1.A very interesting news item appeared in the Business Standard of

Wed, April 29 2015 titled:

''What happened to the Reid & Taylor brand?''

It was captivating.Here is how the news item went:

''A Reid & Taylor store in the busy Flora Fountain area of Mumbai's Fort area has a banner on the front which says: '50% per cent off - End of the season sale.'

When most brands and retailers have long wound up the 'end of season sale', it is unusual for anyone to hold a discounted sale for two months.

The store staff nonchalantly says that the merchandise is old and it is part of clearance sale and fresh stock will come within a month.

The store signifies the the current state of the over-175-year-old Scottish brand in the country, which once had high brand recall.

Reid & Taylor was launched by S Kumar's Nationwide (SKNL) in India in 1998 with a fabric plant at Mysuru in Karnataka, which produces worsted and poly viscose suiting.

…… SKNL planned an ambitious Rs 1,000 crore initial public offer (IPO) for the brand in 2011 , which had to be shelved due to poor market conditions. Its plans to open 15 flagship stores and 160 exclusive stores for Reid & Taylor did not materialise.

Today, it owns couple of company-owned stores in cities such as Mumbai and franchisee stores elsewhere.

Its advertisements have vanished from everywhere - TV, print and outdoor but its products sell on e-commerce stores on discount.''

2.We know now as to what was happening. Reid & Taylor, once endorsed by Amitabh Bachchan, and its parent company S.Kumars Nationwide,

headed for the bankruptcy courts after they defaulted on more than Rs 5,000 crore of loans. IDBI Bank has initiated insolvency proceedings against S. Kumars Nationwide, while Edelweiss BSE 0.15 % Asset Reconstruction Company dragged Reid & Taylor (India) to insolvency court.We also learnt later that Textile firm S Kumars Nationwide (SKNL) **approved the *demerger*** ***of its division Reid & Taylor, into a subsidiary of the parent company***.Reid & Taylor was operating as a division and is in the business of luxury textiles and ready-to-wear garments. The proposed new subsidiary, Reid & Taylor (India), intended to focus only on brand 'Reid and Taylor' .

This arm, per company at that time ''will benefit from a sharper business focus as a business entity and is aimed to consolidate Reid & Taylor's position at the higher end of the textile business", SKNL later press release said. Rest is for corporate historians to document.

3.My fascination with the news item and the tax treatment of demerger in Income Tax Act has lead to this modest effort to understand demerger from a income tax perspective.

4.Concept of Demerger-

a. **Demerger** is the business strategy wherein company transfers one or more of its business undertakings to another company. In other words, when a company splits off its existing business activities into several components, with the intent to form a new company that operates on its

own or sell or dissolve the unit so separated, is called a demerger.A demerged company is said to be one whose undertakings are transferred to the other company, and the company to which the undertakings are transferred is called the resulting company.

b.Demerger means **the transfer of one or more undertakings to any resulting company pursuant to a scheme of arrangement** under **Sections 391 to 394 of the Companies Act, 1956** in such a manner that all the property/liability of the undertaking becomes the property/liability of the resulting company.Now **Section 232 of the Chapter XV of Companies Act 2013** deals with mergers and amalgamation including demergers. **Chapter XV (Section 230 to 240) of Companies Act, 2013** contains provisions on '**Compromises, Arrangements and Amalgamations'**, that covers compromise or arrangements, mergers and amalgamations, Corporate Debt Restructuring, demergers, fast track mergers for small companies/holding subsidiary companies, cross border mergers, takeovers, amalgamation of companies in public interest etc.

c.A demerger under Companies Act 2013, can be defined as **corporate restructuring in which a business breaks into components**. These components can operate as a separate unit or can be sold or can be liquidated. It allows a large company to split into various business units.
The demerger can also occur by transferring the relevant business to a new company or business to which then that company's shareholders are issued shares of. The procedural aspects involved such as format of application to be made to National Company Law Tribunal (the Tribunal), form of notice

and the procedural aspects involved with respect to the substantive law are covered under the Rules made under Chapter XV of the Act

d.Demerger can be affected by any of the following ways:

1. Demerger by agreement between promoters; or
2. Demerger under the scheme of arrangement with approval by the Court under section 232 of Chapter XV.

e.A **petition had to be submitted to the court earlier for authorizing** the demerger. It had to be sanctioned by three-fourths of members/creditors to file an appeal. ... The Court would then pass an order approving the demerger in the same newspaper in which the notice of the meeting was advertised. **Since the advent of Companies Act, 2013,** corporate restructurings involving merger, demerger, capital reductions and other shareholder arrangements **are exclusively heard by National Company Law Tribunals ('NCLT') replacing high courts in the process.**

f.What are the advantages and disadvantages of demerger?

