

INTERPRETATION OF DEEMING FICTION :

a) **The State of Punjab & Ors. ...Appellants Versus Davinder Singh & Ors.
...Respondents**

2024 INSC 562

b. Scope of deeming fiction

107. The use of the phrase “deemed to be” is not conclusive of a legal fiction.154 (See Consolidated Coffee Ltd v. Coffee Board, Bangalore, 1980 3 SCC 358 [11,12]; Bhuwalka Steel Industries Limited v. Union of India, (2017) 5 SCC 598 [36,37,43,44])

The word deemed is used for many purposes, such as for the artificial construction of a word and to clarify uncertain constructions, or plainly just to mean “regarded as being”.155 (St. Aubyn v. Attorney General, 1952 AC 15, 53 [Lord Radcliffe])A legal fiction is essentially a presumption that certain facts which do not exist in fact, will be treated as real and existing for the purpose of law. Courts have evolved two principles on the operation of legal fictions. The first principle is that a legal fiction must be confined to its ‘legitimate field’, for the specific purpose for which it was created.156 (Industrial Supplies Private Limited v. Union of India, (1980) 4 SCC 341 [25]; K. Prabhakaran v. P. Jayarajan, (2005) 1 SCC 754 [39]; See Bengal Immunity Company Ltd v. State of Bihar, (1955) SCC OnLine

SC 2.) In Bengal Immunity Company Ltd v. State of Bihar157 (

157 Bengal Immunity Company Ltd v. State of Bihar, (1955) SCC OnLine SC 2 [Justice Das, 32].), a seven-Judge Bench of this

Court held that legal fictions are created only for a certain purpose and they must be confined only to that “legitimate field”. In its decision in that case, this Court held that the deeming fiction in the Explanation to Article 286(1)(a), before the Constitution (Sixth Amendment) Act 1956, (by which a sale was deemed to have taken place in the State where the goods were delivered because of the direct sale) only applied to Article 286(1)(a) and not to Article 286(2). This Court held that the scope of Article 286(1)(a) which barred a State from imposing tax on sales outside the State, was different from the

scope of Article 286 (2) which stated that unless otherwise provided by law, State laws could not tax a sale or purchase which took place in the course of inter-state trade or commerce.158 (158 52. A legal fiction pre-supposes the correctness of the state of facts on which it is based and all the consequences which flow from that state of facts have got to be worked out to their logical extent. But due

regard must be had in this behalf to the purpose for which the legal fiction has been created. If the purpose of this legal fiction contained in the Explanation to Article 286(1)(a) is solely for the purpose of subclause

(a) as expressly stated it would not be legitimate to travel beyond the scope of that purpose and read into the provision any other purpose howsoever attractive it may be. The legal fiction which was created

here was only for the purpose of determining whether a particular sale was an outside sale or one which could be deemed to have taken place inside the State and that was the only scope of the provision. It would be an illegitimate extension of the purpose of the legal fiction to say that it was also created for the purpose of converting the inter-State character of the transaction into an intra-State one. This type of conversion could not have been in the contemplation of the Constitution-makers and

is contrary to the express purpose for which the legal fiction was created as set out in the Explanation to

Article 286(1)(a). [emphasis supplied])

108. The second principle is that the scope of the legal fiction must be extended to the consequences which “logically” flow from its creation. The opinion of Lord Asquith in *East End Dwelling Co. Ltd. v. Finsbury Borough Council* 159 (159 LR 1952 AC 109) is the leading case for this proposition. The Law Lord observe d that the effect of a legal fiction must not be limited to treating facts that do not exist as real but must be expanded to understand the effects and consequences that flow from the legal fiction. 160

