Recent Important Judgments

National Conference on Taxation
13th December, 2014
Baroda Branch of WIRC of ICAI

Tushar P. Hemani,
Advocate

Bilag Industries Pvt. Ltd. vs. DCIT
SCA No.24128 of 2005 (Guj HC)

- **Facts:**
- Notice u/s 148 was issued and re-assessment order was passed. Assessee preferred an appeal against the same before CIT(A) which came to be partly allowed.
- Both, assessee as well as Department, preferred appeal against order of CIT(A) before ITAT.
- Pending aforesaid appeals, notice was issued u/s 263 and hence, assessee preferred writ before Hon'ble Gujarat High Court.
- The short question for consideration before the Hon'ble High Court was whether notice u/s 263 could have been issued despite the fact that appeals preferred by assessee and revenue against order of CIT(A) partly allowing assessee's appeal against the concerned assessment order were pending before ITAT.

- **Held:**
- Hon'ble High Court was of the view that, applying the principles of merger, order passed by AO stood merged with the order passed by CIT(A) which was challenged before ITAT therefore following the ratio of *"CIT vs. Shashi Theater Pvt. Ltd. – 248 ITR 126"*, it was held that powers of revision do not extend to matters on which appellate authorities have given decisions.
- Further it was held that "the assessee was neither heard nor the revenue conducted any inquiry" the notice even otherwise deserves to be dismissed.

- **Issues:**

- Can Notice u/s 263 of the Act be challenged before the High Court in a Writ?

- Effect of clause (c) of Explanation to S.263 and the meaning of the phrase “matters not considered and decided in appeal”.

- Hearing and inquiry before notice u/s 263 of the Act.

CIT vs. Abhishek Corporation
ITR No.15 of 2003 (Guj HC)

- **Facts:**
- Assessee had collected a sum of Rs.1,88,59,400/- as "on money"/premium and disclosed Rs.30,00,000/- as undisclosed income being net income earned in the concerned project.

- The moot issue was whether the gross receipts collected as on money need to be taxed or only the income component therein.

- **Held:**
- Hon'ble High Court observed that in the following cases it was held that what can be taxed in hands of an assessee is only "Income" and not "gross receipts":
  - *CIT vs. President Industries – 258 ITR 654*
  - *CIT vs. Gurubachhan Singh J. Juneja – 302 ITR 63*
  - *CIT vs. Samir Synthetics Mill – 326 ITR 410*
- In view of the aforesaid legal position, it was held that not the entire receipts, but only the profit element embedded in such receipts can be brought to tax.

- **Issues:**

- Can the entire "On Money" receipts of a Builder be taxed presuming that all expenditure have already been claimed in the regular books of accounts?

- Does an assessee require proof of expenditure presumed to have been incurred out of gross receipts so as to restrict tax only on the income embedded therein?

- Disclosure and its language

Alliance Industries vs. ITO
Tax Appeal No.16 & 229 of 2001

&

ACIT vs. J.R. Dyeing & Printing Mills P. Ltd.
Tax Appeal No.146 of 2003
(Guj HC)

- **Facts:**
- AO made addition in respect of difference between closing stock as shown in regular books of accounts and that declared in statement furnished to the bank in respect of hypothecation facility availed by it.

- CIT(A) deleted the said addition but on Revenue's appeal, ITAT confirmed the same and hence, the assessee preferred tax appeal before Hon'ble High Court.

- **Held:**
- Hon'ble High Court following its earlier decision in the case of *"CIT vs. Riddhi Steel and Tubes Pvt. Ltd. – 40 taxmann.com 177"* decided the issue in favour of the assessee broadly on the following counts:

  - Assessee was subjected to Excise, VAT and also statutory audit under Companies Act and Income-tax Act, no errors were found in reports of such auditors;

  - For past eight years, assessee was consistently following method of accounting as provided u/s 145 and was valuing stock and inventory as provided u/s 145A;

- Hon'ble High Court further held that only on account of inflated statements furnished to banking authorities for availing larger credit facilities, no addition can be made if there appears to be a difference between stock as per books and as per statement furnished to the bank. If, for fulfilling margin requirements of bank purely on inflated estimate basis, when stock statement reflects inflated value of stock, in wake of otherwise satisfactory explanation, both for the purpose of value as well as quantity, no addition can be made for such difference.