i.The restructuring helps to overcome short term constraints. Helps to focus on core business. Promotes independent collaboration and scope for expansion. However the negatives may include difficulty to mobilize funds. There can be Loss of synergy.Also Fear in the minds of investor about the resulting company.

ii. Demerger allows a company to expand its operations in a very systematic manner. It allows a specific division or unit to grow as a separate and a focused entity, thereby increasing its efficiency and effectiveness. It benefits the shareholders by providing them better opportunities to participate in the management, operations, decision making process and profits of the applicant company as well as the resulting company.

g.DEMERGER AND SPINOFFs:

i.The difference between demerger and spinoffs is that the **demerger** is a business strategy where one company transfers one or more of its businesses to another company. Whereas a spinoff is a disinvestment strategy wherein a part of the company's division is separated from the parent company.

ii.To some however spin offs are but one manner of demerger.That viewpoint puts the two varieties as under:

a. **Spin-off/hive off:** It is the **divestiture strategy** wherein the company's division or undertaking is separated as an independent company. Once the undertakings are spun-off, both the parent company and the resulting company act as a separate corporate entities.

b.Split-up: A business strategy wherein a company splits-up into one or more independent companies, such that the parent company ceases to exist.

{Corporate divestiture is a strategy to remove some of a group's assets under its current business portfolio. Depending on the purpose of restructuring, divestitures can take several forms, such as sell-offs, spin-offs, or equity carve-out.}

DEMERGER AND I.T. ACT

5.The demerger under Section 2(19AA) of Income-tax Act, 1961 is defined as follows:

2(*19AA*) "**demerger**", in relation to companies, means the transfer, pursuant to a scheme of arrangement under sections 391 to 394 of the Companies Act, 1956 (1 of 1956), by a demerged company of its one or more undertakings to any resulting company in such a manner that—

(*i*) all the property of the undertaking, being transferred by the demerged company, immediately before the demerger, becomes the property of the resulting company by virtue of the demerger;

(*ii*) all the liabilities relatable to the undertaking, being transferred by the demerged company, immediately before

the demerger, become the liabilities of the resulting company by virtue of the demerger;

(*iii*) the property and the liabilities of the undertaking or undertakings being transferred by the demerged company are transferred at values appearing in its books of account immediately before the demerger:

First proviso Inserted by the Finance (No. 2) Act, 2019, w.e.f. 1-4-2020.

[**Provided** that the provisions of this sub-clause shall not apply where the resulting company records the value of the property and the liabilities of the undertaking or undertakings at a value different from the value appearing in the books of account of the demerged company, immediately before the demerger, **in compliance to the Indian Accounting Standards** specified in Annexure to the Companies (Indian Accounting Standards) Rules, 2015;]

(*iv*) the resulting company issues, in consideration of the demerger, its shares to the shareholders of the demerged company on a proportionate basis [except where the resulting company itself is a shareholder of the demerged company];

(*v*) the shareholders holding not less than three-fourths in value of the shares in the demerged company (other than shares already held therein immediately before the demerger, or by a nominee for, the resulting company or, its subsidiary) become share-holders of the resulting company or companies by virtue of the demerger,

otherwise than as a result of the acquisition of the property or assets of the demerged company or any undertaking thereof by the resulting company;

(*vi*) the transfer of the undertaking is on a going concern basis;

(*vii*) the demerger is in accordance with the conditions, if any, notified under sub-section (5) of section 72A by the Central Government in this behalf.

Explanation 1.—For the purposes of this clause, "undertaking" shall include any part of an undertaking, or a unit or division of an undertaking or a business activity taken as a whole, but does not include individual assets or liabilities or any combination thereof not constituting a business activity.

Explanation 2.—For the purposes of this clause, **the liabilities referred to in sub-clause (*ii*), shall include—**

(*a*) the liabilities which arise out of the activities or operations of the undertaking;

(*b*) the specific loans or borrowings (including debentures) raised, incurred and utilised solely for the activities or operations of the undertaking; and

(*c*) in cases, other than those referred to in clause (*a*) or clause (*b*), so much of the amounts of general or multipurpose borrowings, if any, of the demerged company as stand in the same proportion which the value of the assets transferred in a demerger bears to the total value of the assets of such demerged company immediately before the demerger.

