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JUDICIAL ACTIVISM OR REVENUE REALITY? INDIA'S APPROACH TO SUBSTANCE OVER FORM DOCTRINE

Mohit Mishra*

Abstract

This article analyses the "substance over form" principle of interpretation used in Indian tax law, highlighting its evolution, challenges, and implications for taxpayers' rights and legal certainty. The author argues that the doctrine, while initially intended to curb tax avoidance, has been increasingly applied to favour the state's revenue objectives at the expense of fairness and predictability in tax administration.

The "substance over form" doctrine originated in common law jurisdictions, evolving through landmark cases in the UK and the US. In India, the doctrine gained prominence with the McDowell case, though subsequent judgments, like the Vodafone case, attempted to rebalance its application. The article contends that the introduction of the General Anti-Avoidance Rules (GAAR) in India has further tilted the scales in favour of tax authorities, granting them broad powers to scrutinise and recharacterize transactions based on perceived economic substance, often disregarding the formal legal structure. This, the author argues, raises concerns about the erosion of the rule of law, as arbitrary decision-making by tax authorities can lead to uncertainty and unequal treatment of taxpayers.

This article further explores the implications of "substance over form" for corporate privacy and the right against self-incrimination. It questions how tax authorities can demand information from corporations, potentially forcing them to reveal self-incriminating evidence. The author suggests that the current interpretation of the doctrine may infringe upon these fundamental rights, creating a chilling effect on investment and economic activity. Ultimately, the article calls for reassessing the "substance over form" doctrine in Indian tax law to balance the state's revenue needs and protect taxpayers' rights. The author advocates for greater clarity in legislation, fair judicial processes, and a more restrained application of the doctrine to avoid arbitrary interpretations and uphold the principles of legal certainty and fairness.

Key Words: Tax; Judicial Activism; Supreme Court; Revenue; etc.

I

Introduction

When it comes to morality in tax, Nani Palkhivala has stated that people fall under three heads: people who pay tax honestly despite the tax burden; people who are dishonest and never pay tax irrespective of the tax burden; and lastly, those who are basically honest but change their response depending on the quality of the law.[1] People in India ignore the first category, are preoccupied with the second, and alienate the third category. Further, explaining the morality of tax evasion and the reality of tax avoidance, he stated that while scholars spend their time convincing themselves that high taxes are essential for a socialist economy, people believe that the state is entitled to half of their income and are convinced to resort to any devices, irrespective of punishment, to keep their fair share.[2] In response, the state and the judiciary are resorting to various devices to take their fair share of taxes. It is obvious when it comes to who will take a fair share — the state or the people; it is always the state that wins. Tax morality has been a constant matter of debate. Scholars are clear on one point: tax evasion is illegal, but debate on tax avoidance is more a question of debate. Initially, a positive outlook was given to the debate by emphasising tax planning, which took a drastic turn with instruments like sham transactions, self-cancelling transactions, arm's length transactions, etc. This makes the judiciary try different tests, the legislature formulates policy and negotiate with other nations and international organisations to harmonise understanding.

This article deals with one of the interpretations widely followed: "substance over form", sometimes referred to as "substance v. form" or "economic substance", or sometimes is reversed as "form over substance". Part one of the article deals with the origin of the interpretation and other types of interpretation. The doctrine begins with common law cases of the Inland Revenue Commissioners. v. Duke of Westminster (herein "*Duke of Westminster*")[3] and W. T. Ramsay Ltd. v. Inland Revenue Commissioners, Eilbeck (Inspector of Taxes) v. Rawling (herein "*Ramsay principles*")[4], but in context to India, along with the development of common law, McDowell & Company Limited v. The Commercial Tax Officer (herein "*Mcdowell*

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[1] Nani A. Palkhivala, WE, THE PEOPLE 120 (2009).

[2] Brea E. L'Heureux, *Why Common Law Calculus Failed: An Analysis of the Economic Substance Doctrine in Klamath Strategic Investment Fund v. United States*, 64 Tax Law 471, 472 (2011).