- **Issues:**

- Quantity vis-à-vis Valuation difference

- Hypothecation vs. Pledge

- Physical verification of stock by the Banking Authority

- Validity of stock statement certificate filed before the Bank

ACIT vs. Geera Finance Ltd.
Tax Appeal Nos.67 & 68 of 2001 (Guj HC)

- **Facts:**
- AO made addition u/s 68 in respect of share application money received by the assessee in the very first year of its incorporation. ITAT deleted the said disallowance, against which the Revenue preferred tax appeal before Hon'ble High Court.
- **Held:**
- Hon'ble Court held that during the period immediately after its incorporation, when assessee had practically done no business so as to generate any income, no addition can be made in respect of share application money so received by the assessee.

- Hon'ble High Court relying upon the decision in the case of *"CIT vs. Lovely Exports – 216 CTR 195 (SC)"*, had held that if share application money is received by assessee-company from alleged bogus shareholders whose names are given to AO, then Revenue is free to proceed to reopen such individual assessments in accordance with law. However, such amount cannot be added u/s 68 in the hands of assessee-company.

- It was thus held that funds not having emanated from assessee-company, there was no warrant for making addition of the said amount u/s 68 in assessee's hands.

- **Issues:**

- Share application money received from tainted entities.

- Effect of finding that promoters/directors of the assessee company later on acquired the very shares at discounted rates from such share holders.

- Proof required for proving the genuineness of the transaction.

- Other ancillary and consequential issues.

Snesh Resort Pvt. Ltd. vs. SCIT
Tax Appeal No.113 of 2004 (Guj HC)

- **Facts:**
- Assessee-company was established to provide recreational facilities to its members by way of water park. It had collected "Membership fees" as receipt or advance for rendering such services to members over a period of time. However, assessee did not resume water park till the end of the year.
- AO treated such membership fees as revenue receipt and added the same to the income of the assessee.
- The said addition also came to be confirmed by CIT(A) and ITAT. Being aggrieved by the same, assessee preferred tax appeal before Hon'ble High Court.

- **Held:**
- Hon'ble High Court was of the view that since the assessee had not resumed the task of rendering services of water park to its members, amount received as membership fees was required to be considered as an advance and thereafter, as and when the business commenced, amount of liability was required to be taxed over a period of time proportionately.
- Only "Real Income" that too accrues and arises in the year under consideration can be taxed.
- It was thus held that amount of membership receipts shall be considered as income on proportionate basis in the year in which business of the assessee commenced.

- **Issues**

- Madras Industrial [225 ITR 802 (SC)] is on expenditure side whereas this decision is on Income side

- Concept of deferred income recognised

- If entire membership taxed in the year of receipt, corresponding expenditure over the period of membership is to be allowed.

- Accounting Treatment and its effect on taxability

CIT vs. Manjulaben M. Unadkat
Tax Appeal No.167 of 2003 (Guj HC)

- **Facts:**
- Assessee sold a property during the year under consideration and had declared capital gain arising consequent to such sale.
- AO referred the matter for valuation of such property to the valuation cell. On the basis of such valuation report, AO issued notice u/s 148 and framed assessment u/s 147 r.w.s. 143(3) after estimating capital gain based on such DVO's report.
- CIT(A) upheld the order of AO while ITAT allowed assessee's appeal. Aggrieved by ITAT's order, Revenue preferred an appeal before Hon'ble High Court.

- **Held:**
- Hon'ble High Court observed that S.55A specifically provides that if AO is of the opinion that value disclosed by the assessee is less that fair market value, only then he can make a reference to DVO. Formation of such opinion should have rational connection with the material brought on record. It should not be based on extraneous or irrelevant reasons.
- In this case, AO had not brought on record anything on record indicating that assessee had disclosed lesser selling price of the property. Therefore the reference to DVO itself was not permissible under the law.

- **Issues:**

- Effect of S.50C vis-à-vis S.55A of the Act.

- Can DVO's report be the basis for reopening?

- Validity of reference to DVO u/s 55A without there being any pending proceedings

Vishnubhai A. Patel vs. State of Gujarat SCA Nos.3541 of 2014 (Guj HC)

- **Facts:**
- Petitioner was granted registration under Gujarat Sales Tax [later converted into registration under Value Added Tax Act (VAT)] which came to be cancelled ab-initio by invoking revisionary jurisdiction u/s 75 r.w.s. 100 of VAT Act broadly on the count that Petitioner was engaged in billing activities without actual sale or purchase transaction.
- Aggrieved by the same, the assessee preferred a writ petition before the Hon'ble High Court.

