IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD

BEFORE DR. B.R.R. KUMAR, VICE-PRESIDENT
SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER

I.T.A. Nos. 3217 & 3218/Ahd/2015
(Assessment Year: 1992-93 & 1993-94)

Mukesh Rasiklal Shah, 19/431, Satyagrah Chhavni Society, B/h. Sivanand Ashram, Satellite Road, Ahmedabad-380015 PAN : AJVPS 6793 A	Vs.	ACIT, Circle 4(2), Ahmedabad
(**Appellant**)	..	(**Respondent**)

Appellant by :	Shri Mukesh R. Shah – Party in person
Respondent by:	Shri Karun Kant Ojha, CIT-DR

Date of Hearing	06.11.2024
Date of Pronouncement	31.12.2024

O R D E R

PER DR. B.R.R. KUMAR, VICE-PRESIDENT :

These two appeals have been filed by the Assessee against the order passed by the Ld. Commissioner of Income-tax (Appeals)-4, Ahmedabad (hereinafter referred to as "CIT(A)" for short) dated 08.09.2015 passed under Section 250 of the Income-tax Act, 1961 [hereinafter referred to as "the Act" for short], for Assessment Year (AY) 1992-93 & 1993-94.

2. The Assessee has raised the following Grounds of Appeal:-

"(I) (1) That an A.O. dt. 8-12-06 passed by learned ACIT is bad in law as also on facts.

(2) That learned ACIT erred in not appreciating facts and circumstances of case and evidence on records.

(II) (3) That learned ACIT erred in overruling directions of Hon'ble ITAT Orders dt. 8-6-05 & 7-9-05, in respect of establishing complete facts of case/ supply of materials used against assessee / providing reasonable opportunity of being heard.

(4) That learned ACIT erred in not issuing a single show cause notice before making additions of Rs. 2,47,940/- in A.Y. 92-93 & Rs. 19,36,095/- in A.Y. 93-94 w.r.t. alleged income tax refund money receipts belonging to Govt. of India and thereby further erred in raising demands of Rs. 2,37,368/- in A.Y. 92-93 & Rs. 13,21,127/- in A.Y. 93-94.

(5) That learned ACIT erred in not supplying evidence to prove alleged charges of claims / receipts / utilization / repayment of such alleged income tax refund money receipts, though directed to supply by Hon'ble ITAT.

(6) That learned ACIT erred in not supplying copies of statement dt. 21-4-93 recorded by ITO Ward 8 (1), A'bad & statement dt. 22-4-93 recorded by ITO ward 8 (8) A'bad though directed to supply by Hon'ble ITAT.

(7) That learned ACIT erred in not supplying legible Xerox copies or neat & clean typed copies of statements dt. 23, 24-4-93 u/s. 132 (4) of I.T. Act.

(8) That learned ACIT erred in not supplying Annexure "A" & Annexure "B", containing relevant extracts of statements dt. 21,22,23,24/4/93, which forms part A.O. dt. 8-12-06 (para 4) viz. materials used against assessee has not been supplied, though directed by Hon'ble ITAT.

(9) That learned ACIT erred in ignoring retraction (of statements dt. 21, 22, 23, 24/4/93 and relevant letters of submissions) made before Hon'ble Criminal Court on 27-4-93 and further vide letter dt. 8-6-93/ Affidavit dt. 1-3-95 & vide other letters filed. The learned AC erred in not taking fresh statement of appellant.

(10) That learned ACIT erred in not corroborating such statements dt. 21,22,23, 24-4-93, by independent evidence of claims / receipts/ utilization /repayments for such alleged income tax refund money receipts. Appellant has as such retracted such statements since alleged admission was made under threat, compulsion, inducements and coercions i.e. alleged admissions by statements & letters are not voluntary and true as per laws in force.

(11) That learned ACIT erred in not supplying names and addresses of Income Tax department employees (in service during 1990-91-92- 93) who are engaged in issue and service of such alleged refunds (as Appellant has not received a single income tax refund order, as evidenced by postal regd. AD receipts and / or by I.T. Departmental acknowledgement receipt even in a single case.

(12) That learned ACIT erred in not issuing summons & further erred in not allowing right of cross examination, of I.T. Department Employees / Bankers in service during 1987-88-89-90-91-92-93 / authorized officers of search party (in service during 1990-91-92- 93), for enforcing production of documents / evidence, so as to establish complete facts of case as per Hon'ble ITAT order/s.

III (13) *That learned ACIT has failed to prepare, pass, sign and serve Annexure "A" & "B" forming part of such A.O. dt. 8-12-06 (para 4), on or before 31-12-06 (being last date of passing A.O. u/s. 153 (2A) Proviso Second).*

(14) *A.O. so passed & served on 16-12-06, being half-hearted, incomplete, invalid, non-speaking, is void ab-initio and hence deserves to be quashed (as being time-barred A.O. under I.T. Act.)*

IV (15) *That learned ACIT erred in not following decision in Appellant's own case for A.Y. 91-92 on same sets of facts, as accepted by then CIT by not preferring second appeal before Hon'ble ITAT in view of Hon'ble CBDT instruction no. 1903 considering cumulative tax effect and not due to small tax effect as stated in A.O. dt. 8-12-06.*

V (16) *That learned ACIT erred in ignoring contentions raised in letters dt. 12-6-06, 12-9-06 (253 pages), 28-11-2006, and thus overruled the directions of Hon'ble ITAT.*

VI (17) *That learned ACIT ought to have appreciated that alleged income tax refund money receipts, which belongs to Govt. of India, and hence recovered fully with interest, does not constitute income chargeable to tax u/s. 2 (24)/U/s. 4 r.w. other sections of I.T. Act.*

(18) *That learned ACIT erred in not appreciating that there is no provision under I.T. Act to recover Rs. 37.93 lakhs (Rs. 21.84 lakhs recovery of alleged income tax refund money receipts being Govt. property + Rs. 15.59 lakhs as income tax plus interest demand thereon treating same Govt. property as assessee's income) against Rs. 21.84 lakhs receipts.*

Appellants' income cannot be recovered. BUT such income can be taxed. Tax can be recovered out of income earned and balance of income is at the disposal of appellant.

(19) *That learned ACIT erred in relying upon case laws cited in A.O. dt. 8-12-06, which applies to taxation of income from illegal business only, and not to taxation of alleged misappropriation, Gross receipts of illegal business cannot be recovered but can be taxed WHEREAS Gross Receipts of alleged misappropriations are subject to 100% recovery with interest under laws in force.*

(20) *That learned ACIT erred in taxing alleged income tax refund money receipts, on the ground that such money remained in possession and control of assessee, which has been utilized for investments in shares etc., which are disposed off for recovery purposes. Whereas on other side Learned ACIT erred in not supplying a single evidence of possession and control of such money AND further evidence (like share application forms / share transfer forms duly signed by Appellant as alleged) to prove its utilization in shares AND further evidence to prove such recovery.*

VII (21) *That learned ACIT ought to have treated alleged income tax refund money recovered, as deductible expenditure, from income assessed, since liability to pay*

such alleged refund money to Govt. of India accrues or arose, on the date of receipts of such alleged refund money viz. A.Y. 94-95 being year of actual recovery is totally irrelevant for this purpose and hence assessee is entitled to such deductions in A.Y. 92-93/93-94 as per ACIT's findings resulting into total income determinable as Rs. Nil in both the year/s.

VIII (22) That learned ACIT has erred in charging interest u/s. 234 A /u/s.234 B of I.T. Act, though 100% income as alleged of Rs. 21.84 lakhs (Rs. 2.47 lakhs A.Y. 92-93 + Rs. 19.37 lakhs A.Y. 93-94) has been recovered with interest on or before 31-12-93 and such income so recovered has to be utilized to satisfy the tax demands of Rs. 15.57 lakhs as raised in respect of such income only. Appellant has not used the Govt. funds at all so that interest u/s. 234 A & 234 B of I.T. Act cannot be charged under I.T. Act viz. Revenue loss is Rs. NIL.

(23) That learned ACIT erred in not appreciating that, alleged income tax refund money receipts of Rs. 21.84 lakhs, if treated as income earned by assessee, which is even if confirmed by Hon'ble Supreme Court of India (presumed), then it means as per A.O. dt.8-12-06, assessee is the owner of such receipts during life time, & hence recovery of such receipts so made is invalid & assessee is entitled to a refund of such receipts treated as income, after adjustments of demands as raised. Hence learned ACIT may please be directed to issue refund of balance amount with interest. The question of charge of interest u/s. 234 A/234 B of I.T. Act and question recovery proceedings of such demands does not arise under I.T. Act.

(24) That, presuming even if alleged charges are proved before Hon'ble Supreme Court of India in a criminal case and even under any other laws in force, fact remains that such alleged income tax refund money receipts, belongs to Govt. of India. AND hence does not constitute taxable income under Income Tax Act AND/ or OTHERWISE assessee is entitled to a huge refunds along with interest u/s. 132 B (4)/244 A of I.T. Act as cited in above grounds of appeal."

3. This is second round of litigation before this Tribunal. The brief facts of the case as per the records are as under :-

3.1 The assessee is a Chartered Accountant by Profession. A search and seizure operation carried out at the residential and office premises of the assessee and several incriminating documents were found and seized. This search has been initiated after the Income-tax Officer, Ward 8(1), Ahmedabad while verifying the claims of refunds in the cases of Amratlal S. Vyas, Kishore B. Jagtiani, Kishore B. Jagatiani (HUF) and Kokilaben H. Shah, became suspicious

about the genuineness of the challans attached with the respective Returns of Incomes, as the refunds claimed were disproportionately high compared to the income shown by them. On further verification by the Income-tax Authorities, it was found that the Income-tax challans have been fabricated and a fraud has been perpetrated by the assessee, who happened to be the Authorized Representative of the above named assesses.