(160 *ibid* at page 132. “If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequence and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it.... The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.”) However, a law creating a deeming fiction cannot create presumptions in favor of a legal consequence but only presumptions about facts from which certain legal consequences may follow. In *Delhi Cloth & General Mills Co. Ltd v. State of Rajasthan* 161 (161 :1976 3 SCC 443.), the constitutional validity of the *Kota Municipal Limits (Continued Existence) Validating Act of 1975* was challenged. The *Municipalities Act* prescribed a mandatory procedure for delimitation of municipalities including a public notice inviting objections. This mandatory procedure was flouted in the inclusion and exclusion of certain villages to and from the *Kota municipality in the State. The Validating Act* provided that notwithstanding the mandatory provisions of the *Municipalities Act*, those villages would be deemed to have always continued to exist as they do within the limits of *Kota municipality. The Court held that the Validating Act required the deeming of a legal position rather than the deeming of a fact from which such legal consequence would follow. The Bench found that this was not a permissible creation of a fiction. Article 341 must be interpreted based on the above principles.*

FURTHER REFER:

Further refer Hon’ble Supreme Court in the case of *CIT vs Moon Mills Ltd*, (1966) 59 ITR 574 as per which deeming fiction cannot be extended by importing another deeming fiction.

Hon'ble Supreme Court in CIT v. Mother India Refrigeration Pvt. Ltd. (1985) 155 ITGR 711 (SC) held that legal fictions are created only for some definite purpose and they must be limited to that purpose and should not be extended beyond that legitimate field.

SC rulings in the cases of *Manilal Dhanji* 44 ITR 876, *Harinder Singh* 83 ITR 416 etc, in context of deeming provisions of section 64 of the Act (clubbing of income), has held that same needs strict construction;

SC rulings in the case of *Ishikawajima Harima Heavy Industries* 288 ITR 408 reaffirmed the principle that *deeming fictions needs to be construed strictly and in light of other provisions of the Act* by referring to *Maruti Udyog* SC ruling 2 SCC 638.

SC in case of CIT, Panji vs. V. S. Dempo Company Ltd. [2016] 387 ITR 354 (SC) “The High Court has observed that [Section 50](#) of the Act which is a special provision for computing the capital gains in the case of depreciable assets is not only restricted for the purposes of [Section 48](#) or [Section 49](#) of the Act as specifically stated therein and the said fiction created in sub-section (1) & (2) of [Section 50](#) has limited application only in the context of mode of computation of capital gains contained in [Sections 48](#) and [49](#) and would have nothing to do

with the exemption that is provided in a totally different provision i.e. [Section 54E](#) of the Act. [Section 48](#) deals with the mode of computation and [Section 49](#) relates to cost with reference to certain mode of acquisition. This aspect is analysed in the judgment of the Bombay High Court in the case of “The Commissioner of Income-tax, Mumbai City-II, Mumbai vs. ACE Builders Pvt. Ltd.” (2005) 3 Bom CR 598 in the following manner:

“In our opinion, the assessee cannot be denied exemption under [Section 54E](#), because, firstly, there is nothing in [Section 50](#) to suggest that the fiction created in [Section 50](#) is not only restricted to [Sections 48](#) and [49](#) but also applies to other provisions. On the contrary, [Section 50](#) makes it explicitly clear that the deemed fiction created in sub-section (1) & (2) of [Section 50](#) is restricted only to the mode of computation of capital gains contained in [Section 48](#) and [49](#). Secondly, it is well established in law that a fiction created by the legislature has to be confined to the purpose for which it is created. In this connection, we may refer to the decision of the Apex Court in the case of [State Bank of India vs. D. Hanumantha Rao](#) reported in 1998 (6) SCC 183. In that case, the Service Rules framed by the bank provided for granting extension of service to those appointed prior to 19.07.1969. The respondent therein who had joined the bank on 1.7.1972 claimed extension of service because he was deemed to be appointed in the bank with effect from 26.10.1965 for the purpose of seniority, pay and pension on account of his past service in the army as Short Service Commissioned Officer. In that context, the Apex Court has held that the legal fiction created for the limited purpose of seniority, pay and pension cannot be extended for other purposes. Applying the ratio of [the said judgment](#), we are of the opinion, that the fiction created under [Section 50](#) is confined to the computation of capital gains only and cannot be extended beyond that. Thirdly, [Section 54E](#) does not make any distinction between depreciable asset and non-depreciable asset and, therefore, the exemption available to the depreciable asset under [Section 54E](#) cannot be denied by referring to the fiction created under [Section 50](#). [Section 54E](#) specifically provides that where capital gain arising on transfer of a long term capital asset is invested or deposited (whole or any part of the net consideration) in the specified assets, the assessee shall not be charged to capital gains. Therefore, the exemption under [Section 54E](#) of the I.T. Act cannot be denied to the assessee on account of the fiction created in [Section 50](#).” We are in agreement with the aforesaid view taken by the High Court.”