- **Held:**

- S.75 of VAT Act empowers Commissioner with "Revisionary powers" to be exercised within prescribed time frame whereas S.27 of VAT Act specifically deals with power of Commissioner as to "Suspension or cancellation registration" granted to a dealer.
- Authority specifically invoked general revisionary powers u/s 75 of the Act. Hence, it was held that it was not a case of mere wrong reference to a statutory provision. It was rather a situation where the authority passed an order assuming jurisdiction under a wrong provision exercising powers of entirely different nature which powers were not available to him for revising order of registration.

- Also, Hon'ble High Court was of the view that order granting registration cannot be revised because of subsequent acts or omissions of a dealer which had no connection with the competent authority granting registration.

- **Issues:**

- Specific vs General Provision under a fiscal statute.

- Validity of the order under revision has to be seen as per the facts and law prevailing on the day on which such order is passed.

Ram Prakash Singeshwar Rungta vs. ITO SCA No.9032 of 2014 (Guj HC)

- **Facts:**
- AO passed an order u/s 179(1) of the Act whereby petitioners (i.e. Directors of Pvt. Co.) have been jointly and severally held liable for payment of outstanding demand of Pvt. Co. in which they were directors.

- Aggrieved by the same, assessee preferred a writ petition before the Hon'ble High Court.

- **Held:**
- Notice issued u/s 179 as well as order passed u/s 179(1) was completely silent on the steps taken by the revenue for recovery of outstanding dues.
- Also, nothing has been stated regarding misfeasance or breach of duty on the part of directors due to which tax dues of the company couldn't be recovered.
- In absence of any finding as required for invoking S.179, no order could have been passed u/s 179(1) of the Act.

- **<u>Issues:</u>**
- Provisions of S.179 requires that before initiating recovery proceedings against directors in respect of dues of a company, it is essential for revenue to establish such recovery cannot be made against the company - **Bhagwandas J. Patel vs. DCIT – 238 ITR 127 (Guj), Indubhai T. Vasa (HUF) vs. ITO – 282 ITR 120 (Guj) & Amit Suresh Bhatnagar vs. ITO –308 ITR 113 (Guj).**
- Further, directors can be made liable for such tax dues of company only if such non-recovery can be attributed to any gross neglect, misfeasance or breach of duty on the part of directors.

CIT vs. Bhagwati Spherocast Ltd. Tax Appeal Nos.223 of 2003 (Guj HC)

- **Facts:**
- Assessee is carrying on the business of manufacturing High Cast Iron specialized casting. Assessee installed certain equipment in the premises of its sister concern due to lack of space.
- Assessee had claimed lease rental during the year under consideration. AO was of the view that since the machinery were not used by the assessee but were used by its sister concern for which no rent was charged from it, it was deemed income for avoiding tax and therefore, the was not admissible.
- CIT(A) upheld the order passed by AO whereas ITAT decided the issue in assessee's favor. Aggrieved by the same, revenue preferred tax appeal before High Court.

- **Held:**
- Hon'ble High Court observed that for the use of such machinery by sister concern, assessee was recovering service charge of Rs.5,000/-.
- Further, assessee had paid lease rental in other years as well which came to be allowed after detailed scrutiny.
- Even ITAT had allowed lease rent in various other assessment years.
- It was thus held that, there being no material change in justifying the revenue to take a different view, Revenue couldn't have taken different and contradictory view during the year under consideration.

- **<u>Issues:</u>**

- Is it open to the Revenue to take a different and contradictory stand in each assessment year? [358 ITR 295 (SC)]

- Law of consistency and Principle of Res Judicata.

CIT vs. S.P. Mehta Memorial Trust
Tax Appeal Nos.187 of 2005 (Guj HC)

- **Facts:**
- Assessee is a Trust. AO found that the assessee-trust had invested certain amount in GLFL and claimed exemption u/s 11(5). AO was of the view that such investment was not a specified investment and hence, assessee was not entitled for exemption u/s 11(5).

- Accordingly, AO disallowed the claim of exemption and the entire amount was added to the assessee's income.

