## CASE LAWS CONCERNING ASSESSMENT APPEAL IN CASH DEPOSIT CASES

A) **Assessment is a Quasi-Judicial in nature**

i) Assessment proceedings as well as all proceedings for composition of penalty are judicial in nature.

UOI vs Sheo Shankar Sitaram (1974) 95 ITR 523(All) (Page 566)

ii) Assessment proceeding is a quasi-judicial proceeding. It acquires finality on the assessment order being made. And the finality of such an order can be disturbed only in proceeding and then findings provided by it.

Indian & Eastern Newspaper Society vs. CIT (1979) 119 ITR 996

iii) Assessment proceedings before the Income-tax Officer a judicial proceeding and all the incidence of such judicial proceedings have to be observed before the result is arrived at. The assessee has a right to inspect the record and all relevant documents before he is called upon to provide evidence in rebuttal

Surajmal Mohta & Co. vs. A.V.Viswanath Shastri (1954) 26 ITR 1 (SC)

B) Provisions should be applied in humane and considerate manner – A human and considerate administration of the relevant provisions of the Income-tax Act would go a long way in allaying the apprehensions of the assessee and if that is done in all the true spirit, no assessee will be in a position to charge the revenue with administering the provisions of the Act with 'an evil eye and an unequal hand'. Pannalal Bingraj v. UOI (1957) 31 ITR 565 (SC).

C) Authorities must act in a fair and not partisan manner: The taxing authorities exercise quasi-judicial powers and in doing so they must act in a fair and not a partisan manner. Although it is part of their duty to ensure that no tax which is legitimately due from the assessee should remain unrecovered, they must also at the same time not act in a manner as might indicate that scales are weighed against the assessee. It is impossible to subscribe to the view that unless those authorities exercise the power in a manner must beneficial to the revenue and consequently most adverse to the assessee, they should be deemed to have exercised it in a proper and judicious manner – CIT vs. Simon Carves Ltd. (1976) 105 ITR 212 (SC).

D) Assessment made at the instance of higher authorities –

i) AO ought to conform to the more elementary rules of judicial procedure and in particular to conduct the case himself and not to allow somebody else, even his superior officer, to interfere in the conduct of the case. Dinshaw Dorobshaw Shoroff vs. CIT (1943) 11 ITR 172, 176-77 (Bom)

ii) Where Assessing Officer has passed an order of assessment at the instance of higher authority, it would be illegal. No doubt, in terms of the circular letter issued by the CBDT, the Commissioner or for that matter any other higher authority may have supervisory jurisdiction, but it is difficult to conceive that even the merit of the decision shall be discussed and the same shall be rendered at the instance of the higher authority, who is a supervisory authority. It is one thing to say that while making the order of assessment, the Assessing Officer shall be bound by the statutory circulars issued by the CBDT, but it is another thing to say that the assessing authority exercising quasi-judicial function keeping in view the scheme contained in the Act, would lose its independence to pass an independent order of assessment – CIT vs. Greenworld Corporation (2009) 314 ITR 81 (SC).

E) Officers should not do things in unreasonable manner:

(i) In administering a tax law, irritation to the assessee is inevitable; an officer is bound to do his duty irrespective of the susceptibilities of the assessees or even at the risk of hurting their *amour propre*. But this would not justify the officers functioning under the Act doing things in an unreasonable way – K. Rudra Rao v ITO (1958) 34 ITR 216 (AP).

(ii) Inform assessee of his rights and dues:

Role of departmental officers – Officers of the Department must not take advantage of ignorance of an assessee as to his rights. Altho0ugh, the responsibility for claiming refunds and reliefs rests with assessee on whom it is imposed by law, officers should –

a) draw their attention to any refunds or reliefs to which they appear to be clearly entitled but which they have entitled to claim for some reason or other;

b) freely advise them when approached by them as to their rights and liabilities and as to the procedure to be adopted for claiming refunds and reliefs – Circular No. 14(XL-35) dated 21.4.1955.