In J.K. Cotton Spinning and Weaving Mills Ltd. and Anr v. Union of India (UOI) and Ors. : (1987) Supp 1 SCC 350 the Supreme Court held

that —It is well settled that a deeming provision is an admission of the nonexistence of the fact deemed...The Legislature is quite competent to enact a deeming provision for the purpose of assuming

the existence of a fact which does not really exist. In **G. Viswanathan v. Hon'ble Speaker Tamil Nadu Legislative Assembly, Madras and Ors.:** (1996) 2 SCC 353, the Supreme Court held that "By the decision of this Court it is fairly well settled that a deeming provision is an admission of the non-existence of the fact deemed. The Legislature is competent to enact a deeming provision for the purpose of assuming the existence of a fact which does not even exist. It means that the Courts must assume that such a state of affairs exists as real, and should imagine as real the consequences and incidents which inevitably flow there from, and give effect to the same. The deeming provision may be intended to enlarge the meaning of a particular word or to include matters which otherwise may or may not fall within the main provision. The law laid down in this regard in *East End Dwellings Co. Ltd. case* (1952) AC 109 : (1951) 2 All. E.R. 587 has been followed by this Court in a number of cases, beginning from *State of Bombay v. Pandurang*: 1953Cri LJ 1049 and ending with a recent decision of a three Judge Bench in *M. Venugopal v. Divisional Manager, LIC.*" In **Manish Trivedi v. State of Rajasthan:** (2014) 14 SCC 420, the Supreme Court held that "It is well settled that the legislature is competent to create a legal fiction. A deeming provision is enacted for the purpose of assuming the existence of a fact which does not really exist. When the legislature creates a legal fiction, the court has to ascertain for what purpose the fiction is created and after ascertaining this, to assume all those facts and consequences which are incidental or inevitable corollaries for giving effect to the fiction." (also see: **State of Uttar Pradesh v. Hari Ram:** (2013) 4 SCC 280).

- b) UK Supreme court in case of **JUDGMENT Commissioners for His Majesty's Revenue and Customs (Appellants) v Vermilion Holdings Ltd (Respondent)** (Scotland)

[2023] UKSC 37

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23. In the first case conducted remotely in the pandemic, *Fowler v Revenue and Customs Comrs*, this court, in a judgment of Lord Briggs with whom the other Justices agreed, gave guidance on the interpretation and application of deeming provisions. Lord Briggs summarised the guidance in para 27 of his judgment, which I consider to be a correct statement of the law. He stated:

“(1) The extent of the fiction created by a deeming provision is primarily a matter of construction of the statute in which it appears.

(2) For that purpose the court should ascertain, if it can, the purposes for which and the persons between whom the statutory fiction is to be resorted to, and then apply the deeming provision that far, but not where it would produce effects clearly outside those purposes.

(3) But those purposes may be difficult to ascertain, and Parliament may not find it easy to prescribe with precision the intended limits of the artificial assumption which the deeming provision requires to be made.

(4) A deeming provision should not be applied so far as to produce unjust, absurd or anomalous results, unless the court is compelled to do so by clear language.

(5) But the court should not shrink from applying the fiction created by the deeming provision to the consequences which would inevitably flow from the fiction being real. ...”.

- c) **Hon'ble Supreme court in case of Pioneer Urban Land and Infrastructure Limited & Anr. Versus Union of India & Ors. ...Respondents**
WRIT PETITION (CIVIL) NO. 43 OF 2019

“77. In every case in which a deeming fiction is to be construed, the observations of Lord Asquith in a concurring judgment in *East End Dwellings Co. Ltd. v. Finsbury Borough Council* (1952) Appeal Cases 109 are cited. These observations read as follows:

“If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it.... The statute says that you must imagine a certain state of affairs. It does not say that, having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.”

