

~~~~~ **Interpreting Taxing Statutes # 52 – Format and heading**

The format or layout is part of an Act. It may be considered in construing any provision of the Act, provided due account is taken of the fact that it is designed merely for ease of reference.^{^1}

A heading is part of an Act. It may be considered in construing any provision of the Act, provided due account is taken of the fact that its function is merely to serve as a brief guide to the material to which it relates and that it may not be entirely accurate.^{^2}

SYNOPSIS

Structure

Conjunction between paragraphs

Headings

- Correct approach
- Mischief
- Difference
- Scope
- Brevity
- Updating

Structure

The format or layout form part of the Act and may be used in construing any provision. Said as follows:

‘Arrangement may be of the highest importance in suggesting one interpretation and concealing another.’^{^3}

There are many cases where the courts have been guided in their construction by these aspects of an Act. The weight to be placed on the format will inevitably depend on context.^{^4}

¹ Bennion 2020 s 16.6

² Bennion 2020 s 16.7

³ Megarry V-C, (1959) 75 LQR 31 cited in Bennion 2020 p 538

Conjunction between paragraphs

Where a provision consists of several numbered paragraphs with the word ‘and’ or ‘or’ at the end of the penultimate paragraph, there is a strong implication that each of the preceding paragraphs is separated by the same conjunction.⁴

It is standard modern drafting practice to rely on this implication rather than spelling out the conjunction at the end of each paragraph.

Headings

A variety of heading are used in Acts. Each section, Schedule, Chapter and Part has its own heading and italic headings are often placed above a group of sections or one or more paragraphs of a Schedule. Headings may appear as sidenotes or marginal notes placed in the margin, rather than being placed above.⁶

Correct approach: The correct approach to the use of headings in interpretation was summarized as follows:

‘The question then is whether headings and sidenotes, although unamendable, can be considered in construing a provision in an Act of Parliament. Account must, of course, be taken of the fact that these components were included in the Bill not for debate but for ease of reference. This indicates that less weight can be attached to them than to the parts of the Act that are open for consideration and debate in Parliament. But it is another matter to be required by a rule of law to disregard them altogether. One cannot ignore the fact that the heading and sidenotes are included on the face of the Bill throughout its passage through the legislature. They are there for guidance. They provide the context for an examination of those parts of the Bill that are open

⁴ Bennion 2020 p 538

⁵ Megarry V-C, (1959) 75 LQR 29 cited in Bennion 2020 p 539

⁶ Bennion 2020 p 540

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for debate. Subject, of course, of the fact that they are unamendable, they ought to be open to consideration as part of the enactment when it reaches the statute book'.<sup>7</sup>

**Mischief:** A heading may be relevant as a guide to the meaning of a section or the mischief that it is intended to address.<sup>8</sup>

**Difference:** Where a heading differs from the material it describes, this puts the court on inquiry, but it is most unlikely to be right to allow the plain meaning of the words to be overridden purely by reason of a heading. Said as follows:

‘While the marginal note to a section cannot control the language used in the section, it is at least permissible to approach a consideration of its general purpose and the mischief at which it is aimed with the note in mind’.<sup>9</sup>

**Scope:** Where general words are preceded by a heading indicating a narrower scope this may indicate that the general words are to be given a narrower meaning.<sup>10</sup>

**Brevity:** The function of a heading is to serve as a brief guide to the content of the provisions to which it relates. A heading can only be an approximation and may not cover everything falling within the provision to which it is attached. Said as follows:

‘A section heading is a poor guide to the scope of a section, for it can do no more than indicate the main subject with which the section deals’.<sup>11</sup>

**Updating:** Even if a heading is accurate when a provision is first drafted, it may later be falsified by amendments made during the

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<sup>7</sup> R v Montila [2004] UKHL 50 cited in Bennion 2020 p 540

<sup>8</sup> Project Blue Ltd V Commissioners for HMRC [2018] UKSC 30 cited in Bennion 2020 p 540

<sup>9</sup> Stephens v Cuckfield RDC (1960) 2 QB 373 cited in Bennion 2020 p 540

<sup>10</sup> English v Robertson and Baxter [1898] AC 616 cited in Bennion 2020 p 540

<sup>11</sup> R v Schildkamp (1971) AC 1 cited in Bennion 2020 p 541

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legislative process or by subsequent Acts. Such facts are often outside the knowledge of the interpreter, making headings an unreliable guide. Said as follows:

‘A cross-heading ought to indicate the scope of the sections which follow it but there is always a possibility that the scope of one of these sections may have been widened by amendment’.¹²

Precedents

Every section has its own heading which give a short indication of the content of the section.