3.2 Further scrutiny of the seized documents, case records available with the Income-tax Department and the statement of the assessee recorded, it was found that the assessee had fraudulently earned income to the tune of Rs.2,47,943/- and Rs. 19,36,095/- in the assessment years 1992-93 and 1993-94 respectively. On conclusion of the assessment proceedings, the Assessing Officer added the amount of Rs.2,47,943/- and Rs. 19,36,095/- relating to the Asst. Yrs. 1992-93 and 1993-94 respectively holding that the assessee had defrauded the Govt. of India to the extent of the said amount by entering into illegal activity of encashment of Refunds based on fraudulent challans.

3.3 In conclusion of the assessment proceedings, the original return for AY 1992-93 filed on 20.12.1992 at Rs. 44,319/- was assessed u/s 143(3) vide assessment order dated 23.3.95 at total income of Rs. 2,92,260/-. Similarly, the assessment was completed on 23-03-1995 at Rs. 19,58,540/- against the returned income filed for AY 1993-94 on 17-12-1993 of Rs. 22,440/-.

4. Aggrieved against the assessment orders, the assessee filed appeals before the CIT(A). Ld CIT[A]-VII vide order dated 10.04.1997 confirmed the assessment orders passed by the Assessing Officer. On further appeal of the assessee before this Tribunal, the Co-ordinate Bench of this Tribunal vide order dated 08.06.2005 in ITA nos. 2664, 2665/Abad/1997 restored the issue back to

the file of Assessing Officer. The directions given by the ITAT vide para 4 is reproduced below:

> *"We have heard the assessee and Id. DR and the records perused. The basic and important admitted facts of the case are that the copies of statement recorded were not supplied to the assessee. The said material was used against the assessee while framing the assessment. It has also been noticed that various details and affidavits filed by the assessee have also not been properly appreciated and considered. In view of principle of natural justice, the revenue is required to give the copies of statements and materials used against the assessee while framing the assessment so that the assessee can put his stand and defend his case. We find that the facts of the case have not been completely recorded by lower authorities as the assessee did not get reasonable opportunity to put his case before the lower authorities. After considering the totality of the facts of the case, we find appropriate to send back the matter of these appeals to the file of CIT(A) to decide the same afresh, with a direction to supply the copies of statement recorded and other materials which were used against the assessee while framing the assessment. The CIT(A) will provide a reasonable opportunity of hearing to both sides and will record the complete facts before deciding the matter, since, we have sent back the matter* ***to the file of CIT(A)*** *for fresh consideration as discussed above. Under the circumstances, we are not expressing any opinion or giving any finding on merit on the other grounds raised in these appeals."*

5. The ITAT later modified the order holding that *".....After considering the facts of the case, we find substance in the submission of Id AR and accordingly we modify para 4 of the order dated 8.6.2005 and the matter is sending back to the* ***Assessing Officer***....."

6. Subsequently, the Assessing Officer passed the assessment orders on 08.12.2006 repeating the same additions made in the original orders. Aggrieved, the assessee filed appeals before the ld. CIT(A) which is effectively the second round of litigation. Before the ld. CIT(A), the assessee submitted as under:-

"In any case since there is no change in factual and legal position, ownership of alleged income tax refund money receipts case A in A.Y. 92-93/93-94 assessments thereof have been based wholly and solely on the basis of A.O. dt. 23-3-95 of A.Y. 91-92 only. AND Appellate decision dt. 23-11-95 for A.Y. 91-92 is binding for A.Y. 92-93/93-94 as per Hon'ble SC ratio of Radhasomal Satsang's case 193 FIR 321 (SC) & as per Hon'ble GUJ. HC decision of Taraben Ramanlal Patel's case 215 ITR 323 (Guj) and as per amended Income Tax Act 2008. Kindly therefore grant proper justice as Revenue has to act within four corners of I.T. Law and not on the immoral values if any, of the appellant/assessee. Revenue has no jurisdiction to execute Criminal Law.

Appropriation is an income under I.T. Act and alleged misappropriation is outside the scope of I.T. Act. Alleged Income of Rs. 21.98 lakhs is subject to charge of taxes and taxes have to be recovered out of alleged income earned of Rs. 21.98 lakhs (Rs 978748 (131671 A.Y. 92-93, Rs. 846877 A.Y. 93-94) Income cannot be recovered under I.T. Act .....

ACIT has no jurisdiction to recover Rs.37.93 Lakhs (Rs. 21.84 lakhs recovery of alleged income tax refund money receipts belonging to Govt. of India Rs. 15.59 lakhs as income tax plus interest demand thereon treating same Govt. property as appellants income against Rs. 21.84 lakhs receipts. This is not permissible under Constitution of India.

Appellant has not been supplied even till today, copies of statements dt. 21-4-93, 22- 4-93 AND neat, legible & typed copies of statements dt. 23, 24-4-93, though directed to be supplied by Hon'ble ITAT vide order dt. 8-6-05. 'Not only that but also, Appellant has not been supplied evidence as to claim / receipts/utilization/repayment of such alleged income tax refund money receipts as demanded on page 63-77 of appellant's letter dt. 12-9-06 AND as further demanded by your office letter dt. 20-4-09 from the office of Learned ACIT Cir-9. Ahmedabad. Thus learned ACIT has failed to establish complete facts of case (1) by not supplying copies of statements so recorded on which heavy reliance has been place in A.O. dt. 23-3-95 u/s. 143 (3) and A.O. dt. 8-12-06 u/s. 143 (3) r.w.s. 254 (1) of 1.T. Act (2) by not providing evidence & material used w.r.t. alleged changes (page 6377) (3) by not providing opportunity of being heard (Page 58-62), violating principles of justice as per directions of Hon'ble ITAT's order dt. 8-6-05 & 7-9-05. No such evidence has been filed before Hon'ble Criminal Court/High Court/ICAI even till today."

7. Referring to the submission dated 27.08.2009, the assessee pleaded reiterating the facts there on :

- that alleged misappropriation of income tax refund /money receipts of Rs.21.98 lakhs, has been recovered fully, by Govt. of India, hence does not constitute income chargeable to tax under I.T. Act, Govt. property cannot be assessed at its citizen's income.

- that alleged income tax refund money receipts of Rs. 21.98 lakhs, belongs to Govt. of India, and hence same has been recovered fully by Govt. of India. Even though same has been assessed as income of Appellant vide A.O. dt. 8-12-06 for A.Y. 92-93 & for A.Y. 93-94 and as per ACIT's such findings in A.O. dt. 8-12-06 demands raised have to be satisfied out of such alleged income recovered of Rs.21.98 lakhs as per relevant provisions of Income Tax Act.

- that such additions w.r.t. alleged income tax refund money receipts in A.O. dt. 23-3-95 for A.Y. 91-92 have been deleted in A.Y. 91-92 vide Appellate Order dt. 23-11-95, which has been accepted by Learned CIT Guj. III by not preferring second appeal before Hon'ble ITAT and that there is no change in factual and legal position as to ownership of such alleged income tax refund money receipts by Govt. of India only and in any case not belonging to assessee for A.Y. 92-93 & 93-94. Even conviction by Hon'ble Supreme Court of India w.r.t. such alleged charges will not charge this Govt's ownership concept of such alleged income tax refund money receipts of Rs. 21.98 lakhs which has been recovered fully. Revenue has to execute Income Tax Law only as permissible therein.

- that even otherwise assessee has been prosecuted in April 1993 and criminal proceedings were concluded against assessee before the Hon'ble Criminal Court of Additional Chief Metropolitan Magistrate Ahmedabad and prosecuting income tax department has not filed any evidence as to claim/receipts/ utilization / repayment of alleged income tax refund receipts even till today. Even A.O. has completely overruled the directions of ITAT as stated in ITAT order dt. 8-6-05 that (i) Revenue must establish complete facts of the case, (ii) Revenue will provide an opportunity of being heard to assessee, (iii) Revenue will supply the materials used against the assessee. Assessee has explained these aspects in detail vide his letters as cited supra. But same has been completely

ignored by all the authorities concerned which is not justified as per laws in force. Assessee relied on the judgement of the Hon'ble Apex court in the case of T. A. Quereshi M/s. CIT (2006) 287 ITR 547 (SC) where in it was held *"even though the assessee was committing a highly immoral act in illegally manufacturing and selling heroin, the case had to be decided on legal principles and not on one's own moral views."*

- that even not a single evidence of claims, receipts, utilization / repayments of such alleged income tax, refund receipts has been filed before any competent Court including Criminal Court even after twenty years.

- that Income tax refund received by him was recovered subsequently fully, further, the said refund amount belongs to Govt. of India and therefore does not constitute income u/s 2(24) of the I.T. Act 1961.

8. On the other hand, Ld. CIT(DR) Shri Karun Kanth Ojha argued and filed Revenue's arguments in writing that:

(i) The assessee has confirmed that the amount of Rs.2,47,943/- and Rs.19,36,095/- for Assessment Years 1992-93 and 1993-94 respectively were indeed received by him by en-cashing of Refunds fraudulently.