These observations have been followed time out of number by the decisions of this Court. (See for example, M. Venugopal v. Divisional Manager, LIC (1994) 2 SCC 323 at page 329).

78. But then it was argued that, relying upon Commissioner of Income Tax, Bombay v. Bombay Trust Corporation AIR 1930 PC 54 at 55, that the reason that a deeming fiction is introduced is that the subject matter of that fiction is not so in reality, which why Parliament requires such subject matter be treated as if it were real. To similar effect are the observations in K. Kamaraja Nadar v. Kunju Thevar and Ors. AIR 1958 SC 687 at paragraph 28, where this Court put it thus:

“The effect of such a legal fiction, however, is that a position which otherwise would not obtain is deemed to obtain under those circumstances.”

83. Although a deeming provision is to deem what is not there in reality, thereby requiring the subject matter to be treated as if it were real, yet several authorities and judgments show that a deeming fiction can also be used to put beyond doubt a particular construction that might otherwise be uncertain. Thus, Stroud’s Judicial Dictionary of Words and Phrases (Seventh Edition, 2008), defines “deemed” as follows:

“Deemed”-, as used in statutory definitions “to extend the denotation of the defined term to things it would not in ordinary parlance denote, is often a convenient device for reducing the verbiage or an enactment, but that does not mean that wherever it is used it has that effect; to deem means simply to judge or reach a conclusion about something, and the words ‘deem’ and ‘deemed’ when used in a statute thus simply state the effect or meaning which some matter or things has- the way in which it is to be adjudged ; this need not import artificiality or fiction; it may simply be the statement of an indisputable conclusion.”

84. In Hindustan Cooperative Housing Building Society Limited v. Registrar, Cooperative Societies and Anr. (2009) 14 SCC 302, this Court in dealing with legal fictions generally quoted a large number of authorities thus at paragraph 17:

“17. “13. ... It is, as noted above, a deeming provision. Such a provision creates a legal fiction. As was stated by James, L.J. in Levy, Re, ex p Walton [(1881) 17 Ch D 746 : (1881-85) All ER Rep 548 (CA)] : (Ch D p. 756)

‘... When a statute enacts that something shall be deemed to have been done, which in fact and truth was not done, the court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to.’

After ascertaining the purpose full effect must be given to the statutory fiction and it should be carried to its logical conclusion and to that end it would be proper and even necessary to assume all those facts on which alone the fiction can operate. [Ed.: This latter sentence does not form part of what was observed by James, L.J. in ex p Walton, (1881) 17 Ch D 746 : (1881-85) All ER Rep 548 (CA) but is a paraphrase of what was observed by the Supreme Court in State of Bombay v. Pandurang Vinayak, 1953 SCR 773 at p. 778. See also Ali M.K. v. State of Kerala, (2003) 11 SCC 632 : 2004 SCC (L&S) 136, SCC at p. 639, para 13.] [See Hill v. East and West India Dock Co. [(1884) 9 AC 448 (HL)], State of Travancore-Cochin v. Shanmugha Vilas Cashewnut Factory [AIR 1953 SC 333], American Home Products Corpn. v. Mac Laboratories (P) Ltd. [(1986) 1 SCC 465] and Parayankandiyal Eravath Kanapravan Kalliani Amma v. K. Devi [(1996) 4 SCC 76].] In an oft quoted passage, Lord Asquith stated:

‘If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact, existed, must inevitably have flowed from or accompanied it. ... The statute [states] that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.’

(See East End Dwellings Co. Ltd. v. Finsbury Borough Council [1952 AC 109 : (1951) 2 All ER 587 (HL)] at AC pp. 132-33.)

‘... The word “deemed” is used a great deal in modern legislation. Sometimes it is used to impose for the purposes of a statute an artificial construction of a word or phrase that would not otherwise prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be uncertain. Sometimes it is used to give a comprehensive description that includes what is obvious, what is uncertain and what is, in the ordinary sense, impossible.’

[Per Lord Radcliffe in St. Aubyn v. Attorney General (No. 2) [1952 AC 15 : (1951) 2 All ER 473 (HL)], AC p. 53.]