- CIT(A) as well as ITAT deleted the said addition. Hence, Revenue preferred an appeal before Hon'ble High Court.

- **Held:**
- Following the decision of Karnataka High Court in the case of *"CIT vs. Fr. Mullers Charitable Institutions – 363 ITR 230"*, it was held that it is only the income from such investment or deposit which has been made in violation of S.11(5) is liable to be taxed. Violation of S.13(1)(d) does not result in denial of exemption u/s 11 to the total income of the assessee and that where whole or part of relevant income is not exempted u/s 11 by virtue of S.13(1)(d) of the Act, tax shall be levied on relevant income or part of such relevant income at maximum marginal rate.
- Accordingly, it was held that if the prescribed conditions are violated, then only such income which has been earned in violation of S.11(5) shall loose exemption. Revenue's appeal was thus dismissed.

- **Issues:**

- In case of violation of any of the conditions stipulated u/s 13 of the Act, the assessee trust does not loose global exemption u/s 11. Only the income from such investments can be brought to tax.

Virendra R. Gandhi vs. ACIT
Tax Appeal No.230 of 2003 (Guj HC)

- **Facts:**
- AO made disallowance u/s 57(iii) in respect of interest paid by the assessee which came to be upheld by CIT(A) as well as ITAT. Being aggrieved by the same, assessee preferred tax appeal before Hon'ble High Court.

- **Held:**
- Hon'ble High Court observed that assessee was maintaining one common account in which all his income was deposited and from which, withdrawal for all expenditure was done.
- Further, interest on the same borrowing has been allowed in immediately preceding assessment year.

- Following the decision of Hon'ble Karnataka High Court in the case of *"Sridev Enterprise – 192 ITR 165"* it was held that it would not be equitable to permit the revenue to take a different stand subsequently in respect of amounts which were subject matter of previous year's assessment.
- Hon'ble High Court held that once interest is allowed in previous year and if there is no change in the condition, then it cannot be disallowed in subsequent year.
- Accordingly, the impugned addition was deleted.

- **Issues:**

- Interest disallowance can be made in the subsequent years only if the same is made in the year of borrowing.

- Can this principle be applicable in other expenditure too?

Smt. Neelamben Gopaldas Agarwal vs. ITO Tax Appeal Nos.600 of 2005 (Guj HC)

- **Facts:**
- Assessee received a gift from a non-resident Indian by was of cheque from his NRE account. AO held that financial capacity of donor was not proved u/s 68 and hence, the said gift was treated as unexplained cash credit u/s 68.

- **Held:**
- Hon'ble High Court observed that the gift received by cheque was backed by Gift Deed executed by donor and also the bank certificate.
- Assessee had produced complete details of identity of the donor.

- *"Murlidhar Lahorimal vs. CIT – 280 ITR 512"* - assessee cannot be asked to prove source of source.

- Gift Tax Act nowhere provides that a gift by somebody who is not creditworthy is not a gift.

- Thus, in light of the above discussed law and the evidences furnished by assessee being gift deed executed by donor, bank certificate and the fact that the gift has been received by cheque and that too from NRE account, the impugned addition was deleted.

- **Issues:**

- Impact of decision in the case of CIT vs. P. Mohanakala (291 ITR 278) (SC)

- No blood relations are necessary for proving the Gifts to be genuine. 215 CTR 303 (Raj)

- Source of Source

Shri Soneshware Cold Storage vs. ACIT Tax Appeal No.284 of 2002 (Guj HC)

- **Facts:**
- Assessee, engaged in the business of running cold storage, had claimed depreciation @ 33.33% in respect of "Cold storage building" treating it as "Plant" within the meaning of S.32 of the Act. AO treated such cold storage as "Building" and accordingly allowed depreciation on the same @ 15%.
- CIT(A) decided the issue in assessee's favor whereas ITAT decided the same in favor of Revenue. Aggrieved by ITAT's order, assessee preferred tax appeal before Hon'ble High Court.

- **Held:**
- Structure of the cold storage was permanent in nature and therefore, such cold storage plant will be governed by the term “Plant” as defined in the Act.
- Definition of the term “Plant” is inclusive and the word “plant” includes within its ambit buildings and equipment.
- Further, it was found that the building in assessee’s case was with insulated walls and was used as freezing chamber. It was a part of air-conditioning plant of cold storage.
- Hence, it was held that such building has to be treated as “Plant” and accordingly, depreciation was allowed on the same @ 33.33%.