[3] *Inland Revenue Commissioners.* v. *Duke of Westminster*, (1936) A.C. 1 (UK).

[4] *W.T. Ramsay Ltd.* v. *Inland Revenue Commissioners, Eilbeck (Inspector of Taxes)*, (1982) A.C. 300 (UK).

Case")[5] provided an important aspect, especially the concurring judgment of J. Reddy. Later, the judgment of Vodafone International Holdings B.V. v. Union of India & Anr. (herein "*Vodafone Case*")[6], Union of India and Anr. V. Azadi Bachao Andolan and Anr. (herein "*Azadi Bachao Andolan Case*")[7] played a critical role in interpretation. Things became complicated with the advent of the Organisation for Economic Co-operation and Development (herein "*OECD*") and treaties-based interpretation, which will be discussed. The second part of the article deals with unexpected problems that the interpretation has created in India. This issue is further intensified by the provisions of the General Anti-Avoidance Rules (herein "*GAAR*"). This section especially emphasises the right to privacy and whether a corporation is a separate entity that can be held liable for privacy violations. Another critical aspect will be the rule of law concerning GAAR and the scope of certainty in framing international taxation.

II

Understanding Interpretation Across Time: Substance over Form to Substance in Form

Origin of Interpretations

Initially, the basic understanding in common law is that a subject is at liberty to arrange his affairs not to attract tax, the only condition being that it should be within the law.[8] Manipulation of the law was permitted, and it was left to the legislature to strengthen tax laws.[9] The strict or literal interpretation principle was followed, and "substance of the matter" was not given a predominant position. The Ramsey principle, later followed in IRC v. Burmah Oil Co. Ltd. (herein "*Burmah Case*"), states that the individual transaction need not be investigated; instead, it should be the whole series or combination of transactions or composite transactions.[10] This was to catch the self-cancelling transactions, where there was no change in commercial position or creation of manufactured loss (doctrine of fiscal nullity). Another version of the principle was laid down in Furniss v. Dawson (herein "*Dawson Case*")[11], where it was held that inserted transactions or steps with no "business purpose" and with the sole objective of deferring tax liability need to be struck down. It is also

[5] *Mc Dowell & Company Limited* v. *The Commercial Tax Officer*, 1986 A.I.R. 649 (India).
[6] *Vodafone International Holdings B.V.* v. *Union of India & Anr*, (2012) 1 S.C.R. 573 (India).
[7] *Union of India and Anr.* v. *Azadi Bachao Andolan and Anr*., (2204) 10 SCC 1 (India).
[8] *I.R.C.* v. *Fisher's Executors*, (1926) A.C. 395 (U.K.).
[9] *C.I.T.* v. *Motor & General Stores (P.) Ltd*., (1967) 66 I.T.R. 692 (S.C.).
[10] *I.R.C.* v. *Burmah Oil Co. Ltd*., (1981) 54 T.C. 200 (H.L.) (UK).
[11] *Furniss* v. *Dawson*, (1984) B.T.C. 71. (U.K.)

important to mention that business effects can be present in such a structure, but the purpose must be considered. A more explicit definition of substance over form was seen in the case of Ensign Tankers (Leasing) Limited v Stokes[12], where the phrase "unacceptable tax avoidance" was used to describe transactions with artificial structures. To balance between the taxpayer and the state, Westminster and Ramsey, the court in MacNiven v. Westmoreland (herein "*MacNiven*")[13] holds that in England, the test followed is one of a purposive test to give way to legislative intent, and Ramsay and Dawson are part of these fundamental principles.