14. ‘Deemed’, as used in statutory definitions [is meant]

‘to extend the denotation of the defined term to things it would not in ordinary parlance denote, is often a convenient device for reducing the verbiage of an enactment, but that does not mean that wherever it is used it has that effect; to deem means simply to judge or reach a conclusion about something, and the words “deem” and “deemed” when used in a statute thus simply state the effect or meaning which some matter or thing has — the way in which it is to be adjudged; this need not import artificiality or fiction; it may simply be the statement of an undisputable conclusion.’ (Per Windener, J. in Hunter Douglas Australia Pty. v. Perma Blinds [(1970) 44 Aust LJ R 257] .)

15. When a thing is to be ‘deemed’ something else, it is to be treated as that something else with the attendant consequences, but it is not that something else (per Cave, J., in R. v. Norfolk County Court [(1891) 60 LJ QB 379]).

‘When a statute gives a definition and then adds that certain things shall be “deemed” to be covered by the definition, it matters not whether without that addition the definition would have covered them or not.’ (Per Lord President Cooper in Ferguson v. McMillan [1954 SLT 109] .)

16. Whether the word ‘deemed’ when used in a statute established a conclusive or a rebuttable presumption depended upon the context (see St. Leon Village Consolidated School Dist. v. Ronceray [(1960) 23 DLR (2d) 32]).

‘... I ... regard its primary function as to bring in something which would otherwise be excluded.’ (Per Viscount Simonds in Barclays Bank v. IRC [1961 AC 509 : (1960) 3 WLR 280 : (1960) 2 All ER 817 (HL)] at AC p. 523.)

‘Deems’ means ‘is of opinion’ or ‘considers’ or ‘decides’ and there is no implication of steps to be taken before the opinion is formed or the decision is taken. [See R. v. Brixton Prison (Governor), ex p Soblen [(1963) 2 QB 243 : (1962) 3 WLR 1154 : (1962) 3 All ER 641 (CA)] at QB p. 315.]” [Ed.: As observed in Ali M.K. v. State of Kerala, (2003) 11 SCC 632 : 2004 SCC (L&S) 136, SCC at pp. 639-40, paras 13-16.]”

d) Hon’ble Kerala high court in case of State of Kerala Represented by Secretary, Taxes Department and Another ... Appellants; Versus

MCP Enterprises, Rep. by its Executive Partner M.C. Mohammed Kutty ... Respondent.

i) The chief characteristic of a legal fiction is a deliberate false assumption of fact.

(ii) Assumption is made contrary to reality. (iii) Assumption is employed to achieve a lawful result.

(iv) Legal fiction should not be employed to defeat the law or result in illegality.

(v) Legal fiction should operate for the purpose for which it was created and should not be extended beyond its legitimate field.

(vi) Legal fiction should not be extended so as to lead to unjust results or to work in justice.

(vii) Fiction should be interpreted restrictively, [source V.K. Varadachari - Edition 2012]

39. The Legislature is entitled to create fiction by employing words such as ‘deemed to be’, ‘treated as’ so on and so forth.

e) Chandigarh bench ITAT decision in case of ACIT vs Shri Gurdeep Singh /ITA No. 170/CHD/2018 order dated 26.06.2020

“The dividend taken note of by this provision is a deemed dividend and not a real dividend. For certain purposes, the Legislature has deemed such a loan as 'dividend' and the effect of such deeming provision is that there is no option to the share holder to say that it is a mere loan and not his actual income. If it is proved that a loan has been given out of the accumulated profits of the company to the share holders having substantial interest in the company or to any other concern in which such a share holder has also substantial share holding, then as per the provisions of section 2(22) (e) of the Act, there will be a presumption that such loan has been given for the benefit of the share holder and hence, is taxable in the hands of such a share holder. It has been made so by legal fiction created under section 2(22)(e) of the Act read with section 56 of the Act.