- **Issues:**
- A specially build building which is being used as plant, can be treated as plant.
- Decision of Anand Theater [244 ITR 192 (SC)]

DCIT vs. Sayaji industries Ltd.
Tax Appeal No.331 of 2004 (Guj HC)

- **Facts:**
- Assessee paid technical know how fees during the year under consideration and claimed the same as "Revenue expenditure". AO was of the view that such expenditure shall fall within the ambit of S.35AB. Accordingly, AO held that assessee couldn't have claimed entire deduction in the assessment year under consideration. Rather, assessee ought to have amortized the same as provided u/s 35AB and spread it over six years.
- CIT(A) decided the issue against the assessee whereas ITAT took a view in assessee's favor. Aggrieved by ITAT's order, Revenue preferred tax appeal before High Court.

- **Held:**
- Hon'ble High Court observed that the expenditure was purely "Revenue" in nature. Assessee had not purchased or obtained ownership of such technical know how. Assessee was merely a licensee under which it could use a know-how for the purpose of its business temporarily.
- It was further observed that Hon'ble Apex Court, in the case of *"CIT vs. Swaraj Engines Ltd. – 309 ITR 443"*, had held that for the applicability of S.35AB, nature of expenditure is required to be decided at the threshold because if the expenditure is found to be "Revenue" in nature, then S.35AB shall not apply. However, if the expenditure is "Capital" in nature", then question of amortization and spread over, as contemplated by S.35AB, would certainly come into play.

- It was further observed that CBDT had come out with a Circular No.421 dated 12.6.85 wherein it was clarified that the new section 35AB was inserted with a view to provide further encouragement for indigenous scientific research. Such provision was made for making available benefits which were hitherto not available to manufacturers while incurring expenditure for acquisition of technical know how. If such expenditure was “capital” in nature prior to insertion of S.35AB, no deduction could have been claimed. Thus, S.35AB was an enabling provision and not for limiting benefits which were already existing.
- In light of the above, it was held that S.35AB is not applicable in case of revenue expenditure.

- **Issues:**

- Reconciliation with decision in the case of Madras Industrial [225 ITR 802 (SC)]

- Tests for deciding whether the expenditure on Know-how is capital or revenue

DCIT vs. Gujarat Filaments Ltd.
Tax Appeal No.437 of 2000 (Guj HC)

- **Facts:**
- Assessee changed its method of providing depreciation from "Straight Line Method (SLM)" to "Written Down Value (WDV)" during the year under consideration which resulted into shortfall in depreciation. Such shortfall was charged to P&L account. AO disallowed claim of such additional depreciation on the count that S.205 of Companies Act does not entitle an assessee to claim depreciation for earlier years placing reliance on "McDowell and Co. vs. CTO – 154 ITR 148".
- On appeal, CIT(A) upheld assessee's contention and directed AO to recompute book profit without disallowing additional claim of depreciation and the said view was upheld by ITAT. Hence, revenue preferred tax appeal before High Court.

- **Held:**
- Hon'ble High Court held that change in method of accounting for depreciation from SLM to WDV was in accordance with Accounting Standards issued by ICAI.
- Hon'ble Apex Court, in the case of *"Apollo Tyres Ltd. vs. CIT – 255 ITR 273"*, had held that AO, while computing book profit, has only the power of examining whether books of accounts are certified by authorities under Companies Act. AO has limited power to make adjustments to such book profit as governed vide *Explanation* to the said section. AO has no jurisdiction to go behind the net profits shown in P&L account except to the extent of prescribed adjustments.

- Further, in the case of *"CIT vs. Rubamin (P.) Ltd."*, Hon'ble Gujarat High Court was called upon to decide as to whether ITAT was right in upholding deletion of addition made in respect of difference in amount of depreciation as a result of change in method of providing depreciation from SLM to WDV. Hon'ble High Court, following the ratio laid down in the case of Apollo Tyres Ltd., decided the said issue in assessee's favor.
- Following the ratio laid down in "Rubamin (P.) Ltd.", the issue was decided in assessee's favor and deletion of addition to books profit in respect of additional depreciation consequent to change in method of accounting for depreciation was upheld by High Court.