(ii) If the assessee was aware that the Refunds received fraudulently belonged to Govt. of India, then why was he waiting for Income tax Department to recover the amount? Further, had there been no detection, the amount would never be deposited in Government account.

(iii) As per the findings of The Ld. CIT (A), the fraudulently en-cashed refunds received by the assessee in the FYs 1990-91, 1991-92 and 1992-93 had been utilized by him in the following manner:-

(i) Rs.10,26,060/- had been invested in shares in the name of the HUF.

(ii) Rs. 4,53,000/- had been invested with Sahyog Co. Op. Bank Ltd. F. D. account No. 1408, Madalpur Branch.

(iv) There are provisions in the Income Tax Act that, if the assessee is in receipt of money which does not belong to him, and he does not pay back within the stipulated time, the said amount is treated as his income. The glaring example is the provision of section 36(1)(va) r.w.s. 2(24)(x) of the l.T. Act, 1961.

(v) In the instant case, the assessee held the amount of Rs.2,47,943/- and Rs.19,36,095/- pertaining to A.Yrs. 1992-93 and 1993-94 respectively illegally for number of years and instead of refunding the ill-gotten amount to Govt. account, the assessee chose to invest the money further as mentioned supra by Ld. CIT (A) for more gains.

(vi) The definition of income as envisaged in clause (24) of section 2 is inclusive and not exhaustive. The defrauded money remained in the possession and control of the assessee during the previous year relevant to assessment years 1992-93 and 1993-94 have all the ingredients to qualify the inclusive definition of income as envisaged in clause (24) of section 2 of the I.T. Act, 1961. Therefore, the contention of the assessee may be rejected.

8.1. With regard to the acceptance by then CIT Guj. III, Ahmedabad for not preferring second appeal before ITAT A.Y. 91-92 on same sets of facts and materials, the Ld. CIT DR submitted that the decision of the appellate authority for the AY 1991-92 was not contested further in appeal by the Revenue, considering the monetary limits in force during the period, in view of the CBDT Instruction No: 1903 Dated 28.10.1992.

8.2. With regard to the argument of the assessee that income tax refund money has already been recovered, as deductible expenditure, from income assessed, since liability to pay such alleged refund money to Govt. of India accrues or arose, on the date of receipts of such alleged refund money, Ld. DR argued that A.Y. 1894-95 being year of actual year of recovery, assessee is not entitled to such deductions in A.Y. 92-93 / 93-94 . Ld. CIT (DR) Shri Karun Kant Ojha vehemently argued that, the receipts in the relevant assessment years had arisen out of encashment of the refund obtained in the names of several persons from the Income-tax Department. Income was earned in assessment year 1991-92, 1992-93 and 1993-94 and was invested by the assessee in shares in the name of HUF. In assessment year 1994-95 and 1995-96, the recoveries have been made out of investments made by the assessee in the name of the HUF and its members. Therefore, the deduction of an expenditure, if any, has to be considered from the income of assessment years 1994-95 and 1995-96 only. The assessee is a professional and has shown income from profession on mercantile basis. There is no reason to consider and allow expenditure to the assessee in A.Yrs. 1992-93 & 1993-94 on that basis. Arguing so, the Ld.DR submitted that the addition has been made rightly in the hands of the assessee. Further, the ld. DR relied on the order of the ld. CIT(A), the operative part of which is as under:-

> *"... After going through the directions issued by the Hon'ble ITAT, the assessment order passed by the AO, various submissions made by the appellant, the remand report submitted by the AO and the rejoinder submitted by the appellant, this appeal is decided in paras below. The Hon'ble ITAT directed the AO to provide copies of the material used against the appellant and after giving reasonable opportunity of being heard the assessment may be made afresh. As mentioned in the assessment order and the remand report all the relevant materials used against the appellant have been provided to him. He has been provided sufficient opportunity of being heard. At the appellant stage, it is evident from the number*

of written submissions made that the appellant has been provided adequate opportunity to plead his case. Therefore, the grounds related to non-providing of material and not giving reasonable opportunity of being heard are not found factually correct. Therefore, these are dismissed.

The appeal is directed against the order under section 143(3) for the assessment year 1992-93 & 1993-94. The appellant is a Chartered Accountant practicing at Ahmedabad. For the assessment year 1992-93 & 1993-94, the return of assessment was filed declaring total income and the assessment was completed on a total income as mentioned below:

AY	*Returned Income*	*Assessed Income*
1992-93	*Rs.44,319/-*	*Rs.2,92,260*
1993-94	*Rs.22,440/-*	*Rs. 19,58,540/-*

Being aggrieved by the addition made in the appellant's total income, the assessee has filed this appeal. As this is second round of proceedings (once went upto Hon'ble ITAT & setaside to AO). The issues related to direction of the Hon'ble ITAT. compliance by the AO & objections by the appellant are dealt as under :-

i) The first objection relates to the addition on account of income from other sources. It is seen from paragraph 1 of the assessment order that combined hearing for assessment year 1991-92, 1992-93 and 1993-94 had taken place and a questionnaire was issued to the assessee on 23-11-1994 in which the appellant was required to explain as to how much income had been earned by him by defrauding Government of India during the assessment year under appeal. After considering various submissions made by the assessee during the course of assessment proceedings, the Assessing Officer held that the appellant had defrauded the Government of India for assessment year 1992-93 & 1993-94 to the extent of Rs 2,47,943/- and Rs. 19,36,095/- respectively. The above amount was determined as Income of the appellant from other sources and added in the returned Income. The complete facts of the case have been discussed in the assessment, order for assessment year 1991-92 which are briefly narrated here.

The Income-tax Officer, Ward 8(1), Ahmedabad while verifying the claims of refunds in the cases of Amratlal S. Vyas, Kishore B. Jagtiani, Kishore B. Jagatiani (HUF) and Kokilaben H. Shah, became suspicious about the genuineness of the challans attached with the returns of income, because the refunds claimed were disproportionately high compared to the income shown by them. On further verification, it was found that the challans have been fabricated and a fraud has been perpetrated by the appellant who happens to be the Authorized Representative of the above named assessee.

Thereafter, the Deputy Commissioner of Income-tax, Range 8. Ahmedabad, brought these facts to the knowledge of the Commissioner of Income-tax, Gujarat-III, Ahmedabad to the effect that the appellant had defrauded the Revenue as well as the government by forging advance tax challans and subsequently filing these forged challans in various Wards along with the return of income in bogus names with an intention to claim refunds. The above allegation was duly supported by the confession made by the appellant in the statement recorded by the Income-tax Officer, Ward 8(8) and Ward 8(1), Ahmedabad. In the statements recorded on 21/4/1993, 23/4/1993and 24/4/1993, the appellant had admitted that he had defrauded the Government of India In the pursuance to the warrant of authorization issued by the Commissioner of Income-tax, Gujarat III, Ahmedabad on 22/4/1993, a search was conducted at the residence as well as the office premises of the appellant on 23/4/1993.

During the course of these investigations, the modes operandi of perpetrating fraud was discovered It was found that the appellant used to deposit nominal amounts say Rs. 11/- or Rs. 12/- as advance tax in bogus names/existing names and thereafter secured two copies of such challans. The copies of these challans which were to be attached with the return of income were then tampered by placing the figures of Rs. 100/ and Rs. 200/- in front of the nominal amount to inflate the figure of Income-tax to be paid through the challans Necessary corrections were made in the amounts reflected by the figures by placing the words 10000/20000, to make it appear that advance tax payment had been made to the extent of Rs. 10,001/- oƨ Rs. 10,012/-. The figures were corrected in the stamp of the bank challans also. These forged challans were thereafter attached with the returns of income filed in the bogus/existing names showing nominal income either from salary or from other sources with the net result that a claim for refund of considerable amount was presented to the Income-tax Department. To safeguard against the detection of the fraud and to en cash the refunds issued by the I.T. Department, bank accounts were opened in the names of these assessee in Sahyog Co. Op. Bank in Madalpur Branch. The refunds were deposited in these bogus accounts and subsequently the amounts were withdrawn in small amounts in cash. The funds were transferred to R.H.S. Family account No.681 in the same branch. An amount of Rs. 23,444/-was found to have been withdrawn in cash, the whereabouts of which were not known.

iv) This information was elicited from the appellant himself in the shape of statement recorded on 24/4/1993 by the ITO, Ward -8(8), Ahmedabad which has been reproduced In the assessment order for assessment year 1991-92 at paragraph 2.2 from pages 4 to 16 of the assessment order.

v) Subsequent to the above findings and the admission the appellant, -fact were recorded by the records made by the available with the IT. Department and the incriminating documents seized during the course of search at the residential and

professional premises of the appellant u/s 132(1) of the I.T. Act. The department identified 106 cases where such bogus refunds were claimed and obtained by the appellant. By the above act, the appellant had made, himself liable to the prosecution under various provisions of the Indian Penal Code for which the ITO, Ward 8(1) had launched First Information Report with the Ellisbridge Police Station, Ahmedabad on 24/4/1993

vi) From the scrutiny of the seized documents, case records available with the I. T. Department and the statement recorded, it was found that the appellant had earned a total income Rs.21,75,500/- which pertained to assessment year 1991-92.. 1992-93 and 1993-94. The break-up of the above income has been furnished in paragraph 3.1 of the assessment order for assessment year 1991-92 as follows:-

A.Y. 1991-92 - Rs 14,905/-
A.Y. 1992-93 - Rs. 2,37,141/-
A.Y.1993-94 - Rs. 19,23,453/-