9. The words "deem" or "fiction" or irrebuttable presumption have not been defined in the Income Tax Act. For better understanding of the statutory presumptions and legal/deeming fictions, we deem it appropriate to refer to the relevant provisions of The Indian Evidence Act, 1872. Though the provisions of the Evidence Act are not strictly applicable to the procedures of this Tribunal as envisaged under the Income Tax Act, 1961, but the principles underlying the provisions of Evidence Act do constitute valuable guides. Section 4 of the Evidence Act, read as under:-

"4. "May presume".--Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it. "Shall presume".--Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved. "Conclusive proof".--When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it."

(emphasis supplied) The Conclusive Presumptions/proofs can be considered as one of the strongest presumptions. With regards to Conclusive proofs, the law has absolute power and shall not allow any proofs contrary to the presumption. The general definition of Conclusive Proof is a condition when one fact is established beyond doubt, then the other facts or conditions become conclusive proof of another as declared under the ITA No. 170-Chd-2018 Shri Gurdeep Singh, Ludhiana relevant provision. Legal fictions compel to believe the existence of an artificial state of facts which may be contrary to the real state of facts.

When a fiction is created by law, it is not open to anybody to plead or argue that the artificial state of facts created by law is not true. The basic purpose of a deeming provision is an assumption that something is true even though it may be untrue. It creates a presumption that accepts something as fact without the benefit of evidence and further the legal consequences of such facts have to follow accordingly. Under such circumstances, when on the proof of one fact, which, in the case in hand is

fact of advancement of loan to the share holder or to the concern in which such a share holder is having substantial share holding, the other fact that such a loan is a diversion of the accumulated profits of the company for the benefit of such a shareholder; hence income of the share holder, is to be assumed automatically. For raising such an irrebuttable presumption, the first set of facts which are deemed to be conclusive proof of the other, i.e. regarding the advancement of loan to shareholder or to the concern in which such a share holder has substantial interest has to be proved strictly and beyond reasonable doubt and such first limb of the facts cannot be assumed or presumed merely on the basis of suspicion, howsoever strong it may be.”

F) In *CIT v. Jawahar Lal Oswal*, (2016) 382 ITR 453 (P&H HC). the assessee received two gifts, valued at \$200,000 each by demand drafts from Dr. O.S. Gill and Shri B.P. Bhardwaj for and on behalf of his daughters, Ms. Monica Oswal and Ruchika Oswal on the occasion of their marriage while he was in London. The gifts were received by demand drafts, while the assessee was in London. The Assessing Officer served a notice under section 143, addressed queries to the assessee, obtained information through the Central Board of Direct Taxes, from the Inland Revenue, Great Britain, examined Dr. O.S. Gill but as he was not satisfied with the explanation offered by the assessee, held that the assessee had not been able to prove the genuineness of the gifts. He, therefore, concluded that the gifts represented the income of the assessee and added those amounts to assessee's taxable income under section 69A of the Act. A protective assessment was also made in the hands of the assessee's daughters. Separate appeals was preferred by the assessee's and his daughters challenging the addition made by the Assessing Officer before the Commissioner of Income-tax (Appeals), which was partly allowed by accepting the gift made by Dr. O.S. Gill but rejecting the gift made by Shri B.P. Bhardwaj. Aggrieved by the Order of the Commissioner of Income-tax (Appeals) the assessee along with his daughters and the Department/Revenue preferred appeals before the Tribunal. The Tribunal while accepting the appeals filed by the assessee and his daughters and rejecting the appeal filed by the Department/Revenue held that the Department/Revenue had not brought forth any credible material that would raise an inference under the deeming provision of Section 69A of the Act that the gifts represented the income of the assessee and addition was accordingly deleted. Prejudiced by the Order of the Tribunal the Department/Revenue preferred four appeals, one in the case of the assessee, two appeals in the case of his daughters and fourth pertaining to gift tax before the Hon'ble High Court raising the questions as to whether the assessee had discharged the onus of establishing that gifts made in favour of his daughters through him by Dr. O.S. Gill and Shri B.P. Bhardwaj was valid and the same be treated as the income of the assessee under section 69A of the Act.