Explanation 3.—For determining the value of the property referred to in sub-clause (*iii*), any change in the value of assets consequent to their revaluation shall be ignored.

Explanation 4.—For the purposes of this clause, the splitting up or the reconstruction of any authority or a body constituted or established under a Central, State or Provincial Act, or a local authority or a public sector company, into separate authorities or bodies or local authorities or companies, as the case may be, shall be deemed to be a demerger if such split up or reconstruction fulfils [such conditions as may be notified in the Official Gazette, by the Central Government].

[*Explanation 5.*—For the purposes of this clause, the reconstruction or splitting up of a company, which ceased to be a public sector company as a result of transfer of its shares by the Central Government, into separate companies, shall be deemed to be a demerger, if such reconstruction or splitting up has been made to give effect to any condition attached to the said transfer of shares and also fulfils such other conditions as may be notified by the Central Government in the Official Gazette.]

[Explanation 6.—*For the purposes of this clause, the reconstruction or splitting up of a public sector company into separate companies shall be deemed to be a demerger, if such reconstruction or splitting up has been made to transfer any*

asset of the demerged company to the resulting company and the resulting company—

(i) *is a public sector company on the appointed day indicated in such scheme, as may be approved by the Central Government or any other body authorised under the provisions of the Companies Act, 2013 (18 of 2013) or any other law for the time being in force governing such public sector companies in this behalf; and*

(ii) *fulfils such other conditions as may be notified by the Central Government in the Official Gazette in this behalf;*]

(*19AAA*) "demerged company" means the company whose undertaking is transferred, pursuant to a demerger, to a resulting company;]

6.Provisions applicable to company

a.Capital Gain (Sections 47(vi) and 47(vid))

- Gains arising on transfer of a capital asset in a scheme of amalgamation/demerger to the amalgamated/resulting company b.being an Indian Company is exempt.

b.Carry forward of accumulated loss and/or unabsorbed depreciation (Section 72A)

- Accumulated loss and unabsorbed depreciation of a demerged company can be carried forward by the resulting company for set off against its profits (Section 72A(4)):

    1. Where it is directly relatable to undertaking transferred, it should be such relatable amount.
    2. Where it is not directly relatable to the undertaking transferred, it should be apportioned in the ratio of assets retained by the demerged company and transferred to resulting company.

c.Carry forward of accumulated loss and/or unabsorbed depreciation of the banking company in a Scheme of amalgamation with banking institution **(Section 72AA)**

d.Reorganisation in case of firm/proprietorship to company and private company/unlisted public company to LLP **(Section 72A(6))**

e.Allowability of expenditure relating to amalgamation/demerger (Section 35DD)

An Indian company will be allowed a deduction of 1/5th of the expenditure incurred for the purposes of amalgamation or demerger for five years from the year in which amalgamation/demerger takes place.

WEF 1.4.2000

35DD.Amortisation of expenditure in case of amalgamation or demerger.

(1) Where an assessee, being an Indian company, incurs any expenditure, on or after the 1st day of April, 1999, wholly and exclusively for the

purposes of amalgamation or demerger of an undertaking, the assessee shall be allowed a deduction of an amount equal to one-fifth of such expenditure for each of the five successive previous years beginning with the previous year in which the amalgamation or demerger takes place.

(2) No deduction shall be allowed in respect of the expenditure mentioned in sub-section (1) under any other provision of this Act.

f.Depreciation in the year of amalgamation/demerger (fifth proviso to Section 32(1))

Depreciation to demerged company and the resulting company in the year of demerger shall be apportioned in the ratio of the number of days for which the assets were used.

g.Written Down Value ('WDV') (Sections 32 and 43(6)(c))

I.WDV in the hands of the resulting company shall be the WDV of transferred assets of the demerged company immediately before demerger.

II.WDV in the hands of the demerged company shall be the WDV of the block of assets before demerger less WDV of assets transferred to the resulting company.

7. TAXATION OF RESULTING COMPANY

1. The actual cost of asset transferred by demereged company to resulting company in hands of resulting company shall be.

(A) Actual cost to the demerged company (Non-depreciable assest)

(b) WDV in hands of demerged company. (Depreciable asset)

2. The following expenditures which are unamortised in hands of demerged company in respect of undertakings transferred to resulting company shall be allowed to the resulting company for the balance number of years. The said expenditure shall not be allowed to demerged company in the year of demerger.

(A) Preliminary expenses under section 35D

(B) Expenditure for obtainig license to operate telecommunication servies under section 35ABB.

