

(2012) 07 AHC CK 0037

In the Allahabad High Court

Case No : Writ Tax No's. 1819, 1642, 1710, 1711, 1869 and 1977 of 2009, 839 of 2004, 1229, 1231 and 1493 of 2007, 429 of 2008 and 833 of 2010

Sun Direct TV Pvt. Ltd.

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-07-2012

Acts Referred:

Cable Television Networks (Regulation) Act, 1995 — Section 4
Constitution of India, 1950 — Article 14, 19(1)(a), 19(1)(g), 213, 245
Evidence Act, 1872 — Section 123
Finance Act, 1994 — Section 65(105), 65(105)(zk), 65(15), 67
Income Tax Act, 1961 — Section 2(24)
Telegraph Act, 1885 — Section 4
Uttar Pradesh Cinemas (Regulation) Act, 1955 — Section 2(o), 2(o)(iv), 7(1)
Uttar Pradesh Entertainments and Betting Tax (Amendment) Act, 2009 — Section 3, 5
Uttar Pradesh Entertainments And Betting Tax Act, 1979 — Section 1, 11(1), 2, 2, 2(1)

Citation : (2013) 61 VST 481

Hon'ble Judges : Sunil Ambwani, J;Aditya Nath Mittal, J

Bench : Division Bench

Advocate : Bharat Ji Agrawal, assisted by S.D. Singh, K.N. Tripathi, assisted by Ashish Misra and D.K. Singh assisted by R.M. Saggi, for the Appellant; S.P. Kesarwani, Additional Chief Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

The challenge

1. The Writ Petition No. 839 of 2004, M/s. New Era Entertainment Network Ltd. v. State of U.P. filed on June 18, 2004 is directed against the order of the District Magistrate, Ghaziabad dated June 11, 2004 imposing entertainment tax on the sale of Direct to Home (DTH) equipment including set top boxes, etc., the subscription fees collected from the subscribers quantified at Rs. 4,04,39,628 and penalty of Rs. 20,000, on the DTH services. The petitioners have also prayed for declaring that section 2(1)(iii) of the Uttar Pradesh Entertainments and

Betting Tax Act, 1979 as ultra vires and unconstitutional, and from making any assessment orders; creating any demand or coercive step in pursuance of the order dated June 11, 2004. Writ Petition No. 1229 of 2007 has been filed by M/s. Tata Sky Ltd. against the notices issued by the District Magistrate, Lucknow, dated August 17, 2007, to show cause as to why entertainment tax be not levied and realized on the sale and establishment of set top boxes, and the sale of recharge coupons for various channels including bouquet of channels as well as the directions issued by the District Magistrate, Ghaziabad on August 17, 2007, directing the petitioner in pursuance of the interim orders passed by the High Court in Writ Petition No. 5309 (MB) of 2007 dated August 2, 2007, for depositing the entertainment tax, directing the petitioner to provide for the entire list of the subscribers in District Ghaziabad and the sale of recharge coupons. The District Magistrate has directed the petitioner to provide for the names of the authorised agency, who will be depositing the entertainment tax and will be providing the requisite information.

2. In Writ Petition Nos. 1231 of 2007 and 1493 of 2007 and 429 of 2008, M/s. Tata Sky Ltd. have challenged similar notices issued by the District Magistrates, Allahabad and Meerut.

3. In Writ Petition No. 1642 of 2009, M/s. Tata Sky Ltd. has challenged the Uttar Pradesh Entertainments and Betting Tax (Amendment) Ordinance, 2009 to include DTH services as unconstitutional and ultra vires to the Constitution. They have also prayed for declaring clauses (a), (c), (f), (h) and clause amending sections 3, 5, 24 and 32 of the Uttar Pradesh Entertainments and Betting Tax (Amendment) Ordinance, 2009 as ultra vires to the provisions of the Constitution. They have also prayed for declaring the notices issued by the District Magistrate, Ballia dated June 25, 2009; Assistant Entertainment Tax Commissioner, Lucknow dated June 30, 2009; District Magistrate, Gorakhpur dated July 2, 2009; District Magistrate, Aligarh dated July 18, 2009 and the District Magistrate, Gautam Budh Nagar dated July 20, 2009, as void and issued without jurisdiction.

4. In Writ Petition No. 1710 of 2009 and 1711 of 2009, M/s. Bharti Tele-media Ltd. has prayed for same reliefs, and for declaring the notices issued by the District Magistrate, Gorakhpur on July 2, 2009; District Magistrate, Meerut dated July 18, 2009. They have also prayed for restraining the respondents from entering into any process of recovery of entertainment tax for the period prior to June 16, 2009.

5. In Writ Petition No. 1869 of 2009, M/s. Dish TV India Ltd. has prayed for directions to declare the effect of section 2(a), 2(f1), 2(i-1), 2(1)(vi), 2(1)(vii) including its Explanation and sections 2(1)(viii), 2(1-1)(iii), 2(m)(v), 3(1), 3(2), 3(7), 5, 8(b) and 24 of the Uttar Pradesh Entertainments and Betting Tax Act, 1979 as amended by the U.P. Ordinance No. 4 of 2009 dated June 16, 2009 and the notification dated June 16, 2009 as ultra vires, unconstitutional and void. By prayer (b) the petitioners have challenged the notices issued by the District

Magistrate, Varanasi; District Magistrate, Khiri; District Magistrate, Ballia; District Magistrate, Jyotiba Phule Nagar; District Magistrate, Hardoi; District Magistrate, Sitapur; District Magistrate, Ghaziabad; District Magistrate, Meerut; District Magistrate, Gorakhpur of various dates of July, 2009 issuing directions calling for the records pertaining to DTH services provided by the petitioners to the subscribers.

6. In Writ Petition No. 1977 of 2009, Reliance Big T.V. Ltd. v. State of U.P., the petitioner has challenged the provisions of the Uttar Pradesh Entertainments and Betting Taxes (Amendment) Ordinance, 2009 (4 of 2009) promulgated on June 16, 2009 including DTH services within the ambit of the Act as unconstitutional and ultra vires of the Constitution and not to levy any duty under the Act on DTH services.

7. In Writ Petition No. 833 of 2010, M/s. Tata Sky Ltd. has prayed for declaring the Uttar Pradesh Entertainments and Betting (Amendment) Act, 2009 levying entertainment tax on DTH broadcasting services as ultra vires to the Constitution of India. They have also prayed for directions to declare that the respondents have no right to claim entertainment tax on any amount of installation charges, and set top boxes and issue appropriate writ commanding the respondents not to levy tax, fees or duty under the Amended Act, 2009. They have also sought for quashing the notices dated January 27, 2010, February 16, 2010, March 8, 2010 and March 26, 2010 to deposit entertainment tax on DTH subscriptions.

The amendments to the Act

8. The Uttar Pradesh Entertainments and Betting Tax Act, 1979 was amended by the Second Amendment Act, 1995 (U.P. Act No. 28 of 1995) inserting new section 4C after section 4B providing for entertainment tax on cable services. The proprietor of cable television network providing cable service was made liable to pay entertainment tax not exceeding Rs. 200 per every subscriber for every month. The Amendment Act also inserted clause (a) (e) defining "cable service" to mean the transmission by cables of programmes including retransmission of cables of any broadcast television signals and clause (eee) defining "cable television network" to mean any system consisting of a set of closed transmission paths and associated signal generation, control and distribution equipment, designated to provide cable service for reception by multiple subscribers. The Act also defined "programme" by inserting clause 12 after clause 2(c), and "subscriber" in clause (oo) in clause 2(d) to mean a person, who receives the signals by television network at place indicated by him to the proprietor of the cable television network without further transmitting it to any other persons.

9. The Act was further amended by the Uttar Pradesh Entertainments and Betting Tax (Amendment) Act, 2001 (U.P. Act No. 15 of 2001) with effect from March 5, 2001. The definition of the "cable operator" in clause (b) in section 2(a) relevant for the purposes of this case is quoted as below:

(ee) "cable operator" means any person who provides cable service through a cable television network or otherwise controls or is responsible for the management and operation of cable television network and includes the proprietor of a hotel who provides cable service in the hotel through his own cable television network.

(b) after clause(s), the following clause shall be inserted, namely:-

(1) Words and expressions used in this Act but not defined shall have the meaning respectively assigned to them in the Cable Television Network (Regulation) Act, 1995.

10. By a notification dated April 13, 1989 u/s 3(1) and section 4(1) of the Uttar Pradesh Entertainments and Betting Tax Act, 1979 the State Government notified the rates on which the entertainment tax was to be levied. Item 8 in the Schedule provided for the rates for cable television network, residuary clause provided for 30 per cent of each payment for admission. The residuary item 5 is quoted as below:

11. The Uttar Pradesh Entertainments and Betting Tax (Amendment) Ordinance, 2009 (U.P. Ordinance No. 4 of 2009) exhaustively amended U.P. Act No. 28 of 1979 providing for imposition of entertainment tax on DTH services. The extract of amendments in sections 2 and 3 relevant for the purposes of this case are quoted as below:

THE UTTAR PRADESH ENTERTAINMENTS AND BETTING TAX (AMENDMENT)
ORDINANCE, 2009

(U.P. ORDINANCE NO. 4 of 2009)

[Promulgated by the Governor in the Sixtieth Year of the Republic of India]

An Ordinance Further to amend the Uttar Pradesh Entertainments and Betting Tax Act, 1979.

WHEREAS the State Legislature is not in session and the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action:

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 213 of the Constitution, the Governor is pleased to promulgate the following Ordinance:

1. Short title.--This Ordinance may be called the Uttar Pradesh Entertainments and Betting Tax (Amendment) Ordinance, 2009.

2. Amendment of section 2 of U.P. Act No. 28 of 1979.--In section 2 of the Uttar Pradesh Entertainments and Betting Tax Act, 1979, hereinafter referred to as the principal Act,

(a) In clause (a) for the words "the entertainment is held the words the

entertainment is held or any place where from entertainment is provided by means of the cable television network or direct to home service or any other emerging transmission by whatever name called" shall be substituted.

(b) after clause (a) the following clause shall be inserted, namely:--

(a1) "amusement park" means a place wherein various type of amusements, which includes games or rides or water sports, water park, splash pool, etc., but does not include exhibition by means of cinematograph and video, are provided on payment for admission."

(c) after clause (f) the following clause shall be inserted, namely "(f1) ""direct-to-home service" means a system of distribution of multi-channel television programmes in Ku band by using a satellite system, by providing television signals direct to the subscriber's premises without passing through an intermediary such as cable operator."

(d) in clause (g) the following words shall be inserted at the end, namely:

if also includes any activity notified as entertainment by the State Government from time to time.

(e) after clause (i) the following clause shall be inserted, namely:-

(i1) "Ku Band" ordinarily means the 11.7 to 12.7 Gigahertz frequency band which splits into two segments, namely fix satellite service having the frequency of the 11.7 to 12.2 Gigahertz and broadcasting satellite service having the frequency of 12.2 to 12.7 Gigahertz, or any other band of width as may be approved by the Government of India from time to time.

(f) in clause (i) after sub-clause (v), the following sub-clauses shall be inserted, namely:

(vi) any payment made by a person by way of contribution or subscription or installation and connection charges or any other charges collected in any manner whatsoever, by whatever name called, for television exhibition through cable television network or any other such network by whatever name called, attached to television set or any other device at a residential or non-residential place of a connection holder; or

(vii) any payment made by person to the proprietor of a direct-to-home service or any other service by whatever name called, by way of contribution or subscription or installation and connection charges or any charges collected in any manner by whatever name called either directly or through any agency established for the purpose for direct-to-home service with the aid of set top box or any other device of like nature which connects television set or any other device at a residential or non-residential place of a connection holder directly to the satellite without passing through an intermediary such as cable operator;

Explanation.--For the purposes of sub-clauses (vi) and (vii) any expenditure

incurred by any co-operative society including a co-operative housing society or by the management of any factory, hotel, lodge, bar, permit room, pub or by person or group of persons for the purchase of any type of antenna or any other apparatus for securing transmission through cable television network, direct-to-home service or any other service by whatever name called, for its member or for workers or customers or for himself or themselves, as the case may be shall be deemed to be the payment made under the sub-clause.

(viii) where in any entertainment admission has been allowed on a gross payment, such gross payment shall be deemed to be aggregate payment.

(g) after clause (k) the following clause shall be inserted:

(k1) "Multi system operator" means a cable operator who receives a programming service from a broadcaster or his authorized agencies and retransmits the same or transmits his own programming service for simultaneous reception either by multiple subscribers directly or through one or more local cable operators, and includes his authorized distribution agencies by whatever name called.

(h) after clause (1) the following clause shall be inserted, namely:

(1-1) "Place of entertainment" includes-

(i) a house, building, tent, site to be used for purpose of cinema building or other structure and description of transport whatsoever;

(ii) any addition to the place of entertainment;

(iii) a house, building, tent or any other place where the books of account, ticket books or any other relevant records pertaining to the entertainment or pertaining to the management of providing cable service or direct-to-home service or broadband service or any emerging transmission services, by whatever name called, are kept or purported to have been kept;

(i) In clause (m) for sub-clause (iii) the following sub-clauses shall be substituted namely:-

(iii) responsible for, or for the time being in-charge of the management thereof; or

(iv) any cable operator registered u/s 4 of the Cable Television Network (Regulation) Act, 1995 (Act No. 7 of 1995) or any person responsible for or for time being in charge of management of providing cable connection through cable television network or any other emerging technology; or,

(v) any company registered under the Company Act, 1956 having license to provide direct-to-home service or any other emerging transmission services by whatever name called by the Government of India u/s 4 of the Telegraph Act, 1985 and the Indian Wireless Telegraph Act, 1933 or any agent thereof appointed for the purpose of sale, letting on rent or distribution of equipment

related thereto;

(j) after clause (p), the following clauses shall be inserted, namely:-

(P1) "television signal receiver" means any device, by whatever name called, used to receive and/or decode the transmission programme of particular channel and without which no person is able to see a particular channel programme.

(P2) "television signal receiver agency" means a place of entertainment by whatever name called, where business of selling or letting on hire or distribution or exchange or putting into circulation in any manner whatsoever of television signal receiver.

(k) after clause (t) the following clause shall be inserted namely:

(u) words and expression used in this Act not defined, shall have the same meaning as respectively assigned to them in the Uttar Pradesh Cinema (Regulation) Act 1955 or the rules made thereunder and the Cable Television Network (Regulation) Act, 1995 and the rules made thereunder.

3. Amendment of section.--In section 3 of the principal Act:-

(a) In the marginal heading for the words "tax on the payment for admission to entertainment" the words "tax on entertainment" shall be substituted.

(b) in sub-section (1),

(i) for the words "all payment for admission" the words "all aggregate payments required for admission to any entertainment" shall be substituted.

(ii) after the provision to sub-section (1), the following provisos shall be inserted, namely:-

provided further that in the case of cable service, the proprietor of the cable service control room/multi-system operator shall be liable to pay the tax, irrespective of the fact whether he collect it directly from the person making the payment for admission or indirectly through an associate or franchise cable operator or an agent, who in turn collects it from the person making the payment:

Provided also that a proprietor of a cinema, in lieu of payment under this sub-section, shall make a lump sum payment to the State Government on such conditions and restrictions and in such manner as may be prescribed and at such rate as the State Government may from time to time notify, and different rates of lump sum payments may be notified for different categories of local areas or cinemas or for different payment for admission.

(c) in sub-section (2) for the words "payment for admission" the words "aggregate payment required for admission" shall be substituted.