F) <u>Precedents must be applied with due care</u> –

i) A decision is a precedent on its own facts. Each case presents its own features. The Income-tax authorities and Tribunals are supposed to apply the ratio or a decision to the facts of a particular case with due care – Mahendra Mills Ltd. v. P.B. Desai AAC (1975) 99 ITR 135 (SC);

*(ii)* *"It is neither desirable nor permissible to pick out a word or a sentence from the judgement of the Supreme Court divorced from the context of the question under consideration and treat it to be the complete law declared by the court. The judgement must be read as a whole and the observations from the judgement have to be considered in the light of the questions which were before the court. A decision of the Supreme Court takes its colour from the questions involved in the case in which it is rendered and, while applying the decision to a later case, courts must carefully try to ascertain the true principle laid down by the decision".* SUN ENGG WORKS (1992) 198 ITR 299.

G) <u>Technical rules of evidence not to apply</u>:

i) The ITO is not fettered by technical rules of evidence and pleadings, and he is entitled to act on material which may not be accepted as evidence in a court of law – Dhakeswari Cotton Mills Ltd. vs. CIT (1954) 26 ITR 775

ii) What is meant by saying that the Evidence Act does not apply to proceedings under the IT Act is that the rigour of the rules of evidence complained in the Evidence At is not applicable but that does not mean that when the taxing authorities are desirous of invoking the principles of the Act in proceedings before them, they are prohibited from doing so. Chuharmal v CIT (1988) 172 ITR 250 at 255(SC)

H) <u>ITO can collect material by private enquiry</u>

It is open to the ITO to collect materials to facilitate assessment even by private enquiry. But if he desires to use the material so collected, the

assessee must be informed of the material and must be given an adequate opportunity of explaining it. C. Vasantilal & Co. v. CIT (1962) 45 ITR 206 (SC), Dhakeswari Cotton Mills Ltd. v. CIT *(supra)*

I) Affidavits cannot be rejected straightaway –

i) It is not open to the Tribunal to reject the plea taken by the assessee in his affidavit merely on the ground that no documentary evidence has been filed in support of that plea. Rejection of an affidavit filed by an assessee is not justified unless the assessee has either been cross examined or called upon to produce documentary evidence in support of the affidavit sworn by him – L. Sohan Lal Gupta v. CIT (1958) 33 ITR 786 (All).

ii) In a case where the deponents to the affidavit were not cross examined, it was not open to the revenue to challenge the correctness of the statements made in the affidavit.
Mehta Parikh & Co. vs. CIT (1956) 30 ITR 181

J) Assessee must be given reasonable time and opportunity –

i) The ITO should give the assessee reasonable time and opportunity to produce evidence, as otherwise the order of assessment will be vitiated – Munnalal Murlidhar v CIT (1971) 79 ITR 540(All)

(ii) ".... opportunity should be real and not ritualistic, effective and not illusory and must be followed by a fair consideration of the explanation offered and the materials available, culminating in an order which discloses reasons for the decision sufficient to show that the mind of the authority has been applied relevantly and rationally and without reliance on facts not furnished in the affected party." – M.S. Jewellery vs. ACIT (1994) 208 ITR 531 at page 533

K) Surrounding circumstances must be considered while scrutinising documents –

i) a) Science has not yet invented any instrument to test the reliability of the evidence placed before the Court or Tribunal. Therefore, the Courts and Tribunals have to judge the evidence

before them by applying the test of human probabilities. Human minds may defer as to the reliability of a piece of evidence. In that sphere the decision of the final effect finding authority is made conclusive by law.

b) The taxing authorities are not required to put in blinkers while looking at the documents produced before them. They are entitled to look into the surrounding circumstances to find out the reality of the recitals made in those documents – CIT v. Durga Prasad More (1971) 82 ITR 540 (SC)

ii) That the onus of proving that the apparent was not the real was on the party who claimed it to be so. As it was the department which claimed that the amount of fixed deposit receipt belonged to the respondent-firm even though the receipt had been issued in the name of B, the burden lay on the department to prove that the respondent was the owner of the amount despite the fact that the receipt was in the name of B.

iii) That both as regards the source as well as the destination of the amount, the material on record gave no support to the claim of the department.

