

Note on Assessment and Appellate Proceedings

Recent Judicial lessons and feedback:

Group M. Media India Pvt. Ltd vs. UOI (Bombay High Court)

.....In this case, the return was filed on 29th November, 2015, yet there is no reason why the Assessing Officer has not processed the refund and taken a decision to grant or not grant a refund under Section 143(1D) of the Act. This attitude on the part of the Assessing Officer leaves us with a feeling (not based on any evidence) that the Officers of the Revenue seem to believe that it is not enough for the assessee to please the deity (Income Tax Act) but the assessee must also please the priest (Income Tax Officer) before getting what is due to him under the Act. The officers of the State must ensure that their conduct does not give rise to the above feeling even remotely....

HIGH COURT OF JUDICATURE AT ALLAHABAD

M/S Sahara India Mutual Benefit Col Ltd.

INCOME TAX APPEAL DEFECTIVE No. - 112 of 2000

The proceedings relating to the quasi-judicial functions are not one's private affairs-such as going to the market and not keeping the record of enquiries or bargains carried out with the shopkeepers. ♦ Non-keeping of such records clearly leads to presume that the authority concerned has either not carried on such functions or has proceeded without having met with the mandatory pre-requisite conditions

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Court No. - 34
Case :- WRIT TAX No. - 805 of 2013
Petitioner :- Shreemati Devi
Respondent :- The Commissioner Of Income Tax (Central) And Another

OrderDate14.9.2016/

Interest of public revenue does not authorize Revenue Authorities to work without any authority and create or cause all kinds of harassment to innocent people on the pretext of statutory authority, Revenue Authorities cannot claim liberty/privilege so as to deprive an individual, his property and that too in a manner, which has been found quite unreasonable and wholly without jurisdiction."

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2424 OF 2016

WITH

WRIT PETITION NO. 2425 OF 2016

Shapoorji Pallonji and Co. Pvt. Ltd. .. Petitioner

v/s.

Dy. Commissioner of Income Tax

1) & Anr. .. Respondents

DATED : 19th OCTOBER, 2016.

In terms of Section 143(1) of the Act, the Assessing Officer is required to process a return of income by making adjustment as specified thereunder and sending an intimation to the assessee. This intimation is required to be sent before the expiry of one year from the end of the financial year in which the return of income is filed, if any demand is payable or an amount is refundable to an assessee. In terms of Section 143(1D) of the Act, the Assessing Officer has a discretion whether to process or not a return of income under Section 143(1) of the Act, where notices have already been issued under Subsection (2) to Section 143 of the Act. In the facts of this case, the Assessing Officer is unable to process the return of income not of his volition but because the technology employed by the Income Tax Department fails him and the Act. On being asked, Mr. Malhotra, learned Counsel appearing for the Revenue, on instructions, states that the systems difficulty continues till date even though the Commissioner of Income Tax has taken up the issue with the System Administrator, it is not possible to state how much longer it would take to fix the problem.

4. The convenience of modern technology and computerization of the system is to enable / assist the Income Tax Officers to discharge its statutory obligations under the Act in a more transparent and time efficient manner and not as a substitute for human action. Therefore, where the computer system, as operating, is an hindrance to the discharge of statutory obligations, then the least that would be expected is that the senior most Officers of the Department would address this issue on warfooting.

This inability to process a return of income would cause tremendous hardship to a large number of assesseees, particularly retired individuals and others similarly placed who would be entitled to refund of taxes as a large quantum of amounts received by them would be subject to Tax Deducted at Source, when the tax payable by them is minimal. the above view, we direct the Chief Commissioner of Income

Tax to examine and attempt to resolve the issue on warfooting to

ensure that the computer system runs in accord with the Act. In case, it is not possible to resolve the issue, then come up with an alternative so that the return of income can be processed and grant of refund be considered by the Assessing Officer. We direct a responsible and senior Officer of the Revenue to file an affidavit setting out the steps taken by

it so far to rectify the system, including the time within which the system would be rectified and the alternative method by which the return of income could be processed under Section 143(1) of the Act. We expect the Department to give this the highest attention as this system failure would affect a large number of assesseees.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