If we look at it from the point of view of the UK governance structure, the purposive test or legislative intent suits their condition. Parliamentary sovereignty is a principle of the UK. Innovation by the judiciary or interpretative construction through test or doctrine is subject to state legislation; hence, judges must consider legislative intent. This is also one of the arguments against the Ramsey case. This is also represented by the counsel for the revenue in the case, when he states that the doctrine evolved judicially by the American courts and is not dependent upon statutory enactment. It is criticised that Lord Wilberforce's approach to examining the legal nature of the transaction and a particular transaction is more of a legislative function of the court than its interpretative function. When taxpayers question the court's authority, the court justifies it on the grounds of public policy. As explicitly stated in the MacNiven Case by Lord Hoffman, this approach is unconstitutional. The question is the principle of construction used by the judicial system. It is argued that Ramsey's principle has a broad or practical meaning rather than a commercial one. However, a close examination of the capital gains tax legislation reveals that Lord Wilberforce was not concentrating on its requirements. Instead, the terms "gain" and "loss" refer to a *specific asset*, not a collection of assets considered collectively or a sequence of actions taken into consideration. It is misused even in recent judgments where the court moves beyond the statute in the name of a broad and practical meaning.

In more explicit terms, the development of "substance over form" happened in the US. The earliest reference can be traced in *Weiss v. Stearn*[14], where the court mentioned that the question of taxation must be viewed holistically rather than through the declared purpose of the participant. From this solid start, we discover that Supreme Court rulings reflect every significant turning point in the substance doctrine's growth, extension, and integration within the body of tax law. The four considerable developments include sham transactions, which are the crudest form

[12] *Ensign Tankers (Leasing) Limited* v. *Stokes*, (1992) S.T.C. 226 (U.K.).
[13] *MacNiven* v. *Westmoreland*, (2001) 1 All. E.R. 865 (U.K.).
[14] *Weiss* v. *Stearn*, (1924) 265 U.S. 242 (U.S.).

of avoidance; business purpose cases,[15] which represent a separate strain of substance cases; questioning the economic reality, where the economic substance of the transaction does not support the Code-contemplated tax treatment,[16] and lastly, step transactions, or "as if" or "net effect doctrine", where the transaction is telescoped. There is a comparison between the beginning situation and the results.[17]

India's approach to Doctrine: Is the ghost of McDowell still alive?

The landmark case in the development of doctrine is McDowell. However, it is essential to take note of the various approaches used before the judgment. Cases can be divided into two categories: one where the true nature of the transaction is not disputed, which is mainly a question of law, and the second category is those where the nature is denied, and depending on the nature, it is decided whether the law is to be applied or not. Distinct principles of statutory interpretation decide cases in the first category. These are legislative intention principles[18], textual rules,[19] minimum liability rules,[20] strict interpretation rules[21] and restrictive strict interpretation rules[22]. The Court appears to have established four different judicial standards for the second category, but they are pretty limited in scope. These are the prudent businessman's yardstick, the test of the ordinary course in business, a legitimate business deal, the test of a bona fide commercial transaction[23] and the commercial expediency test.[24] However, questions remain about the circumstances to use which device or test. For example, in the Sodra Devi case, where legislative intent was used, there was no distinction as to whether the rule would be applied only to the machinery provision or would apply to the charging provision as well. The court has applied the textual rule in the charging provisions, and legislative intent is used in the machinery provisions. Another point of conflict is seen in the Sivakasi Match Exporting case, where, despite the question being factual, the judges applied the "minimum liability rule" based on the genuineness of the transaction and within the law, even though the judgment does not cite even one authority to back this rule. Further, it is always seen that in most cases, judges have the option

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[15] *Gregory* v. *Helvering*, (1935) 293 U.S. 465 (U.S.).
[16] *Higgins* v. *Smith*, (1940) 308 U.S. 473 (U.S.).
[17] *Minnesota Tea Co.* v. *Helvering*, (1937) 302 U.S. 609 (U.S.).
[18] *C.I.T.* v. *Sodra Devi*, A.I.R. 1957 S.C. 832 (India).
[19] *Mazagaon Dock Ltd.* v. *C.I.T.*, A.I.R. 1958 S.C. 861(India).
[20] *C.I.T.* v. *Sivakasi Match Exporting Co*., A.I.R. 1964 S.C. 1813 (India).
[21] *Tarulata Shyam* v. *C.I.T.*, (1977) 3 S.C.C. 305 (India).
[22] *Murarilal Mahabir Prasad* v. *B.R. Vad*, (1975) 2 S.C.C. 736 (India).
[23] *M.C.T.M. Chidambaram Chettiar* v. *C.I.T.*, A.I.R. 1966 S.C. 1453(India).
[24] *C.I.T.* v. *Walchand & Co. (P) Ltd.,* A.I.R. 1967 S.C. 1435 (India).