There should be some direct nexus between the conclusion of fact arrived at by the authority concerned and the primary facts upon which the conclusion is based. The use of extraneous and irrelevant material in arriving at that conclusion would vitiate the conclusion of fact because it is difficult to predicate as to what extent the extraneous and irrelevant material has influenced the authority in arriving at the conclusion of fact.

When a court of fact acts on material partly relevant and partly irrelevant, it is impossible to say to what extent the mind of the court was affected by the irrelevant material used by it in arriving at its finding. Such a finding is vitiated because of the use of inadmissible material and thereby an issue of law arises. Likewise, if the court of fact bases its decision partly on conjecture, surmises and suspicions and partly on evidence, in such a situation an issue of law arises. Daulat Ram Rawat Mull (1973) 87 ITR 349 (SC)

L) Entries in Books of Accounts:

i) Entries in books of accounts are prima facie proof of the correctness of the transaction. Tola Ram Daga vs. CIT (1966) 59 ITR 632 at 636 (Assam)

ii) Entries in books of accounts are admissible as evidence u/s 34 of the Evidence Act. If so done, material to the contrary must be adduced by the ITO to reject them. ACIT vs. Jay Engg Works Ltd (1978) 113 ITR 389.

iii) In the event of the entries in the books of accounts going against the averments of the assessee even then the assessee can win reprieve if he establishes facts to the contrary. Pullengode Rubber Produce Co. vs. State of Kerala (1973) 91 ITR 18 (SC)

iv) Onus is on the assessee to prove that entries ostensibly showing cash receipts are not real receipts. Debi Burman Vs. CIT (1994) TLR 452 (Cal)

v) In the event of the books of accounts not being available for any reason, the assessment can be done on the basis of the audited accounts and report-Jay Engg Works. *supra.*

M) Evidence:

Evidence is not confined to direct evidence. The term is wide enough to cover circumstantial evidence. Homi Jehangir Gheesta Vs. CIT (1961) 41 ITR 135 (SC) at page 142.

N) Reports of the Investigation Wing are neither conclusive nor binding.

The reports of the Investigation Wing are neither conclusive nor binding because they are not based on judicial enquiries. They are not legally admissible as evidence. Ram Krishna Dalmia vs. S.R. Tendolkar AIR 1958 SC 538

O) Verification of Sales:

Where the sales are supported by purchases and payment for purchases have been made through banks merely because the

suppliers have not complied with the Assessing Officer's enquiry notice the purchases cannot be rejected as bogus. CIT Vs. Nikunj Eximp Enterprises (P.) Ltd. (2015) 372 ITR 619 (Bom.)

P) Verification of purchases:

i) Where the Assessing Officer disallowed purchases and made addition on the information that one of the suppliers was stated to be a Hawala operator by the VAT Department and wherein the Income Tax Officer did not conduct any further investigation and particularly did not call for details of the bank accounts of the suppliers to find out whether there was any cash withdrawal from their accounts and with the proof of movement of goods was not in doubt, the addition for purchases made u/s 69C of the Income Tax Act was unsustainable. DCIT Vs. Rajeev G. Kalathil (2015) 67 SOT 52 (Mumbai - Trib.)

ii) The Tribunal having been satisfied with the genuineness of the purchases as also especially considering the payments for purchases were made through cheques such addition could not be sustained. CIT Vs. M/s Nangalia Fabrics Private Limited – Tax Appeal No. 689 of 2010 dated 22.04.2013 (Guj.)

iv) Where the transactions of purchases had been recorded in the regular books of accounts with identity of the vendor disclosed the amounts in question could not be included in the total income as unexplained investment u/s 69 of the Act. Babulal C. Borana (2006) 282 ITR 251 (Bom).

v) As regards addition for bogus purchases from the material available on record, it appeared that the tax audit report and books of accounts were accepted by the Assessing Officer

without pointing out any defect. Accordingly the sale was accepted by the Department. The sale could not be made without making purchases. No addition could be sustained in such circumstances. Syntexa Vs. ACIT (2011) 111 Taxman 47 (Cal.) (MAG.)

vi) Where purchases were not bogus but were made from parties other than those mentioned in the books of account, not entire purchase price but only profit element embedded in such purchases can be added to income of assessee. CIT Vs. Simit P. Sheth (2013) 356 ITR 451 (Guj.)

vii) Where though purchases of raw material was not made from the party from whom assessee claimed but such material was purchased from the open market incurring cash payment, only profit element of such purchases and not entire purchases was to be added to income of the assessee. CIT Vs. Sathyanarayan P. Rathi (2013) 351 ITR 150 (Guj.)