(d) after sub-section (2), the following sub-section shall be inserted, namely:-

(2a) it shall be lawful for the State Government to notify lump sum rate of entertainment tax for any entertainment or class of entertainments or for different payment for admission to entertainment or for different area";

(e) for sub-section (3) the following sub-section shall be substituted, namely:-

(3) Where the aggregate payment required for admission to an entertainment together with any other charge leviable under this Act, is not a multiple of one rupee then notwithstanding anything to the contrary contained in sub-section (1) or sub-section (2) or any notification issued thereunder, the tax shall be increased to such extent and be so computed that the aggregate of such aggregate payment and other charges is rounded off to the next higher multiply of one rupee and such increased tax shall also be collected by the proprietor and paid to the State Government in such manner as may be prescribed.

(f) in sub-section (5) for the words "payment for admission" wherever occurring the words "aggregate payment required for admission" shall be substituted.

(g) In sub-section (6),-

(i) for the words "payment for admission" wherever occurring the words "aggregate payment required for admission" shall be substituted;

(ii) for the words "twenty per cent" the words "thirty per cent" shall be substituted.

(h) In sub-section (7) the existing Explanation shall be renumbered as "Explanation (1)" and after Explanation (1) as so renumbered, the following Explanation shall be inserted, namely:-

"Explanation (2).--For the purpose of this Act, the expression aggregate payment shall mean a sum paid by a person for admission to the entertainment which shall include entertainment tax and any other amount required to be paid under the Act but does not include any fee or other charges which is not a part of entertainment tax under this Act".

12. The State Legislature passed the Bill on which the Ordinance amending the Act of 1979 was promulgated into the Uttar Pradesh Entertainments and Betting Tax (Amendment) Act, 2009 (U.P. Act No. 25 of 2009), which was notified on August 27, 2009 and came into force on June 16th, 2009 with effect from the date, when the Ordinance was promulgated.

13. On September 4th, 2009 a Notification No. 1672/XI-Ka. Ni.-6-2009-M. (92)-2009 was issued under sub-section (1) of section 3, sub-section (1) of section 4, sub-section (1) of section 4A and sub-section (1) of section 4B and in supersession of the Notifications dated April 13, 1989, April 27, 1989, October 15, 1994, December 12, 2000, December 15, 2002, March 26, 2003 and January 14, 2004, notifying the rates of entertainment tax. For DTH services item 5 provide that rates of the entertainment tax in Schedule as follows:

14. On July 30, 2009 after hearing learned counsel for the parties an interim order was passed providing that until August 25, 2009 the respondents shall not enforce the provisions of the Uttar Pradesh Entertainments and Betting Tax Act, 1979 as amended by Ordinance 2009 for the period prior to June 16, 2009. The interim order was extended from time to time and was vacated on March 21, 2012.

The judgments of Allahabad High Court

15. In the year 1995 the cable operators in the State of U.P. challenged the notices issued by the Assistant Commissioner, Entertainment tax to pay entertainment tax at 30 per cent, of subscription charges received by them from their subscribers. In *Universal Communication System through its Proprietor Praveen Gaur v. State of U.P.* [1995] 29 ATJ 454, the Division Bench, in a judgment delivered by the honourable Mr. Justice G.P. Mathur (as he then was), considered the submissions that the nature of activity carried by cable TV operators, namely the forwarding of the signals emitted and sprayed by geo-stationary satellites through series of electronic equipments to the television sets installed in the private premises of the subscribers does not fall within the purview of the Act. Relying upon article 265 of the Constitution of India it was submitted that the petitioners as cable operators do not provide any entertainment nor they admit persons to any entertainment on payment, which is essential for applicability of section 3 of the Act, which is the charging section. It was submitted that the entertainment tax can be levied on all payments for admission to any entertainment and in view of section 2(a) of the Act the payment should be made for getting admission to any place in which the entertainment is held. In the absence of admission to any place in which the entertainment is held, no tax can be levied. The cable TV operator neither provides any place nor charges any money for granting admission to any place. The subscribers neither come nor seek admission or insures to any place provided by the operator. He views the programmes on his own TV and in his own residence and thus section 3 of the Act has no application to such activity.

16. The Division Bench, after considering the submissions, held that the Preamble of U.P. Act of 1979 shows that the Act was enacted to consolidate and amend the law relating to taxes on entertainments, amusement and on certain forms of betting in the State of U.P. In view of the fact that the Legislature itself had given a different preamble of the U.P. Act of 1979, the element of admission, which was present in the Act of 1937, cannot be imported for interpreting its provisions. This court then held in paragraphs 12, 14, 15, 16, 17, 18, 19 and 20 as follows:

12. Sub-clause (iii) of section 2(1) defines "payment for admission" as any payment made for the loan or use of any instrument or contrivance which enables a person to get normal or better view or hearing or enjoyment of the entertainment which without aid of such instrument of contrivance such person would not get. Therefore, if any person charges any money for enabling any

person to use any instrument or mechanical device which enables such person to get a normal view of the entertainment which without aid of such device, he would not get, will come fully within the clutches of section 3 of the Act. The programmes being broadcast by foreign media like B.B.C. Star T.V. and II T.V. Or by D.D. Metro cannot be received directly on television sets. The cable T.V. operators receive the wireless signals on their dish-antennas and after processing them through electronic equipments, they are transmitted to television sets of the subscribers through the connecting metal wires. The role played by them will be clear from paras 2 and 8 of Writ Petition No. 1353 of 1993 (Universal Communication System v. State of U.P.) which are quoted below:

Para 2. That several such satellites are visible in the sky over the Indian sub-continent. The signals emitted and sprayed by any such satellite can be directly received and collected on an appropriately designed dish-shaped receptacle known as dish-antenna, c to face that satellite in the direct line of vision. The signals so received, can be fed to a television set by means of a conducting metal wire to recreated an audio-visual effect on the television screen.

Para 8. That as already stated earlier, the signals and first collected and received by dish-antenna. They are then processed and amplified in the control room of the petitioners and connected through special cables to the television sets of people, willing to pay a monthly maintenance charge. The number of channels transmitted through the cable varies from petitioner to petitioner depending upon the range of the equipment and facilities processed by them. The entire set up is generally called cable T.V. network. The petitioners generally have up to a hundred customers each.

There cannot be slightest doubt that a subscriber gets a normal view of the programmes only with the use of instruments which are provided by the cable T.V. operator and without the aid of such instruments, these programmes cannot be viewed. For making use of these instruments the subscriber makes payment to the cable T.V. operator. The money paid by the subscriber is thus clearly a payment for admission to an entertainment. The activity carried on by the petitioners is thus fully covered by the provisions of section 3 of the Act and they are liable to pay entertainment tax.

14. Sri Gaur also submitted that for attracting sub-clause (iii) of section 2(1) of the Act, use of the instruments should be in the physical sense of the term namely that the person who goes normal view of the entertainment must himself use the instrument. In our opinion, there is no scope for restricting the meaning of the word "use" to such an extent. The use of instrument can be direct or indirect. Once the instruments of cable T.V. operator are connected to the television set of the subscriber by wire or cable the mere fact that someone else is operating the control room can make no difference as the subscriber gets full benefit of the instruments installed therein and it is through those instruments that the wireless signals beamed by the satellites are converted into such type of signals which can be directly received by an ordinary television set. Thus, it

cannot be held that a subscriber does not himself use the instruments or devices which have been installed by a cable T.V. operator.

15. It is next submitted that the cable T.V. operators do not themselves provide an entertainment as the same is provided by the proprietor of the television station from where these programmes are broadcast. The contention is that the cable T.V. operators are merely extending the facility and as such they do not come within the purview of section 3 of the Act. As shown, the definition of word "entertainment" as given in section 2(g) is not exhaustive but is illustrative. Since the Legislature has used the word "includes" the same has to be extended. There can be no doubt that with the use of the equipment installed by cable T.V. operator, a subscriber is able to set the programmes which he would not be able to do otherwise. Therefore, in so far as the subscriber is concerned, the said entertainment is provided by the concerned cable T.V. operators. If the argument of learned counsel is accepted, it will lead to an absurd result. A proprietor of cinema hall does not himself provide any entertainment as the same is provided by the stars and artists who have acted in the film. Such a restricted interpretation of the word "entertainment" can never be accepted.

16. Sri Ashok Khare has submitted that in view of the language used in section 3 of the Act, the liability of tax is an act of entertainment and not on the person providing entertainment. In support of his submission, he has placed reliance on *The Western India Theatres Ltd. Vs. The Cantonment Board, Poona*, *Cantonment*, and *Y.V. Shrinivasamurthy v. State of Madras* AIR 1959 SC 894. The contention is that there has to be a tax on each act of entertainment for which payment is charged and there cannot be a tax on monthly or yearly basis. In our opinion, the word "entertainment" used in section 3, in view of its inclusive definition, cannot be given any restricted meaning. It will be doing violence to the language used in section 3 to hold that the entertainment contemplated therein is relatable only to a single act or number of act of entertainment. It may be a series of acts of entertainment or the said entertainment may be spread over to several hours or days and the tax would have nexus to the mode and manner of payment. If payment for series of entertainments is made separately for a show of them then the tax would have to be paid on each such payment but if the payment is made by way of a consolidated amount on weekly or monthly basis, the tax has to be paid on such consolidated amount.

In *Ramesh Sippy and etc. Vs. State of Maharashtra*, levy or tax under the Bombay Entertainment Duty Act on machines in video parlour was challenged on the ground that the same was levied on lump sum rate on the basis of Rs. 500 per machine per month within the limits of Municipal Corporation of Greater Bombay and at the rate of 250 per machine per month in other areas. It was contended that the tax was payable even in a case where the machine, though could be used but in fact was not used and thus depended upon its capacity to provide entertainment. It was also contended that as the tax was levied on the machine it was not on an act of entertainment and consequently the same was

illegal. The contention was repelled on the ground that in regulation to taxing statutes the Legislature enjoys a large discretion in the matter of classification and it must be given full freedom to determine the manner in which tax should be imposed. The tax levied in lump sum basis on the number of machines was only convenient method to levy the tax in so far as video parlours were concerned. In para 8 of the reports it was observed as follows:

...The tax contemplated by the Act is not a tax on ownership of machine or its possession. In the normal circumstances, when a video game machine is installed in a video parlour, it could safely be inferred that it is used as a source of entertainment. Therefore, in substance it is a tax on act of entertainment. This is clear from the fact that a lump sum tax is fixed irrespective of capacity of a machine. Tax does not vary with the cost of machine or its make. Machine is chosen as a mere criteria for the purpose of calculation. Incidence of tax is not on the machine but is on the act of entertainment. From the definition of video game parlour it is clear that it is a place of entertainment where persons are required to make a payment for the purpose of working a machine installed therein which operates electronically, or mechanically or electro mechanically. Therefore, the machines installed in the video game parlours are part and parcel of the act of entertainment. Since any other mode of imposition of tax was either impossible or impracticable, Legislature has chosen to impose a tax in lump sum at a flat rate. But from this alone an inference cannot be drawn that the tax is levied on the machine itself and not on the act of entertainment.

Recently in Venkateshwara Theatre Vs. State of Andhra Pradesh and Others, the constitutional validity of sections 5 of the A.P. Entertainment Tax Act, 1939 as amended by Act No. 23 of 1988 and Act No. 16 of 1991 came up for consideration before the apex court. The mode of levy based on "per payment on admission" which necessitated enquiry into the number of shows held and the number of persons admitted to cinema theatre for each show made on the basis of theatre's collection capacity per show for a prescribed number of shows in a week. The challenge to the amended provision was repelled with the following observations:

...Once it is held that tax on entertainment could be levied by either of the two modes, viz., per payment of admission or gross collection capacity per show, it is for the Legislature to decide the particular mode or modes of levy to be adopted and whether a choice should be available to proprietor of the cinema theatre in this regard. The Legislature does not transgress the limits of its legislative power conferred on it under entry 62 of List II if it decides that consolidation levy on the basis of gross collection capacity per show shall be the only mode for levy of tax on entertainment.

For taking the above view, the court relied upon a series of decisions rendered in East India Tobacco Co. Vs. State of Andhra Pradesh, , Federation of Hotel and Restaurant Association of India, etc., Vs. Union of India (UOI) and Others, , Gannon Dunkerley and Co. and Others Vs. State of Rajasthan and Others, and

also a decision of the U.S. Supreme Court in *Sam Antonio School District Vs. Rodrigous*, (1973) 411 US 1 page 41, wherein, it has been held that in the field of taxation the Legislature is permitted to exercise an extremely wide discretion in classifying items for tax purposes so long as it retains from clear and hostile discrimination against particular person or association.

18. Shri Khare has next submitted that in the notification issued by the State Government on April 13, 1989, there is no specific entry regarding rate of tax which is leviable on a cable T.V. operator and the respondents are taking recourse to entry No. 5 which is residuary clause for levying tax. The submission is that a taxing statute cannot be vague and in absence of some definite publication that the activity being carried on by a cable T.V. operator is liable to be taxed at a particular rate, the tax cannot be imposed. Entry No. 5 of the notification dated April 13, 1989 regarding rates of entertainment tax reads as follows:

We have examined the notification issued by the State Government in this regard. It is noteworthy that though the notification mentions about exhibition in a cinema, house, joyrides in aeroplanes, horse racing, it does not mention some well-known form of entertainment like a music programme, theatre or dance show. It cannot be contended that these programmes do not provide any entertainment or that they would not be liable to tax. In our opinion, the language used in entry No. 5 is all-comprehensive and will cover all types of entertainment including that provided by cable T.V. operators even though it is specifically not mentioned in the notification.

19. Shri Prabodh Gaur has submitted that the Act as it was enacted in 1979 could not have possibly taken into consideration the advent of video cinema and cable T.V. and with that end in view, it was amended by U.P. Act No. 12 of 1989 and sections 4A and 4B were introduced which makes proprietor of a video cinema as well as proprietor of a public service vehicle or of a hotel where exhibition by video is given liable for payment of tax. Since, there is no corresponding amendment for making a cable T.V. operator liable to entertainment tax, it is contended, the provisions of the Act should not be held applicable to him. Sri Gaur has also referred to Maxwell on Interpretation of Statutes page 256 where after making reference to *Russel (Inspector of Taxes) v. Scott* [1948] AC 422 (HL) and *Inland Revenue Commissioners v. Wolfson* [1949] 1 AER 865, the law regarding imposition of tax is stated in following words:

Statutes which impose pecuniary burdens are subject to the same rule of strict construction. It is well-settled rule of law that all charges upon the subject must be imposed by clear and unambiguous language, because in some degree they operate as penalties: The subject is not to be taxed unless the language of the statute clearly imposes the obligation, and language must not be strained in order to tax a transaction which, had the Legislature thought of it, would have been covered by appropriate words. "In a taxing Act", said Rowlatt J., "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".

Reference has also been made to Baidyanath Ayurved Bhawan (Pvt) Ltd., Jhansi Vs. The Excise Commissioner, U. P. and Others, where similar view has been taken by the apex court. The submission is that as the activity of a cable T.V. operator is not specifically or directly mentioned in the Act, the levy of entertainment tax is illegal.

20. We have given our careful consideration to the submission made by the learned counsel. We are unable to accept the submission that in absence of a corresponding amendment the activity carried on by cable T.V. operator would not come within the purview of the Act. We have to gather the intention of the Legislature from the provisions of the Act and then to examine whether the petitioners are realising any amount for admission to an entertainment. If they are so doing they are liable to pay entertainment tax. There can be no quarrel with the proposition of law enunciated by the learned counsel. However, at the same time, we cannot ignore the current thinking with regard to interpretation of statutes where on account of progress being made by the society and development in science and technology, the courts are confronted with new problems which had not been visualised at the time when the laws were enacted by the Legislature. In this connection, it may be useful to refer to some decisions of the Supreme Court where this view has been expressed. In *The Senior Electric Inspector and Others Vs. Laxmi Narayan Chopra and Others*, , at page 163, it was observed as follows:

...in a modern progressive society it would be unreasonable to confine the intention of a Legislature to the meaning attributable to the word used at the time the law was made, for a modern Legislature making laws to govern a society which is fast moving must be presumed to be award of an enlarged meaning the same concept might attract with the march of time and with the revolutionary changes brought about in social, economic, political and scientific and other fields of human activity. Indeed, unless a contrary intention appears, an interpretation should be given to the words used to take in new facts and situations, if the words are capable of comprehending them....