- **Issues:**

- Treatment of income on account of change in the method of depreciation.

- Treatment of additional claim / write back of depreciation in the books of account upon change in the method of calculating the same.

CIT vs. Rashmikaben K. Thakkar
Tax Appeal No.517 of 2014 (Guj HC)

- **Facts:**
- Assessee received certain amount on redemption of Deep Discount Bonds (DDB) of Sardar Sarovar Narmada Nigam Ltd. (SSNNL). AO treated interest received from SSNNL as “Income from other sources”.
- CIT(A) dismissed assessee’s appeal whereas ITAT held that such income has to be taxed as “Capital Gain” and not “Income from other sources”.
- Aggrieved by the same, Revenue preferred tax appeal before High Court.

- **Held:**
- Hon'ble High Court observed that DDB are capital assets and hence, profit arising on redemption thereof is to be treated as capital gain.
- It was further observed that ITAT, while allowing assessee's appeal, had directed the AO to treat redemption value less issue price as capital gain and tax the same accordingly.
- Hon'ble High Court was in complete agreement with the view taken by ITAT and hence, Revenue's tax appeal was dismissed.

- **Issues:**
- Benefit of indexation
- CBDT Circular Nos. 2/2002 dated 15/02/2002 & 4/2004 dated 13/05/2004 and their impact on taxability
- Accrual of interest over the period of Bond
- TDS

CIT vs. Sandvik Chokshi Ltd.
Tax Appeal No.1071 of 2014 (Guj HC)

- **Facts:**
- Assessee is a joint venture (JV) company formed by "Sandvik AB Sweden" ["Sandvik" for short] and "M/s. Chokshi Tubes Coo. Ltd." ["Chokshi" for short]. The JV company acquired an undertaking of Chokshi as going concern on "as is where is basis" at a slump price without assigning values to individual assets. Assessee claimed depreciation on value attributable to depreciable assets which came to be disallowed by AO by invoking *Explanation* 3 to sub-section (1) of S.43 on the count that no amount was mentioned in the agreement as to acquisition of the said undertaking.
- CIT(A) and ITAT allowed such claim of depreciation. Hence, revenue preferred tax appeal before High Court.

- **Held:**
- Hon'ble High Court observed that depreciable assets had been valued by approved valuer and the same had been duly recorded in books of accounts. Hence, onus was on part of revenue to prove that such valuation was incorrect which was not done in the instant case.

- Further, it was a slump sale and no individual value was assigned to any particular asset. In the hands of the transferee, it was open to assign any value as it deems fit as it has paid consideration for the same.

- *Explanation* 3 to S.43(1) can be invoked if AO is satisfied that the main purpose of transfer of assets, direct or indirectly to the assessee, is reduction of liability of income-tax by claiming depreciation with reference to enhanced cost.

- Thus, it was finally held that Explanation 3 to S.43(1) was not required to be invoked in assessee's case.

- **<u>Issues:</u>**

- Commercial motive

- Applicability of provisions of S.43(6)(c)(i)(C) of the Act.

CIT vs. Prayas Engineering Ltd.
Tax Appeal No.1237 of 2014 (Guj HC)

- **Facts:**
- AO made disallowance u/s 40(a)(ia) for short deduction of tax consequent to application of incorrect section of TDS. The said disallowance was deleted by ITAT and hence, Revenue preferred tax appeal against the same before Hon'ble High Court.

- **Held:**
- Hon'ble High Court observed that as per assessee, S.194J was applicable which is contrary to the view of AO. Hence, AO concluded that there was short deduction of tax and made disallowance u/s 40(a)(ia).

- ITAT had held that shortfall in TDS was on account applicability of different provision of TDS. No doubt assessee is in default as per provisions of S.201 but disallowance of expenditure u/s 40(a)(ia) is not permissible. Accordingly, AO was directed tot delete the said disallowance.

- Hon'ble High Court approved the decision of the ITAT that short deduction is no ground for invoking provisions of S.40(a)(ia) of the Act.

- **<u>Issues:</u>**

- Section 40(a)(ia) has two limbs:
  - Non-deduction of tax at source
  - After deduction, non-payment thereof into the Govt. treasury

- Shortfall in deduction does not come within the purview of S.40(a)(ia) of the Act.

