

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**INCOME TAX REFERENCE No. 114 of 1997**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE D.A.MEHTA**

**HONOURABLE MR.JUSTICE Z.K.SAIYED**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**COMMISSIONER OF INCOME-TAX - Applicant(s)**

**Versus**

**M/S.PARASRAM KARAMCHAND - Respondent(s)**

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**Appearance :**

MR BB NAIK for Applicant(s) : 1,  
SERVED BY RPAD - (N) for Respondent(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA**

**and**

**HONOURABLE MR.JUSTICE Z.K.SAIYED**

**Date : 09/04/2008**

**ORAL JUDGMENT**

**(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)**

1. The Income Tax Appellate Tribunal, Ahmedabad Bench-B, has referred the following three common questions for the opinion of this Court, under sec. 256(1) of the Income Tax Act, 1961 (the Act), at the instance of the Commissioner of Income Tax.

1. Whether on the facts and circumstances of the case, the Tribunal was right in holding that there was no formation of cross trusts?
2. Whether the Tribunal was right in law in holding that this is not a case of cross gifts because the amounts settled and the number of beneficiaries involved was not the same and the settlement had taken place at two different points of time?
3. Whether of the facts and circumstances of the case and in law, the Tribunal was right in law in holding that provisions of Sec. 64(i)(vii) of the Act are not applicable in the present case ?

2. The Assessment Years are 1983-84 to 1985-86. It is not necessary to set out the facts in detail for the reasons that follow hereinafter.

3. Heard Mr. B.B. Naik learned Standing counsel for the applicant \_ Revenue. Though served, there is no appearance on behalf of the assessee.

4. It is an admitted position that the assessment orders have been framed under sec. 143(3) of the Act

pursuant to order made by Commissioner of Income Tax (CIT) under sec. 263 of the Act. The CIT has framed the order under sec. 263 of the Act as a consequence of his own order under sec.263 of the Act in case of one Rakhi Beneficiary Trust.

5. It has been concurrently found, both by the first Appellate Authority and the Tribunal that the Tribunal, Bombay Bench-D vide its order dated 30.11.1990 in the case of Rakhi Beneficiary Trust, has set aside the order of CIT made under sec. 263 of the Act. Therefore, the assessments in the case of assessee for the three years under consideration framed under sec. 143(3) of the act pursuant to order under sec. 263 of the Act cannot operate and the additions made under sec. 64(1)(viii) of the Act have been deleted by the Appellate Authority. This order has been confirmed by the Tribunal. The Tribunal has recorded thus; "We have heard the ld. DR and have also gone through the orders of the authorities below. We find that the ITAT Bombay vide its order dated 30<sup>th</sup> Nov., 1990 in the case of Rakhi Beneficiary Trust has already set aside the order of the CIT passed under sec. 263 of the Act. During the assessment years under consideration the assessment orders were completed by the A.O. Under sec. 143(3) of the Act in pursuance to the order of CIT, Bombay City, Bombay made under sec. 263 of the Act. The orders under sec. 143 in the assessee's case were framed as a consequential order. In that view of the matter, the DC(A) was justified in deleting the

impugned additions and, therefore, we do not find any infirmity in the order of the DC(A).”

6. In the aforesaid factual matrix, it is apparent that the questions raised and referred by the Tribunal, are not questions which arise out of the impugned order of Tribunal dated 26.12.1996. Accordingly, the Reference stands disposed of without answering the questions as the questions do not arise out the order of Tribunal.

(D.A. MEHTA, J.)

(Z.K. SAIYED, J.)

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