-
INCOME TAX APPEAL NO.362 OF 2014

-
The Commissioner of Income Tax-1, Mumbai ... Appellant

Versus

ALSTOM Projects India Limited ... DATE : 14 SEPTEMBER 2016

The Revenue must apply the law equally to all and

cannot take inconsistent position in law (de hors the facts) to apply

different standards to different assessee. The administration of the tax

laws should not degenerate into an arbitrary and inconsistent application

of law dependent upon the Assessee concerned.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

-
WRIT PETITION NO.1344 OF 2000

-
Dr. Gautam Sen ... Petitioner

Versus

Chief Commissioner of Income-Tax And Others ...

We note that this action on the part of the Respondents-revenue to issue the impugned notice ignoring the appraisal report is highly deplorable. We live in a Country governed by laws. The Officers of the Income Tax Department are obliged to proceed in accordance with the statutory provisions and not on their whim and fancy. The Officers hold power in trust and must ensure that no citizen is harassed by sending him notices, when on the basis on its own record, such notices are not sustainable. We trust that the Income Tax Department would adopt a standard operating procedure which would provide for appropriate safeguards before issuing notices under Chapter XIVB of the Act. This alone would ensure that Officers of the Revenue act in terms of the

mandate provided in the Act.

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 21.10.2016

+ W.P.(C) 7620/2011

SUSHILA DEVI

This court is of opinion that the respondent's recalcitrance is not mere inaction; it is one of deliberate harassment. The obdurate refusal of the respondents to release the jewellery constitutes deprivation of property without lawful authority and is contrary to Article 300-A of the Constitution of India. The petition has to succeed; a direction is issued to the respondents to release the jewellery within two weeks and in that regard intimate to the petitioner the time and place where she (or her representative) can receive it. The respondents shall also pay costs quantified at `30,000/- to the petitioner, within four weeks, directly.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO.573 OF 2014**

The Commissioner of Income Tax, TDS, Mumbai ..Appellant

Versus

M/s.Oberoi Constructions Pvt.Ltd.

DATE : 1 OCTOBER 2016

The officers of the Revenue administering the TDS provisions are not outside the scope of the Act and orders passed under the Act in respect of the character of the payment made under the Act are binding upon them. The fact that at the time the order of the ACIT (TDS) was passed, there was basis to do so does not mean that orders passed on income in the hands of the recipients will have no bearing in deciding its validity. One must not ignore the fact that this order of the TDS officer is tentative in nature and its existence would depend upon the nature of receipt in the hands of the recipient and subject to the orders passed in respect thereof by appropriate court.

DIT (IT) v/s. Credit Agricole Indosuez 377 ITR 102, we had observed as under:“

.....
In matters of tax, justice requires that there must be certainty of law which presupposes equal application of law. Thus, where the issue in controversy stands settled by the decisions of this court or the Tribunal in any other case and the Revenue has accepted that decision then in that event the Revenue ought not to agitate the issue further unless there is some cogent justification such as change in law or some later decision of an higher forum, etc. then in such cases appropriately the appeal memo itself must specify the reasons for preferring an appeal failing which at least before admission the officer concerned should file an affidavit pointing out the reasons for filing the appeal. It is only when the court is satisfied with the reasons given, that the merits of the issue need the examine of purposes for admission (please see I.T.A. No. 37 of 2013 CIT v/s. Procter and Gamble Home Products Ltd. Dated January 19, 2015 (2015) 377 ITR 66 (Bom); ITA No.269 of 2013 CIT v/s. SBI dated February 4, 2015 (2015) 375 ITR 20 (Bom); ITA No.330 of 2013 DIT v/s. Citibank N. A. dated March 11, 2015 – (2015) 377 ITR 69 (Bom).... (vi) Filing of appeal under Section 260A of the Act is a serious issue. The parties who seek to file such appeals (which are normally after two tiers of appeal before the

authorities under the Act) must do so after due application of mind and not raised frivolous/ concluded issues. This is certainly expected of the State.”