CIT vs. Shree Govindbhai Jethalal Nathvani Charitable Trust
Tax Appeal Nos.306 of 2014 (Guj HC)

- **Facts:**
- Assessee trust moved an application in Form No.10G for grant of approval u/s 80G(5) of the Act. CIT called for various details from which he found that trust had failed in making expenditure to the extent 85% in FY 2011-12 which was necessary as per the provisions of S.80G(5). Hence, CIT rejected application moved by the assessee seeking approval u/s 80G(5).
- On appeal, ITAT held that CIT had materially erred in refusing to grant recognition u/s 80G(5) and hence, order of CIT was set-aside and CIT was directed to grant recognition u/s 80G(5). Being aggrieved by the same, Revenue preferred tax appeal before the High Court.

- **Held:**
- Hon'ble High Court observed that main objects of the trust as per trust deed are educational, social activities, medical, etc.
- It was further observed that, in the case of *"M.M. Desai Charitable Trust vs. CIT – 246 ITR 546"*, it has been held that while considering certification of institution for purpose of S.80G(5), the authority granting approval cannot act as an Assessing Officer and the inquiry should be confined to finding out if institution satisfies prescribed conditions.
- Such prescribed conditions have been duly satisfied in assessee's case. Hence, in light of the above, Hon'ble High Court held that ITAT had not committed any error in setting aside order of CIT.

- **Issues:**

- Even when 85% of the amount of the donations received by the Trust is not spent in a given year, approval u/s 80G cannot be denied.

- Similar law for S.12AA registration also.

CIT vs. Suzlon Energy Ltd.
Tax Appeal No.1437 of 2005 (Guj HC)

- **Facts:**
- AO rejected assessee's claim u/s 80IB by treating interest on fixed deposits as "other income".

- ITAT held that only "net interest" is to be excluded while working out deduction u/s 80IB.

- Being aggrieved by the same, revenue preferred tax appeal before Hon'ble High Court.

- Hon'ble High Court observed that Hon'ble Apex Court, in the case of "ACG Associated Capsules Pvt. Ltd. vs. CIT – 343 ITR 89 (SC)", has held that 90% of not the gross rent or gross interest but only net interest or net rent which has been included in profits of business of the assessee as computed under the head "Profits and gains of business or profession" was to be deducted under clause (1) of Explanation (baa) to S.80HHC for determining profits of the business.
- In light of the aforesaid decision, it was held that ITAT was right in holding that net interest was to be excluded while working out deduction u/s 80IB instead of gross income. Revenue's appeal was dismissed accordingly.

- **<u>Issues:</u>**

- 80HHC vs 80IB

- Can principle of "Netting off" be applied to all items of income?

- Can it be applied to Duty Drawback?

ACIT vs. Growth Avenues Ltd.
Tax Appeal No.1799 of 2005 (Guj HC)

- **Facts:**
- Assessee incurred expenditure on purchase of new software and claimed it as revenue expenditure.

- AO treated the same as capital expenditure and disallowed the same.

- ITAT decided the issue in assessee's favor and hence, aggrieved by ITAT's order, revenue preferred tax appeal before Hon'ble High Court.

- **Held:**
- Hon'ble High Court observed that in the case of *"CIT vs. N.J. Invest (P.) Ltd. – 32 taxmann.com 367 (Guj)"*, it was held that software development and up gradation would included data administrative services, information and technology support services, software asset management services, etc. which was in the nature of maintenance, back up and support service to existing hardware and software and did not give any fresh or new benefit and therefore the same shall be treated as revenue expenditure.
- It was thus held that ITAT had rightly concluded that expenditure on purchase of new software was revenue in nature.

- **Issues:**

- Application software vs Operating software

- Enduring benefit

- Custom made specially developed software vs packaged software.

Chartered Motors Pvt. Ltd. vs. ACIT IT(SS)A No.26 of 2012 (A'bad ITAT)

- **Facts:**
- Assessee-company had received share application money from various companies by cheque.
- AO recorded statement of directors of such companies which had applied for shares of the assessee-company. Such statements were recorded behind the back of the assessee and in spite of categorical request for cross examination of such directors, no such cross examination was granted. Finally, such statements were used against the assessee and addition was made u/s 68 in respect of such share application which came to be confirmed by CIT(A).
- Aggrieved by the same, assessee preferred appeal before ITAT.