Q) Credit for cash withdrawals from bank must be given while computing the excess for addition:-

**i) Sreelekha Banerjee & Anr vs. CIT (1963) 49 ITR 112 (SC)**

*The case involving the encashment of high denomination notes are quite numerous. In some of them, the explanation tendered by the tax-payer has been accepted, and in some, it has been rejected. The manner in which evidence brought on behalf of the taxpayer should be vi4ewed, has, of course, depended on the facts of each case. In those cases in which the assessee proved that he had on the relevant date a large sum of money sufficient to cover the number of notes encashed, this court and the High Courts, in the absence of something which showed that the explanation was inherently improbable, accepted the explanation that the assessee held the amount of part of it in*

*high denomination notes. In other words, in such cases, the assessee was held, prima facie, to have discharged the burden which was upon him. Where the assessee was unable to prove that in his normal business or otherwise, he was possessed of so much cash, it was held that the assessee started under a cloud and must dispel that cloud to the reasonable satisfaction or the assessing authorities, and that if he did not, then, the department was free to reject his explanation and to hold that the amount represented income from some undisclosed source.*

**ii)** **S.R. Venkataraman vs. CIT (1981) 127 ITR 807 (Kar)**

*That once the petitioner disclosed the source of Rs.15,000 as having come from the withdrawal made on a given date from a given bank, it was not for the ITO or the Commissioner to concern themselves with what the petitioner did with that money, i.e. whether he had kept the money in his house or deposited the same in the bank.*

**iii)** **CIT vs. Kulwant Rai (2007) 291 ITR 36 (Del)**

*That the assessee had not disputed the recovery of cash amounting to Rs.3,76,800/- found in his bed room at the time of search. However, the case of the assessee was that this represented cash remaining from the withdrawal from his bank account from time to time and a sum of Rs. 2 Lakhs was received on December 4, 2000, by cheque and he had furnished a cash flow statement to this effect also. This cash flow statement furnished by the assessee was rejected by the Assessing Officer which was on the basis of suspicion that the assessee must have spent the amount for some other purposes. The order of the authorities was silent as to the purpose for which the earlier withdrawals would have been spent. According to the cash book maintained by the assessee, a sum of Rs. 10,000 was spent for household expenses every month and the assessee had withdrawn from bank a sum of Rs. 2 Lakhs on December 4, 2000, and there was no material with the Revenue that this money was not available with the assessee. Thus, no fault could be found with the view taken by the Tribunal and the assessment of Rs.2 Lakhs was liable to be deleted.*

**iv) <u>ACIT vs. Baldev Raj Charla (2009) 121 TTJ 366 (Del)</u>**

*Where there were sufficient cash withdrawals to cover cash deposits in question, merely because there was time gap between withdrawal of cash and cash deposits explanation of the assessee could not be rejected and addition on account of cash deposit could not be made, particularly when there was no finding recorded by the Assessing Officer or by the Commissioner (Appeals) that apart from depositing these cash into bank as explained by the assessee, there was any other user by the assessee of these amounts.*

**v) <u>CIT vs. Jaora Flour and Foods P. Ltd. (2012) 344 ITR 294(MP)</u>**

*Dismissing the appeal, that the Tribunal found that the amount of Rs. 10 Lakhs cash found during the course of survey was duly entered in the books of account and did not remain unrecorded or unaccounted. The Tribunal noted that the addition of the same amount again during the assessment proceedings amounted to double addition, since it was already shown in the books of account. The facts recorded by the Tribunal were not in dispute and the reasoning given by the Tribunal for deleting the addition of Rs. 10 Lakhs on the undisputed facts did not suffer from any error.*