Every section has its own heading. The function of the heading is to give a short indication of the content of the section. It need not be a summary to cover everything dealt with in the section. Section headings, when read together in the arrangements of sections at the beginning of the Act, should have such a consecutive meaning as will give a tolerably accurate idea of the contents of the Act.¹³ Headings may not always been amended to reflect changes to the text so older headings should be treated with particular caution. As headings are indicated by a note in the margin, so are referred to as **sidenotes** or **marginal notes**. Eg:

“5. Powers of officers under GST

(1) Subject to such conditions and limitations as the Board may impose, an officer of central tax may exercise the powers and discharge the duties conferred or imposed on him under this Act.

(2) An officer of central tax may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of central tax who is subordinate to him.

¹² R v Schildkamp (1971) AC 1 cited in Bennion 2020 p 541

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(3) The Commissioner may, subject to such conditions and limitations as may be specified in this behalf by him, delegate his powers to any other officer who is subordinate to him.

(4) Notwithstanding anything contained in this section, an Appellate Authority shall not exercise the powers and discharge the duties conferred or imposed on any other officer of central tax.”<sup>14</sup>

### **The sections of an Act are often grouped together into Parts or Chapters.**

The sections of an Act are often grouped together into Parts or Chapters. In longer Acts there may be Parts as well as Chapters such that the Parts are subdivided into Chapters. ‘Part’ and ‘Chapter’ are always given a capital letter. Each Part or Chapter is given a number and has a short heading. A Part or Chapter is referred to by its number. Part V (The Union) of the Indian Constitution has following Chapters:

Chapter I (The Executive);

Chapter II (Parliament);

Chapter III (Legislative powers of the President);

Chapter IV (The Union judiciary);

Chapter V (Comptroller and Auditor-General of India).

### **Italic headings or fasciculus are sometimes used to group sections together in small divisions.**

Italic headings are sometimes used to group sections together in small divisions, whether or not there are also Parts or Chapters. A group of sections under this kind of heading is sometimes known

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<sup>14</sup> CGST Sec 5

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as a fasciculus. These groupings are not numbered and are not usually cross-referred in the text. For example, Chapter IV of Income Tax Act 1961 has the following italic headings or fasciculus:

Heads of income;

Salaries;

Income from house property;

Profits and gains of business or profession;

Capital gains;

Income from other sources.

A heading is a part of an Act.

A heading is a part of an Act. It may be considered in construing any provision of the Act, provided due account is taken of the fact that its function is merely to serve as a brief guide to the material it governs and that it may not be entirely accurate.¹⁵ Heading here includes all kinds of headings such as section heading, Schedule heading, Chapter heading, Part heading, and italic heading.¹⁶ The question then is whether headings and sidenotes, although unamendable, can be considered in construing a provision in an Act. Account must, of course, be taken of the fact that these components were included in the Bill not for debate but for ease of reference. This indicates that less weight can be attached to them than to the parts of the Act that are open for consideration and debate in the legislature. But it is another matter to be required by a rule of law to disregard them altogether. One cannot ignore the fact that the headings and

¹⁵ Bennion 2019 p 444 Sec 16.7

¹⁶ Bennion 2019 p 444

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sidenotes are included on the face of the Bill throughout its passage through the legislature. They are there for guidance. They provide the context for an examination of those parts of the Bill that are open for debate. Subject, of course, to the fact that they are unamendable, they ought to be open to consideration as part of the enactment when it reaches the statute book.<sup>17</sup> Where a heading differs from the material it describes, this puts the court on inquiry, but it is most unlikely to be right to allow the plain meaning of the words to be overridden purely by reason of a heading.<sup>18</sup> The function of a heading is to give a short indication of the content of the provisions it governs rather than a comprehensive and accurate summary. A heading can only be an approximation, and may not cover everything falling within the provision to which it is attached. A section heading is a poor guide to the scope of a section, for it can do no more than indicate the main subject with which the section deals.<sup>19</sup> A heading that was once accurate may have been falsified by amendments made during the passage of a Bill through Parliament or by subsequent Acts. Or the drafter may simply have chosen an inadequate signpost. Such facts are often outside the knowledge of the interpreter, making headings an unreliable guide.<sup>20</sup> Although headings are not generally open to formal amendment in Parliament, two exceptions may be noted. First, italic headings within a Schedule to a Bill may be amended by a Member tabling a formal amendment. Secondly, where a Bill amends an earlier Act the amendments themselves may include headings and they are amendable by Members. Despite this, the

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<sup>17</sup> Bennion 2019 p 444

<sup>18</sup> Bennion 2019 p 444

<sup>19</sup> Bennion 2019 p 445

<sup>20</sup> Bennion 2019 p 445

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 general rule remains that headings are unamendable.²¹ It is often suggested that the headings are not debatable during the progress of a Bill through the legislature. This is not strictly accurate. Although it is true that headings are not routinely debated, there is nothing to prevent Members from debating headings and sometimes this does result in a change being made.²²

Chapter heading may aid interpretation of enactments in case of ambiguity.