Refer case of J.C. Thakkar Vs. CIT [27 ITR 658 (Bom)] and the decision of the High Court of Madras in the case of H.C. Kothari and others Vs. CIT [20 ITR 579 (Mad)] in support of the proposition that if an income falls under more than one head, the assessee has the option of choosing the head of income which makes the burden of the assessee lighter.(**Income Tax Appellate Tribunal – Mumbai Hansat Maneklal Savani, Mumbai vs Assessee on 12 December, 2013**)

SHREE SIDHNATH ENTERPRISE.

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Date : 28/03/2016

Insofar as the petitioner is concerned, as stated in the affidavit-in-reply, it is its business to receive cash and issue cheques in lieu thereof for which it charges commission. Under the circumstances, in the absence of any material to show that the cash in respect of which the cheque had been issued travelled back to the petitioner, one fails to understand as to how such amount may be said to be the undisclosed income of the petitioner. Under the circumstances, on the facts as recorded in the reasons as well as in the affidavit-in-reply, in the opinion of this court, the Assessing Officer could not have formed the belief that income chargeable to tax has escaped assessment.

In the opinion of this court, in case of a survey under section 133A of the Act, what is material are the suppressed transactions, if any, which are discovered as a result of the survey. In the present case, no material has been discovered during the survey warranting any further inquiry by the survey party. If consequent upon the survey, the survey party discovers any incriminating material, it may call upon the assessee to explain the same, but when no incriminating material is found, the survey party cannot assume the jurisdiction of the Assessing Officer and call for information in relation to the material which is already on record. In case any concealed income has been discovered, it may justify reopening the assessment. In the present case, no concealed income has been discovered by the survey party, but the assessment is sought to be reopened for the purpose of verification of facts.

1. Assessment Proceedings

- 1.1. *Transfer under section 127: Between two Assessing Officers with different CCIT/DGIT: held in Norul Islam Educational Trust, order dated 21/10/2016, held absence of disagreement cannot amount cannot amount to agreement under section 127(2)(C).*
- 1.2. *(SC) Babita Leela (387 ITR 305), held competent authority to lodge complaint before criminal court would be authority to whom appeal **ordinarily** lie from order of AO and ITO, held DDIT(Investigation) has no powers to lodge complaint before criminal court.*
- 1.3. *Shasun Chemicals (SC), order dated 16/09/2016, held a benefit given u/s 35 D for first year, cannot be rejected in subsequent years.*

- 1.4. (SC) *Hissaria Brothers (386 ITR 719)*, held u/s 275 for penalty u/s 271 D, time limitation will be 275 (1)(c).
- 1.5. (SC) *Awasthi Traders (388 ITR 185)*, held depreciation is separately entitled from estimated income.
- 1.6. (SC) *P.G. & Sawoo (385 ITR 60)*, held income accrued when right to receive income is established.
- 1.7. (Delhi High Court) *S.T. Micro (384 ITR 550)*, held when order is dispatched then same can be set to be passed u/s 153.
- 1.8. (Delhi High Court) *Tata Tele Services (386 ITR 30)*, held u/s 143(1D) on objective basis decision on refund issuance has to be taken.
- 1.9. (SC) *Rayala Corporation (386 ITR 500)*, held rental income as business income where properties were leased, when business stopped to earn rentals.
- 1.10. (SC) *V.S. Dempo (387 ITR 354)*, held scope of deeming fiction u/s 50, cannot be stretched to other provision in Capital Gain Head.
- 1.11. (Delhi High Court) *Shakti Bhog (388 ITR 280)*, held even if a return is declared as invalid, self assessment tax cannot be refunded.
- 1.12. *Scope of enquiry u/s 133(6)*, held larger public interest would override other considerations.
- 1.13. (Punjab & Haryana High Court) *Jawahar Lal Oswal (382 ITR 453)*, held if's and but's in deeming fiction without incriminating material will not allow department to make any addition.
- 1.14. **Reassessment Provisions**
 - a) *G&G Pharama India Limited (384 ITR 147)*, non application of mind in reasons recorded.
 - b) *H.R. Mehta (387 ITR 561)*, opportunity of cross examination and confrontation of back material.

- c) *Softline Creations (387 ITR 636)*, production of creditor/director u/s 68.
- d) *Rajasthan high court M/s Shub Mines Pvt. Ltd. order dated:03/05/2016 (D.B. Income Tax Appeal No. 96/15)*
(In the considered opinion of this court, in absence of any cogent evidence on record establishing that the money shown to have received as share application money, was as a matter of fact, unaccounted money belonging to the assessee company, the finding arrived at by the AO, which is based on suspicion, has rightly been held not sustainable in the eyes of law.)
- e) *Agyaram (386 ITR 545)*
- f) *Indulata (384 ITR 337)*
- g) *Asharam Ashram (386 ITR 222)*
- h) *Delhi high court G.K.Consultants order dated 24/05/2016 entry operator cases how to be assessed : commission to be assessed in hands of entry provider and sec.68 in hands of beneficiary and no addition/reopening in hands of conduit company*

1.15. Search Assessment Provisions

- a) *(Guj.) Desai Constructions (387 ITR 552)*, incriminating material (153 A).
- b) *(Guj.) Soumya Constructions (387 ITR 529)*, incriminating material (153A).
- c) *(Raj.) Umlesh Goyal (387 ITR 575)*, search person specific.
- d) *Nikki Drugs (386 ITR 680)*, 153 (c) provisions explained.
- e) *(Kerala) (386 ITR 597)*, 153 (c) provisions explained.
- f) *(Karnataka) (153(c)) (385 ITR 346)*, 153(c) provisions explained.

g) (Bom.) *T. Ladha & Co.* (386 ITR 245), 132 (4) statement significance.

1.16. *TDS Credit u/s 199* (386 ITR 564)

1.17. *Revision u/s 263*

a) (Patna High Court) *Satish Kumar Keshri* (387 ITR 447)

b) (Bom.) *Gera Development* (387 ITR 691)

c) (Bom.) *Nirav Modi* (138 DTR 81)

1.18 Supreme court in *Vatsala Shenoy* on capital gains taxation in order dated 18/10/2016 Held section 45 is a deemed income provision and accrues at a fixed point of time & explained section 50B scope of slump sale by observing “It is stated at the cost of repetition that not only value was assigned to individual assets, even the liabilities were taken care of when the amount of sale was apportioned among the outgoing partners, i.e. the assesses herein”

1.19 Bombay high court in *Ghasiram Gokalchand* 1 SEPTEMBER, 2016

7. The fact that the Respondent Assessee had itself disclosed

additional income during the course of the assessment proceedings, would

not by itself lead to the conclusion of concealment of income. An

admission made by a party contrary to facts on record would not est
op a

party, from pointing out/explaining the facts already on re
cord in a

correct although a different perspective. This is more particularly so, if
the party is to be visited with an imposition of penalty. So far as intent is
concerned, the same is of no consequence in interpreting a fiscal statute,
while imposing a penalty for a breach of law. Penalty would visit a party,
who has breached the law in fact and not on the basis of supposed intent.

1.20 Share premium justification prior to sec. 56 amendment by Finance Act 2012: Latest Hyderabad ITAT ass fav detailed order in case of Hariom Concast case order dated 5/10/2016

1.21 Calcutta High Court in **CIT v. Ananda Bazar Patrika Pvt. Ltd. (1979) 116 ITR 416 (Cal)**, held that "once the basis for initiation of penalty proceedings was altered or modified by the first appellate authority, the Assessing Officer has no jurisdiction thereafter to proceed on the basis of the findings of the first appellate authority."

1.22 Bombay high court in Magnum Trading Corpn. 21/10/2016 Held once transaction is accepted as genuine in hands of recipient, no

different view possible in hands of payer, because both are “two sides of same coin”

1.23 Section 50C DVO reference Calcutta high court in 372 ITR 83 AO's duty to offer DVO reference to assessee

1.24 Cash deposits apart from sale deed in bank a/c AO's duty to call buyer where bank a/c has very limited entries apart from stated cash deposits etc Delhi ITAT in Ami Lal Yadav order dated 27.09.2016

1.25 Section 50C: Tenanted premises : Rent Capitalisation method Poddar Sons HUF Delhi ITAT order (123 ITR 68 Applied)

**1.26 IN THE HIGH COURT OF JUDICATURE AT BOMBAY ORDINARY
ORIGINAL CIVIL JURISDICTION INCOME TAX APPEAL NO.2336 OF 2013**

Premkumar Arjundas Luthra (HUF) ..Respondent **DATE : 25TH APRIL, 2016**

7. An appeal is filed with the CIT(A) from appealable orders listed in Section 246A of the Act. We find that the procedure in appeal before the CIT(A) and the powers of the CIT(A) are governed by Sections 250 and 251 of the Act respectively. The relevant provisions for consideration are as under: “

Procedure in appeal

250 (1)

(2)

(3)

(4) The Commissioner (Appeals) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Assessing Officer to make further inquiry and report the result of the same to the Commissioner (Appeals)."

(5)

(6) The order of the Commissioner(Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.

(6A) (7)

"Powers of the Commissioner (Appeals)

"Section 251(1) In disposing of an appeal, the Commissioner (Appeals) shall have the following powers –

(a) – in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment.

(aa)

(b) in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty."

(c)

(2) The Commissioner (Appeals) shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.

Explanation. – In disposing of an appeal, the Commissioner(Appeals) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Commissioner(Appeals) by the appellant."

8. From the aforesaid provisions, it is very clear once an appeal is

preferred before the CIT(A), then in disposing of the appeal, he is obliged to make such further inquiry that he thinks fit or direct the Assessing Officer to make further inquiry and report the result of the same to him as found in Section 250(4) of the Act. Further Section 250(6) of the Act obliges the CIT(A) to dispose of an appeal in writing after stating the points for determination and then render a decision on each of the points which arise for consideration with reasons in support. Section 251(1)(a) and (b) of the Act provide that while disposing of appeal the CIT(A) would have the power to confirm, reduce, enhance or annul an assessment and/or penalty. Besides Explanation to subsection(2) of

Section 251 of the Act also makes it clear that while considering the appeal, the CIT(A) would be entitled to consider and decide any issue arising in the proceedings before him in appeal filed for its consideration, even if the issue is not raised by the appellant in its appeal before the CIT(A). Thus once an assessee files an appeal under Section 246A of the Act, it is not open to him as of right to withdraw or not press the appeal. In fact the CIT(A) is obliged to dispose of the appeal on merits. In fact with effect from 1st June, 2001 the power of the CIT(A) to set aside the order of the Assessing Officer and restore it to the Assessing Officer for passing a fresh order stands withdrawn. Therefore, it would be noticed that the powers of the CIT(A) is coterminous with that of the Assessing Officer i.e. he can do all that Assessing Officer could do. Therefore just as it is not open to the Assessing Officer to not complete the assessment by allowing the assessee to withdraw its return of income, it is not open to the assessee in appeal to withdraw and/or the CIT(A) to dismiss the appeal on account of nonprosecution of the appeal by the assessee. This is amply clear from the Section 251(1)(a) and (b) and Explanation to Section 251(2) of the Act which requires the CIT(A) to apply his mind to

all the issues which arise from the impugned order before him whether or not the same has been raised by the appellant before him. Accordingly, the law does not empower the CIT(A) to dismiss the appeal for nonprosecution as is evident from the provisions of the Act.

9. In the above view, the question as raised does not give rise to any substantial question of law. Thus, not entertained.

1.27 Compensation taxability:

a) Motor vehicle law: Madras case: 385 ITR 656 Social legislation vs tax legislation

*b) Real estate : Builder compensation to flat buyer: HP high court H.P.Housing Board case 341 ITR...& Delhi ITAT recent decision in Aerens Developers and Engineers Ltd vs. ACIT (ITAT Delhi): **Compensation for breach of promise to provide land to the assessee is not compensation for loss of profits but is for injury caused to the profit making apparatus. Such compensation is a capital receipt not chargeable to tax***

d) Employment cases: Delhi ITAT recent decision in Ranjeet Singh Khurana case analyzing entire law vs sec.17

e) Crop Loss cases

f) Liquidated damages : SC Saurashtra cement case: 325 ITR held capital receipt non taxable

1.28 Double taxation conundrum analysed in:

- *PWS ENGINEERS LIMITED HIGH COURT OF GUJARAT Date : 06/06/2016*
- *Karnataka high court in case of G.Balaraj Para 13 order dated 31/08/2016*
- *M/S SSIPL LUXURY FASHION PVT. LTD DELHI BENCH 'G' Date of order : 29-09-2016*
KOLKATA BENCH 'A' Date of Pronouncement:- 21/09/16 Sri SuvaprasannaBhattacharjee
- *Laxmipat Singhania vs. CIT (1969) 72 ITR 0291 (SC)*
- CIT vs. R. Dalmia (1982) 135 ITR 0346 (Del.)
- *Jyotindra Natwarlal Nak vs. ITO (2013) 21 ITR (Trib.) 0252 (Mum).*
- *DCIT vs. Standard Fireworks (P) Ltd. (2010) 128 TTJ 0001 (Chennai) (TM)*
- *Suresh K. Jajoo vs. ACIT (2010) 39 SOT 514 (Mum.)*

1.29 Instruction No. 5/2016 : Conversion of limited scrutiny to complete scrutiny

Vide Instruction No. 20/2015 dated 29.12.2015 in File of even number, Board has laid down Standard Operating Procedure for handling of cases under 'Limited Scrutiny' which were selected through Computer Aided Scrutiny Selection in 'CASS Cycle 2015'. In these cases, it was stated that the general scope of enquiry in scrutiny proceedings should be restricted to the relevant parameters which formed the basis for selecting the case for scrutiny. However, in revenue potential cases, it was further provided that 'Complete Scrutiny' could be conducted, if there was potential escapement of income above a prescribed monetary limit, subject to the approval of administrative Pr. CIT/CIT/Pr. DIT/DIT.

2. In order to ensure that maximum objectivity is maintained in converting a case falling under 'Limited Scrutiny' into a 'Complete Scrutiny' case, the matter has been further examined and in partial modification to Para 3(d) of the earlier order dated 29.12.2015, Board hereby lays down that while proposing to take up 'Complete Scrutiny' in a case which was originally earmarked for 'Limited Scrutiny', the Assessing Officer ('AO') shall be required to form a reasonable view that there is possibility of under assessment of income if the case is not examined under 'Complete Scrutiny'. In this regard, the monetary limits and requirement of administrative approval from Pr. CIT/CIT/Pr. DIT/DIT, as prescribed in Para 3(d) of earlier Instruction dated 29.12.2015, shall continue to remain applicable.

3. Further, while forming the reasonable view, the Assessing Officer would ensure that:

a. there exists credible material or information available on record for forming such view;

b. this reasonable view should not be based on mere suspicion, conjecture or unreliable source; and

c. there must be a direct nexus between the available material and formation of such view.

4. It is further clarified that in cases under 'Limited Scrutiny', the scrutiny assessment proceedings would initially be confined only to issues under 'Limited Scrutiny' and questionnaires, enquiry, investigation etc. would be restricted to such issues. Only upon conversion of case to 'Complete

Scrutiny' after following the procedure outlined above, the AO may examine the additional issues besides the issue(s) involved in 'Limited Scrutiny'.

1.30 Assessment on basis of other law proceedings: AO approach

a) SC 231 ITR 200

b) BHC 296 ITR 217

c) Madras HC 377 ITR 568

*1.31 Ahmedabad ITAT in **Rupesh Jayvadan Kapadia,***

Date of pronouncement 20/10/2016

/ . On analyzing the facts of the case before us, we find that the facts of the present case are squarely similarly to those adjudicated by the Co-ordinate Bench, Mumbai in the case of Ravi Sud vs. ACIT (supra). As the assessee submitted a revised return after the lapse of limitation period and in response to notice u/s 148 of the Act assessee has submitted for treating the revised return filed on 18/1/2006 as return filed in compliance of notice u/s 148 of the Act. In the case before us also the search was conducted in the case of some other assessee. However, no proceedings were initiated u/s

153 of the Act against the assessee. Therefore, respectfully following the decision of the Co-ordinate Bench, Mumbai in the above referred case, we are of the view that the re-assessment proceedings were carried out just to validate the revised return and there was no detection of concealed income by the Assessing Authority and in such circumstances no penalty u/s 271(1)(c) of the Act is leviable

1.32 IN THE HIGH COURT OF JHARKHAND AT RANCHI **Tax Appeal No.24 of 2002 Dr. Mukesh Kr. Shrivastava**, S/o Sri Bipin Bihari Shrivastava, C/o Rajesh Kr. Shrivastava (Brother),34, Khasmahal, Tata Chaibasa Road, Jamshedpur
... Appellant Versus **1.** The Commissioner of Income Tax, Jamshedpur **2.** The Asstt. Commissioner of Income-tax (Inv.) Circle, Jamshedpur Respondents
18/Dated: 24th August, 2016

This Tax Appeal has been preferred raising the following substantial questions of Law: -

- (i) Whether on the facts of the case and in law the ex parte assessment order is bad for want of proper service of notice and reasonable opportunity of hearing?
- (ii) Whether there is clear cut violation and equity and natural justice in completing the assessment for period of 10 years (01.04.1986 to 18.10.1996) by giving less than one week notice and that too when the appellant was in Jail at Patna far away from his place of employment/residence? **Accordingly, both the substantial questions of law raised in this Tax Appeal are answered in affirmative.**

1.33 Vested Right concept

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS. 8070-8073 OF 2016
(ARISING OUT OF SLP (CIVIL) NOS. 34023-34026/2013)
JAYAM & CO.APPELLANT(S)
VERSUS
ASSISTANT COMMISSIONER & ANR.RESPONDENT(S)
AUGUST 05, 2016

We may refer to the judgment of this Court in Tata Motors
Ltd. v. State of Maharashtra and others²
. (2004) 5 SCC 783

When we keep in mind the aforesaid parameters laid down by this Court in testing validity of retrospective operation of fiscal laws, we find that the amendment in-question fails to meet these tests. The High Court has primarily gone by the fact that there was no unforeseen or unforeseeable financial burden imposed for the past period. That is not correct. Moreover, as can be seen, sub-section (20) of Section 19 is altogether new provision introduced for determining the input tax in specified situation, i.e., where goods are sold at a lesser price than the purchase price of goods. The manner of calculation of the ITC was entirely different before this amendment. In the example, which has been given by us in the earlier part of the judgment, 'dealer' was entitled to ITC of Rs. 10/- on re-sale, which was paid by the dealer as VAT while purchasing the goods from the vendors. However, in view of Section 19(20) inserted by way of amendment, he would now be entitled to ITC of Rs. 9.50. This is clearly a provision which is made for the first time to the detriment of the dealers. Such a provision, therefore, cannot have retrospective effect, more so, when vested right had accrued in favour of these dealers in respect of purchases and sales made between January 01, 2007 to August 19, 2010. Thus, while upholding the vires of sub-section (20) of Section 19, we set aside and strike down Amendment Act 22 of 2010 whereby this amendment was given retrospective effect from January 01, 2007.