This was the total amount reflected in the RHS Family Account Ho.581. Out of the above amount, Rs. 23,444/- had been withdrawn by the appellant in cash from time to time. The withdrawals amounting to Rs 23,444/- pertained to assessment year 1992-93 to the extent of Rs. 10,802/- and to the extent of Rs. 12,642/- to the assessment year 1993-94 The appellant was called upon to explain as to why the above income of Rs. 21,75,500/- and Rs. 23,444/- be not considered as his income from other sources in the assessment years 1991-92, 1992-93 and 1993-94. Before the Assessing Officer, the appellant had contended that the department had recovered the entire amount of and Rs 21,87,719/- during assessment year 1995-96. Therefore and if the defrauded amount was to be considered as appellant's income, then the corresponding expenditure of the like amount was liable to be allowed by way of set off on account of expenditure. The appellant had placed reliance on the following judicial pronouncements:-

1. J. S. Parker vs. V. B. Palekar (1974) 94 ITR616, 639.
2. CIT VS. Lahore Electric Supply Co. Ltd. (1966) ITR 1 (SC)
3. CIT vs. s. c. Kothari (1971) 82 ITR 794 (SC)

It was claimed that the liability to repay the refunds of a crime and liability of fund other charges etc. was wholly and exclusively payable in the case of conviction of the alleged charges of such offence of earning I. T. refunds of Government of India. It was further argued that, if the refunds were treated as professional receipts of the assessee, the same amount could not taxed as gross receipts only since the assesses had maintained its expenditure account on mercantile basis and hence the recovery made by the Government of India was liable to be deducted as professional expenditure. The reliance was placed on the decision of Badridas Daga vs.CIT 34 ITR 10(SC), wherein it was held that "loss resulting from

embezzlement are admissible as deduction u/s 10(1) of the I.T. Act (corresponding to sec.23 of I.T. Act, 1961) if it arises out of carrying on of the business and is incidental to it. It was further claimed that the appellant had not been proved guilty of charges leveled against him by the Court and till that date, the appellant was Innocent and as such the question of assessing the income did not arise. The Assessing Officer, however rejected the above explanation and the arguments of the appellant for the following reason:-

> *(a) "The word 'income' in the Act connotes a periodical monetary return 'coming in' with some sort of regularity or expected regularly from definite sources. The sources need not be continuously productive but must be one whose; object is the production of; a definite return excluding anything in the nature of a windfall (CIT vs. Shaw Wallace & Co, AIR PC. 133)."*
>
> *(b) For the purpose of taxation of any income at the hands of an assessee, two things are necessary (i) firstly, the income must have accrued or arisen to or must have been received by the assessee, and (ii) secondly, the income, profits and gains to form the basis of tax must represent the true Income, apart from the deemed or fictional Income under the statutory provisions.*

Once it is held that a particular income had accrued or arisen during a particular accounting year and that that represented the true income of the assesses for that year, then the income is taxable notwithstanding the rival claim put forward by the third party to the amount In question (Indian Copper Corporation Ltd. Vs. CIT(1976) CTR (Pat), 227, 233, 234).

(c) Although the distinction between capital receipt and revenue receipt is well recognized, the task of assigning it to the appropriate head in borderline cases is not free from difficulty and becomes one of much refinement. Decided cases can provide illustrations and afford indications of the kind of consideration which may relevantly be borne in mind in approaching the problem. In the final analysis, however, the controversy would have to be resolved in the light of the facts and circumstances of each Individual case (CIT vs. Manna & Co. (1972) 86 ITU 23, 33(SC).

(d) In order to find out whether a receipt is a capital or revenue receipt, one has to see what it is in the hands of the receiver and not in its nature in the hands of the payer. The source from which the payment is made has no bearing on the question. Where an amount is paid which, so far as the payer is concerned, is paid wholly or partly out of the capital, and the receiver receives it as income on his part, the entire receipt is taxable in the hands of the receiver (CIT vs. Kamal Behri Lai Singha (1971) 82 ITU 460,462(SC).

(e) State bank of Travancore vs. CIT (1936) 158 ITR 155(SC), it was, by majority said that (1) the concept of real income would apply where there has been a surrender of income which in theory may have accrued but in the reality of the situation, no income had resulted because the income did not really accrue; (2) where the act applies, the concept of real income should not be so read as to defeat the provisions of the Act;

(f) In all cases in which a receipt is sought to be taxed as income, the burden lies upon the department to prove that it is within the taxing provision. Where, however, a receipt is in the nature of income, the burden of proving that it is not taxable, because it falls within an exemption provided by the Act, lies upon the lies upon the assessee. (Parimisetti Seetharamamma vs CIT(1965) 57 ITR 532, 536(SC)

(g) The Assessing Officer is, within the limits assigned to him under the Act, a tribunal of exclusive jurisdiction for the purpose of assessment of income-tax He has under the Act to decide whether a particular receipt as income. As between the state and the as sea see, it is his function alone to determine whether the receipt is income and is taxable. [Chhatrasinhji Kesarlsinhji Thakore vs CIT(1966) 59 ITR 562, 568(SC)]

(h) It is well settled In England that the Income Tax Act is not restricted to its application to lawful business only. Once it is found that the transaction in question is trade, manufacture, adventure or concern in the nature of trade within the meaning of the Income Tax Act, the words of the Section are not to be cut down by the consideration that the trade is tainted with illegally. The taint of illegality or wrong-doing associates with income, profits and gains is immaterial for the purpose of taxation. Even if a trade is illegal, it is still a trade within the meaning of income Tax Act, and its income, profits and gains are chargeable to Income-tax (see, Wheatoroft's Law of Income-tax part 1- 411, page 1196, Simon's Income-tax, Second edition, Vol.2, para 480).

The cases where these principles were laid down are -

(1) Mann. V. Nash (1932)16 TAX Cas. 523,527-8)

> *It was held that in truth, the revenue representing the state, is merely looking at an accomplished fact. It is not condoning it, it has not taken part in it, it merely finds profits made from what appears to be a trade which has to be taxed.*

2) Lindsay vs. Comrs of Inland Revenue (1932) 18 Tax Case, 43.56)-

> *A case on bootlegging partnership between three persons for the purpose of getting whisky into the United States by committing a breach of laws. Profits held to be taxable*

3) Canadian Minister of Finance vs. Smith (1927)A.C.193(PC):

> *Once the character of business has been ascertained as being of the nature of trade, the person who carried it on cannot found upon elements of illegality to avoid tax.*

4) Southern vs. A.B. Ltd. (1933 18 Tax cas 59,73-1 ITR 176(KB):

> *Once you find a trade, profession, employment or vocation, and find profits derived from that, then at once, the tax would be livable and it would be irrelevant to the taxing statute whether the trade is a lawful or unlawful."*
>
> *"The basic rule which these decisions lay down is, that the Income tax law is not concerned with the legality or illegality of the business. Once it is round that there is a business, legal or illegal, the Income-tax law says that the profits shall be chargeable to tax (GIT vs. S.C. Kothari(1968) 69 ITR 1. 25(Guj). The same was reversed in (1971) 82 ITR 794 (SC).*

Under the Income-tax Act, the authorities are not concerned only with whether the activities of the assessee are legal or illegal. An assessee may be earning income by indulging in illegal activities like smuggling. The Income-tax Authorities have no power to stop the activity of such an assessee and the only power which they have is to levy income tax on the income which such an assessee may be earning from even such an illegal activity (Harinder Singh vs. ITO (1987) 166 ITR 763,763(ALL).

Tainted income: Income is income, though tainted. When a receipt possesses the quality of income, it does not shed its quality by reason of the fact that it comes from a tainted source or through tainted means. The degree of taint may vary from a simple unenforceability in a court of law of a contract intended to produce income to the illegality of making a contract itself und consequent imposition of fines and imprisonment on the transgression there of (CIT vs. Kothari (SC) (1968) 09 ITR I (GUJ)

The offence in certain cases may, besides vitiating the main contract, affect subsidiary contracts too, as for example, contracts of insurance against fire or damage of goods or articles involved in the main contract. (Insurance on spirits and casks containing spirits would be void and illegal in areas where anti-liquor laws are in force - Porter on Insurance, 8th edition, page 31) In all such cases, so long as the methods adopted to earn the income are commercial and otherwise amount to a business, the income would not be exempt from taxation (Chandrika Prasad Ram Swarup vs CIT (1939) 7 ITR 269 (ALL).