In *S.P. Gupta Vs. President of India and Others*, , while interpreting section 123 of the Evidence Act, which is a very old provision having been enacted in the last century, it was observed that the interpretation of every statutory provision must keep pace with changing concepts and values and it must, to the extent to which its language permits or rather does not prohibit, after adjustment through general interpretation so far as to accord with requirement of the fast changing society which is undertaking rapid social and economic transformation. It was further observed that the language of statutory provision is not static vehicle of ideas and concepts and as ideas and concepts change, as they are bound to do in any country like ours, so must be meaning and the concept of the statutory

provision undergo a change. In *S.P. Jain Vs. Krishna Mohan Gupta and Others*, , it was observed as follows:

We are of the opinion that law should take pragmatic view of the matter and respond to the purpose for which it was made and also take cognizance of the current capabilities of technology and life style of the community. It is well-settled that the purpose of law provides a good guide to the interpretation of the meaning of the Act. We agree with the views of justice Krishna Iyer in *Busching Schmitz Private Limited Vs. P.T. Menghani and Another*, that legislative futility is to be ruled out so long as interpretative possibility permits....

Similar view has been taken in *The Municipal Corporation of Greater Bombay and others Vs. The Indian Oil Corporation Ltd.*, where steel tanks for storing petroleum products were held to be "land" or "building" and exigible to property tax under the Bombay Municipal Corporation Act. In view of the aforesaid authorities the law seems to have been settled that in a fast developing society, it would not be correct to confine the intention of the Legislature to the meaning attributable to the words used at the time of making of enactment. In a scientific age, the Legislature must be presumed to be aware of an enlarged meaning of the word which it may attract with the advance in science and technology. Therefore, the contention of the learned counsel not to see the intention of Legislature cannot be accepted.

17. The challenge to the levy of entertainment tax on the employers, extending to its employees the cable network at their residence for viewing television programmes and charging Rs. 5 from the employees, was considered by this court in *Hindalco Industries Ltd. and Another Vs. State of U.P. and Another*, again held repelling the arguments that in the absence of admission to any place in which the entertainment is held, no tax can be levied nor the TV cable operators provide any place or charge any money for granting admission to any place and held that in view of the division of "payment for admission" given in sub-section (1) of section 2 which is an inclusive definition and which includes not only seat or other accommodation or a place of entertainment but also covers any payment by whatever name called for any purpose whatsoever connected with an entertainment. The court held "what is relevant is the fact of providing entertainment through cable network. If such facility for entertainment is provided and the viewers are charged for it, the liability to pay entertainment tax is created. The quantum of amount, which is paid by the viewers in lieu of entertainment given to them, is not relevant. The name which has been given to such an amount by the employer is also not relevant. Once any sum is realised from the viewers for entertainment, the liability to pay tax is created immediately." The fact, that Hindalco is providing cable network facilities to its employees as a welfare measures and not with profit-motive, may be a good ground for to seek exemption for the payment of entertainment tax u/s 11(1) of the Act. The court remanded the matter to decide the question about the number of residential units of the workmen after giving reasonable opportunity of hearing

to the petitioner. The judgment in Hindalco Industries Ltd. [1996] AWC 357 was affirmed by the Supreme Court in Special Leave to Appeal (Civil) No. 5293 of 1996 on March 20, 1996 with a short order as follows:

The question raised by the petitioners in this case is whether providing entertainment through cable TV network in the homes of the viewers constitutes entertainment within the meaning of clause (b) of section 2 of the Uttar Pradesh Entertainments and Betting Tax Act, 1979. The definition of entertainment reads thus:

"Entertainment" includes any exhibition, performance, amusement game, sport or race (including horse race) to which persons are admitted for payment and in the case of cinematograph exhibition, including exhibition of news-reels, documentaries, cartoons, advertisement shorts or slides, whether before or during the exhibition of a feature film or separately.

The High Court has taken the view and in our opinion rightly held that the cable TV network run by the petitioners fall within the said definition which is of an inclusive nature. We agree with it.

So far as the petitioners are concerned, it is stated that they are providing the said entertainment only to its employees and that too free of cost. Only a nominal sum of Rs. 5 from each connection is collected--that too for paying part of the maintenance cost payable to the contractors. It is submitted that this is only a welfare measure conceived in the interest of the workers. The High Court has also taken note of this plea and has made the following observation:

The fact that the Hindalco is providing cable network facilities to its employees as a welfare measure and not with profit-motive, may be a good ground for Hindalco to seek exemption for the payment of entertainment tax u/s 11(1) of the Act. For that purpose Hindalco is at liberty to file an application before the State Government, but unless such an exemption is granted Hindalco is liable to pay entertainment tax on the cable TV network connections, given by it to its employees.

We endorse the said observation. If the petitioners file an application for exemption and if they satisfy the Government that the entertainment is confined to their employees and in practically free, the Government shall consider the grant of exemption in accordance with law. With the above observations, the SLP is disposed of.

18. In *Hukum Singh Vs. State of U.P. and Others*, the High Court was again called upon to decide whether the facility of cable TV at the recreation centre by way of welfare measure by NTPC for its employees on the rates notified on April 12, 1989 was valid. Rejecting the argument that the entertainment tax has been imposed on telecasting which falls within the scope of entry 31 of the Union List on which the Parliament alone has a right to impose tax, this court held in paragraphs 15, 16 and 17 as follows:

15. Sri Bhattacharya has lost sight of the fact that the tax is not imposed under the act on telecasting, but the tax is imposed on entertainment, Telecasting, as argued by Sri Bhattacharya, may be a mode for providing entertainment, but tax is leviable on entertainment and not on the mode of entertainment.

16. On the other hand, a Division Bench of this court has held in *Universal Communication System, Allahabad v. State of U.P.* [1995] 29 ATJ 454, that the Act of 1979 has been enacted with reference to entry Nos. 33, 34 and 62 of the State List to the Seventh Schedule of the Constitution. Power to levy entertainment tax under the Act has also been upheld by another Division Bench of this court in the case of *Hindalco Industries Ltd. and Another Vs. State of U.P. and Another*, which decision has been upheld by the Supreme Court.

17. Tamil Nadu Entertainments Tax Act, 1939 (as amended by Act No. 37 of 1996) was enacted by the State of Tamil Nadu, which is *pari materia* to the Uttar Pradesh Entertainments and Betting Tax Act, 1979. The former came to be amended by Act No. 37 of 1996 to bring within its purview cable T.V. and entertainment tax was levied thereon. A large number of writ petitions were filed in the Madras High Court challenging the validity of the Amendment Act. The ground of challenge, *inter alia*, was that the State Legislature has no legislative competence to enact the Amendment Act, inasmuch as the subject-matter of the enactment falls exclusively within the province of Parliament that is List I of the Seventh Schedule to the Constitution. Such contention was negatived by the Madras High Court and then a SLP was filed and the decision of the Madras High Court was challenged before the Supreme Court, which in its judgment reported as *A. Suresh, etc. etc. Vs. State of Tamil Nadu and Another, etc. etc.*, held as under (para 7, at page 495):

The High Court has dealt with each of these contentions advanced by the writ petitions separately and exhaustively and rejected each of them. Since we agree with the reasoning and conclusions arrived at by the High Court on all the issues, we think it unnecessary to deal with the above submissions except contentions Nos. 3, 4 and 7.

19. The court did not agree that the notification by Government Order dated April 12, 1989 notifying the rates of entertainment tax is violative of article 19(1) (a) of the Constitution of India and followed the judgment of the Supreme Court in *A. Suresh, etc. etc. Vs. State of Tamil Nadu and Another, etc. etc.*, that there is no reason as to why the business part of the entertainment cannot be taxed. If the tax can be levied on entertainment provided by cinemas; if taxes can be levied upon the press, it is not understandable why the activity of entertainment by TV network cannot be taxed. While there can be no tax on the right to be exercised freedom of expression, tax is leviable on profession, occupation, trade, business and industry.

20. A large number of cable TV operators once again challenged the levy of entertainment tax on the ground that the services which are rendered by the

petitioners to their members-viewers cannot be brought within the meaning of the word "admission to entertainment" as provided under the U.P. Act of 1979. Once again it was alleged that u/s 3 of the Act of 1979 which is the charging section, a notification dated April 13, 1989 was issued superseding earlier notifications providing new rates of entertainment tax in which clauses I to IV of the Schedule relate to the rates of entertainment on different items, whereas clause V relates to levy of 30 per cent of each payment for admission in regard to all classes of entertainment not covered by clauses I to IV of the Schedule. In *Rajesh Jolly v. State of U.P.* Writ Petition No. 2433 (M/B) of 1993 decided by the Lucknow Bench of this court in judgment dated July 1, 1997 by a Division Bench presided over by the honourable Mr. Justice Brijesh Kumar (as he then was). Relying upon *Universal Communication System v. State of U.P.* [1995] 29 ATJ 454 and *Hindalco Industries Ltd. and Another Vs. State of U.P. and Another*, it was held as follows:

The position thus that emerges is that entertainment tax on cable T.V. network would not be liable to be assessed, levied or recovered under the amended provisions including section 4C, but it shall still be chargeable u/s 3 of the Act of 1979. It is a general provision about exigibility of tax on admission to an entertainment. We have already referred to decisions of the honourable Supreme Court as well as this court, holding that entertainment tax is chargeable u/s 3 of the Act of 1979 on cable T.V. network. No amendment has been effected by the Ordinance or by Amending Act No. 28 of 1995 in section 3 of Act of 1979. Section 3 of Act of 1979 and its scope remains the same. It being a general provision applicable to all kinds of admission to entertainments may have to give way to the newly added provisions specially enacted for the purposes of taxing admission to an entertainment through cable T.V. network as and when amended provisions are enforced by a notification issued by the State Government under sub-section (2) of section 1 of Act No. 28 of 1995, but so long such amended provisions including section 4C, brought about by virtue of Ordinance No. 21 of 1995 as re-enacted by Act No. 28 of 1995, are not enforced, the entertainment provided by cable T.V. network would continue to be taxable u/s 3 of Act of 1979. The net result would thus be that for the brief period during which the Ordinance No. 21 of 1995 remained in force, the opposite-parties can levy tax only in accordance with the amended text of the Act of 1979, but before and after that period, the petitioners would be liable to pay entertainment tax in accordance with the notification dated April 13, 1989 issued under sections 3(1) and 4(1) of Act of 1979. The contention thus raised on behalf of the petitioners that they are liable to pay tax only in accordance with the amended provisions, as amended by Ordinance No. 21 of 1995 followed by re-enacted Act No. 28 of 1995, cannot be accepted, except for the period the Ordinance remained in operation, i.e., up to the date of reenactment.

21. In *Sharad Traders and Another Vs. State of U.P. and Others*, (Writ Petition No. 702 of 2011 decided on October 21, 2011), a Division Bench of this court in the writ petitions filed by the petitioners seeking declaration of section 2(f1),

(f2), 3(d) and 13(2) of the U.P. Cinemas (Regulation of Exhibition by means of Video) (Fourth Amendment) Rules, 2011 as ultra vires to the provisions of Indian Telegraph Act, 1985 and articles 14, 19(1)(g), 246 and 265 of the Constitution of India as well as the notices issued by the District Entertainment Tax Officer (Licensing Authority) directing them to obtain licences as "Television Signal Receiver Agency" held as follows:

46. On these settled principles of law, we are of the view that the challenge to both legislative competence of the State Government to make amendments in the U.P. Cinema (Regulation) Act, 1955 and the U.P. Cinemas (Regulation of Exhibition by means of Video) (4th Amendment) Rules, 2011, is without any substance. The State Government has legislative competence to regulate the entertainment. The DTH services, as the latest technological advance, in the field of telegraphy, can be, and is used for entertainment, which is subject to regulation under entry 33 of the State List. The amendments clearly fall within the legislative competence of the State Government. There is no repugnancy between the two laws. A repugnancy arises as it was held in *Hoechst Pharmaceuticals Ltd. and Others Vs. State of Bihar and Others*, , when the law made by Parliament and a law made by the State Legislature, occupy the same field with respect to anyone of the matters enumerated in the Concurrent List, and there is direct conflict between the two laws. We further hold that the licence fees, for taking out a licence by the television signal receiver agency under the U.P. Cinema Regulation Act, 1955 as amended by U.P. Act No. 27 of 2009, from the place from where he is running the business, and where he keeps his books of accounts, apparatus and equipments, under rule 18 of the U.P. Cinemas (Regulation of Exhibition by Means of Video) (Fourth Amendment) Rules, 2011 on form IV, is not a compensatory fees, which may require the State Government to justify its levy on the principles of quid pro quo. It is a licence fee for taking out licence, with an object to regulate entertainment.

22. As noticed above, this court has consistently taken the view in *Universal Communication System* [1995] 29 ATJ 454 in the year 1995; *Hindalco Industries Ltd. and Another Vs. State of U.P. and Another*, in the year 1996; *Hukum Singh Vs. State of U.P. and Others*, in the year 1997; in *Rajesh folly* (Writ Petition No. 2433 (M/B) of 1993 decided on dated July 1, 1997) in the year 1997 and in *Sharad Traders and Another Vs. State of U.P. and Others*, (Writ Petition No. 702 of 2011 decided on October 21, 2011 that in a modern progressive society it would be unreasonable to confine the intention of the Legislature, to the meaning attributable to the words used at the time, when the law was made. For a modern Legislature, making laws to govern a society, which is fast moving, must be presumed to award an enlarged meaning, the same concept might attract with the march of time, and with the revolutionary changes brought about in social economic, political and scientific and other fields of human activity. Unless a contrary intention appears an interpretation should be given to the words used, to take in new facts and situation. Even prior to the promulgation of the Uttar Pradesh Entertainments and Betting Tax (Amendment) Ordinance, 2004, this

High Court had interpreted the provisions of the unamended Act to include within the definition:--"payment for admission" in sub-clause (iii) of section 2(1), as any payment made for the loan or use of any instrument or contrivance, which enables a person to get normal or better view or hearing or enjoyment of the entertainment, which without aid of such instrument or contrivance such person would not get. If any person charges any money for enabling to use any instrument or mechanic device, which enables such person to get a normal view of the entertainment, which without aid of such device he would not get, will come fully within the ambit of section 3 of the Act. The cable T.V. operators receive the wireless signals on their dish antennas and after processing them through electronic equipments, they are transmitted to the television sets of the subscribers through the connecting metal wires. The entire set up is generally called cable TV network. It was held that there cannot be a slightest doubt that subscriber gets normal view of the programmes only with use of instruments, which are provided by the cable TV operator, and without the aid of such instrument, these programmes cannot be viewed. For making use of these instruments the subscriber makes payment to the cable TV operator. The money paid by the subscriber is thus clearly a payment for admission to an entertainment. The activity carried is thus fully covered u/s 3 of the Act and is exchangeable to entertainment tax.