(C) Expenditure under voluntary retirement scheme under section 35DDA.

3. **Apportionment of Depreciation-** As per amendment in section 32, where there has been a demerger, the aggregate of depeciation available to the demerged company and the resulting, company shall not exceed in the previous year, the depreciation calculated at the prescribed rates as if the demerger had not taken place and such depreciation shall be apportioned between the demerged company and the resulting company in the ratio of number of days for which assets were used by them.**[proviso 6 to s. 32(1)]**

4. **Carry forward of losses and depreciation**- As per Section **72A(4)**, the loss and unabsorbed depreciation of the demerged company directly relating to the undertakings transferred in the demerger, them such loss and depreciation shall be carried forward by the resulting company and not the demerged company. However if such loss and unabsorbed depreciation is not directly relatable to the undertakings transferred to the resulting company, then the loss and depreciation shall be apportioned between the demerged company and the resulting company in the following proportion:

Assets retained by the: Assets transferred to the:

demerged company resulting company

the loss and depreciation shall be allowed to be carried forward for the balance number of years for which the demerged company would have carried forward.

[''apportioned between the demerged company and the resulting company in the same proportion in which the assets of the undertakings have been retained by the demerged company and transferred to the resulting company, and be allowed to be carried forward and set off in the hands of the demerged company or the resulting company, as the case may be''.]

5. **Expenses on demerger** shall be allowed in five successive Assessment years beginning whit the previous year in which demerger takes place. The deduction shall be 1/5th of such expenditure on demerger.

6. Where the demerged company was allowed a deduction in respect of any loss/expenditure/ trading liability and subsequently the resulting company obtains some benefits, such benefits shall be taxable as profits and gains of business or profession in the hands of the resulting company.

7. **Bad debts recovery-** If the bad debts of the demerged company are recovered by the resulting company, then there will be no income under Section 41(4) as per the judgement in case of P.K. Kaimal. **[1980] 123 ITR 755 (Madras):**

Held

1. *Under the provisions of sub-section (4) of section 41, as in the case of sub-section* (i) *thereof, the continued existence of the business was not a criterion for its application, so*

that the ***common basis of applying both the subsections was that the identity of the assessee must be the same.***

2. ***The provisions of section 10(2)(xi) of the 1922 Act had been split into two sections, viz., sections 36(l)(vii) and 41(4) in the 1961 Act****. In the 1922 Act, the word "assessee" occurred in the main section but not in the proviso to avoid repetition. This proviso was transposed as section 41(4) in the 1961 Act. Hence, the absence of the words "the assessee" in section 41(4) was of no significance so as to change the concept of liability under the 1961 Act* vis-a-vis *the 1922 Act. The intention was to take away the benefit of an allowance already granted. Hence, if one did not get the benefit, he could not be taxed as realisation of a debt was not income by itself. The provision enacts a fiction and would have to be construed strictly on its language. This is also, in a way, a charging provision and the charge must be clearly made out. It was not made out on the successor.*

3. ***Hence, the identity of the assessee, who enjoyed the benefit of the allowance, had to be established to invoke section 41(4). In the present case, the firm, who had got the allowance, was dissolved and the assessee succeeded to the said business so that his identity was lost.***

4. *Thus, the impugned recovery of bad debt of the firm, made by the assessee as proprietor could not be taxed under section 41(4).*

It was held that the provisions of section 41 are applicable only in a case where the assessee obtains some benefit in cash or in kind in respect of a loss or expenditure or some benefit in respect of a trading liability by way of remission, which was earlier allowed as deduction. It was further held that the provisions of section 41 are applicable to the assessee who had taken the benefits or advantage or deduction and the intention was to take away an allowance granted. If one did not get that benefit, he cannot be required to pay the tax. **Realisation of a debt is not income.** The provision enacts a fiction and would have to be construed strictly on its language. This is also in a way, a charging provision and the charge must clearly be made out. **It is not made out on the successor.**

8. **Debts of demerged Company written off as bad debts by the resulting company-** Deduction shall be allowed to the Resulting Company

9. **Applicability of section 10AA/80IB/80IC/80IE/80IA-** Where an undertaking which is entitled to deduction under section 10AA/80IA/80IB/80IC/80IE is transferred before the expiry of the period specified in section 10AA/80IA/80IB/80IC/80IE in the scheme of demerger by the demerged company to the resulting company, then:

(A) No deduction shall be available to the demergd company for the previovus year in which demerger takes place as per Section 10AA(5)/80IA(12)/80IB(12/80IC(7)/80IE(6); and

(B) The provisions of Section 10AA/80IA/80IB/80IC/80IE shall apply to the resulting company in the same manner in which they would have applied to the demerged company.