Once the character of the activity has been ascertained as being in the nature of trade, the person who carries it on cannot found himself upon the element of illegality in it, to avoid the tax (Lindsay vs. IRC 18 TC 43). He cannot invoke his (owrn turpitude and claim immunity (Canadian Minister of Finance vs. Smith (1927) AC 193). By taxing such income, the State is not taking part in the crime or condoning it, nor would it become a principal or a sharer in the illegality. The revenue merely looks at an accomplished fact, viz of profits having been earned and assesses the same. The assessee may be prosecuted for the crime and yet be charged on the profit (Mann v. Nash 16 TC 523). To hold otherwise would be to put a premium on dishonesty and fraud. The burglar and the swindler are also liable to tax as the honest businessman and, in addition, they may also reap their deserts elsewhere (Canadian Minister of Finance V. Smith (1927 AC 193,193) In short, Income Tax Acts are not necessarily restricted in their application to lawful business only (Southern Vs AB Ltd 18 TC 59,73). It is, however, possible to urge in some cases that the crime is such that there can be no trade or business in the eye of law(as for instance, in house-breaking, burglary, or receiving stolen goods and re- selling the same) (Though it is doubtful whether such a contention is tenable as the concept of 'business' has no relation to the lawfulness of the activities indulged in), when the profit will be excluded from the head 'Business or profession', not on the ground that they are profits from illegal business, but on the ground that the business is honest in law. The profits under such circumstances will be assessable under the residuary head 'Other Sources'

(i) Deductions from tainted income-in CIT vs. Kothari (SC) (82 ITR 794 (SC)- the Supreme Court held that a loss incurred in carrying on an illegal business must be deduction before the true figure of profits brought to tax can be computed. Grover. J., speaking for the Court, observed:-

> *"If the business is illegal, neither the profits earned nor the losses incurred would be enforceable in law. But, that does not take the profits out of the taxing statute. Similarly, the taint of illegality of the business cannot detract from the losses being taken into account for computation of the amount, which can be subjected to tax as 'profits' under section 10(1) of the Act of 1922. The tax collector cannot be heard or say that he will being the gross receipts to tax. He can only tax profits of a trade or business. That cannot be done without deducting the losses and the legitimate expenses of the business"*

A distinction must however, be drawn between an infraction of the law committed in the carrying on of a lawful business and in infraction of the law committed in a business inherently unlawful and constituting a normal Incident of it [CIT vs. Piara Singh(1930) 124 ITR 40(SC)) Thus, if expenditure has been incurred for the purpose of carrying on the business, that is, to enable a person to carry on and

earn profit in that business, it would be treated a permissible deduction. It has to be a commercial loss in trade and also contemplable by the parties. A penalty imposed for a breach of any law during the course of a trade cannot be regarded as an allowable expenditure, as an infraction of the law is not a normal incident of a lawful business and a penalty paid for an infraction of the law cannot be said to be a business loss in the commercial sense. However, where for certain infractions of the law, in addition to a penalty or fine, the goods are confiscated and sold at a lower price which is paid to the assessee, the resultant loss on sale of stock in trade would be an allowable loss.

(j) Infraction of the law in the course of carrying on unlawful business - Profits in the carrying on of unlawful business shall have to be computed according to commercial principles. The commercial conception of profits does not vary according as the business in question is tainted or untainted. No businessman would agree that his business say, of smuggling, is the sum of the gross receipts, ignoring the expenses he had laid out to earn the income. In CIT vs. Piara Singh (1930) 124 ITR 40(SC), the assessee was carrying on the business of smuggling. He was apprehended by the Police while crossing the Indo-Pakistan border into Pakistan. A sum of Rs. 63,500/- in currency notes was recovered from his person. On interrogation, he stated that he was taking the currency notes to Pakistan to enable him to purchase gold in that country with a view to smuggling it into India. The confiscation of the currency Officer then took proceedings determined his tax liability. A sum notes was ordered The Assessing for assessing the assessee income and of Rs 60,500/- out of Rs 65,500/- was held to constitute the income of the assessee from undisclosed sources The question was whether the confiscation of the currency notes entitled the assessee to the deduction of Rs 65,500/- claimed by him. The Supreme Court held that the currency notes carried by the assessee across the border constituted the means for acquiring gold in Pakistan, which gold he subsequently sold in India at a profit. The currency notes were necessary for acquiring gold. The carriage of currency notes across the border was an essential part of the smuggling operation. If the activity of smuggling can be regarded as a business, those who are carrying on that business must to be deemed to be aware that a necessary incident of the business is detection by the customs authorities and the consequent confiscation of the currency notes.

It is an incident as predictable in the course of carrying on the activity as any other feature of it. Having regard to the nature of the activity possible detection by the customs authorities constitutes a normal feature integrated into all that is implied and Involved in it. The confiscation of the currency notes is a loss occasioned in pursuing the business, it is a loss which springs directly from the carrying on of the business and is incidental to it

(k) Head under which income is to be charged to tax earning illegal business income becomes taxable either under the head "Business or profession, or under

the head "Other sources" Should the business by reason of its being prohibited by law or being, carried out a bones mores be regarded as ineligible to the status of a 'business or profession the income from, such business or profession", the income from such business would have to be charged only under the head 'Other sources Under this later head, for the purpose of computing the chargeable income, all expenditure incurred for the purpose of making or earning such income' has statutorily to be deducted. If, however, the income should be taxed under the head 'Business or profession, then, what is taxable thereunder is the 'profit or gain' of the business. Such profits shall have to be computed according to commercial principles, that it is, after making an allowance for necessary outgoings

(1) Embezzled or misappropriated funds:

The chargeability of sums of money embezzled or stolen would depend upon the application of several principles touching the subject, some of which are well established. It is well settled that the element of unlawfulness or illegality or immorality in the acquisition of income does not exempt the income from charge. It is equally well settled that the fact that theft or embezzled may give rise to deductible loss to the owner of the money, has no relevance to the chargeability of the sum embezzled in the hands of the embezzler. The two are uncorrelated. Also, if the embezzled or misappropriated sum be employed in business or in a productive investment, there is no question that the profit or yield resulting there from is taxable. The difficulty raised in the attributing of income-quality to the sum embezzled or stolen. If the embezzler is in the habit of committing misappropriation, there would arise a continuity which would be said to constitute a source, It would be improper to attribute this coarse to business or profession within the meaning of section 28 of the Act, since, in law, there can be no business in stealing and misappropriation Consequently, the source would have to be attributed to the residuary head 'Other sources. But even so, the question would yet remain for an answer, whether the acquisition is in the nature of 'income or 'gain' to the embezzler

The view that the embezzled sum is taxable runs on the following. amongst other, lines

(i) As against the whole world except the owner, the embezzler is the legal owner. His complete possession of the funds and his dominion over the funds to the extent of his ability to dispose of every pie of it is of undoubted economic and realizable value

(ii) The treasury may tax not only ownership but any right or privilege which is a constituent of ownership

(iii) The State in the matter of levy of taxes does not take sides in any private controversy Possession is prima facie evidence of ownership and the collection of revenue cannot be delayed by the decision as to the question of legality of the claim of the possessor.

(iv) The fact that the Government's lien upon the fund would have priority over the claim of the rightful owner is at best an argument for modifying the tax lien and not against the levy of the charge itself.

11. The assessee is carrying on a lawful white-collared profession that of a Chartered Accountant. I am in entire agreement with his contention that gross receipts of his profession cannot be taxed in view of the present position of law. But the real issue is that whether the ill-gotten gains can be considered as his professional receipts. During the course of carrying out a lawful profession the EXIL GENIUS within him prompted him to commit a misdemeanor which in normal parlance amounts to embezzlement. Hence, it can be stated that receipts from such activities do not amount to professional receipts. The nature of his profession is far different from his acts of commission. The requirements of his profession are to prepare Returns of income, represent cases before the Revenue, tender advice to his client etc. Hence, it is Income from such activity which can be termed as his professional receipts. The defrauded amount has not arisen to him on account of his profession, but on account of illegal activity which he carried out during the exercise of his lawful profession. The illegal activity must be dissected from his professional activity and thereby it follows that receipts from two separated activities must also be dissected. The receipts arising from profession will necessarily be taxed under the head "profession", whereas the TAINTED income must be brought to tax under the residuary head "Other sources" The assessee's contention that unless and until he is proved guilty in a Court of law, the question of income does not arise, cannot be entertained as determination of income is independent of the view a Court of law may take with regard to a case that is governed by a different statute. According to the assesses the of defrauded amount was utilized as follows:

> *Rs. 10, 26,060 have been invested in shares in the name of his HUF.*
>
> *Rs.4.53 lakhs have been invested with Sahayog Co. Op Bank S.B.a/c. No. 1408, Madalpur Branch, Ahmedabad*

The balance has not been explained hence, it is presumed to be expenditure which has not been recorded in the books of accounts

11.1 The relevant portions of Section 56 and 57 read as follow:-

"56(1) Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to Income-tax under the head "Income from other sources11, if it is not chargeable to income-tax under any of the heads specified in section 14, items A to E.

"57. The income chargeable under the head "Income from other sources" shall be computed after waking the following deductions, namely -

(iii) any other expenditure(not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income

It is very clear that the recovery by the Government cannot be claimed by the assessee as a deduction as the recovery was not expended wholly and exclusively for the purpose of earning such income."

11.2 In appeal, the above addition has been challenged by the appellant. It has been contended that the Assessing Officer was not justified in making the above addition in appellant's total Income on the ground that not a single notice was issued to the appellant except requirement letter before determining the total income at higher level as against the returned income. The Assessing Officer had not supplied to the appellant the copies of the statements recorded on 21/4/1993 by the learned ITO, Ward 8(1), Ahmedabad and the statements recorded on 22/4/93 by the ITO, Ward 8(8), Ahmedabad, inspite of repeated requests made from time to time orally as well as in writing. The learned ACIT has further erred in relying on the statements of the appellant recorded on 21/4/1993, 22/4/1993, 23/4/1993 and 24/4/1993 in addition to the other material without even disclosing to the appellant the relevant extracts as have been mentioned in the assessment order dated 23/3/1995 for assessment year 1991-92 Since the copies of the statements had not been supplied to the appellant, the same could not be rebutted before the Assessing Officer. The procedure adopted by the Assessing Officer in framing the assessment and determining the appellant's income from other sources denied any opportunity to the appellant to explain or rebut the presumptions raised against him. Firstly, the evidence and material relied on by the Assessing Officer was not made available to the appellant and secondly no opportunity was given to offer explanation or comment in this regard. It was further contended that apart from the above denial of principles of natural justice, the Assessing Officer ignored the objections and contentions raised by the appellant on various dates of hearing vide letters dated 27/10/94, 22/1/95, 18/2/95, 2/3/95 and 6/3/1995.