to choose the "legislative intent rule", which nullifies the argument of having a judicial test.

McDowell is considered one of the most critical cases in interpreting tax statutes. The 25-page 5-bench judgment, with the majority judgment delivered by J. Ranganath Mishra and the concurring judgment of J. Chinnappa Reddy. The majority judgment states that tax planning may be legitimate, but colourable devices cannot be part of it. All citizens must pay taxes without resorting to subterfuges. After this, J. Rangathan passed the baton to J. Reddy, who remained the most controversial. The three significant criticism grounds are the assumption that there is no difference between tax evasion and tax avoidance: secondly, misinterpretation of foreign precedent and extreme power delegated to revenue authorities and courts. It is, however, ironic that in the same year in Saviano v. Commissioner of Internal Revenue,[25] The US court balanced taxpayer rights to arrange to minimise tax evasion, limited or illegal, or fraudulent conduct, which is not permissible. However, in the subsequent case of CWT v. Arvind Narottam,[26] Where authorities relied on the judgment of the McDowell case, the authorities' claim was rejected, and the taxpayer's claim was favoured over the authorities' claim.

The central contention came in the *Azadi Bachao Andolan* and *Vodafone case*. In the Vodafone case, it was said that Justice Ranganath Misra's judgment, where the instances cited are themselves, is contrary to the stand taken by J. Chinnappa Reddy. Justice Shah in the Raman case (as quoted by J. Ranganath) stated that a taxpayer may resort to any device, and such effectiveness depends upon the Income Tax Act. As stated in the *Vodafone case*, "Revenue's position that the ratio outlined in *McDowell* is inconsistent with *Azadi Bachao Andolan* is, in our opinion, unsustainable and does not warrant reconsideration by a larger bench. Revenue cannot tax a subject without a statute to support it. In the process, we also acknowledge that every taxpayer has the right to arrange his affairs so that his taxes shall be as low as possible and that he is not obligated to choose that pattern which will replenish the fund."

Old Doctrine - New Problems: Interpretation of Treaties

Hence, the debate between substance and form dates back to the 1920s. Until now, there have been multiple interpretations by the respective domestic courts. Things became even more complicated with the advent of the OECD and DTAs. The question of tax morality has become more complex with cross-border taxation and globalisation. Authorities and states (including courts) have always been conscious

[25] *Saviano* v. *Commr. of Internal Revenue*, 765 F. 2d 643 (7th Cir 1985) (U.S.).
[26] *C.W.T.* v. *Arvind Narottam*, (1988) 4 S.C.C. 113 (India).

of revenue loss. With various approaches, tests or principles in brackets, there were further additions such as OECD commentaries, the BEPS Action Plan, the VCLT, etc. Cross-border investment poses serious challenges, such as a lack of information, treaty shopping, tax havens, etc.