Deduction under section 80-IA(12) shall not be available to resulting company if demerged company transfer the 80-IA undertaking to resulting company.

8. TAXATION OF DEMERGED COMPANY

1. By virtue of section **47(vib),** there will be no capital gains, when a capital asset is transferred, in a demerger, by the demerged company to the resulting company, provided that the resulting company is an Indian company.

2. Where any asset forming part of block of assets is transferred by the demerged company to the resulting company, then the written Down Value of block of assets shall be reduced by the written down value of assets transferred to the resulting company purusant to demerger.

9.Key notification:

Notification No. SO 3204(E), dated 14-10-2016, as amended by, Notification No. SO 2338(E), dated 26-7-2017.

Notified conditions under Explanation 4 - Where the split up or the reconstructed authority or body, constituted or established under a Central, State or Provincial Act, is an entity engaged in the generation or transmission or distribution of electrical power, or in all of these activities, such splitting up or reconstruction shall be deemed to be a demerger if the following conditions are fulfilled, namely :—

(*i*) that such reconstruction or splitting up has been made [1][by way of transfer of] any assets of the demerged company to the resulting company to give effect to the conditions mentioned in the Shareholders' Agreement and Share Purchase Agreement; and

(*ii*) that the resulting company is a [2][public sector company on the appointed date indicated in the scheme approved by the Appellate Tribunal constituted under section 410 of the Companies Act, 2013 in this behalf].

10.SOME LEADING CASE AUTHORITIES

1.In VODAFONE ESSAR GUJARAT LTD., IN RE (2012) 342 ITR 0135the facts were that Petitioner,80IA eligible company sought sanction of the Court to a scheme of arrangement under ss. 391 to 394 of Companies Act, 1956, which contemplates transfer of passive infrastructure assets of the petitioner and other group companies to another group company without

any consideration and thereafter amalgamation/merger of the transferee company with ITL.

Held, explicitly a scheme of tax evasion.

a.Transferor companies would be writing off the entire value of their assets spread over a period of time, thereby depressing their taxable income while the transferee company would be claiming depreciation on the same block of assets.This would result in double deduction.

b.The transferee company would be claiming benefit under s. 80-IA once again on the same set of assets on which the transferor companies have already claimed the same benefit once it becomes "eligible undertaking"—Since no liabilities are to be transferred, the expenses will be continued to be borne by the transferor companies which would artificially deplete their taxable profits—

c.That apart, the tax payable on capital gains on transfer of market value of the assets is sought to be evaded by the proposed scheme—Transfer is shown as a gift as a tax planning device thereby avoiding the capital gains tax at this stage—

d. Also, the transferee is to be merged with I Ltd. which transaction would again be exempt under s. 47 and thus capital gain tax would not be payable at that stage as well—Thus, income-tax in excess of Rs. 3,500 crores is sought to be evaded by such scheme—

e.Fact that the purpose of the proposed scheme is clear from difference in accounting treatments accorded to transferor companies having positive net worth and those having negative net worth.

f.Further, systematic amendment was made in the memorandum of association of the petitioner company for treating this transfer as gift solely for tax purposes—

g.It was nowhere mentioned in the original petition that it is a transaction of gift.It was only after objections were filed by the IT Department that the case of gift was made out for the first time in the rejoinder.Thus, the scheme is unreasonable, unfair and unjust.Therefore, the proposed scheme was not to be sanctioned.

2.Indo Rama Textile Ltd., ***In re (2012)212 Taxman 462(Delhi).***Facts in this case were that A company namely, 'IRSL' set up a spinning mill in year 1989. In 1993-94, IRSL set up a second unit in for expansion of spinning business as well as for commencing polymer production. The second unit, including the housing colony had been constructed out of the funds of the spinning business. In 2002, IRSL decided to vertically split its business by way of a scheme of arrangement and under the said scheme, spinning business was to be demerged as a going concern and transferred to IRTL, while the polymer business was to be retained by IRSL. In the year 2006, a scheme of amalgamation of applicant with IRTL was approved by the Court under section 391 of the Companies Act, 1956. According to applicant, section 2(19AA)(i) and (vi) stipulated that as a result of the demerger, all the property of the undertaking (as a going concern) being transferred had to become the property of the resulting company. The applicant thus filed instant application seeking a direction to IRSL to transfer the assets mentioned in the application including the part of the housing colony occupied/used by the

workers/employees of IRTL to the applicant or in the alternative to pay to the applicant the value of the aforesaid assets.

