

National Judicial Academy



Programme Report

SE-3

**NATIONAL SEMINAR FOR MEMBERS OF THE INCOME TAX APPELLATE
TRIBUNAL OCTOBER 28TH AND 29TH, 2017**

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INTRODUCTION

The National Judicial Academy organized a two-day National Seminar for members of the Income Tax Appellate Tribunal (hereinafter ITAT). The course was attended by 29 participants.

The ITAT is a quasi-judicial Tribunal which functions under the Ministry of Law and Justice. World over, continuing judicial education and training is recognized as an imperative for efficient and quality justice delivery. The product (judgments, orders) of Appellate Tribunals, whether ITAT or CESTAT are subject to appellate or revision scrutiny or judicial review before High Courts and the Supreme Court. Relevant legislation also has provisions for statutory appeals to Higher Courts. The operative quality of these Tribunals thus impacts the appellate load of superior courts besides indexing the quality of tax administration. Periodic judicial education and training of presiding officers of such Tribunals is an essential element of a robust justice delivery system.

The National Seminar intended and designed to provide a forum for learned Members of the ITAT to discuss, deliberate and share experiences, knowledge and best practices in exercise of jurisdiction; revisit with the help of domain experts, evolving horizons of relevant law and jurisprudence; seminal interpretive principles; the incessant problem of objectivity in decision making; the art, science and craft of drafting reasoned orders and like themes.

DAY-1

Session 1: Constitutional Authority to Tax and Basis of Taxation

Speaker: *Justice R.V. Easwar*

Chair: *Mr. Porus Kaka*

The speaker emphasized that tax law is a branch of law which requires knowledge of several other laws. The functions of the ITAT members are specified in the statute but it is essential to have an understanding of the wider aspects associated with the statute i.e., the importance of constitutional authority to tax. At the same time, it is imperative to realize that the power to tax cannot be tested on the same latitude as other powers of the government. The silence in the constitutional text is an area for the judiciary to explore. The constitution is to be interpreted by the tribunals as well. The

spirit of the Constitutional mandate should work at the back of the mind of a judge while deciding cases.

Session 2: Interpretation of Tax Statutes: Core Principles

Speakers: *Mr. Porus Kaka & Ms. Sonia Mathur*

Chair: *Justice R.V. Easwar*

This session briefly discussed the principles of interpretation i.e., literal construction, strict interpretation, contextual interpretation, mischief rule, harmonious construction, the principle of beneficial interpretation and the golden rule. It was deliberated that there are two types of interpretation tools viz., the “external” and “internal” aids. External aids include - legislative history, circulars, instructions, the speech of the finance minister, other parliamentary material, previous judicial interpretation or legislation, provisions of other statutes and subsequent enactments, dictionary meaning or ordinary meaning and leading commentaries. Whereas, the internal aids include- provisos, explanations, non-obstante clauses, marginal notes and headings, punctuation and definition clause and undefined words. Interpretation of International Law / Treaties *vis-à-vis* Taxation was an integral part of the discourse.

Session 3: Endemic pathologies in Assessment Proceedings and Role of the Tribunal

Speaker: *Mr. Arvind P. Datar*

Chair: *Justice R.V. Easwar*

The session highlighted the practical problems and issues that arise in assessment proceedings and how the tribunal may address them. It was stressed that the assessing officer is usually not bothered about the theories of natural justice and is generally unaware of the law of evidence as well. This undoubtedly creates some irreversible damage. Then there is some awful system of TARGETS that creates issues like- how many assessment proceedings have been conducted, target with respect to the money involved and reopening of cases. In high-value cases, the assessment officers tend to be biased. However, in small value cases, they work neutrally. It was stressed that faulted

assessments violate Article 14 as well and this is how it impacts the poor people. It was highlighted that the appraisal report is resubmitted as assessment orders, this, of course, is a systematic defect which needs to be done away with. The deliberation emphasized that the constitutional interest of revenue needs to be revisited.

DAY-2

Session 4: Judicial Discretion and the Art, Science, and Craft of Reasoned Adjudication

Speaker: Justice Rajive Bhalla

Chair: Justice R.V. Easwar

The speaker emphasized that reasoning is essential since it puts a check on human conduct. The essence of the Constitutional text is the reasoning. Recording reasons brings in discipline and one cannot be arbitrary. The distinction between legitimate alternative choices is judicial discretion. It was submitted that a reasoned order gives the litigants a clear picture of the decision; it demonstrates fairness and correctness of the decision; it excludes arbitrariness and bias, and enables the appellate court to pronounce upon the correctness of the decision. It was proposed that since the adjudicatory authorities perform a quasi-judicial function, therefore, it is their duty to give reasons.

Session 5: Appreciation of Evidence including Electronic Evidence in taxation proceedings

Speakers: Mr. Vakul Sharma & Ms. N.S. Nappinai

Chair: Justice R.V. Easwar & Justice Rajive Bhalla

The speaker explained the admissibility, indisputability, genuineness, and reliability of Electronic Evidence and how to differentiate between original and duplicate database. The discourse was elaborated with case law jurisprudence in India as in the case of *Gajraj v. State of Delhi*, *Sanjay Kumar Kedia v. Narcotics Control Bureau & Anr*, *Tukaram S. Dighole v. Manilerao Shivaji Kokate and Md. Ajmal Kasab v. State of Maharashtra*. Discussion on Section 65 B of IEA

(Admissibility of Electronic Records) formed an integral part of the session. It was suggested that the tribunal may do appreciation of evidence by questioning the source, by seeking a standard of proof and by checking whether the evidence fulfills the evidence rule. The case of *Anwar v. P.K. Basheer & Ors* was discussed at length where it was held that certificate should be produced for the admissibility of electronic evidence.

The National Seminar concluded with a vote of thanks to the resource persons and participants by Justice G. Raghuram .
