidance Agreements), which aim to eliminate double taxation and encourage cross-border trade and investment.
- ❖ The legal system seeks to prevent the imposition of undue tax burdens on taxpayers, especially in cross-border scenarios where complexities are more frequent.

## Illustration of two possible views

- ❖ Suppose an Indian company receives technical services from a foreign company. The tax treaty between India and the foreign country is ambiguous about whether these services constitute "Fees for Technical Services" (FTS) or "Business Profits."
  - If classified as FTS, it would be taxable in India at a higher rate.
  - If classified as Business Profits, it might not be taxable in India if the foreign company doesn't have a Permanent Establishment in India.
- ❖ In such a case, where both interpretations are plausible due to the ambiguity in the treaty language, the tax authorities should adopt the view that benefits the assessee - classifying the income as Business Profits, potentially resulting in no tax liability in India.
- ❖ This approach not only benefits the taxpayer but also encourages international trade and investment by providing certainty and a favorable tax environment for cross-border transactions.

# Judicial Precedents in India

## ❖ **Commissioner of Income-tax v. Vegetable Products Ltd. [1973] 88 ITR 192 (SC)**

- Under Indian tax law, **Section 90(2)** of the Income Tax Act, 1961, provides that a taxpayer can apply the provisions of a DTAA if they are more beneficial than the domestic tax law.
- DTAAAs often include provisions like lower tax rates or specific exemptions that taxpayers can choose.
- **Article 24** of many DTAAAs, known as the **Non-Discrimination Clause**, ensures that non-resident taxpayers are not treated less favorably than residents. This reinforces the principle that a taxpayer-friendly interpretation should prevail where two reasonable views exist. Judicial precedents have played a significant role in solidifying this principle.

# Application of the Principle in DTAA's

- ❖ **This principle was extended to DTAA's in cases like Solid Works Corporation [ITA No. 3219/Mum/2010]**, where the Mumbai Tribunal upheld a taxpayer-friendly view under the India-USA DTAA, referencing the Non-Discrimination Clause.
- ❖ Similarly, in **Reliance Communication Ltd. (52 CCH 292)**, the Mumbai Tribunal reaffirmed that courts should prefer interpretations that are favorable to taxpayers. These cases underscore the importance of judicial precedent in shaping how DTAA's are interpreted, with the overarching goal of ensuring fairness and minimizing the tax burden on the taxpayer.

## Our Comments

- ❖ In our view, the principle of adopting a taxpayer-friendly interpretation is essential in ensuring that the tax system remains fair, transparent, and accessible for all taxpayers. This approach not only safeguards the rights of taxpayers but also promotes international cooperation and economic growth, particularly in cross-border transactions.
- ❖ It is important to note that the rule of resolving ambiguity in favour of the assessee does not also apply where the interpretation in favour of assessee will have to treat the provisions unconstitutional.
- ❖ Further, in case of two views only has to first apply the rule of specific over general and still if there is ambiguity then we should adopt the interpretation which is more favourable to the taxpayer.

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