The contention was rejected.It was held that definition of 'demerger' as mentioned in section 2(19AA) would be satisfied if undertaking that is being demerged is hived off as a going concern, that means, if it constitutes a business activity capable of being run independently for a foreseeable future .Also held that in order to ensure that it is a going concern, Court while sanctioning a scheme can certainly examine whether essential and integral assets like plant, machinery, manpower, etc., without which it would not be able to run as an independent unit have been transferred to demerged company but it can not be concluded that in a scheme of demerger all properties of undertaking would become property of resulting company .

3.The key point to be seen is that while tax neutrality of demerger is the key factor there has also to be **a distinction drawn between commercial wisdom and tax evasion.**This was precisely the issue in **Vodafone Essar Gujarat Ltd.*v*.Department of Income-tax[2012] 24 taxmann.com 323 (Guj.)**Under a scheme of arrangement, passive infrastructure assets (PIAs) of Vodafone Gujarat along with six other companies were to be transferred to Vodafone Infrastructure so that passive infrastructure business and telecommunication service business could be segregated to enable business growth and maximization of value . Scheme did not envisage share exchange or transfer nor did it involve any consideration . Company Judge denied sanction to such scheme by holding

that sole object thereof was to avoid tax, stamp duty, etc.. As per Company Judge scheme did not involve any consideration for transfer which disqualified scheme to be treated as demerger under section 2(19AA) of the 1961 Act .However, it was found that such schemes were sanctioned by other High Courts. In those cases revenue department had not raised any objection It was held that If in its commercial wisdom, a company has decided to have a particular arrangement by which there may be even benefit of saving income-tax or other taxes, that itself cannot be a ground for coming to conclusion that sole object of framing scheme is to defraud Income-tax department .Also on basis **of judicial comity and principles of parity,** no contrary view could be taken in instant scheme.

4.In **Avaya Global Connect Ltd.*v.Assistant Commissioner of Income-tax, Range 7(3), Mumbai[2008] 26 SOT 397 (Mumbai)** Assessee-company was engaged in business of providing solutions in field of voice communications and manufacture of telephone instruments, EPBAX systems, etc. - It had two divisions, viz., Business Communications Division (BCD) and Tata Fone Division (TFD) - During relevant assessment year, it had transferred TFD to ITEL by way of scheme of amalgamation which had been approved by High Court . One of condition under section 2(19AA) is that resulting company should issue its shares in consideration of demerger to shareholders of demerged company and another condition is that shareholders holding at least three-fourths of value of shares of demerged company should be holding shares to that extent in resultant company .Since none of those conditions were satisfied in case of assessee, transfer

in instant case could not be regarded as 'demerger' within meaning of section 2(19AA).

Concluding remarks: No exception can be taken to demerger as a corporate restructuring mechanism for the efficiencies, survival and thrival of a business unit.The tax provisions related thereto are clearly an aid to the same.But the very fact that the provision has as many as six explanations appended to it brings fears of McDowellian proportions to the fore.The tax courts have more often than not come down heavily on demergers as violating the spirit of tax neutrality which is the underlying theme of s 2(19AA).While some would argue and quote approvingly **Lord Clyde in Ayrshire Pullman Motor Services and D.M Ritchie v IRC (1929) 14 TC 754** where he held ***:"Nobody is under the smallest obligation, moral or otherwise, so as to arrange his legal relationships to his business or to his property as to enable the Inland Revenue to put the largest possible shovel into his stores"***and would go on to rely on Azadi Bachao Andolan(263 ITR 706.SC) nearer home. ,for me,the moment a proposed demerger is covertly factored in with tax benefits not being a collateral outcome but a planned objective ,it becomes ABUSE OF PROCESS.The objective then is escaping the rigours of tax law. Plain words of law are seldom adequate to anticipate and forestall the multiplicity of ingenious schemes which are constantly being devised to evade taxation.

Lord Reid in *Greenberg v IRC* [1971] 47 TC 240 held *that those on the left seek to equate 'benefit cheats' with tax avoiders. There is an enormous difference. The taxpayer owns property and by legal means seeks to prevent*

the state taking it from him. 'Benefit cheats' seek by dishonest means to acquire the property of the state, which never belonged to them in the first place.