11.3 The Assessing Officer failed to appreciate the fact that the appellant had not earned income at all from the Income-tax refunds obtained from the Government India. No such income had either accrued to the appellant or arosed to him in any

of the previous year relevant to assessment year 1992-33 and 1993-94 in view of CBDT order u/s 119(2A) dated 2/5/1994

The Assessing Officer also failed to appreciate the fact that the appellant had not earned income at all from the Income-tax refunds obtained from the Govt. of India. No such income had either accrued to the appellant or arosed to him in any of the PY relevant to assessment year 1992-93 and 1993-94 in view of CBDT order u/s 119(2A) dated 2/5/1994. The AO also failed to appreciate that even otherwise the appellant had suffered a loss of Rs, 12219/-on this account since the gross payment of Rs.2187719/- exceeded the gross receipts of Rs.2135500/-. The appellant had informed these facts under him letter dated 22/1/1995 which have been ignored while framing the assessment. The Assessing Officer was not justified in bringing the gross receipts only to the preview of the I.T. Act without considering the outgoings in the shape of repayment of embezzled money to the Government of India. The Assessing officer had further erred in upholding that the additional sum of Rs. 10802/- formed part of diverted receipts without any basis or material on record. The withdrawal of cash from the savings bank account or any bank account did not detriment the character of income as chargeable to tax. The refunds deposited in the savings bank account were supported by the evidences according to which the gross receipts case to Rs 217550/- RHS Family account Ho.681 was an account in which the source of credit was transferred from the saving bank account were refunds were deposited by account payee cheque as well as by reimbursement of the capital being refund of share application money. The question of any credit in RHS Family account Mo.681 in this respect does not arise. Even otherwise, the same should have been allowed as set off against the loss of Rs. 12,719/-.

11.4 The appellant further contented order for assessment year 1991-92,

The appellant had filed an appeal before the DCIT(Appeal s) II Ahmedabad, who had vide his order No. IT/Inv. 6(1)/3/95-96 dated 23/11/1995, deleted similar addition made in assessment year 1991-92, In the appellate order referred to above, the learned DCIT(Appeals) II, Ahmedabad had held "Theoretically the stand taken by the appellant in respect of deductibility of expenditure out of gross receipts, amount repaid to the Govt. being liability and liability being allowable in A. Y, 91-92 though paid in A.Y.94-95 are correct. I hold that embezzled amount received by the appellant is not an income as he is duty bound to repay the amount to the Government on being caught with forgery and ownership of the Government never ceased whatever has been paid by him or recovered from him is not tax but recovery of amount which was lying with him and which was owned by the Government throughout this period. The conduct of the appellant howsoever reprehensible may be, will not turn the receipts obtained from bogus claim refund as income of the appellant. The proceedings before the Department have to be decided within the four corners of the Income-tax Act, 1961 and this

forum is not a criminal court of justice for passing judgement on immorality of the appellant's act." Since the addition made in appellant's total income in assessment year 1991-92 had been deleted by the learned DCIT(A)2, Ahmedabad vide order dated 23/11/1995 and the department had not filed appeal against the said order, the addition made in assessment year 1992-93 was able to be deleted. It was contended that the addition wade in appellant's total income may be deleted

12. The contention of the appellant has been carefully considered. From the facts of the case as discussed in the earlier paragraphs and by the Assessing Officer in his order for assessment year 1991-92, it is emerges that the appellant had received a total sum of Rs.21,75,500/- by en-cashing the refunds obtained from the IT. Department. These refunds had been obtained frequently in the names of the persons who had neither deposited such amounts by way of Income-tax nor had any income as disclosed in their return. The funds so obtained by the appellant had been utilized by him In the following manner :-

(i) Rs. 1026060/- had been invested in shares in the name of the HUF
(ii) Rs.453,000/- had been invested with Sahayog Co. Op. Bank F.D. account No 1408, Madalpur Branch
(iii) The balance had not been explained

It is further seen from the facts of the case that the above amount regained in the possession and control of the appellant during the previous year relevant to assessment year 1992-93 and 1993-94. Therefore, it is apparent that the appellant had earned income to the extent of Rs.2,47,941/-for the period relevant to assessment year 1992-93 and Rs. 19,36,100/- for AY 1993-94. The above income had been utilized by the appellant by making investment in shares in the name of HUF The appellant's claim that the money obtained frequently belonged to the Government of India and had been ultimately paid back to them during the period relevant to assessment year 1994-95 and 1995-96 is not wholly true. The recoveries have been effected form the appellant in assessment year 1994-95 and 1995-96 and not of the same amount but by disposal of the shares and investment which the appellant had in various companies and banks. The Assessing officer has discussed at length the taxability of income derived by the appellant by indulging in the illegal activity, From the reasons discussed in the assessment order, it is patently clear that the appellant has earned income from the activity of obtaining refunds from the I.T. Department. This has been done by virtue of the fact that he has been practicing as a professional Chartered Account in the Income-tax Department. The fact that the appellant professionally qualified has given him an ingress to the procedures of the I.T. Department which have been utilized by him skillfully to obtain the funds amounting Rs.21,75,500/- The various case laws discussed by the Assessing Officer show that the Income-tax Law is concerned with the legality or illegality of business or it is found that there is an

economic activity, the provisions of the I.T. Act are applicable to determine the chargeability of the receipts under the I.T. Act under the appropriate heads of income. Under the I.T. Act, I.T. authority is not concerned with the legality of the activities of the appellant. The appellant may be earning income by indulging in the illegal activities. Income- tax Act empowers the Assessing Officer to levy income-tax on such income.

12.1 The deductions from the above income are to be allowed in view of the Supreme Court decision in the case of CIT vs. S.C, Kothari (82 ITR) 794. In that case the Supreme Court had held that loss incurred in carrying on illegal business must be deducted from the true figure of profits brought to tax could be computed. However, it is seen that the recoveries have been made from the appellant not during the accounting period relevant to assessment year 1992-93 & 1993-94. As stated earlier, the amount has been recovered from the appellant only. In A.Y. 1994- 95 and 1995-96. Therefore, the deduction in respect of the above expenditure can be allowed to the appellant only in the assessment years 1994-95 and 1995-96. So far as assessment year 1992-93 & 1993-94 is concerned, since no recovery has been made by the Government, the question of allowing deduction from such Income in respect of the expenditure does not arise. In view of this, the income from other sources amounting to Rs. 2,47,943/- and Rs. 19,36,095/- has to be taxed in assessment years 1992-93 & 1993-94 respectively.

13. The appellate order referred to by the appellant has been carefully considered. The learned DCIT (Appeals) 2. Ahmedabad has not given any specific finding in the appellate order that the appellant has not earned any income from the activity of encashment of the refunds, in fact, the learned DCIT (Appeals) has accepted the taxability of these receipts in the appellant's hands in assessment year 1991-92. In this connection, a reference is made to paragraph 7 of the appellate order which is reproduced below :-

> *"Presuming it is an income, question arises under which head it should be assessed. Though the income arose in A.Y.1991-92 onwards for 3 more years and forgery was done in challans pertaining to 106 persons, it cannot be said that the receipts are out of the profession of the appellant. As mentioned above the receipts are as a result of interpolation of gigues in the challans and in collusion with Income-tax and bank officials and assessee had defrauded the Govt. of India, the receipts are taxable (if it Can be argued so) under the head income from other sources. However, what is taxable is incase and not the gross receipts over the expenditure incurred to earn it (expenditure allowable to the extent as per provisions of the Act). According to the appellant, if the gross receipts received on account of embezzlement is income, then due allowance has to be given for the payments made to the Govt. of India of the amount embezzled. The appellant has paid/amount recovered from him is Rs.21,93,944/- This*

amount has been recovered out of the sale proceeds of the seized shares, encashment of NSC, FOR and recovery out of the Savings Bank account. The total amount of 21,98,945/- has been recovered in A.Y. 1994-95 and 1995-96 as against the defraud amount."

The learned DCIT(A) had deleted the addition in assessment year 1991-92 on the ground that the income had to be considered after setting off the expenditure incurred by the appellant in earning such Income. Reference is made of the discussion in paragraph 7 of the appellate order, he had considered the recoveries effected from the appellant in assessment year 1994-95 and 1995-96 as expedite allowable for the receipts for assessment year 1991-92 With all due regards, I am unable to agree with the findings in of the brother-colleague. The receipts in assessment year 1991-92 had arisen out of encashment of the refund obtained in the names of several persons from the IT. Department. Income was earned in assessment year 1991-92, 1992-93 and 1993-94 and was invested by the appellant in shares in the name of HUF In assessment year 1994-95 and 1995-96, the recoveries have been made out of investments made by the appellant in the name of the HUF and its members. Therefore, the deduction of an expenditure, if any, has to be considered of the earning or income for assessment year 1994-95 and 1995- 06. Appellant is a professional and has shown income from profession on mercantile basis. There is no reason consider and allow expenditure to the appellant in A.Y 1992-93 & 1993-94 on that basis. Therefore, it is held that the additions has been correctly made and no interference is called for in this respect. Accordingly, this ground is dismissed and decided against the appellant.