It was *the Indo-Mauritius treaty case* where the court dealt with the issue directly. An important point to note is that the interpretation of treaties differs from that of statutes. As rightly pointed out by Lord Widgery, the words in the treaty should be given a general meaning, general to lawyers and laymen alike; they should be viewed from a diplomatic perspective rather than a legal one. It is a political negotiation.[27] One of the forms of arrangements that taxpayers take in international taxation is treaty shopping, including deficit financing, which is legitimate and taken to attract investments. It was also mentioned that words like "sham" or "device " cannot be used loosely or to nullify the legal positions. The judgment explained that motive cannot be used in the abstract, should be objectively given tangible meaning, and cannot afford to chase a will-o'-the-wisp. In the Vodafone case, while discussing corporate governance, it was mentioned that the burden of proof on whether such a transaction is fraudulent or against the law is on the revenue authorities, who should be strictly with the "look at". Further, drawing its reference from the OECD Report titled ""Harmful Tax Competition: An Emerging Global Issue", the court urges the parliament to get legislation in dealing with money laundering and tax evasion through FDIs and OFCs. The TRC certificate, which can be called a "form" in DTAAs, should be accepted as conclusive form and should be ignored only when there is a question of tax evasion.[28] This was also followed in the Sanofi and Serco case.

This was also recently discussed in the *Global Tiger case*, where the Delhi High Court reversed the order of the AAR and held in favour of the taxpayer. But the issue is that the case has promoted "substance in form".[29] Rule 10U (1) and (2) state that GAAR would apply to all transactions.[30] The court held that the India-Mauritius DTAA's LOB clause, which was included after GAAR and Article 27A[31], grandfathered transactions involving shares purchased before April 1, 2017, according to the High Court's analysis of the DTAA's provisions. This means that the revenue cannot erect further obstacles to provide DTAA advantages because the LOB provisions were designed considering the current domestic laws. The High

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[27] Francis Bennion, *Statutory Interpretation*, Butterworths, 2nd edition, 1992, Pg. 461.
[28] OECD, *Harmful Tax Competition: An Emerging Global Issue*, OECD Publishing Paris, 1998. https://doi.org/10.1787/9789264162945-en.
[29] *Tiger Global International III Holdings* v. *Authority for Advance Rulings,* 2024 S.C.C. OnLine Del. 5987.
[30] Income Tax Rules 1962, *Section 10U.*
[31] India-Mauritius DTAA, *Article 27A.*

Court ruled that interpretations of domestic tax laws could not be made that would directly contradict a treaty or have a superseding impact over the terms of the DTAA. The High Court underlined and determined that the transaction was fully covered by Article 13(3A) of the DTAA, which grandfathered deals involving shares purchased before April 1, 2017. This is likely to be challenged in the Supreme Court, with the Blackstone case listed this year.

III

Imbalance Between the Interest of the Taxpayer and the Authorities

Substance over form received a setback with the Tiger Global, where the court invoked the substance behind the GAAR provisions ("form") and invoked the concept of the grandfathered provision. The doctrine started with "substance v. form", turned to "form over substance", then to "substance over form" and is now read as "substance in form". The GAAR provisions have given extreme power to the authority, and it has started challenging every taxation case. The authority's scanning of substance by ignoring form is problematic. The reliance on information lacking credible information has increased, adding a burden to the judiciary. Further, the lack of procedures for revenue authorities has led to concerns about corporate privacy. The GAAR, which involves "*substance in form*", has raised the "rule of law" concern. The justification behind every national and international framework is to bring certainty, but certainty ensures that the rule of law is an essential element to look after.

Freedom to Associate

Although corporations in the US generally do not have constitutional privacy rights, certain privileges accorded to them are fundamental, such as trade secrets, arbitrary searches and seizures, control over management and expansion, etc. A US case of NAACP v. Alabama ex rel.[32] Patterson provides certain important aspects against the doctrine of excessive usage. The judgment acknowledged that the freedom to associate extends to all groups, including corporations; further, there is a vital relationship between freedom of association and privacy in a corporation's association. However, this freedom is subject to limitations of the public interest. The landmark case in this aspect is the Morton Salt Case,[33] which discussed this aspect. It is essential to understand that the judgment only mentioned that an individual's privacy, usually understood in a general sense, is different from that of a corporation. Instead, the privacy aspect was a case of "no equality" between the

[32] *N.A.A.C.P.* v. *Alabama ex rel. Patterson*, 357 U.S. 449 (U.S.).
[33] *United States* v. *Morton Salt Co.*, 338 U.S. 632 (1950) (U.S.).