The Hon'ble Court with regard to the interpretation of the deeming provision held:

"...The principle that governs a deeming provision is that the initial onus lies upon the revenue to raise a *prima facie* doubt on the basis of credible material. The onus, thereafter, shifts to the assessee to prove that the gift is genuine and if the assessee is unable to proffer a credible explanation, the Assessing Officer may legitimately raise an inference against the assessee. If, however, the assessee furnishes all relevant facts within his knowledge and offers a credible explanation, the onus reverts to the revenue to prove that these facts are not correct. The revenue cannot draw an inference based upon suspicion or doubt or perceptions of culpability or on the quantum of the amount, involved. Any ambiguity or any ifs and buts in the material collected by the Assessing Officer must necessarily be read in favour of the assessee, particularly when the question is one of taxation, under a deeming provision. Thus, neither suspicion/doubt, nor the quantum shall determine the exercise of jurisdiction by the Assessing Officer. The above exposition shall not be misconstrued to restrict the power of the revenue to raise an inference as to the efficacy of material produced by or before the Assessing Officer. ...A deeming provision requires the Assessing Officer to collect relevant facts and then confront the assessee, who is thereafter, required to explain incriminating facts and in case he fails to proffer a credible information, the Assessing Officer may validly raise an inference of deemed income under section 69A of the Act. ...If the assessee proffers an explanation and discloses all relevant facts within his knowledge, the onus reverts to the revenue to adduce evidence and only thereafter, may an inference be raised, based upon relevant facts, by invoking the deeming provisions of Section 69A of the Act. It is true that inferences and presumptions are integral to an adjudicatory process but cannot by themselves be raised to the status of substantial evidence or evidence sufficient to raise an inference. A deeming

provision, thus, enables the revenue to raise an inference against an assessee on the basis of tangible material and not on mere suspicion, conjectures or perceptions. It would also be necessary to reiterate that it is not perceptions but concrete facts that underline quasi judicial determinations and where concrete facts are not available, relevant facts, as would raise a credible inference of culpability requiring an assessee to rebut the inference so raised." (Emphasis supplied)

Thus, the Hon'ble High Court on the basis of the distinction between burden of proof and onus of proof rightly came to the conclusion that once a satisfactory explanation had been tendered by an assessee, the burden of proof stood discharged, and thereafter, under a deeming provision in the absence of any tangible material no contrary inference could be drawn against the assessee.

- G) **Full Bench Allahabad High Court** ruling in the case of Nathimal Gaya Lal 89 ITR 190 (at page no 198) (interalia holding *that fiction needs to be interpreted in such a manner as would not work injustice for a party*, for even when the court steps into the world of legal fantasy, the principle of equity and justice cannot be lost sight)
- H) **Madhya Pradesh High Court in the case of Chottelal Kanhaiya Lal 80 ITR 656** (interalia holding *deeming fiction needs strict construction and without importing another fiction therein*)
- I) On the concept of Deeming Fiction, the decision of the Chandigarh Bench in Subhash Chand v. Asstt. CIT [2012] 49 SOT 732, succinctly summarises the observations of various judicial opinions as under: "By catena of decisions, three rules are fairly well settled for interpreting a provision creating a legal fiction. They are as under: (i) The court is to ascertain the purpose for which the fiction has been created, and after ascertaining this, the court is to assume all those facts and consequences which are incidental or inevitable corollaries to giving effect to the fiction. (ii) The legal fiction cannot be interpreted in a manner that extends the effect of fiction beyond the purpose for which it is created or beyond the language of the section by which it is created. Neither can one allow himself to be so carried away by a legal fiction as to ignore the words of the very section which creates it or its context or setting in the statute which contains that section nor can one lose sight of the purpose for which the fiction is created. (iii) Outside the bounds of the legal fiction the difference between the reality and the fiction may still persist in the provisions of the same Act which creates the fiction and the difference may be ascertained by reference to the subject and context of those provisions."
- J) **Delhi Bench of ITAT in the case of Aar Dee Finvest 79 ITD 547** while concluding that share application money (pending allotment) cannot be treated as "deemed dividend" under section 2(22)(e) of the Act interalia observing in Para 24 that "*Law dealing with fiction relates to that branch of jurisprudence which should be narrowly watched, jealously regarded and never to be pressed beyond its true limits*