9. Heard rival submissions at length and perused the materials available on record. We have gone through the judgement of the Hon'ble ACMM, Ahmedabad discharging the assessee from the prosecution filed by the Department u/s 277 of the Income-tax Act. For the sake of ready reference, the said order is reproduced as under:-

Cr. Case no 333/1993

English translation of original Gujarati version of order dt 12/12/2023 in response to discharge petition dt 06/09/2023

Complainant: Ld. Sp. Prosecutor Shri J. C. Yagnik accused party in person (self)

1. In this case, accused has filed a petition for discharging him from alleged charges u/s 177,193,196,199 of Indian Penal Code.

2. Accused has stated reasons for discharge that Sec. 277 of Income Tax Act applies to tax evasion only but the complaint includes allegations of securing income tax refunds on the basis of forged- false documents only and hence sec. 277 of it act does not apply in this case. Complainant has alleged that accused has secured income-tax refund on the basis of forged documents in the names of his clients' assessees but the complainant has not submitted any documentary evidence in the case matter since April 1993 till today. In this case, complainant and his client assessees have either expired or their whereabouts are not known and Sahyog bank has also been closed and hence complainant does not possess any documentary evidence & hence criminal case against accused has not been proceeded with since April 1993. In addition, it has been informed that, accused, a senior citizen of 70 years old, suffers from health-sickness and is also responsible for maintenance of his father aged 94 years, who also, usually remains sick. Hence accused may please be discharged and acquitted as innocent from all charges by passing an order as per this petition

2.1 Complainant has submitted written reply vide exhibit-107 and stated that income tax department has filed F.I.R. under other sections of Indian Penal Code with Ellis bridge police station, which has been later on transferred to crime branch Ahmedabad and charge sheet has been filed & case has been registered as Cr. Case no 108/2006, which is pending for evidence. It was further disclosed that Crime Branch, Abad has collected certain documents from income tax department and from Sahyog cooperative bank Madalpura branch, Abd. That income tax refunds have been credited in savings bank accounts of Sahyog cooperative bank, which has been closed prior to 15 years, and at present there is no information about this bank's management, branch managers, officers, employees, engaged in opening and operating of savings accounts & hence at present, it is not possible to secure copies of this bank's records. It is further disclosed that complainant has tried his level best in collecting evidence since April 1993 but it was just a wastage of considerable time and further due to transfer of case records, income tax department is not in possession of important and cogent evidence. It is further disclosed that crime branch has collected some of the documents but same have been found to have been termit-feded and hence such documents have been returned to crime branch. It is further disclosed that crime branch has again collected certain documents but same being incomplete, it is not possible to establish a chain of evidence. It is further disclosed that complainant P. M. Makwana has expired even before a long time period. It has been further stated that this discharge petition has been sent to judicial department of income tax dept. Hence it is being prayed either to postpone the case for a shorter time or to pass an appropriate order

3. In the present case, alleged offence has to be proceeded with through warrant trial basis. Hence taking into consideration cognizance as per sec. 245 of cr.pr code, it is being read as follows.

Sec 245:- when accused shall be discharged

(1) if, upon taking all evidence referred to in sec 244, the magistrate considers, for reasons to be recorded, that no case against accused has been made out which, if unrebutted, warrant his conviction, the magistrate shall discharge him.

(2) nothing in this section shall be deemed to prevent a magistrate from discharging the accused at any previous stage of case if, for reasons to be recorded by such magistrate, he considers the charges to be groundless.

3.1 Hon'ble SC has held in case of AIR 2008 SC 1903 (Hemchand v/s state of Jarkhand)

"it is beyond any doubt or dispute that at the stage of framing of charge, the court will not weigh the evidence. The stage for appreciating evidence for the purpose of arriving at a conclusion as to whether prosecution was able to bring home charge against accused or not, would arise only after all evidences are brought on records at the trial" held further that

As is evident from the paragraph extracted above, if the court is satisfied that a prima facie case is made out for proceeding further then charge has to be framed. Per contra, if evidence which the prosecution proposes to produce to prove the guilt of accused, even if fully accepted before it is challenged by cross examination or rebutted by the defence evidence, if any, cannot show that the accused committed the particular offence, then the charge can be quashed."

Hon'ble Gujarat HC has held in case of 2009(3) GLR 1937 (Kanubhai Genaji Trikamji Bhatti v/s State of Gujarat "thus as observed by Hon'ble SC, if on the basis of materials on record, a court would come to conclusion that commission of offence is probable consequence, a case for framing of charge exits.it is further observed that if the court were to think that accused might have committed the offence, it can frame the charge. Though for conviction, conclusion is required to be that accused has committed the ofence.at this stage, probative value of materials on record cannot be gone into, but the materials brought on records by prosecution has to be accepted as true at this stage. In the background of the ratios laid down by Hon'ble apex court in Somnath Thapar case (supra) and in the light of the entire above discussion, prima-facie it cannot be said that the ld. Trial judge erred in rejecting the request of the petitioner- original accused no. 4 for discharge. As stated above and as observed by Hon'ble apex court in Dilavar Balus case (supra), even laying evidence for the limited purpose of finding as to whether

prima-facie case has been made out, it prima-facie transpires in the light of above entire discussion that the evidence prima-facie reveals that charge is required to be framed"

4. Accused has pleaded that it has been held in the case of P Jayapan 149 ITR 696 (SC), that once the assessment order has been cancelled by the tribunal, prosecution cannot be proceeded with. It is being further argued that it has been held in the case of Uttamchand 133 ITR 909 (SC), Shivsankar Shah 106 Taxman 536 (Patna HC), that once penalty u/s 271(1)(c) of income tax act has been cancelled by tribunal, prosecution proceedings automatically ends. It is further pleaded that it has been held in the case of K.C. Builders 265 ITR 562(SC), that findings of tribunal are binding on the criminal court. It is further pleaded that in this case, prosecution cannot be sustained, as tribunal has restored the case matter to the CIT (Appeal) vide its order dt 08/06/2005 in ITA nos. 2664, 2665/Abad/1997. It is further pleaded that Hon'ble Guj HC has passed an order dt 28/12/2005 in sp. Cr. Appl. No 857/01 and directed to transfer the Cr. Case no 59/97 to this court. Complainant has confirmed that they do not have any documentary evidence in possession.

5. Petitioner/accused is a senior citizen. .complainant has not submitted paper book till today since filing of case in April 1993. Complainant has not declared facts before this court, as to within how much time-period, he will submit paper book, even after, when accused has filed this discharge petition. Present case is also pending since more than 30 years time period. Present case is also included in the list of oldest cases and complainant has not taken any effective actions for process of case, inspite of repeated reminders for the same.in view of 5+0 policy guidelines of Hon'ble SC and Guj HC, it has been directed to dispose of old cases pending since five years or more time period, by carrying out urgent hearings. Complainant has not submitted any documentary evidence during arguments stage so as to establish clear-cut case of involvement of accused as per complaint filed. Complainant P.M. Makwana has expired and whereabouts of other witnesses are not known. Alleged income tax refund money has been credited in accounts of Sahyog bank, which has been closed for more than 15 years ago and complainant is not able to submit any documents from this bank. Hon'ble Guj. HC has transferred this fir/charge sheet case to this court and passed an order to hear the cases together. Hence this court had started taking evidence in all the cases but considering above facts in this case, there is no probability of such evidence in the near future and complainant, being income tax department, it is not proper to keep the case pending for an unlimited time period hence at this stage, considering the changes in circumstances as stated above, this discharge petition deserves to be accepted again by passing an order.

Considering above facts in this case, an order has been passed from justice as state below.

:: ORDER ::

Petitioner/accused's discharge petition is hereby accepted in this case and accused is hereby discharged in this case in accordance with the norms of sec.245 of Cr. Pr. Code and further declared as innocent and ordered as absolved / acquitted in this case.

If there is a change in this order by higher forum, then income tax department will not be prevented from restoring/filing this case again because of such order.
No order as to costs
Pronounced and read this order today in the court

Date: 12/12/2023 *(Sanat Jayantilal Panchal)*
Place: Ahmedabad *Addl. Chief Metropolitan Magistrate.*
Abad (G.J. 00864)

10. From the above sequence of events from the year 1993, the following facts emerge :-

- A search was conducted at the premises of the assessee on the allegation of fraudulent claim of refunds by producing forged challans.
- Assessments for the AYs 1991-92 to 1993-94 have been completed taking into consideration the amount of fraudulent refunds claimed.
- The matter went on a series of litigations and the appeal before the Tribunal is pending.
- It is not in dispute that the assessee has obtained fraudulent refunds and invested in shares in other accounts.
- It is also a fact on record that the embezzled amount of the refunds have been recovered from the assessee in the year 1994-95 and 1995-96 from the accounts of the persons in whose name the amounts have been invested.

- It is also not disputed that the amount out of the fraudulent refunds have been invested in shares and the Department has recovered the amount by disposal of the shares and investments.
- The Revenue has initiated prosecution proceedings u/s 277 of the Income-tax Act in the year 1993 and the same has been dismissed in the year 2023.
- The Additional Chief Metropolitan Magistrate (ACMM), Ahmedabad dismissed the prosecution charges filed by the Revenue owing to non-submission of any evidences.
- A warrant trial u/s 245 of the Cr.P.C. discharged the assessee from the criminal prosecution was initiated u/s 277 of the Income-tax Act.

