

SESSION 4

➤ **APPELLATE & WRIT JURISDICTION OF HIGH COURTS: JURISDICTION AND LIMITATIONS**

BY

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APPELLATE JURISDICTION

INCOME TAX

- **REFERENCE - 1941 – 1998**
 - QUESTION OF LAW

- **APPEAL - 1998 - S. 260A**
 - “*SUBSTANTIAL*” QUESTION OF LAW

 - S. 100 CPC APPLIES

CENTRAL EXCISE / CUSTOMS

- 1982 - CEGAT / CESTAT
- 1982 – 1998 - QUESTION OF LAW
- 1998 - “*SUBSTANTIAL*” QUESTION OF LAW
- S. 35L - APPEAL TO SUPREME COURT

SUBSTANTIAL QUESTIONS OF LAW

➤ FIVE/SIX TESTS:

- (i) it directly or indirectly affects substantial rights of the parties;
 - (ii) it is of general public importance;
 - (iii) it is an open question in the sense that the issue has not been settled by a pronouncement of the Supreme Court;
 - (iv) it is not free from difficulty; or
 - (v) it calls for a discussion of an alternate view;
 - (vi) *conflict of views* by ITAT / CESTAT. (Mad HC)
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- (a) *Santosh Hazari v Purushottam Tiwari* 251 ITR 84: (2001) 3 SCC 179
following:
 - (b) *Sir Chunilal Mehta v Century Spg. & Mfg. Co. Ltd.* AIR 1962 SC 1314
- approving *R. Subba Rao v. Noonni Veeraju* AIR 1951 Mad 969 (FB).

SUBSTANTIAL QUESTIONS OF LAW – FURTHER TESTS

- (i) The findings are based on no evidence;
 - (ii) While arriving at the said finding, relevant admissible evidence has not been taken into consideration;
 - (iii) While arriving at the said finding, inadmissible evidence has been taken into consideration;
 - (iv) Legal principles have not been applied in appreciating the evidence;
 - (v) When the evidence has been misread.
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- *Vijay Kumar Talwar v CIT* 330 ITR 1: (2011) 1 SCC 673 (case law discussed)
 - *Hero Vinoth v Seshammal* (2006) 5 SCC 545
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- Need not be of “*general importance*” - S. 109 CPC / Art. 133(1)(a)

WRITS

➤ CERTIORARI

➤ PROHIBITION

➤ ABSENCE OF JURISDICTION /

➤ SHOW CAUSE NOTICE STAGE

➤ ALTERNATIVE REMEDY NOT A BAR

➤ (i) *Isha Beevi v TRO* AIR 1975 SC 1235: (1976) 1 SCC 70

➤ (ii) *Bengal Immunity Co. Ltd. v State of Bihar* AIR 1955 SC 661:
(1955) 6 STC 446

➤ TAX DISPUTES - WIDE RANGE OF SUBJECTS

➤ *Madras Bar Association v Union of India* (2014) 10 SCC 1, 199-211

GROUNDS FOR INTERFERENCE

- **THE GROUNDS FOR INTERFERENCE AGAINST THE ORDERS OF QUASI-JUDICIAL AUTHORITIES ARISE IN THE FOLLOWING CIRCUMSTANCES:**
 - (i) If they act without jurisdiction; or
 - (ii) In excess of their legal authority; or
 - (iii) Illegally assume jurisdiction by erroneous interpretation; or
 - (iv) In patent misconstruction of a tariff entry; or
 - (v) In violation of the principles of natural justice, on in a perverse and unreasonable manner; or
 - (vi) Without application of mind; or
 - (vii) Discriminate between one importer and another in matters of classification; or
 - (viii) Where there is a clear error of law apparent on the face of the record in the matter of classification; and
 - (ix) To interfere if there is a miscarriage of justice.

REASSESSMENT

- REOPENING OF ASSESSMENT – MAJOR LITIGATION
 - *GKN Driveshafts v ITO* (2003) 1 SCC 72 – (see p. 647-648 – extracts)
 - NOTICE U/S 148
 - OBJECTIONS TO REOPENING
 - DISPOSAL OF OBJECTIONS
- **FOUR YEARS / SIX YEARS**
 - *Calcutta Discount Co. Ltd. v ITO* 41 ITR 191 : AIR 1961 SC 372
 - 644 – 648
 - NOTICE ISSUED – WRIT ADMITTED – ASSESSMENT ORDER PASSED – COURT CAN QUASH ASSESSMENT ORDER ALSO.

OTHER ASPECTS RELATING TO TAXATION

➤ **ESTOPPEL, RES JUDICATA**

➤ NOT APPLICABLE TO TAX LAW;

➤ CONSISTENT PRACTICE CANNOT BE IGNORED

➤ (i) *Radha Swami Satsang v CIT* AIR 1992 SC 377

➤ (ii) *J.K. Synthetics v Union of India* (1981) ELT 328 (Del)-para 15 – per Ranganathan J.

(BEST DECISION ON *RES JUDICATA* AND *ESTOPPEL* IN TAX MATTERS)

➤ **FOUR GROUNDS TO DEPART FROM EARLIER VIEW:**

➤ (i) CHANGE IN LAW;

➤ (ii) NEW RULINGS BY HIGH COURT / SUPREME COURT;

➤ (iii) NEW FACTS HAVE COME TO LIGHT; AND

➤ (iv) CHANGE IN THE METHOD OF BUSINESS OR MANUFACTURING PROCESS

THANK YOU