individual and the corporation, which can be understood from the later part of the judgment where it was recognised that certain limitations over government access to corporate information in investigations are permitted.[34]

The landmark case is Robert v. Gulf Oil Corp..[35] Where authorities wanted information on corporate taxpayers' property, the court held that although corporations do not have a "fundamental right to privacy", they do have a "general right to privacy". Artificial beings' rights to privacy are situation-specific and never remain constant. Hence, it is dependent on two factors: one, the nexus between the human and the entity, and secondly, in the context of privacy. In the context of India, the case of Justice K.S. Puttaswamy v. Union of India [36] Upheld the fundamental right to privacy found in the Constitution. The limited aspects of the right to privacy are seen in the case of Distt. Registrar and Collector, Hyderabad vs. Canara Bank[37]Section 73 of the Stamp Act was declared invalid as it permitted unannounced searches. Similar rulings were made by the Madhya Pradesh High Court in ICICI Bank v. State of Madhya Pradesh.[38] and the Gauhati High Court in Senairam Doongarmal Agency v. K.E. Johnson[39]They emphasised the grave consequences of search and seizure provisions on commercial operations and goodwill. Hence, India permits action against the arbitrariness of the authorities. The doctrine of "substance over form" must be seen in this limited right to privacy. The authorities can access corporate affairs with no procedures or limitations. This leaves a negative impact on corporations and discourages investment in India. This affects not only the corporation's identity but also the corporation's identity.

Right Against Self-Incrimination

Another point of contention is the right against self-incrimination in the case of tax evasion, which is illegal and attracts criminal liability. Although this right is not available to corporations in the US, it is applicable in India. The right to self-incrimination, which is mentioned in Article 20(3) of the constitution of India, can be determined in the tax sphere from two perspectives: one, the accused person's right to refuse to give any self-incriminating information that the authorities request; and another, the right to prevent information that they were forced or coerced to provide during legal procedures from being used against them as a foundation for a later criminal conviction or administrative penalty. When applying

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[34] Pollman, Elizabeth, *A Corporate Right to Privacy*, All Faculty Scholarship. 2562, 2014. https://scholarship.law.upenn.edu/faculty_scholarship/2562.

[35] *Roberts* v. *Gulf Oil Corp*., 147 Cal. App. 3d 770, 791 (1983) (U.S.).

[36] *Justice K.S.Puttaswamy(Retd)* v. *Union Of India*, 2019 (1) S.C.C. 1 (India).

[37] *Distt. Registrar & Collector, Hyderabad & Anr* v. *Canara Bank*, (2005) 1 S.C.C. 496 (India).

[38] *ICICI Bank* v. *State of Madhya Pradesh*, 2014 (I) M.P.J.R. 144 (India).

[39] *Senairam Doongarmal Agency* v. *K.E. Johnson*, M.A.N.U./G.H./0094/1963.

the doctrine of "substance over form", the revenue authorities use a look-through approach and dissect the transactions. The form is ignored, and the substances are focused on. It raised some serious issues. Whether, in the case of finding substance, authorities can require a taxpayer to submit documents that are self-incriminating or whether arrangements to hide these documents or transactions will amount to illegality.

As stated in *"Self-Incrimination and the Use of Income Tax Returns in Non-Tax Criminal Prosecutions*, "the disclosure of income derived from illegal activities as required in income tax returns may lead to an individual's conviction in a non-tax criminal prosecution. This situation may occur despite the constitutional guarantee against self-incrimination, which is designed to protect the individual from being compelled by the government to divulge information that would assist in his prosecution.' Until recently, under various rationales, most courts have refused to find this Fifth Amendment protection in income disclosure cases. Some courts have failed to reach the protection question by saying that the disclosures are not sufficiently incriminating.2 Others facing the issue have nevertheless held that governmental needs were more important than the individual's or that the taxpayer waived his privilege against self-incrimination by complying with the income tax filing requirements."[40]