11. After analysing the above facts, the following questions arise for our adjudication alongwith the grounds taken up by the assessee in the appeal filed.

i) Having recovered the entire amounts from the assessee, can the same amounts be treated as income of the assessee ?

ii) Whether the Income-tax Department can be satisfied with taxing @ 30-35% of the fraudulent income earned by the assessee by defrauding the Government Department ?

iii) Whether the proceedings of prosecution initiated by the Income-tax Department u/s 277 of the Income-tax Act literally pertains to the tax evaded which is 30-35% of the income fraudulently earned ?

iv) Whether, the Income-tax Department executing the Income-tax Act can only deal with taxation of the income as per the rates prescribed by the Statute ?

v) In that case, whether the Income-tax Department is willing to refund 65-75% of the amount embezzled by the assessee on account of the refunds by taxing him @ 35% ?

vi) Whether the Income-tax Department working as a Department of Government of India should take initiative and launch proceedings to recover the entire amounts or not ?

vii) Whether the Income-tax Department acted as a Department executing the income-tax statute and also as an arm of Government of India like any other Department wherein a fraud has been perpetuated and any action has to be taken on the assessee for the fraud perpetuated rather than restricting itself to the assessment of the amount of the fraud perpetuated and collection of the taxes thereof ?

viii) What was the action taken by the Income-tax Department to file any other criminal charges against the assessee who has already perpetuated an act of crime on Government of India ?

12. The case presents a peculiar situation where the income, accrued fraudulently by the assessee, was parked in the accounts of his family's HUF and further leveraged for economic benefits, such as investments and financial gains. The assessee has accepted engaging in the fraudulent activity, which resulted in tangible control and dominion over the funds. This conduct, coupled with the economic benefits derived from the tainted money, reinforces the principle that such income must be attributed to the assessee for tax purposes. While the taxability of the economic benefits derived from such fraudulent income is beyond the current scope, the fact that the assessee leveraged these

funds for personal gains adds weight to the case for taxing the income in the year of accrual. **This aligns with the established principle that income, once accrued or received, irrespective of its legality, must be taxed under the Income-tax Act, 1961.**

13. On these issues we are guided by the facts of the case as well as the established judgments of Hon'ble Supreme Court and High Courts.

14. It is an undisputable fact that the assessee has admitted to fraudulently earning income and parking the same in the accounts operated by him. The deliberate act of parking funds in the accounts operated by him do not absolve the assessee of the taxability of such income. The assessee had dominion over the funds and utilized them for economic gains, including investments. This clearly establishes that the income accrued to the assessee, making it taxable in his hands. In *CIT v. Sitaldas Tirathdas [(*1961) 41 ITR 367 (SC)], the **Hon'ble Supreme Court held that taxability is based on the accrual of income and dominion over funds. The subsequent application of income, whether for personal or family use, does not negate its taxability in the hands of the recipient.** The principle that tainted or illegal income is taxable has been well established in law. The illegality of the source does not absolve the recipient from tax liability. In *CIT v. Piara Singh* [(1980) 124 ITR 40 (SC)], the Hon'ble Supreme Court held that illegal income, such as smuggling profits, is taxable. Similarly, fraudulent income is taxable upon accrual. In *Chandrika Prasad Ram Swarup v. CIT* [(1939) 7 ITR 269 (ALL)], the Apex Court ruled that **tainted income, including that derived from fraud, must be taxed when it accrues or is received.** The leveraging of fraudulently accrued income for economic benefits, such as investments in shares and deposits in the accounts operated by him, further supports its taxability in the hands of the assessee. While the

taxation of economic benefits is beyond the current scope, it demonstrates that the assessee exercised full dominion and control over the funds. **The fact that the fraudulent income was recovered or repaid in subsequent years does not negate the taxability of the income in the year of accrual.**

15. The doctrine of real income requires taxation at the time of accrual, irrespective of later events. In *CIT v. Shoorji Vallabhdas & Co.* [(1962) 46 ITR 144 (SC)], the Hon'ble Supreme Court emphasized **that income is taxable when it is received or accrued, and subsequent adjustments do not affect its original taxability**. Thus, the assessee's claim for deductions in respect of recovery or repayment fails, as it does not satisfy the conditions enumerated in Section 57 of the Act. This provision permits deductions only for expenses incurred wholly and exclusively for the purpose of earning income. **Recovery of fraudulent income is not an expense incurred for earning taxable income; rather, it represents restitution of wrongful gains**. In *CIT v. S.C. Kothari* [(1971) 82 ITR 794 (SC)], the Hon'ble Supreme Court held **that losses from illegal activities can be deducted only if incurred for earning taxable income.** In the present case, recovery or repayment of fraudulent income does not qualify as an allowable expense. Allowing deductions for recovery of fraudulent income would contradict the legislative intent of the Income-tax Act. It would effectively permit the assessee to benefit from their wrongful acts by reducing their tax liability in subsequent years.

16. In *A. Raman & Co. v. CIT* [(1968) AIR 49 (SC)], the Hon'ble Supreme Court ruled **that statutory provisions must be interpreted to align with legislative intent and should not enable unintended benefits to taxpayers involved in fraudulent or wrongful acts.** Thus, the fraudulent income of

Rs. 2,47,943/- for Assessment Year 1992-93 and Rs. 19,36,095/- for Assessment Year 1993-94 is taxable in the hands of the assessee under the head "Income from Other Sources." The parking of these funds in the different accounts and subsequent leveraging for economic benefits reinforces the attribution of such income to the assessee. The deductions claimed for the recovery or repayment of fraudulent income in subsequent years are disallowed. Recovery of such income does not constitute an expense incurred wholly and exclusively for the purpose of earning income under Section 57 of the Act. Therefore, the order of the ld CIT(A) confirming the addition of the fraudulent income is hereby upheld. The denial of deductions for subsequent recovery is also upheld, as it aligns with statutory provisions of the Act as well as judicial precedents.

17. Further, the provision of Section 2(24) of the Act is an inclusive definition and does not differentiate between legality or illegality of earning of income. By subjecting the amount to tax as per the Statute, the Income-tax Department does not condone the illegal activity of claiming fraudulent income from the exchequer of the Govt. This answers the question on the construction of statute which implies that the Parliament intends to levy Income-tax on proceeds of crime or on the gain derived from it. The similar issues involved in the instant case have been the subject matter of interpretation world-wide in USA, UK, Malayisa. The taxing provisions have to be read in consonance with the other provisions of the Act made by the legislature. The taxation of the illegal amounts earned as per the rates provided in the income-tax statute cannot be deemed to have given the right to the assessee to usurp or enjoy the remaining illegal amounts. The taxing amounts as per the income-tax statute, the amounts fraudulently obtained from the Govt. departments, in this case the Income-tax Department itself, by way of claim of fraudulent refunds are still subject to

recovery by Govt. of India. Taxability arises at the point of accrual or receipt. Even if the income is later restituted or recovered, its taxability remains unaffected for the year of accrual. Subsequent adjustments do not negate the taxability for the original period for the matter generation, recovery and restitution are separate transactions. Thus, the act of restitution or recovery is treated independently for taxation purpose. Taxability remains intact for the year of accrual and recovery does not create a retroactive exemption. Under Section 57 of the Act, only expenses incurred wholly and exclusively for the purpose of earning income or deductible. Restitution does not meet the criterion. Allowing deductions for restitution of fraudulently earned income would undermine public policy by creating an incentive to commit fraud. Courts have consistently disallowed claims for deductions or refunds in such cases to maintain the integrity of the tax administration.

18. We also find that the Income-tax Department has initiated prosecution u/s 277 of the Act. This prosecution is primarily launched as per the provisions of the income-tax act for making false statements in verification under the IT Act. The assessee has been discharged from these charges owing to non-substantiation of this allegation in any form by the Revenue. The Income-tax Department being an arm of the Govt. of India appears to have not launched any criminal proceedings against the assessee for defrauding a Govt. Department by way of claiming of wrong amounts from the Government, like in any other department viz. CPWD, NHAIL, Health, Education or Telecommunications. In this case, the Income-tax Department has to act in dual role of the executor of the income-tax statute and also as an arm of Government. The prosecution launched was limited in its role as the executor of the income-tax statute. The act of perpetuation of a criminality *per se* have been ignored by the Income-tax

Department as a part of Govt. of India. It is well settled principle that tax authorities are not only responsible for enforcing compliance under Income-tax Act but also act as an arm of Government in ensuring that violations of other laws particularly involving public exchequer are addressed through appropriate legal mechanisms. That is the reason inter-departmental organizations such as CEIB/SFIO/FIO have been established.

19. While the Tribunal's jurisdiction dealing with tax liability and adjudicating disputes under Income-tax Act, it cannot ignore the broader implications of fraudulent activities that undermine the efficiency of the Government and tax administration. It is critical to address such malpractices to deter the tax payers from abusing legal processes and to safeguard the Revenue system. Thus, the Revenue Authorities may take actions as deem fit and in the manner prescribed as per the law in force. Therefore, the Grounds of Appeal raised by the assessee, as discussed at para No.12 to 17, are devoid of merits and liable to be rejected.

20. In the result, **the appeals filed by the assessee are hereby dismissed.**

The order is pronounced in the open Court on 31.12.2024

Sd/-	**Sd/-**
(T.R. SENTHIL KUMAR) **JUDICIAL MEMBER**	**(DR. B.R.R. KUMAR)** **VICE-PRESIDENT**

Ahmedabad;
Dated 31/12/2024
btk

<u>आदेश की प्रतिलिपि ग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

True Copy

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad