



Misc Principals and their application under Income Tax Act

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Resjudicata and Income Tax Act, 1961 :- “The rationale for *res judicata* is that there must be an end to litigation. Basically, the **purpose** of the principle of *res judicata* is to support the good administration of justice in the interests of both the public and the litigants, by preventing abusive and duplicative litigation”.

In CIT Vs. N.P. Mathew [(2006)280 ITR 44(Ker.)] this principal came for consideration of Hon’ble High Court. In this case assess pleaded that department is bound to apply same rule for assessee on one matter in different assessment year. if there is no change in facts and circumstances. Principal of *resjudicata* was in fact pleaded in this case which applies in civil courts. However in this particular case court held that A.O. is required to follow same rule in respect of one matter in different years. Once department start accepting this principal of uniformity continuously narrowing discretionary area of A.O. will be reduced to paper size.

However this uniformity is desired from the A.O. considering fundamental principals of Law. In Indian CPC 1908 this principal is contained under section 11.

For making *Res judicata* binding, several factors must be met up with :-

1. Identity in the thing at the suit
2. Identity of the cause at suit
3. Identity of the parties to the action
4. Identity in the designation of the parties involved
5. Finality of judgement
6. Whether the parties were given full and fair opportunity to be heard on the issue

Resjudicata Vs. Estoppel :- the **res judicata** prohibits a man averring the same thing in successive litigations whereas **estoppel** prevents a person from saying one thing which he has said before and consequences have arrived thereafter.

The concept of *res judicata* has evolved from the English Common Law System. The Common Law system has been derived from the overriding concept of judicial consistency. *Res judicata* took its place first in the Code of Civil Procedure from Common Law and then into the Indian Legal System. If either of the parties in a case approaches the same court for the judgment of the same issue then the suit will be struck by the doctrine of *res judicata*. *Res judicata* plays a role in administrative law as well. It helps to administer how efficiently the Judiciary works and disposes of the case. The doctrine of *res judicata* becomes applicable where there is more than one petition filed in the same or in some other court of India with the same parties and same facts. The parties involved in a case may file the same suit again just to harass the reputation of the opposite party and may do to get compensation twice.

So to prevent such overloads and extra cases, the doctrine of res judicata plays a major role and importance in the Code of Civil Procedure.

Earlier res judicata was termed as Purva Nyaya or former judgment by the Hindu lawyers and Muslim jurists according to ancient Hindu Law. The countries of the Commonwealth and the European Continent have accepted that once the matter has been brought to trial once, it must not be tried again. The principle of res judicata is originated from the Seventh Amendment to the U.S. Constitution. It addresses the finality of judgments in a civil jury trial. Once a court has rendered a verdict in a civil trial, it cannot be changed by another court except there are very specific conditions.

Substance over rule format:- Substance of a transaction is to be taken into account and not it's legal form. The department has always been guided by this rule. Whenever in substance any transaction has been concluded but some legal formality has been deliberately left pending then department consider that as concluded. Although this accounting concept is an integral part of tax law and prevails even when legislation is silent example being section 68 of unexplained credits or Section 269SS and T of penalty for loan and deposits in some circumstances.

Yet at places words have been allotted to this principal. An example in this respect is **Section 27** of the act which is **as follows:-**

In the following cases the person is deemed to be owner of the property even if they are not the legal owners of the property:-

1) An individual who transferred his property without adequate consideration to his or her spouse (otherwise than in connection with an agreement to live apart) his minor child (not being married daughter) is deemed to be owner of _____ that _____ property.

If an individual transfers another asset and his spouse or minor child purchase house property from that asset, then such individual is not treated as deemed owner.

2) If property is allotted by company/co operative society to its shareholders/members, then technically the company/cooperative society may be the owner. But the shareholder/member to whom property is allotted is deemed to be owner of property.

3) If buyer has taken the possession of the property without getting the sale deed registered is deemed to be owner _____ of _____ the _____ property. A person who is allowed to take or retain possession of any building (or part thereof) in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882, is also deemed as the owner of that building (or part thereof).

4) A person who acquires any rights (excluding any rights by way of a lease from month to month or for a period not exceeding one year) in or with respect to any building (or part thereof) by virtue of any such transaction as is referred to in section 269UA(f) [i.e. if a person takes a house on lease for a period of 12 months or more, Persons who purchase properties on the basis of Power of Attorney]

This is clearly evident that whole of this section is based on the rule of supremacy of substance over format. For application of section 53 A (to find substance of the transactions) following conditions are to be met :-

- Firstly, Contract of transfer should be in writing and from that necessary terms of transfer should be ascertainable.
- Secondly, transferee must have taken possession of that building in part performance.
- Lastly, transferee should be willing to perform his part of the contract.

Substance over form is an accounting principle used "to ensure that financial statements give a complete, relevant, and accurate picture of transactions and events". If an entity practices the 'substance over form' concept, then the financial statements will show the overall financial reality of the entity (economic substance), rather than the legal form of transactions (form).^[4] In accounting for business transactions and other events, the measurement and reporting is for the economic impact of an event, instead of its legal form. Substance over form is critical for reliable financial reporting. It is particularly relevant in cases of revenue recognition, sale and purchase agreements, etc.

The key point of the concept is that a transaction should not be recorded in such a manner as to hide the true intent of the transaction, which would mislead the readers of a company's financial statements. [source Wikipedia]

Cash Flow and Income Calculation:- Fundamental economic equation “ Revenue Cash inflows + Inflow as a result of liability = Revenue cash expenditure + Capital cash outflow during the year” is of utmost importance as far as income tax act is concerned. It was first time when in 2006 budget ITR Form 2F was introduced by the CBDT in which additional information of flow of cash had to be given.