23. This court in its judgments cited as above, rejected the argument that the cable TV operators do not themselves provide entertainment, as the same is provided by the proprietor of the television station from where these programmes are broadcast. Further the argument that cable TV operators are merely extending the facility and as such they do not come within the purview of section 3 of the Act, was not accepted. The unamended definition of the word "entertainment" as given in section 2(g) was held to be illustrative. Since the Legislature has used the word includes, the same has to be extended. There can be no doubt that with the use of equipments installed by the cable TV operators, a subscriber is able to set the programmes, which he would not be able to do otherwise. The entertainment is thus provided by the concerned cable TV operators. If the argument that they do not provide entertainment, is accepted, then it would mean that the proprietor of cinema hall does not provide entertainment as the same is provided by the stars and artists, who have acted in the film. Such a restricted interpretation of the word "entertainment" was not accepted. The court relied upon *The Western India Theatres Ltd. Vs. The Cantonment Board, Poona*, *Cantonment*, , *Y.V. Shrinivasamurthy v. State of Madras* AIR 1959 SC 894 and *Ramesh Sippy and etc. Vs. State of Maharashtra*, in support of its decisions.

24. In *Universal Communication System* [1995] 29 ATJ 454 the Division Bench did not accept the argument that the Act, as it was enacted in 1979 could not have possibly taken into consideration the advent of video cinema and cable TV and with that end in view sections 4A and 4B were added by U.P. Act No. 12 of 1989. The court did not accept the argument that since there was no

corresponding amendment for making a cable TV operator liable to entertainment tax, the tax cannot be imposed unless intendment is provided by the amendment. The same argument has now been raised in respect of DTH services.

The judgments of other High Courts

25. The High Court of Bihar at Patna and the High Court, Uttarakhand, have quashed the levy of entertainment tax on DTH services. In *Sky Vision T.V. Vs. State of Bihar and Others*, and in *Dish T.V. India Ltd. v. State of Uttarakhand* (Writ Petition (M/S.) No. 2562 of 2007) the imposition of entertainment tax on cable operators was set aside in the absence of specific charging section and relevant specific entry for cable services. The Patna High Court held that the law means an Act of Legislature, and cannot comprise of an executive order, without any expressed statutory authority. The executive orders, or executive instructions cannot justify imposition of tax. The DTH services were not covered by the Bihar Act and was sought to be covered by an executive action.

26. The High Court of Uttarakhand in *Dish T.V. India Ltd. v. State of Uttarakhand* (Writ Petition (M/S) No. 2562 of 2007), similarly held that without there being any specific provision in the U.P. Act, the entertainment tax cannot be levied on DTH services. The judgment of learned Single Judge was challenged before a Division Bench. The special appeal was dismissed principally on the ground that DTH services are not covered by the Act. The judgments of both the Patna High Court and the Uttarakhand High Court were challenged in the Supreme Court. The SLP against the judgment of the Patna High Court was dismissed on the ground that it will be open for the Legislature to impose entertainment tax on DTH services; the judgment of Uttarakhand High Court was dismissed by non-speaking order.

27. The Madhya Pradesh High Court at Jabalpur in *Tata Sky Limited Vs. State of M.P. and Others*, (Writ Petition No. 10148 of 2009) along with other connected writ petitions decided on August 20, 2010, and the Delhi High Court in *Bharti Telemedia Ltd. Vs. Government of Nct of Delhi and Another*, and other connected petitions including writ petition filed by *Bharti Telemedia Ltd. Vs. Government of Nct of Delhi and Another*, (W.P. No. 1312 of 2010) and *Bharti Telemedia Ltd. Vs. Government of Nct of Delhi and Another*, (W.P. (C) No. 4621 of 2010), have upheld the levy of entertainment tax on DTH services.

28. The Madhya Pradesh High Court and Delhi High Court did not accept the arguments that there is any overlap in so far as entry 92C of List I (tax on services), with entry 62 of List II (tax on luxury including tax on entertainments, amusements, betting and gambling). It was held that two entries clearly operate in entirely different fields, with no overlapping in so far as two entries per se are concerned. Both the High Courts have relied upon the, "aspects theory" and held that tax on entertainment through DTH service is a tax on entertainment and not that services provided by the DTH service provider. Relying upon *The State of*

West Bengal and Others Vs. Purvi Communication Pvt. Ltd. and Others, , it was held that the television, films and programmes shown to the viewers is entertainment and therefore within the legislative competence of the State Legislature under entry 62 of List II of the Seventh Schedule to make law for the levy and collection of tax on such entertainment and that the tax is paid on all payments for admission to an entertainment. The tax is levied on entertainment. It is paid on all payments for admission to an entertainment, and is collected by the proprietor and paid to the Government in the manner prescribed. The tax is neither on the provider of DTH services nor on the DTH services nor on the person entertained, that the question of tax may fall on the ultimate subscriber and the tax may have to be collected by the DTH service provider and paid to the Government. Those are matters consisting instance and measure of tax, which is irrelevant for determining the subject-matter of tax. It was further held that the entertainment through DTH broadcasting service or distribution of television signals, and value added services with the aid of any type of addressable system, which connects television set, computer system at a residential or non-residential place of subscriber's premise, directly to the satellite or otherwise. The traditional concept of "payment for admission" as contemplated in the Act to mean any payment made by a person for seats or other accommodation in any form, in a place of entertainment is causing concept of payment, for cinema ticket or theater ticket and public place, where an entertainment is held. The Delhi High Court in its well considered judgment held: "...Times have changed, technology has changed and this has brought about a complete upheaval in the manner of delivering entertainment. Our drawing rooms have taken the place of the cinema halls or theater and the cable TV or DTH connection has taken the place of the paper ticket. Similarly, money paid for the ticket has been substituted by subscription money paid for the relevant connection, i.e., cable or DTH, as the case may be". There could be no admission to a place of entertainment without a ticket, there cannot be admission to entertainment provided through a cable service or DTH service without a connection. It was held that DTH connection is "virtual ticket" and the payments for it including subscription money are the payments for admission to entertainment. The Delhi High Court, thereafter, held in paras 43-46 in Bharti Telemedia Ltd. Vs. Government of Nct of Delhi and Another, as follows:

43. The entertainment tax is to be "collected" by the "proprietor" and paid to the Government in the manner prescribed. The word "proprietor" as used in section 7(1) of the said Act is a term of art and has been defined in section 2(o). In relation to entertainment through a DTH system, section 2(o)(iv) of the said Act defines the word "proprietor" to include any person having licence to provide direct-to-home (DTH) service, by the Central Government u/s 4 of the Indian Telegraph Act, 1885 and the Indian Wireless Telegraphy Act, 1933 and also includes the service provider of cable television signals and value added services, registered or licensed under the Cable Television Network (Regulation) Act, 1995. So, the licensed DTH service provider is only a "collector" of the entertainment

tax on behalf of the Government. He is not the subject-matter of the tax, nor is the service provided by him the subject-matter of the entertainment tax. At the cost of repetition but, for the sake of clarity, we state that the tax in question is neither on a person nor on a thing but on the activity of entertainment. This is the true nature and character of the tax and is, therefore, within the legislative field of entry 62 of List II of the Seventh Schedule to the Constitution.

44. Let us understand the role played by the petitioners in delivering entertainment directly into the homes of individual subscribers or rooms of hotel guests. The petitioners downlink the signals from various satellites of various TV channels at their hub stations. From there they uplink the signals to their own Ku Band designated transponders which are then transmitted in Ku Band through satellites. Dish antennae installed by the petitioners at their subscribers' premises pick up these Ku Band signals which are then decrypted by the set-top boxes and viewing cards provided by the petitioners. These decrypted signals are then viewed by the subscribers on their TV sets. Apart from installation charges, the subscribers have to pay a monthly subscription ranging from Rs. 99 to Rs. 400 depending on their choice of channels. The payment for subscription is like the payment for a cinema ticket or a theatre ticket. Since the "admission" to entertainment in the case of entertainment through DTH service is continuous, (i.e., $24 \times 7 \times 365$), the subscription charge is on a monthly basis. The DTH connection is a "ticket" to continual entertainment at any time of the day or night. This has been made possible because of advancement in technology. But, conceptually, the DTH connection which enables admission to entertainment is no different from the traditional cinema ticket which permits entry into a cinema hall for viewing a film.

45. The petitioners have provided the infrastructure for down-linking signals of TV channels and of up-linking them to their Ku Band designated transponders and so on till the signals are viewable by a subscriber on his TV set or display monitor. By allowing the flow of content through their infrastructural set up they are providing a service. For doing so they are subjected to service tax under the service tax regime put in place by Parliament in exercise of its legislative power under article 246 of the Constitution read with entry 92C of List I of the Seventh Schedule thereto. Under the said Act, the subject-matter of the tax is the entertainment provided by the content that flows through the petitioners' system. The DTH service provider, in a sense only acts as a conduit between the content providers, (i.e., TV channels) and the content viewers, (i.e., subscribers). It is the entertainment derived from the content that is the subject-matter of the tax under the said Act and not the service of enabling the flow of content through the DTH system. There is no scope of confusing one for the other.

46. Even if we assume that the concepts are intertwined, the strands can easily be separated by employing the aspect theory. The DTH system had two aspects-- (1) a service aspect; and (2) an entertainment aspect. The former is taxed as a service under the service tax regime and the latter is subjected to tax as an

entertainment under the said Act read with entry 62 of List II. They are two separate and distinct taxable events in respect of each of the two aspects. In respect of the service aspect, the taxable event is flow of content through the DTH system, whereas, in respect of the entertainment aspect, the taxable event is the entertainment from the content.

The arguments

29. Shri D.K. Singh assisted by Shri R.M. Saggi appearing for Tata Sky Limited in Writ Tax Nos. 1493 of 2007, 5309 of 2007, 1229 of 2007 and 1231 of 2007 has challenged the notices dated June 29, 2007 issued by the District Magistrates in the State of U.P. demanding entertainment tax from the petitioners on the direct-to-home (DTH) services; seeking to impose entertainment tax on DTH services at 30 per cent under the residuary entry in the Schedule setting out the rate of entertainment tax. The District Magistrates have also demanded entertainment tax on the sale proceeds of the set top boxes and installation charges, on which it is alleged that the petitioners have paid value added tax (VAT).

30. It is submitted by Shri D.K. Singh, that the DTH services were not covered under the Uttar Pradesh Entertainments and Betting Tax Act, 1979 either prior to its amendment by U.P. Act No. 25 of 2009, or that even after the amendment the entertainment tax cannot be levied on DTH services. The levy and demand of entertainment tax prior to June 16, 2009 is unconstitutional, and this is clear from the very fact, that the State had to bring specific amendment to levy entertainment tax on DTH services. The issue has been decided in favour of the petitioners by the Uttarakhand High Court as well as the Patna High Court. Both these judgments have been upheld by the Supreme Court. Shri D.K. Singh submits that the basic issue, which arises for consideration, is not the dictionary meaning of the word "entertainment" and even "entertainments" appearing in entry 62 of List II of the Seventh Schedule to the Constitution. The basic issue is the meaning of the word "entertainment" as defined in the unamended provisions of section 2(g), read with section 2(a) of the Act of 1979, which is a tax statute. He submits that the relevant principles for interpreting a legislative entry in Schedule VII are different from the principles relating to interpretation of a term employed in a taxing statute. While the legislative entries in Schedule VII have to be given the widest and broadest possible meaning, in contrast the terms and provisions of a tax statute have to be construed strictly and narrowly, and if two views are possible, the benefit is to be given to the assessee. He has relied upon *The State of West Bengal Vs. Kesoram Industries Ltd. and Others*, ; pages 781 and 782 in 266 ITR); *Mathuram Agrawal Vs. State of Madhya Pradesh*, ; *Govind Saran Ganga Saran Vs. Commissioner of Sales Tax and Others*, ; page 4 in 60 STC); *M/s. VVS Sugars Vs. Govt. of Andhra Pradesh and Others*, and *M/s. Oswal Agro Mills Ltd. Vs. Collector of Central Excise and others etc. etc.*, .

31. Shri D.K. Singh submits that a taxing statute is to be strictly construed. The tax cannot be imposed without clear words. In a taxing statute, one has to look

merely as what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in. Nothing is to be implied. One has only to look at the language used. In fiscal legislation a transaction cannot be taxed on any doctrine of the substance of the matter (G.P. Singh, Principles of Statutory Interpretation, (11th Edition, pages 771-775).

32. Shri D.K. Singh submits that there are four essential components of a valid tax; (i) it must prescribe the taxable event attracting the levy; (ii) clear indication of the person on whom the tax is imposed and who is obliged to pay the tax; (iii) the rate at which the tax is imposed and (iv) measure or value to which the rate would be applied for computing the tax liability. If these components are not clearly and definitely ascertainable, the levy cannot be a valid levy. Relying upon *The State of West Bengal Vs. Kesoram Industries Ltd. and Others*, he submits that in interpreting a taxing statute, equitable considerations are entirely out of place. The taxing statutes cannot be interpreted on any presumption or assumption. A taxing statute has to be interpreted in the light of what is clearly expressed; it cannot imply anything, which is not expressed; it cannot import provisions in the statute to supply the deficiency. Before taxing any person, it must be shown that he falls within the ambit of charging section by clear words used in the section; and if the words are ambiguous and open to two interpretations, the benefit of the interpretation is given to the subject. There is nothing unjust in the tax payer escaping, if the letter of law fails to catch him on account of Legislature's failure to express itself clearly.

33. Shri D.K. Singh submits that DTH broadcasting service is neither defined nor there is any charging provision for DTH service in the unamended U.P. Act of 1979. There is no provision/entry with respect to DTH services in the unamended Act. The charging section providing for the taxing event occurs on ""admission to entertainment" which only means admission to any place where the entertainment is held. The DTH services are provided directly from satellite through set top boxes on television at the residence of DTH subscribers. The residence of the subscribers is not a place where there is an admission for payment. The plain reading of the provisions of the Act pre-supposes that entertainment referred to relates to public entertainment. There has to be a common place where public comes for the purposes of being entertained. The presumption in the law is not misplaced but is real. The principles of interpretation of taxing statutes clearly provide that the law must be construed in its strictest sense. The intention of the Legislature has to be clearly spelled out while passing the legislation and any other interpretation will defeat the purpose and intent of the legislation. The DTH subscribers, therefore, cannot be covered within the charging provisions of the unamended U.P. Act of 1979.

34. Shri D.K. Singh further submits that only entertainment, which is taxed by section 3 of the U.P. Act of 1979, namely, the entertainment which is covered by

section 2(g) read with section 2(a) of the U.P. Act of 1979 which means an "entertainment" which takes place in a specific physical location, to which persons are admitted on payment of a charge. Since the cable TV operations were not included within the meaning of "entertainment" under the U.P. Act of 1979, the U.P. Legislature amended the Act in 1995 inserting a separate charging section 4C specifically for the purpose of levying entertainment tax on cable TV operators. It was not a clarificatory provision but was a substantive provision which was originally enacted. In the Statement of Objects and Reasons of the amendment, it was clearly stated that there was no specific provisions in the Act for levy and payment of tax on entertainments provided through cable service and thus it was decided to amend the Act mainly to provide for; (i) the definition of the term "cable operator" and extending the meaning of words and expressions assigned to such in the Cable Television Network (Regulation) Act, 1995 as were used for the Act but are not defined therein and (ii) imposition of tax on the proprietor of a hotel, who provides cable service to the hotel through his own cable television network.

35. The Act was again amended in the year 2001 to define "cable operator" and section 3 was amended to provide specifically for tax on cable. Since the Legislature found that section 3 read with section 2(1) did not cover cable TV operations, the same cannot possibly be considered to cover DTH operations or services. Similarly entertainment provided through video cinema was not covered by the Act and therefore, the Act was amended and specific charging sections 4A and 4B were enacted for levying entertainment tax on video cinema. It is submitted that "payment for admission" defined in various clauses of section 20) is only the measure of the tax and is not part of the charge which is imposed by section 3. The question of going into the measure of the tax arises only, if it is first found that the charge of tax is attracted. Since the charging section with the aid of section 2(g) and section 2(a) is confined to entertainment in a particular place or location, and persons are admitted to such place on payment of charge, the DTH operations are not included within the meaning of charging section and consequently section 2(1) is not attracted as the measure of tax cannot expand or change the scope and ambit of the charge. Even if section 2(1) is to be read into section 3, it does not make any difference because section 2(1) refers to "entertainment" which is a referable to section 2(g) and which in turn referable to section 2(a).

36. It is submitted by Shri D.K. Singh that whenever Legislature intends to cover any activity, where entertainment is not held on payment for admission to a place, it brought specific amendments, namely, for video cinema in 1989 and for cable operators in 1995 and in the year 2001 providing for specific charging sections namely sections 4A, 4B, and 4C and the proviso was inserted in section 3 for these objects.

37. No tax can be levied or collected except by the authority of law, as provided in article 265 of the Constitution of India. Shri D.K. Singh submits that the power

to tax must be expressed. There is nothing like an implied power to tax. The source of power, which does not specifically speak of taxation, cannot be interpreted by expanding its width so as to include therein the power to tax by implication or necessary reference. He relies upon *The State of West Bengal Vs. Kesoram Industries Ltd. and Others*, ; *M/s. VVS Sugars Vs. Govt. of Andhra Pradesh and Others*, and *M/s. Oswal Agro Mills Ltd. Vs. Collector of Central Excise and others etc. etc.*, .

38. Shri D.K. Singh submits that the entire machinery created and provided u/s 8 of the U.P. Act of 1979 is applicable only to a place-related entertainment. The machinery consists of provisions prohibiting the admission of any person to a place of entertainment except on the basis of a ticket to which an entertainment tax stamp has been affixed. This machinery has not been made applicable to the tax levied under sections 4A, 4B and 4C. For these provisions there is separate and distinct machinery for levying tax on a non-place-related entertainments found in rules 27A and 27B, which requires the information to be submitted in prescribed forms and the filing of returns by the proprietors. The machinery u/s 8 is of vital significance inasmuch as it is submitted that it was held in *Commissioner of Income Tax, Bangalore Vs. B.C. Srinivasa Setty*, , that if the machinery provisions are found to be inapplicable or unworkable, then the charge of tax itself has to fall or construed inapplicable. In case of DTH operations the machinery of tickets with entertainment tax stamped is wholly unworkable. He then submits that the machinery provisions in the Acts and the Rules established the continuous contemporaneous understanding of the concerned authorities. From the very beginning the charge of tax u/s 3 was only on place related entertainment. In *Desh Bandhu Gupta and Co. and Others Vs. Delhi Stock Exchange Association Ltd.*, and *K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another*, the doctrine of contemporaneous exposition was explained and it was laid down that the courts would not ordinarily depart from the contemporaneous understanding of the provisions and the working of the Act by the authorities.

39. Shri D.K. Singh further submits that the Amending Act of 2009, which came into force on June 16, 2009 amending the U.P. Act of 1979 including DTH services, is not clarificatory in nature inasmuch as the Act was substantially implied to include DTH broadcasting services. The substantive amendments are not held to be clarificatory and do not have retrospective operations, vide *Union of India (UOI) and Others Vs. Martin Lottery Agencies Ltd.*, .

40. It is submitted that the entertainment tax is consumption based in direct tax. It is charged on the person, who subscribes the entertainment or is admitted to entertainments. The DTH service providers have not been charging any entertainment tax from their subscribers as there were no provisions for levying entertainment tax on such services and also interim orders granted by the court. The DTH is a pre-paid service and thus the petitioners cannot realise the tax from their subscribers for the past period. The petitioners are already incurring

huge losses because of the tax regime and heavy costs involved in establishment and operations cannot be saddled with the liability of entertainment tax for the past period when there were no statutory provisions for levying entertainment tax on DTH broadcasting service.

41. It is submitted that the demand and levy of entertainment tax at 30 per cent of the gross amount prior to September 5, 2009 when the rate notification issued under the Amending Act is discriminatory and illegal inasmuch as the notices issued specifically mention that DTH is also providing same services as cable operators, the tax on cable services was only 10 per cent for the relevant period. It is only after September 5, 2009 when the rate notification was issued, the tax on DTH and cable has been levied uniformly at 25 per cent. The levy and demand of entertainment tax at 30 per cent is thus wholly discriminatory and violative of articles 14 and 19(1)(g) of the Constitution of India.

42. Assuming without admitting that the entertainment tax is applicable, Shri D.K. Singh submits that the same cannot be imposed on the petitioners as under the Telecom Regulatory Authority of India Act and other inter connecting Regulations framed thereunder the petitioner has been defined as a service provider. The services provided by it are defined as DTH services. The imposition of tax on service provider is misplaced by the authorities. The petitioner is paying service tax to the Central Government. The Supreme Court in *Star India Pvt. Ltd. Vs. Sea T.V. Network Ltd. and Another*, has upheld and endorsed the TRAI Regulations. The Central Government has under the licence issued for DTH services imposed stringent conditions which are mandatory and any deviation or violation of these conditions may lead to cancellation of licence and invite imposition of heavy penalties. The service providers are merely to re-transmit the contents without any addition, alteration or charges that it has received from the broadcasters. The licence issued to the petitioner is to only provide services of re-transmitting the signals received from the broadcasters. These services cannot by any stretch of imagination be called entertainment. Under the up-linking and down-linking guidelines issued by the Union of India applications have to be made for entertainment channels and sports channels. For each type of channels a broadcaster is proposed to show the terms and conditions for grant of licence, including the restrictions by the Government on foreign investments in each of these types of channels. As a service provider the petitioner carries all the types of channels licensed as non-entertainment and sports channels. The petitioners as such as licensees are not providing entertainment and thus are not liable to pay entertainment tax on the non-entertainment channels, which are mandatory, the State cannot levy or collect tax by which its very own enactment cannot impose the tax.

43. It is submitted that the DTH service otherwise also cannot be taxed by the State Government applying the aspect theory inasmuch as the Finance Act defines the broadcasting service as a service in such a manner that no aspect of it is left out from the scope and ambit of the Finance Act which can be said to be

entertainments. The pith and substance theory, which is applicable and not the aspect doctrine borrowed from Canadian Constitution is applicable as there is no concurrent list in the Canadian Constitution. The aspect doctrine has been discarded in interpreting the laws made under the entries in the Seventh Schedule by the Supreme Court in *Imagic Creative Pvt. Ltd. Vs. The Commissioner of Commercial Taxes and Others*, . Shri D.K. Singh submits that on these grounds the entertainment tax on DTH service was not provided and thus it cannot be levied and collected under the U.P. Act of 1979 prior to its amendment on June 16, 2009 and even thereafter the DTH services being only services provided under a licence with the Union of India are not entertainment which could be covered and for which the entertainment tax is levied on the place specific entertainments. He submits that the notices for imposing the entertainment tax both prior to the amendments and subsequent to the amendment of the Act by notification dated June 16, 2009 is illegal, violative of article 265 of the Constitution and is thus liable to be set aside by the High Court.

44. Shri Bharat Ji Agrawal, senior advocate assisted by Shri S.D. Singh submits that the basic issue, which arises for consideration, is not the meaning of the word "entertainment" appearing in entry 62 of List II of the Seventh Schedule, but the meaning of the word "entertainment" as defined in section 2(g) read with sections 2(a), 2(1) and section 3 of the U.P. Act of 1979. Prior to issuance of the notification dated June 16, 2009 (U.P. Act 25 of 2009) amending the Uttar Pradesh Entertainments and Betting Tax Act, 1979 there was no provision in the Act to impose entertainment tax on DTH services. Only public place-centric entertainments were covered. The provisions of the U.P. Act of 1979 are applicable to public place-centric entertainments and do not contain any charging section to cover DTH services. The 2009 Amending Act amended section 2(a) and various other provisions of the U.P. Act of 1979 including DTH services within the taxation ambit. The U.P. Act of 2009 is an Amendatory Act and is prospective in its operation. The Amendment Act specifically states that it shall deem to have come into force on June 16, 2009. The DTH services are not taxable services under the definition of "entertainment" in section 2(g) of the U.P. Act of 1979.

45. Shri Bharat Ji Agrawal submits that section 2(a) specifically provides for a place where entertainment is held. In section 2(g) several examples have been given which clearly show that they relate to a place/situs of entertainment for the entertainment. Section 2(1) provides for the definition of payment for admission. It is to be read with the other provisions including section 2(a), section 2(g) and section 3 of the Act. The phrases "admission to an entertainment" and "payment for admission" clearly denote entry into physical premises. The entertainment, which does not contemplate admission or entry into a physical premises, where such entertainment is provided, is not covered by the Act.

46. It is submitted that the petitioner is only providing services and providing of such services by no stretch of imagination comes within the ambit of

entertainment. It is against the spirit of physical statutes that all services, which may have some connection with the entertainment, can be burdened by the entertainment tax. In order to bring any activity/service to be taxed by the State Government there must be sufficient machinery provisions for computation of the same. The charging section and computation/machinery provisions together construe an integrated code and where computation/machinery provisions are found to be inapplicable or unworkable, the Legislature did not intend to bring the same subject-matter within the ambit of charging section. In the present case, the computation provisions under sections 6 and 8 and the Rules made thereunder prescribe the method of levy of affixing the stamp on the tickets required for admission to an entertainment u/s 3 of the Act. This machinery is workable only in a case where persons are admitted to a place of entertainment. It is not workable in the case of DTH services. Shri Bharat Ji Agrawal submits that even the rates on which the tax is charged on DTH services have not been specified in U.P. Act of 1979. The contention, that the rates mentioned in residuary clause 5 of the Schedule in the notification dated July 24, 1981 would also apply to DTH services, is not correct. The illustration given in serial No. 5 reveal that it applies to only the entertainment held at public places. The mention of the activities, namely mimicry, carnival, puppet show, magic show, giant wheel, etc., are all held at a public place. These do not cover the other forms of entertainment such as DTH service.

47. Shri Agrawal submits that the State Government was fully conscious that the entertainment tax can be levied on admission to any place of entertainment and was also aware of the contemporary legislative practice, which shows the understanding of the concerned authorities, that the charge of tax is only on place-related entertainment. The Act was amended in 1989 introducing sections 4A and 4B providing for imposition of entertainment tax on radio cinema, radio shows. In the year 2001 it was made applicable to cable operators with a clear statement in the objects and reasons. The DTH services were not covered by the charging section. He submits that for payment for admission u/s 2(1) is only a measure of tax and is not a part of the charge imposed by section 3. As DTH operations are not a place-related entertainment, they are not covered by charging section 3 read with section 2(a), 2(g) and 2(1). He relies upon *Geeta Enterprises and Others Vs. State of U.P. and Others*, which also deals with a place related entertainment namely the video game machines in a game parlour. In paragraph 12, the Supreme Court clearly held that the principle, that the entertainment tax under the Act is one, which takes place in a particular physical location to which a person is admitted. The Supreme Court clearly held that the activity to fall under the definition of "entertainment" must contain a public colour and the show should be open to public in a hall, theatre or any other place where members of the public are invited or attended the show. In paragraph 12 the Supreme Court held:

12. Thus, on a consideration of the legal connotation of the word "entertainment" as defined in various books, and other circumstances of the

case as also on a true interpretation of the word as defined in section 2(3) of the Act, it follows that the show must pass the following tests to fall within the ambit of the aforesaid section:

1. That the show, performance, game or sport, etc., must contain a public colour in that the show should be open to public in a hall, theatre or any other place where members of the public are invited or attend the show;
2. That the show may provide any kind of amusement whether sport, game or even a performance which requires some amount of skill....

48. Shri Bharat Ji Agrawal submits that in Universal Communication's case [1995] 29 ATJ 454 this court had overlooked the aspect of the judgment passed by the Supreme Court in Geeta Enterprises and Others Vs. State of U.P. and Others, and accordingly the opinion expressed in Universal Communication [1995] 29 ATJ 454 is per incuriam. The DTH services provide for transmission and re-transmission of programmes and signals by electromagnetic waves and not by cables. The DTH services are not covered by Cable Television Network (Regulation) Act, 1995. Both services are technologically different and separate.

49. Shri Bharat Ji Agrawal submits that this honourable court in Universal Communication [1995] 29 STJ 454 held that the advancement/growth of science and technology has made changes in the manner of entertainment. The court has applied living organism theory, which is not applicable to fiscal/taxing statute. The principles relating to interpretation of legislative entry in the Seventh Schedule to the Constitution are different from the settled principles relating to the interpretation of a term employed in a taxing statute. The legislative entries have to be given widest and broadest possible meaning, whereas the taxing statute has to be construed strictly and narrowly, with the benefit in case of two views to be given to the assessee.

50. Shri Bharat Ji Agrawal submits that the State amended the U.P. Act of 1979 bringing within its ambit the DTH services and accordingly notification dated August 27, 2009 amended the Act, with effect from June 16, 2009. The object and reasons of the amendment and the substantial amendments made to the Act do not provide its intendment with retrospective effect. There is a clear departure in the amendments made in the year 2009 by which specific amendments were brought in for the purposes of including DTH services. The amended provisions make it clear that the law has been changed and that substantial changes/amendments have been incorporated, which do not make its application retrospective. He has relied upon Union of India (UOI) and Others Vs. Martin Lottery Agencies Ltd., in which it was held that the question as to whether a subordinate legislation or a Parliamentary Statute would be held to be clarificatory or declaratory or not would indisputably depend upon the nature thereof as also the object it seeks to achieve. What we intend to say is that if two views are not possible, resort to clarification and/or declaration may not be permissible.

51. Shri Bharat Ji Agrawal submits that in the various notices sent to the petitioners stating that the same contents/TV channels are being delivered by the DTH operators to subscribers as these are delivered by the cable operators, the entertainment as contemplated by the Act is being provided. The respondents have equated the DTH services to cable services in which the delivery is made through cable. The respondents, however, seek to levy tax at the rate of 30 per cent on DTH services as against 10 per cent to 15 per cent levied on cable services. The inequality in the matter of imposing differential rates/quantum of tax is violative of articles 14 and 19(1)(g) of Constitution of India and amounts to hostile discrimination. He relies upon *Aashirwad Films Vs. Union of India (UOI) and Others*, in submitting that the taxation laws must pass test of article 14 of the Constitution of India and that there should be reasonable classification, which should bear a nexus with object sought to be achieved. A statute must be held valid unless the classification is clearly unreasonable and arbitrary and that the class legislation is such which makes an improper discrimination by conferring particular privileges. Shri Agrawal has relied upon the passage from *Weaver's Constitutional Law*, page 397 as follows (page 723 in 7 VST):

...Class legislation is that which makes an improper discrimination by conferring particular privileges upon a class of persons, arbitrarily selected from a large number of persons, all of whom stand in the same relation to the privilege granted and between whom and the persons not so favoured no reasonable distinction or substantial difference can be found justifying the inclusion of one and the exclusion of the other from such privilege. A classification must not be arbitrary, artificial or evasive and there must be a reasonable, natural and substantial distinction in the nature of the class or classes upon which the law operates.

52. Shri Bharat Ji Agrawal submits that the order dated June 11, 2004 passed by the District Magistrate, Ghaziabad, raising a demand of entertainment tax and penalty against New Era Entertainment Network Ltd. v. State of U.P. (Writ Petition No. 839 of 2004), is grossly illegal and is also without jurisdiction. The District Magistrate has levied entertainment tax on the sale of set top boxes, and the subscription. The DTH services were introduced in the year 2003. The set top boxes were not sold by the petitioner-company. These were sold by separate company. There were only 76 DTH connections of M/s. New Era Entertainment Network Ltd. in the State of U.P. A reply was submitted by the petitioner, which was not considered by the District Magistrate. He relied upon an inspection report, and did not consider the reply and the evidence led by the petitioner. The entertainment tax cannot be imposed on the sale of set top boxes, which are goods within the meaning of the Trade Tax Act.

53. Shri K.N. Tripathi, senior advocate assisted by Shri Ashish Misra appearing in Writ Petition Nos. 1710-11 of 2009, *Bharti Telemedia Ltd., v. State of U.P.*, submits that DTH services were not included prior to the amendments of the Act

of 1979. The Act of 1979 consolidated and amended the law relating to tax on entertainment, amusements and on certain forms of betting in the State of U.P. The power to tax entertainment under entry 62 of List II of the Seventh Schedule does not include the power to tax everything, which is connected with entertainment. The expression admission to an entertainment is a place specific definition u/s 2(a). The definition of the word "entertainment" u/s 2(g) and "payment for admission" u/s 2(1) will not include entertainment on whom by any means. He submits that if a person cannot be entertained without a television set, would not mean that even the price of television set be included u/s 2(1)(iii), which includes any payment made for the loan or use of any instrument or contrivance, which enables a person to get a normal or better view or enjoyment of the entertainment, which without the aid of such instrument or contrivance such person would not get. Shri Tripathi submits that on the same logic even spectacles or hearing aid without which a person may not get normal or better view or hearing or enjoyment of the entertainment would be taxable. He submits that any payment would not include the price of dinner, if the entertainment is held in hotel. Any charge, which is not connected with admission should not be treated as payment for admission.

54. It is submitted by Shri K.N. Tripathi that section 4C was inserted by U.P. Act No. 28 of 1995 to include tax on cable service. The tax was to be paid by the proprietor of a cable television network providing cable service. He submits that the principles of law in M/s. Universal Communication System [1995] 29 ATJ 454 are not applicable inasmuch as DTH service was not even conceived in India in the year 1995. The Legislature has included DTH services by issuing an Ordinance in the year 2009. There was no need to include DTH services by amending the Act, if such services were already liable to tax under the unamended Act. The object and reasons clarified that DTH services were not included prior to the amendment introduced on June 16th, 2009 and by notifying the rates of tax on September 4, 2009.

55. Shri K.N. Tripathi submits that downloading the signals and decrypting them with the help of set top boxes is service, which cannot be included within the meaning of entertainment. If the entertainment tax can be charged on set top box by the same manner, it should be charged on hearing aid also. The amendments have increased the scope of levy of entertainment tax on the direct-to-home service the intention of which can be gathered from the objects and reasons. Shri Tripathi has relied upon Kumar Jagdish Chandra Sinha and others Vs. Mrs. Eileen K. Patricia D'Rozarie, in which the Supreme Court held that it is undoubtedly true that the statement of objects and reasons accompanying a legislative Bill cannot be used to ascertain the true meaning and effect of the substantive provisions of the legislation, but it can certainly be pressed into service for the limited purpose of understanding the background, the antecedent state of affairs and the object the legislation seeks to achieve.

56. Shri K.N. Tripathi has relied upon Guffic Chem P. Ltd. Vs. Commissioner of

Income Tax, Belgaum and Another, , in submitting that a liability cannot be created by an Act retrospectively. In this case the payment received as non-competition fee under a negative covenant was treated as capital receipt till assessment year 2003-04. It was only vide the Finance Act, 2002 with effect from April 1, 2003 that the capital receipt was made taxable. In this context it was held that compensation received under the non-competition agreement became taxable as capital receipt and not a revenue receipt by specific legislation and thus the liability could not be created, retrospectively.

57. Shri K.N. Tripathi submits relying upon Union of India (UOI) and Others Vs. Ind-Swift Laboratories Ltd., , that a taxing statute must be interpreted in the light of what is clearly expressed. It is not permissible to import provisions in a taxing statute so as to supply any assumed deficiency. In Commissioner of Sales Tax, Uttar Pradesh Vs. The Modi Sugar Mills Ltd., the Supreme Court held that the court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed, it cannot imply anything, which is not expressed, it cannot import provisions in the statute so as to supply any assumed deficiency. In Bansal Wire Industries Ltd. and Another Vs. State of U.P. and Others, , a cardinal principle of construction of a statute was reiterated namely that when the language of the statute is plain and unambiguous, the court must give effect to the words used in the statute. Besides, in a taxing Act one has to look merely at what is clearly said and there is no room for any intendment. In a taxing statute nothing is to be read in, nothing is to be implied, one can only look fairly at the language used.

58. Shri K.N. Tripathi submits that in Bharti Telemedia Ltd. Vs. Government of Nct of Delhi and Another, the Delhi High Court was considering the provisions of the Delhi Entertainment and Betting Tax Act, 1996 and the Delhi Entertainment and Betting Tax (Amendment) Rules, 2010, in so far as it imposes tax on entertainment through DTH service. He submits that unlike the Delhi Act the DTH services were included in the U.P. Act of 1979 by amending in the year 2009 with effect from June 16th, 2009. The DTH services were not included in the U.P. Act of 1979 prior to June 16, 2009. The definition of "entertainment" u/s 2(a) of the U.P. Act does not include DTH services. Section 7(1) of the Delhi Act specifically provides for levy and payment of entertainment tax on all payments for admission to an entertainment through DTH or through cable television network with addressable system or otherwise. He submits that the decision of the Delhi High Court is thus distinguishable and should not be relied upon for deciding the validity of entertainment tax under the U.P. Act of 1979.

The reply

59. Shri S.P. Kesarwani, Additional Chief Standing Counsel appearing for the State submits that the word "include" in the definition clause to include DTH services has been made as a matter of abundant caution to clarify and to make the taxation more transparent. The taxable event "entertainment" remains unaffected. He has relied upon M/s. Punjab Traders and others Vs. State of

Punjab Traders and others, , Lucknow Development Authority Vs. M.K. Gupta, and Commissioner of Income Tax, Madras Vs. G.R. Karthikeyan, to support his submission. In Commissioner of Income Tax, Madras Vs. G.R. Karthikeyan, ; explaining the nature and scope of the definition of "income" in section 2(24) of the income tax Act it was held that the definition is inclusive and is not exhaustive. The words "other games of any sort" in clause (ix) of section 2(24) are of wide amplitude. Their meaning is not confined to games of a gambling nature alone. Clause (ix) is not confined to mere gambling or betting activities. Even assuming that the word "winnings" occurring at the inception of clause (ix) controls the meaning of the aforesaid words it does not follow that merely because winnings from gambling/betting activities are included within the ambit of income, the monies received from non-gambling and non-betting activities are not so included. If moneys which are not earned in the true sense of the word constitute income, moneys earned by skill and toil would also constitute income. The rally in question was a contest, if not a race. The assessee entered the contest to win it and to win the first prize. What he got was a "return" for his skill and endurance. As such it is income. Word "income" must be construed in its widest sense. In Lucknow Development Authority Vs. M.K. Gupta, the Supreme Court explained the reasons as to why certain words are added by way of abundant caution and held in paragraph 7 that a perusal of the definition of "service" as it stood in the Consumer Protection Act prior to 1993 would indicate that the word "facility" was already there. The Legislature while amending the law in 1993 added the word in clause (d) to dispel any doubt that consumer in the Act would mean a person who not only hires but avails of any facility for consideration. These words were added more to clarify than to add something new.

60. In The State of West Bengal and Others Vs. Purvi Communication Pvt. Ltd. and Others, , the Supreme Court held that the State Legislature is free to the tax matters, on which it has legislative competence, to choose the persons from whom the tax levied on entertainments is to be collected. What are taxed are the entertainments, which is very much within the ambit of entry 62 of List II of the Seventh Schedule. The cable operators are engaged in the business of providing or offering entertainments which include showing of films, various serials, cricket matches and dramatic performances to the subscribers, and the tax is imposed on the act of offering such entertainments in such way to such subscribers and/or viewers. The entire communication network service is built up and controlled by the respondents. Whatever amount is received or receivable by the respondents in respect of providing such entertainments is taxable under the West Bengal Entertainment-cum-Amusement Tax Act, 1982. The Supreme Court further held that the charging section is very clear and unambiguous. There is no vagueness about the incidence of tax and the person, who is liable to pay tax. So far as declaration of liability to pay tax is concerned, the charging section does not suffer from any vagueness. The provision does not lead nor there is any scope of discrimination inasmuch as either an owner, or person who is in

possession of electrical, electronic or mechanical device receive signals and instantly transmit such signals of visual image and audio to a sub-cable operator for presentation of any performance, film or any other programme to the subscriber and/or viewers against payment, and as such owner or person exhibits such performance, film or any other programme through his cable television network directly to customers he is liable to pay tax. In (paragraphs 36 to 42 in JT; paragraphs 37 to 43 in STC), the Supreme Court held as follows:

36. In our view, the respondents as a cable operator, for the purpose of levy and collection of tax under sub-section (4a) of section 4A of the Act have direct and close nexus with the entertainments made available to the viewer through their cable television network. The performance, film or programmes shown to the viewers through the cable television network come within the meaning of entertainments and therefore within the legislative competence of the State Legislature under entry 62 of List II of the Seventh Schedule to the Constitution of India to make law for the levy and collection of tax on such entertainments.

37. A tax under entry 62 of List II of the Seventh Schedule to the Constitution of India may be imposed not only on the person spending on entertainment but also on the act of a person entertaining, or the subject of entertainment. It is well-settled by this court that such tax may be levied on the person offering or providing entertainment or the person enjoying it. The respondents admittedly engaged in the business of receiving broadcast signals and the instantaneously sending or transmitting such visual or audio visual signals by coaxial cable, to subscribers' homes through their various franchise. It has been made possible for the individual subscribers to choose the desired channels on their individual T.V. sets because of cable television technology of the respondents and of sending the visual or audio visual signals to sub-cable operators, and instantly re-transmitting such signals to individual subscribers for entertaining them through their franchise. The respondents' act is, no doubt, an act of offering entertainment to the subscribers and/or viewers. The respondent is very much directly and closely involved in the act of offering or providing entertainment to subscribers who are on his record. For the fact of offering or providing entertainment to the subscribers and/or viewers, the respondents receive charges, which are realised or collected by their franchise from the ultimate subscribers. Their franchise, called as sub-cable operator under the said 1982 Act, having no independent role to offer or provide entertainments to the subscribers inasmuch as franchise have to depend entirely on the respondents communication network and this communication network of the respondents consists of receiving and sending visual images and audio and other information for preparation of the subscribers and/or viewers, without the communication network service of the respondents, no entertainments can be offered or provided to the subscribers and/or viewers.

38. In the tax matters, the State Legislature is free to, if it has legislative competence, choose the persons from whom the tax levied on entertainments is

to be collected. In other words, what are taxed are the entertainments, which is very much within the ambit of entry 62 of List II of the Seventh Schedule. It is the respondents who as cable operator for the purpose of the said 1982 Act is engaged in the business of providing or offering entertainments which include showing of films, various serials, cricket matches and dramatic performances to the subscribers, and the tax is imposed on the act of offering such entertainments in this way to such subscribers and/or viewers. The entire communication network service is built up and controlled by the respondents. Whatever amount is received or receivable by the respondent in respect of providing such entertainments is taxable under sub-section 4(a) of section 4A of the said 1982 Act which has a direct and sufficient nexus with the entertainments.

39. The charging section is very clear and unambiguous inasmuch as there is no vagueness about the incidence of tax and the person who is liable to pay tax. So far as the declaration of liability to pay tax is concerned, the charging section does not suffer from any vagueness. The provision does not lead to any discrimination amongst persons. There is no scope of any discrimination inasmuch as either an owner, or person who having in possession of electrical, electronic or mechanical device receive signals and instantly transmits such signals of visual image and audio to a sub-cable operator for presentation of any performance, film or any other programme to the subscriber and/or viewers against payment, and as such owner or person exhibits such performance, film or any other programme through his cable television network directly to customers he is liable to pay tax. Except that owner or person of the class referred to in subsection (4a) of section 4A of the said 1982 Act, no other person can be held liable to pay such tax. There is clear indication of the character of tax from the incidence of such tax or taxable event which takes place on the happening of the event of offering entertainments to the subscribers. The person on whom the legal liability to pay tax falls has also been clearly and unambiguously mentioned in the charging section. The rates of tax has been sought to be specified by the notification. The measure of tax is the "gross receipt" on the basis of which the person is saddled with the liability to pay tax. There is no uncertainty or vagueness of the legislative scheme. The tax levied by sub-section (4a) of section 4A of the said 1982 Act does not interfere with the fundamental rights guaranteed under article 19(1)(g) of the Constitution or is violative of article 19(1)(g).

40. We also see no substance in the submission that the impugned legislation impinges on the field occupied by the Central legislation. The aforesaid Central legislation has been enacted to regulate the operation of cable television network in the country and matters connected therewith or incidental thereto whereas the State Legislation is for levy of entertainment tax on entertainment within the legislative field exclusively assigned to the State Legislature under entry 62 of List II of the Seventh Schedule to the Constitution. Thus the objects sought to be achieved by two different Acts enacted under two different legislative fields

exclusively assigned to the respective Legislatures are entirely distinct and separate. The Cable Television Networks (Regulation) Act, 1995 of the Union Legislature does not denude the State Legislature for levying entertainment tax on entertainment.

41. It is thus clear that the cable operator-respondent No. 1 is the exhibitor in this case and also the provider of the entertainment to the customer. Hence, he alone can be asked to pay the tax on the entertainment that has resulted from this exhibition. This provision, therefore, does not cross the bounds of entry No. 62 of List II of the Seventh Schedule to the Constitution and is intra vires. Providing a cable link up to the viewers end is the only role of sub-cable operator. It is, therefore, inconceivable that despite putting forth the ready entertainment in the form of signal on the cable line, the cable operator cannot be said to be providing the entertainment within the meaning of entry 62 of List II of the Seventh Schedule to the Constitution. So long as the State Act remains within the ambit of entry 62 of List II and is not offending the provisions of article 286 of the Constitution or the laws made thereunder, the State Act validity is beyond question. Thus, respondent No. 1 who is engaged in receiving and providing TV signals to individual cable operators is liable to pay tax under clause (ii) of sub-section (4a) of section 4A of the Act. From the definition of "communication network" given in the agreement between the cable operator and sub-cable operator (termed as Franchise in the agreement), will be clear that the service rendered by respondent No. 1 is not restricted only to receiving signals but also extends to sending visual images and audio and other information by means of telecommunication network for presentation to members of public. In the present case, respondent No. 1 sends visual images and audio signals for presentation to the individual subscribers at various homes through their feeder line, i.e., coaxial cable or any other device used for transmitting audio and visual signals in terms of clause 2 of the said agreement. The franchisee has access to the signals provided by respondent No. 1. Therefore, it cannot be disputed that the price or prices received or receivable by respondent No. 1 is the amount received or receivable by him for transmitting the signal for exhibition of any performance, film or any other programme telecast and the aggregate of such prices or amounts is the gross receipt of respondent No. 1 in relation to any month or part thereof.

42. Who will be considered the giver of the entertainment--The cable operator or the sub-cable operator?

We do not find any reason to consider the sub-cable operator as the only giver. Even though the sub-cable operator may be the giver of the entertainment inasmuch as he has a direct connection with the viewer, still in cases like the present where he does not select the show, or make the show ready, or does not put the show on and the exhibition is done by the cable operator through mere franchisees, it cannot be said that the cable operator is not the giver. It is true that the cable used to get in touch with the TV set of the consumer has been

provided by the sub-cable operator, but that fact alone by itself cannot make the sub-cable operator, the only exhibitor or the giver, of the entertainment. In a world of indirect links between individuals made possible by the electronic age, the indirect meeting between the cable operator and the consumer through a technical link has been made possible.

61. Shri S.P. Kesarwani submits that the entertainment tax has been imposed on entertainment and not on the services. In case the petitioners are aggrieved by the imposition of entertainment tax, they have right to file an appeal against the assessment or penalty as the case may be. In many writ petitions including the writ petition filed by M/s. New Era Entertainment Network Ltd. (Writ Tax No. 839 of 2004), the petitioners have challenged the assessment orders. These orders do not suffer from any error of jurisdiction and that against the assessment the petitioners have a right to appeal to the appellate authority under sub-section (2) of section 12 of the Act. He submits that the question of fact may not be decided by the High Court and that in all the cases the petitioners may be relegated to file an appeal against the assessment orders.

Discussion

62. The Statement of Objects and Reasons of the Uttar Pradesh Entertainments and Betting Tax (Amendment) Ordinance, 2009 is quoted as below:

Statement of Objects and Reasons

In the present scenario new technology and methods of entertainment are being developed due to which it was become necessary to amend the Uttar Pradesh Entertainments and Betting Tax Act, 1979 (U.P. Act No. 28 of 1979) to bring the said new technology and methods in the purview of the Act and to clarify "direct-to-home services" and "amusement park", which are already covered by clause (g) of section 3 so as to make the taxation thereon more transparent. It was, therefore decided to amend the said Act mainly to provide for defining the words "amusement park", "direct-to-home service", "ku band", "Muh system operator", "place of entertainment", "television signal receiver" and "television signal receiver agency" and enlarging the definitions of "admission to entertainment", "payment for admission" and "proprietor" and clarifying the payment of tax thereon, simplifying the payment of entertainment tax, making binding of proprietor to utilize appropriate amount of ticket value on the maintenance of cinema premises, abolishing the maximum limit of tax on interior cinemas, making the permission of the District Magistrate necessary for holding entertainment, making the multi-system operator/proprietors of cable control room responsible for the payment of tax due on the cable connection issued by their defaulter franchise cable operators and entertainment of appeal by the State Government only after payment of undisputed amount of tax and one-third of the disputed amount of tax.

Since the State Legislature was not in session and immediate legislative action was necessary to implement the aforesaid decision, the Uttar Pradesh

Entertainments and Betting Tax (Amendment) Ordinance, 2009 (U.P. Ordinance No. 4 of 2009) was promulgated by the Governor on June 16, 2009.

This Bill is introduced to replace the aforesaid Ordinance.

63. The petitioners have challenged the levy of entertainment tax under the Act of 1979 on the legislative competence of the State of U.P. in including DTH services by the Amendment Act of 2009. They have also challenged the levy of entertainment tax on DTH services on the ground that prior to its amendment and even after the amendment the provisions of the Act do not authorise the levy of entertainment tax on DTH services as provisions of the Act are applicable only to a place-related entertainment. The Act provides for machinery only for a place-related entertainment to which an entry is on the basis of a ticket to which an entertainment tax stamp has been fixed. The Amendment Act of 2009 is not clarificatory in nature in as much as the Act substantially implies to include DTH broadcasting services, and which may not have any retrospective effect. The levy of tax is also discriminatory in nature.

64. The U.P. Act of 1979 provides for levy of entertainment tax on entertainments and betting. Entry 62 of List II of the Seventh Schedule to the Constitution of India gives authority to the State to levy "tax on luxury" including tax on entertainments, amusements, betting and gambling. In *Federation of Hotel and Restaurant Association of India, etc., Vs. Union of India (UOI) and Others*, *Express Hotels Private Ltd. Vs. State of Gujarat and Another*, ; *Godfrey Phillips India Ltd. and Another Vs. State of U.P. and Others*, ; *The State of Karnataka and Others Vs. M/s. Drive-in-Enterprises*, and in *The State of West Bengal and Others Vs. Purvi Communication Pvt. Ltd. and Others*, , the Supreme Court held that the entries in the three Lists of the Seventh Schedule should not be read in a narrow or pedantic sense but must be given their fullest meaning, and the widest amplitude, and be held to extend to all ancillary and subsidiary matters, which can fairly and reasonably be said to be comprehended in them. In *Godfrey Phillips India Ltd. and Another Vs. State of U.P. and Others*, the Supreme Court held that the taxing powers in Lists I and II of the Seventh Schedule give independent source of tax to the Union and the States. There is no overlapping anywhere in these powers. If, however, any overlapping occurs, the principles that the legislative entries should be liberally interpreted and that entries must be read harmoniously to avoid any conflict should be adopted. The courts should harmonise the entries together in interpreting the language of one by that of the other.

65. In *Godfrey Phillips India Ltd. and Another Vs. State of U.P. and Others*, , the Supreme Court reiterated that classically a tax is similarly composed of two elements, namely, the thing or activity on which the tax is imposed and the instance of tax. The instance of tax would be relevant in construing whether a tax is direct or indirect. But it would be irrelevant in determining the subject-matter of the tax.

66. In Federation of Hotel and Restaurant Association of India, etc., Vs. Union of India (UOI) and Others, , the Supreme Court reiterated the principles that the true nature and character of legislation and not its ultimate economic result matters. The subject of tax is different from the measure of the levy. Further the measure of the tax is not determinative of its essential character or the competence of the Legislature. The same transaction may involve two or more taxable events in its different aspects. The fact that there is an overlapping does not detract from the distinctiveness of the aspects. For deciding the true character and nature of a particular levy, with reference to the legislative competence, it was held in All India Federation of Tax Practitioners and Others Vs. Union of India (UOI) and Others, , that the court has to look into the pith and substance of the legislation. The court must bear in mind that, where the application of a parliamentary and a legislative act comes up for consideration, endeavour shall be made to see that the provisions of both the Acts are made applicable.

67. In The State of West Bengal and Others Vs. Purvi Communication Pvt. Ltd. and Others, , the Supreme Court dealing with the entertainment tax on cable television network held that the performance, film, or programmes shown to the viewers through the cable television network fall within the meaning of entertainments and therefore the State Legislature is competent under entry 62 of List II of the Seventh Schedule to make laws for the levy and collection of tax on such entertainments.

68. The place specific entertainments were subject to entertainment tax in the U.P. Act of 1979. It was explained by this court in Universal Communication System in [1995] 29 ATJ 454, which has held the field in respect of local law, i.e., Uttar Pradesh Entertainments and Betting Tax Act, 1979, since then that the provisions of the Act are sufficient to include the entertainment within the home of a person by wires extended by the cable TV operators. The equipment installed by cable TV operator to a subscriber enables him to set the programmes, which he would not be able to do otherwise. This court did not accept the definition of the expression "admission to an entertainment", "entertainment" and "payment for admission" to include entertainments, which are held in a public place and to which the admission is made through a ticket. It was held and has been consistently followed by the High Court in the State of U.P. for last 17 years, that the Act would include the services by the cable TV operators.

69. The petitioners are public limited companies incorporated under the Indian Companies Act, 1956. They have been awarded licence by Government of India u/s 4 of the Indian Telegraph Act, 1885 and the Indian Wireless Telegraph Act, 1993, for providing direct-to-home broadcasting service. All the petitioners have paid a non-refundable entry fee of Rs. 10 crores and have furnished a bank guarantee for an amount of Rs. 40 crores valid for the duration of the licence for 10 years. The terms of the licence provide that they shall pay an annual fee

equivalent to 10 per cent of the gross revenue as reflected in the audited accounts of the company for the particular financial year within one month of the end of the financial year. In addition they are also required to pay royalty of spectrum used as prescribed by the Department of Telecommunication. The petitioners have signal broadcasting centres, which downlinks the signals from satellite and then uplinks to the designated transponders for transmission of signals in Ku band. These signals are received by the dish antennas installed at the subscribers' premises for which the petitioners claim that they had not used any infrastructure of the State in providing such services.

70. The TV signals transmitted from the broadcasting centres are in encrypted format. They are decrypted/decoded by the set top box, with the help of the viewing card inside the set top box for the customers to be able to view the service. The subscribers have to obtain a connection for which they pay monthly charges. The set top boxes are provided to the customers free of cost without any consideration, for facilitating effective receipt and entertainment of DTH service. The set top boxes were earlier sold but that thereafter under the new schemes they continue to be the property of the petitioners' broadcasting DTH services. When a new connection is given, the subscriber gets the applicable charges for occupation and is thereafter required to pay subscription charges based on his choice of channels, apart from free channels. The service provided, thereafter, is a pre-paid service, wherein the subscriber is required to purchase recharge vouchers for the choice of channels with convenient mode of payment, to which he subscribes on his request.

71. The Chelliah Committee (1991) made recommendations on which the service tax was introduced in the budget of 1994-95 through the Finance Act, 1994 under residuary entry 97 of List I. By the Constitutional (88th Amendment) Act, 2003, a new entry 92C was introduced in List I for the levy of tax on service. The broadcasting services were brought within the purview of service tax net with effect from July 16, 2001 by the Finance Act, 2001 u/s 65(105). Section 65(15) of the Act defines "broadcasting" and gives it binding to it in clause C of section 2 of the Prasar Bharti (Broadcasting Corporation of India) Act, 1990 and also includes programme selection, scheduling or presentation of sound or visual matter on radio or TV channel in India for public listening or viewing as the case may be, and in the case of broadcasting agency or organisation, having its head office situated in any place outside India, to include the activity of selling of time slot or obtaining sponsorship for broadcasting any form of communication or collecting the broadcasting charges, etc. The scope of the taxable services has been widened by the Finance Act to convert the service tax generally from broadcaster to the customer u/s 65(105)(zk), which defines "taxable service"; "taxable service", any service provided or to be provided to a client, by a broadcasting agency or client, or organisation in relation to broadcasting, in any manner..."

72. u/s 67 of the Finance Act, 2001 the value of taxable service is the gross

amount charged by the service provider or production of service. Clause C of section 2 of the Prasar Bharti (Broadcasting Corporation of India) Act, 1990 defines "broadcast" as follows:

Broadcasting means the dissemination of any form of communication like signs, signals, writing, pictures, images and sounds of all kinds by transmission of electromagnetic waves through space or through cables intended to be received by the general public either directly or indirectly through the medium of relay stations and all its grammatical variations and cognate expressions shall be construed accordingly.

73. The competence to legislate flows from articles 245, 246 and other articles in Part XI. A legislation like the Finance Act can be supported on the basis of a number of entries. In *All India Federation of Tax Practitioners and Others Vs. Union of India (UOI) and Others*, , the Supreme Court held in para 44 that the nomenclature of levy is not conclusive for deciding its true character and nature. For deciding the true character and nature of a particular levy, with reference to the legislative competence, the court has to look into the pith and substance of the legislation. The powers of the Parliament and the State Legislatures are subject to constitutional limitations. The tax laws are governed by Part XII and Part XIII. Article 265 takes in article 245, when it says that the tax shall be levied by the authority of law. Various entries of the Seventh Schedule shows that the powers to tax is treated as a distinct matter for the purpose of legislative competence. The underlying principle is to differentiate between the two groups of entries namely general entry and taxing entry. The tax on services is a different subject as compared to tax on profession, trust and calling etc. The Supreme Court held that in that respect entry 60 of List II and entry 92C of List I operate in different spheres. In *Imagic Creative Pvt. Ltd. Vs. The Commissioner of Commercial Taxes and Others*, , the Supreme Court while considering the question whether the charges collected towards the services for evaluation of prototype conceptual design on which service tax has been paid under the Finance Act, 1994 were liable to tax under the Karnataka Value Added Tax Act, 2003 observed (page 384 and 385 in 12 VST):

28...In the matter of interpretation of a taxing statute, as also other statutes where the applicability of article 246 of the Constitution of India, read with the Seventh Schedule thereof is in question, the court may have to take recourse to various theories including "aspect theory", as was noticed by this court in *Federation of Hotel and Restaurant Association of India, etc., Vs. Union of India (UOI) and Others*, .

...

31. The court, while interpreting a statute, must bear in mind that the Legislature was supposed to know law and the legislation enacted is a reasonable one. The court must also bear in mind that where the application of a parliamentary and a legislative Act comes up for consideration; endeavours shall

be made to see that provisions of both the Acts are made applicable.

32. Payments of service tax as also the VAT are mutually exclusive. Therefore, they should be held to be applicable having regard to the respective parameters of service tax and the sales tax as envisaged in a composite contract as contradistinguished from an indivisible contract. It may consist of different elements providing for attracting different nature of levy. It is, therefore, difficult to hold that in a case of this nature, sales tax would be payable on the value of the entire contract; irrespective of the element of service provided. The approach of the assessing authority, to us, thus, appears to be correct.

74. In *Bharat Sanchar Nigam Ltd. and Another Vs. Union of India (UOI) and Others*, , the Supreme Court required to determine the nature of transaction by which mobile phone connection are enjoyed relied upon the "aspect theory". In para 32 to the transaction enabling the State to levy sales tax on the same transaction in respect of which Union Government levied service tax. It was held that the States had the legislative competence to levy sales tax on the transaction under entry 54, List II. On the other hand if it was a service, then Parliament alone could levy service tax under entry 97, List I (now entry 92C of List I after 2003). If the nature of the transaction had elements of both sale and service, the question, which arose was whether both the State Legislature and Parliament could levy their separate tax together or only one of them. The court held that the nature of the transaction involved in providing the telephone connection may be a composite contract of service and sale. It is possible for the State to tax sale element provided there is a discernible sale and only to the extent relatable to such sale. This, however, does not allow the State to entrench upon the Union List and to tax service by including the cost of such service in the value of the goods. Even in those composite contracts, which are by legal fiction deemed to be visible under article 366(29A) the value of the goods involved in the execution of the sale transaction cannot be assessed to sales tax. By way of clarification it was added that the "aspect theory" would not apply to enable the value of the services to be included in the sale of goods or the price of goods in the value of the service.

75. In *The State of West Bengal and Others Vs. Purvi Communication Pvt. Ltd. and Others*, , the Supreme Court considered the question as to whether section 4A, (4a) (ii) of the West Bengal Entertainment-cum-Amusement Tax Act, 1982 was beyond the legislative competence of the State Legislature. The Supreme Court clarified that the levy in collection of tax u/s 4A(4a) from any person, which provides cable service directly to consumers or transmits to a sub-cable operator through a cable television network, can otherwise controls or is responsible for the management and operation of cable television network is defined as cable operator being a taxable person exclusively for the purposes of levy and collection of entertainment tax, when the cable operators so defined receives through electronic or mechanical device, the signal of any purpose, the film or any other programme telecast. The person, who has been defined as

"cable operator" exclusively for the purposes of levy and collection of entertainment tax, has a direct and approximate nexus with the amusement and entertainments to the viewers at every home or place inasmuch as he is the person directly connected with presentation of entertainments to the subscribers. He controls and is responsible for the management and operation of the cable television network. He has source of entertainment to the individual subscriber because it is he, who receives the signal of performance and film, and any programme, which is transmitted or given to a large number of sub-cable operators. The viewers enjoy or are entertained of such performance, film or programme because of the receiving and transmitting video or audio visual signals through coaxial cable or any other device by the respondents, no entertainment can be presented to the viewers unless a cable operator transmits the video and audio signals to a sub-cable operator for extraneous presentation of any performance, film or any programme on their TV screen. The sub-cable operators are mere franchisee, who receives signals for transmission to the viewers only on payment of price, promise or paid in terms of agreement entered by and between them. The Supreme Court, thereafter, held in paragraphs 37, 38 and 39 as follows (pages 173 and 174 in 140 STC):

37. In our view, the respondents as a cable operator, for the purpose of levy and collection of tax under sub-section (4a) of section 4A of the Act have direct and close nexus with the entertainments made available to the viewer through their cable television network. The performance, film or programmes shown to the viewers through the cable television network come within the meaning of entertainments and therefore within the legislative competence of the State Legislature under entry 62 of List II of the Seventh Schedule to the Constitution of India to make law for the levy and collection of tax on such entertainments.