IV

GAAR: In Between Arbitrary Authority and Regulatory Oversight

The recent case of the US in Summa Holdings holds that "Form" is "substance" when it comes to law. The words of the law (its form) determine its content (its substance). How odd, then, to permit the tax collector to reverse the sequence—to allow him to assess the substance of a law and to make it govern "over" the written form of the law—and to call it a "doctrine" no less."[41]

This raises the serious issue of the reinterpretation of statutes by authorities at their whim. It is one thing to find fiscal realities and recharacterize the economic substance by taking its form. However, a question arises when the authorities recharacterize the statute or form in favour of their perception of its substance. The question is about the separation of powers principle between the executive and legislature, where authorities warrant searching through statutes and correcting the

[40] *Self-Incrimination and the Use of Income Tax Returns in Non- Tax Criminal Prosecutions*, 30 Wash. & Lee L. Rev. 182 (1973).
https://scholarlycommons.law.wlu.edu/wlulr/vol30/iss1/10.

[41] *Summa Holdings, Inc.* v. *Comm'r of Internal Revenue*, 848 F.3d 779 (6th Cir. 2017) (U.S.).

policy missteps the legislature used to take. In the case of India, GAAR in Chapter XA of the Income Tax Act is one such provision that has given authority overriding power over transactions. This can be seen through the "rule of law" lens. Using GAAR to calculate tax liability has three adverse effects from a "rule of law" standpoint:

(a) Tax is imposed illegally, rather than through the proper channels. It is imposed through administrative discretion granted to the authorities under GAAR.

(b) It is improper for the government to change the outcome of transactions by applying GAAR after the legislature has enacted a law and taxpayers have acted to undertake transactions on that basis; and

(c) Tax laws must be clearly stated so taxpayers can adequately address their transactions.[42]

However, there is always the contention that certainty in tax may lead to aggressive tax planning, causing ill effects; hence, the grandeur of the GAAR position must be given to meet changing circumstances. There are two approaches to these issues. This approach can be seen in Canada, where the interpretation is based on the premise that to maintain consistency, predictability, and fairness in tax law, GAAR cannot be understood to unsettle settled principles of tax legislation. Another interpretation is provided by New Zealand, which has given way to the principle of certainty in favour of authorities to neutralise tax avoidance strategies by applying GAAR.

Conclusion

The ongoing struggle between substance and form in tax treaty interpretation has highlighted significant issues within the framework of Indian tax law, particularly concerning the misuse of substance over form. The evolution of judicial interpretations, especially following landmark cases such as McDowell and Vodafone, underscores a troubling trend where the doctrine of substance over form has increasingly been applied to support the state's tax claims, often at the expense of taxpayers' rights and legal certainty.

An inherent tension arises from the broader implications of this doctrine, which can lead to arbitrary decision-making by tax authorities. As courts and tax authorities

[42] Jain, Tarun, *'GAAR' and 'Rule of Law': Mutually Incompatible?*, Chartered Accountant Practice Journal, Vol. 43 (August 2013) (pp. 424-444) https://ssrn.com/abstract=2298520.

strive to enforce compliance, they may disregard the clear statutory language, opting for interpretations that align with their revenue objectives. This approach undermines the fundamental principles of the rule of law, as it allows for discretion that can result in unequal treatment of taxpayers, creating an environment rife with uncertainty and fear of punitive action.

Moreover, introducing the General Anti-Avoidance Rules (GAAR) has intensified the scrutiny of transactions, pushing the boundaries of legitimate tax planning versus tax avoidance. While important, the reliance on economic substance can become a double-edged sword when it leads to the unwarranted nullification of lawful arrangements. The risks of encroaching on corporate privacy and infringing upon rights against self-incrimination further complicate the landscape, illustrating the need for a balanced approach that respects the state's revenue needs and taxpayers' legal rights.

In summary, the trajectory of substance over form interpretation in tax law necessitates a reevaluation to ensure that tax compliance is achieved through clear legislation and fair judicial processes, rather than through overreach that distorts the intended legal framework.