- **Held:**
- Hon'ble ITAT observed that assessee had placed on record various documentary evidences of share applicants (viz. MOA, AOA, share application form, board resolution, certificate of incorporation, certificate of commencement, acknowledgments of ITR, audited accounts) so as to prove the identity, genuineness and creditworthiness of such share applicant companies.
- Hon'ble ITAT was of the view that having furnished aforesaid documents, initial onus cast on the assessee shifted on the revenue and it was for the revenue to bring on record relevant material to show that why in spite of above documents, addition was still required to be made in the hands of the assessee.

- Revenue had sought to discharge such onus on the basis of statements of directors of share applicants.
- Hon'ble ITAT was of the view that statements of such directors were self serving evidences and the same cannot be taken as evidence against the assessee unless assessee was allowed sufficient opportunity of cross examination.
- Since no real opportunity to cross examine such directors was allowed, Hon'ble ITAT held that statements of such persons cannot be read against the assessee in light of the followings:
  - ✓ *CIT vs. Indrajit Singh Suri – 33 taxmann.com 281 (Guj)*
  - ✓ *DCIt vs. Mahendra Ambalal Patel – 40 DTR 243 (Guj)*

- ✓ *Heirs and legal representatives of Late Laxmanbhai S. Patel vs. CIT – 174 taxman 206 (Guj)*
- ✓ *CIT vs. Kantibhai Revidas Patel – Tax appeal 910 of 2013*

- In absence of these statements, no other material was brought on record by Revenue to show that why amount in question should be treated as income of the assessee.
- It was thus held that addition made solely on the basis of inadmissible and unreliable material cannot be sustained. Accordingly, the impugned addition was deleted.

- **Issues:**

- Breach of Principles of Natural Justice and its consequences
- Statements cannot be replied upon against the assessee without affording an opportunity of cross examination
- Self serving statements can not obviate documentary evidences available on record

Shri Puransingh M. Verma vs. CIT
Tax Appeal No.24 of 2003 (Guj HC)

- **Facts:**
- Assessee derived income from nursery and claimed the same as exempt income u/s 10(1) since it was agricultural income. AO denied the said exemption.
- CIT(A) held that income derived from nursery is agricultural income and hence, exemption can be availed u/s 10(1) of the Act.
- ITAT held that such income is not agricultural income and hence, being aggrieved by the said order, assessee preferred tax appeal before the Hon'ble High Court.

- **Held:**
- Hon'ble High Court observed that assessee grows plants on land owned by it. During the course of growing and nurturing plants on the land, assessee carries out certain functions such as tilling the soil, weeding, watering, manuring, etc. and finally the plants are made ready for sale.
- All such tasks involve human skill and effort. When plants are established in soil, only then they are shifted in suitable containers or appropriate places of land.

- It was thus held that sale proceeds from business of nursery carried on by the assessee constitutes income from agriculture. Reliance was placed on the followings:
  - ✓ *CIT vs. Raja Benoy Kumar Sahas Roy – 32 ITR 466 (SC)*
  - ✓ *CIT vs. Green Gold Tea farmers P. Ltd. – 299 ITR 262 (Uttrakhand)*
  - ✓ *A.T. Parthasarathiah & Bros. vs. CIT – 48 ITR 830 (Mysore)*
  - ✓ *CIT vs. Soundarya Nursery – 241 ITR 530 (Madras)*

Guru Ashish Ship Breakers vs. ACIT Tax Appeal No.732 of 2005 (Guj HC)

- **Facts:**
- A search action u/s 132 took place and assessment was framed after making several additions. When the matter reached before ITAT, Hon'ble ITAT observed that similar action was made in block assessments of two other concerns and notices u/s 148 were issued to consider the discrepancies in material found during the search. However, no notice u/s 148 was issued in assessee's case. Hence, ITAT directed AO to issue notice u/s 148 to examine discrepancies in assessee's case.
- Aggrieved by the said order of ITAT, assessee preferred tax appeal before Hon'ble High Court.

- **Held:**

- Hon'ble High Court, replying upon the decision in the case of *"Adani Exports vs. DCIT – 240 ITR 224 (Guj)"*, held that directions given by ITAT to the AO to issue notice u/s 148 were contrary to law and the same deserves to be quashed and set-aside.

- **Issues:**

- ITAT cannot substitute the belief about escapement of income. AO alone can have "reason to believe" for reopening.

Thank You