38. A tax under entry 62 of List II of the Seventh Schedule to the Constitution of India may be imposed not only on the person spending on entertainment but also on the act of a person entertaining, or the subject of entertainment. It is well-settled by this court that such tax may be levied on the person offering or providing entertainment or the person enjoying it. The respondents admittedly engaged in the business of receiving broadcast signals and then instantaneously sending or transmitting such visual or audio-visual signals by coaxial cable, to subscribers' homes through their various franchisees. It has been made possible for the individual subscribers to choose the desired channels on their individual TV sets because of cable television technology of the respondents and of sending the visual or audio-visual signals to sub-cable operators, and instantly retransmitting such signals to individual subscribers for entertaining them through their franchisees. The respondents' act is, no doubt, an act of offering entertainment to the subscribers and/or viewers. The respondent is very much directly and closely involved in the act of offering or providing entertainment to subscribers who are on his record. For the fact of offering or providing entertainment to the subscribers and/or viewers, the respondents receive charges, which are realised or collected by their franchisee from the ultimate

subscribers. Their franchisee, called as sub-cable operator under the said 1982 Act, having no independent role to offer or provide entertainments to the subscribers inasmuch as franchisees have to depend entirely on the respondents communication network and this communication network of the respondents consists of receiving and sending visual images and audio and other information for preparation of the subscribers and/or viewers, without the communication network service of the respondents, no entertainments can be offered or provided to the subscribers and/or viewers.

39. In tax matters, the State Legislature is free to, if it has legislative competence, to choose the persons from whom the tax levied on entertainments is to be collected. In other words, what are taxed are the entertainments, which is very much within the ambit of entry 62 of List II of the Seventh Schedule. It is the respondents who as cable operator for the purpose of the said 1982 Act is engaged in the business of providing or offering entertainments which include showing of films, various serials, cricket matches and dramatic performances to the subscribers, and the tax is imposed on the act of offering such entertainments in this way to such subscribers and/or viewers. The entire communication network service is built up and controlled by the respondents. Whatever amount is received or receivable by the respondent in respect of providing such entertainments is taxable under sub-section (4a) of section 4A of the said 1982 Act which has a direct and sufficient nexus with the entertainments.

76. We respectfully agree with the reasoning given by Madhya Pradesh and Delhi High Court, that the two entries, namely, entry 62 of List II and entry 92C of List I operate in entirely different fields. There is no overlapping in so far as the two entries per se are concerned. The tax on cable and DTH service contemplated under the U.P. Act of 1979 is tax on entertainment, and not a tax on services. The measure of a tax or the instance of tax or the economic effect of the tax is not material in determining its true nature and character. The tax in the present case under the unamended Act in section 3, which is the charging section is entertainment tax to be levied and paid on all payments for admission to any entertainment, other than entertainment to which section 4 or section 4A or section 4B applies or as contended payment is made under the provisions of the Act. Section 4A levies entertainment tax on video cinema and section 4B on video show in public service vehicle or hotels. u/s 4C the entertainment tax is on cable service, after the amendment with effect from June 16, 2009, the words "tax on payment for admission to entertainment" have been substituted with the words "tax on entertainment" and for the words "all payment for admission" the words "aggregate payments required for admission to any entertainment" have been substituted. The inclusion of the words direct-to-home service in section 2(c)(f1) and section 2(c)(f)(vi) is only by way of clarification to include direct-to-home and further inclusion of direct-to-home or broad band service or any emerging transmission service by whatever name called u/s 2(h)(1-1) as it may be seen from the objects and reasons is only by way of clarification.

77. The charging section (section 3) stipulates that there shall be levy and paid on all payments for admission to any entertainment, such payment as the State Government may from time to time notify in this behalf and the tax shall be collected by the proprietor from the person making the payment for admission and paid to the Government in the manner prescribed, makes it clear that the tax is on entertainment. The entertainment u/s 2(g) includes any exhibition, performance, amusement, game, sport or race (including horse race) to which persons are admitted for payment. The emphasis in the Act is on entertainment and not the means through which such entertainment is provided to the subscriber. In *The State of West Bengal and Others Vs. Purvi Communication Pvt. Ltd. and Others*, , the Supreme Court has already held that performances, films or programmes shown to the viewers through the cable television network has fallen within the meaning of "entertainment" and is therefore within the legislative competence of the State Legislature under entry 62 of List II of the Seventh Schedule to the Constitution of India. The same performance, films or programmes shown to the viewers either by cable services or through DTH services will also squarely fall within the meaning of "entertainment" and therefore the tax in question is within the legislative competence of the State.

78. We do not find substance in the contention that there is difference between cable services and DTH services. As explained by the Supreme Court in *The State of West Bengal and Others Vs. Purvi Communication Pvt. Ltd. and Others*, and followed by the Delhi High Court and Madhya Pradesh High Court, the vehicle for transporting the contents and the method, which provide entertainment is not material. The tax is on the entertainment and not the manner in which the content of entertainment reaches the actual persons entertained. The tax is not on the content provider or the content transporter or the person entertained. The entertainment tax is levied on the entertainment. It is the subscriber on whom the incident of tax falls. The measure of the tax is based on the amount paid by the subscriber as subscription money, but the instance of a tax or measure of the tax is not the same and cannot be treated as subject-matter of the tax.

79. The entertainment tax is to be paid on payments for admission to an entertainment, which includes contribution, subscription, installation or connection charges or any other charges collected in any manner whatsoever. Clauses (i) to (v) with its Explanation u/s 20) defining "payment for admission" has not undergone any change after amendment. A new sub-clause (vi) has been added, which includes the subscription or installation or charges or any other charges collected in any manner whatsoever by whatever name called for television, through cable television network or any such network of whatever name called, attached to television set or any other device at a residential or non-residential place. A further sub-clause (vii) has been added to make a clarification for any payment made by person to the proprietor of a direct-to-home service or any other service by whatever name called, by way of contribution or subscription or installation and connection charges, or any charges collected in any manner of whatever name called either directly or

through any agency established for the purposes of direct-to-home service with aid of set top box or any other device of like nature, which connects television set or any other device at a residential or non-residential place of connection holder directly to the satellite without passing through an intermediary such as cable operator.

80. The amendments in the Act as explained in the Objects and Reasons, is by way of clarification to include the DTH service as a new technology and method within the purview of the Act, by which entertainment is provided sitting at home. Our homes have taken the place of cinema hall or theater, and the paper ticket has been substituted by subscription money. For viewing channels through DTH connection by either prepaid or post-paid payments made through cash or credit cards, or by any other method, are all payments for admission to entertainment. The entertainment tax is to be collected by the proprietor and paid to the State Government in the manner prescribed. The proprietor includes in relation to the entertainment any person connected with the organisation of the entertainment, or charges with the work of admission to the entertainment or responsible for, or for the time being in charge of, the management thereof u/s 2(m) of the Act.

81. The petitioners by delivering entertainment directly to the homes of individual subscribers downlink the signals from various satellites of various TV channels on their stations. They uplink the signals thereafter to their own Ku Band designated transponders, which are then transmitted in Ku Band through satellite. The dish antennas installed at the subscribers premise pick up these signals, which are decrypted in the set top box, and viewing cards provided by the petitioners; These signals are viewed by the subscribers on their TV sets. The technology is so advanced that the petitioners can stop any channel or group of channels at any time, to be viewed by the subscriber. The payment for subscription is like payment for cinema ticket either by cash or credit. The entertainment is continuous on which the subscription charges are charged on monthly or quarterly basis. The entertainment is round the clock, be it day or night. The methods of providing the contents have changed, but the object of entertainment remains the same.

82. The day is not far, when the technology will make it possible for viewing all the channels on the hand held sets, which may be sold together with smart phones, i-pads or tablets and on which the programmes may be viewed with the help of modem and for which the signals may be provided through data cards by internet. It will not be necessary for the Act to be amended again to impose entertainment tax on such entertainments as the principal activity will continue to remain the entertainment and not the method by which such entertainment is provided.

83. The method by which the flow and content may be provided by the infrastructural set up, and for which the petitioner may be subjected to service tax under the service tax regime put in place by Parliament in exercise of its

legislative powers under article 246 of the Constitution read with entry 92C of List I. The service provider will in that sense only act as a link between the content provider and the content viewers. It is ultimately the entertainment, which cannot be treated as a good, but a feeling, which may be subject-matter of tax under the Act. In such case it would not be the service of enabling the flow of content, which is taxed by the State Act. We do not find that there is any scope of overlapping or confusing one with the other.

84. We entirely agree with the opinion of the Delhi High Court that the DTH system has two aspects, namely, service aspects and entertainment aspect, which are clearly separated and distinguishable. The former is taxed under the service tax regime and the later is subjected to tax as an entertainment under the U.P. Act of 1979 read with entry 62 of List II. These are two separate and distinct taxable events. We do not find that there is any overlapping, and that the State Legislature is not denuded by its powers to levy entertainment tax on entertainment provided by either cable TV network or DTH services or any other emerging technology.

85. We are not impressed with the arguments made by Shri K.N. Tripathi; Shri Bharat Ji Agrawal and Shri D.K. Singh that the unamended Act did not include DTH services and that for imposing any tax there has to be a clear intendment to levy tax. We also do not agree that under the unamended Act there was no provision/entry or any charging section providing for the taxing event.

86. This court had in M/s. Universal Communication clearly held that the U.P. Act of 1979 was enacted to consolidate and amend laws relating to tax on entertainments, amusements and certain forms of betting. The entertainment tax was levied on entertainment provided by the proprietor. The entertainment was not necessary to be place specific. The argument that the cable TV operators do not provide entertainment and that the definition of the word "entertainment" would not cover the activity of entertainment through the cables was not accepted. It was held relying upon *The Western India Theatres Ltd. Vs. The Cantonment Board, Poona, Cantonment, and Y.V. Shrinivasamurthy* AIR 1959 SC 894 that the word entertainment has an inclusive Explanation. It may not be given restricted meaning. It will be doing violence to the language used in section 3 to hold that the entertainment contemplated therein is relatable only to a single act or a number of acts of entertainments or an entertainment of any kind, which may be spread over to save hours or days and that the tax would have nexus, mode and manner of payment. It was held that in a taxing Act one has to look merely at what is clearly said. There is no presumption as to the tax and that intent is to be read in and intend is to be implied. One can only look fairly at the language used. Gathering the intention of Legislature in para 20 of the opinion of the learned judge (as he then was) it was said that if the petitioners are realising any amount for admission to entertainment they are liable to pay entertainment tax. The progress made by the society and development in science and technology, which could not be visualised at the

time, when the laws are enacted cannot be ignored by the court. In a modern progressive society the intention of Legislature to the meaning attributed to the word must be presumed to have a larger meaning while preserving the same concept and such interpretation, unless a contrary intention appears, should be given to the words used to take in new facts and situation. If the words are capable of comprehension, there is no reason to have an restrictive interpretation. The changing concepts and values, without doing any violence to the object and reasons, and where language permits and rather does not prohibit after adjustment through general interpretation must be adopted. The court followed the opinions expressed in *S.P. Gupta Vs. President of India and Others*, and *S.P. Jain Vs. Krishna Mohan Gupta and Others*, , that the law takes pragmatic view of the matter and should be allowed to be recipient to the purpose for which it was made and also take cognizance of the current capabilities of technology and lifestyle of the community. The legislative futility is to be ruled out so long as interpretative possibility permits. In scientific age as it was held in *The Municipal Corporation of Greater Bombay and others Vs. The Indian Oil Corporation Ltd.*, , the Legislature must be presumed to be aware of the large meaning of the word, which it may approve with the advance in science and technology.

87. The object and reasons for which the amendments were made in the year 2009, should not have been more clear in preserving that the words DTH services and amusement parks, which are already covered by clause (g) of section 3 have been incorporated by way of amendment only to clarify and to meet the present scenario with new technology and methods of entertainment. The object was to make taxation thereon more transparent and to avoid any doubt and confusion.

88. The Act in its unamended form as consistently interpreted by this court, with the definition of admission to an entertainment, payment for admission, proprietor, subscriber and its charging section and the notified rate schedule without any doubt, levies entertainment tax on entertainment. The method and manner of entertainment is not of consequence. The unamended Act satisfied all the tests for imposition of valid levy of tax namely it provides for the person, thing or activity on which the tax is imposed namely the entertainment, and the incident of tax, i.e., on the subscriber and which makes the entertainment tax as an indirect tax. The subject of tax, namely, the entertainment is different from the measure of the levy and cannot be treated to be determinative of its essential character. The entertainment tax on DTH service is thus liable to be paid both for preamended period as well as after the amendment.

89. We are not impressed with the arguments that in view of the interim orders the petitioners could not collect the tax. There was no interim order restraining the petitioners from collecting the tax and thus it cannot be said that the petitioners could not collect the tax for the period prior to June 16, 2009. We may also observe that the interim orders were passed after the Ordinance of

2009, was enforced and prior to that the legal position as obtained in M/s. Universal Communication was operative. The petitioners were thus liable to collect the tax and to deposit it in accordance with the procedure prescribed under the Act.

90. The challenge to the notices on the ground that information collected by the District Magistrates regarding the number of subscribers and the amount charged is not reliable, would require consideration of facts in each case. The argument that the petitioners did not sell the set top boxes and that some other agency had sold the set top boxes and further that number of subscribers in the State of U.P. is much less than the numbers, which has been found by the District Magistrate or assessment of Entertainment Tax Commissioner is a question of fact, subject to right of appeal provided under the Act.

91. A feeble argument was raised that the rate of entertainment tax on DTH services prescribed by the notification is discriminatory, in comparison to the cable services. In this regard we may observe that in dealing with the challenge to the constitutional validity of the provisions of taxing statutes that it violates article 14 of the Constitution, the court, which exercises the power of judicial review should be conscious of the limitation of judicial intervention, particularly in matters relating to the legitimacy of economic or fiscal legislation. The Legislature is entitled to a great deal of latitude in fiscal legislation. The court would interfere only where a clear infraction of constitutional provision is established. In *Sardar Baldev Singh Vs. Commissioner of Income Tax, Delhi and Ajmer*, *East India Tobacco Co. Vs. State of Andhra Pradesh*, *R.K. Garg and Others Vs. Union of India (UOI) and Others*, *State of M.P. and Others Vs. M/s. Indore Iron and Steel Mills Pvt. Ltd.*, and *Government of Andhra Pradesh and Others Vs. Smt. P. Laxmi Devi*, the Supreme Court has expressed a note of caution that the burden is all the heavier when the legislation under attack is a taxing statute, since the power of the Legislature in classifying objects for the purposes of taxation are wide. The Legislatures possess the greatest freedom in classification and the burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it. The court must make every effort to uphold the constitutional validity of a statute, even if that requires giving the statutory provision a strained meaning, or narrower or wider meaning, than what appears on the face of it. It is only when all efforts to do so fail should the court declare a statute to be unconstitutional.

92. For the reasons discussed as above, we do not find merit in any of the grounds raised in the writ petitions. All the writ petitions are consequently dismissed.