In **CIT v Ahmedbhai Umarbhai, AIR 1950 SC 134** it was held that the title of a Chapter cannot be legitimately used to restrict the plain terms of an enactment.²³

In **Bhinka v Charan Singh, AIR 1959 SC 960** Subbarao J quoted with approval the following passage from Maxwell on Statutes:

The heading prefixed to sections or sets of sections in some modern statutes are regarded as Preambles to those sections. They cannot control the plain words of the statute but they may explain ambiguous words.²⁴

In **Frick India Ltd v UOI AIR 1990 SC 689** it was held that only in the case of ambiguity or doubt the heading or sub-heading may be referred to as an aid in construing the provision and even in such a case it could not be used for cutting down the wide application of the clear words used in the provision.²⁵

Section heading or marginal note may be used as aid in interpretation in case of ambiguity.

²¹ Bennion 2019 p 446

²² Bennion 2019 p 446

²³ Singh 2021 p 130

²⁴ Singh 2021 p 132

²⁵ Singh 2021 p 130


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In **UOI v National Federation of the Blind (2003) 10 SCC 772**

it was held that the heading of a section will not play a crucial role when the language of the section is clear and unambiguous.<sup>^26</sup>

In **Bharat Damoder Kale v State of Andhra Pradesh, (2003) 8 SCC 559**

it was held that the headings do not have any controlling effect when other relevant considerations and the language leave no doubt as to the meaning of the statutory provision. For example, the heading of Chapter XXXVI of the Cr PC, 1973 which reads “Limitations for taking cognizance of certain offences”, was not held to be controlling and it was held that a cumulative reading of various provisions in the said chapter clearly indicated that the limitation prescribed therein was only for the filing of the complaint or initiation of the prosecution and not for taking cognizance.<sup>^27</sup>

In **Raichurmathan Prabhakar Rawatmal Dugar (2004) 4 SCC 766** Lahoti J pronounced thus:

It is permissible to assign the heading or title of a section, a limited role to play in the construction of statutes. They may be taken as very broad and general indicators of the nature of the subject-matter dealt with thereunder. The heading or title may also be taken as a condensed name assigned to indicate collectively the characteristics of the subject matter dealt with by the enactment underneath; though the name would always be brief having its own limitations. In case of conflict between the plain language of the provision and the meaning of the heading or title, the heading or title would not control the meaning which

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<sup>26</sup> Singh 2021 p 130

<sup>27</sup> Singh 2021 p 132

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is clearly and plainly discernible from the language of the provision thereunder.²⁸

In **NC Dhondial v UOI (2004) 2 SCC 579** it was held that the section heading or marginal note can be relied upon to clear any doubt or ambiguity in the interpretation of the provision and to discern the legislative intent.²⁹

In **National Insurance Co Ltd v Sinitha, (2012) 2 SCC 356** the Court relied on the heading of section 163A of the Motor Vehicles Act, 1988, which reads “Special provisions as to payment of compensation on structured formula basis”, and the section itself, as well as the scheme provided therein, to hold that sine a pre-structured formula is to be used to evaluate the compensation, the liability thereunder may be huge, and hence the section cannot be based on the principle of no-fault liability.³⁰

In **S Iyyapan v United India Insurance Co Ltd, (2013) 7 SCC 62** it was held that by the heading “Insurance of Motor Vehicles against Third Party Risks” given to Chapter XI of the Motor Vehicles Act, 1988 the intention of the Legislature is to make third-party insurance compulsory in order to protect persons from the risk attendant upon the user of motor vehicles on the road, and to ensure that the victims of accidents would be able to get compensation for the death or injuries suffered. The Legislature has therefore made it obligatory that no motor vehicle shall be used unless a third-party insurance is in force.³¹

²⁸ Singh 2021 p 130

²⁹ Singh 2021 p 132

³⁰ Singh 2021 p 133

³¹ Singh 2021 p 132

In **UOI v ABN Amro Bank, (2013) 16 SCC 490** it was held that if the language of a section is plain and clear then the heading used in the section strengthens that meaning.^{^32}

In **Mathew Varghese v M Amritha Kumar, (2014) 5 SCC 610** relying on the heading of section 37 of the SARFAESI Act, 2002, which reads “Application of other laws not barred”, the Court held that application of the SARFAESI Act will be in addition to, and not in derogation of, the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.^{^33}

Article heading is part of the Constitution.

In **Bengal Immunity Co Ltd v State of Bihar, AIR 1955 SC 661** it was held that the marginal notes appended to Articles of Constitution constitute part of the Constitution as passed by the Constituent Assembly and therefore they have been made use of in construing the Articles, e.g., Article 286, as furnishing “prima facie”, “some clue as to the meaning and purpose of the Article”.^{^34}

³² Singh 2021 p 133

³³ Singh 2021 p 133

³⁴ Singh 2021 p 134