

Issue of "evidence" has rankled a lot in income tax law. What exactly is evidence, what is the role of Evidence Act in tax law needs a basic understanding. These are some bullet points I was able to gather from my studies. I expect these to be of use specially to new entrants in field of tax litigation without getting into the deep end of the concept which involve multiple complexities.

I. Classification of Evidence

Direct Evidence are those which establish a fact in issue, require no mental process, production of document, witness testimony who perceived the fact .

Indirect Evidence means that other facts are so proved that existence of a given fact may be logically inferred. .

Circumstantial evidence includes which gives rise to logical inference that such a fact does exist. . Circumstances must be fully established. In **CIT v. Rameshwar Prasad Bagla [1968] 68 ITR 653 (ALL.)** it was held that

“It is well settled that in a case of circumstantial evidence the totality of circumstances has got to be taken into consideration and the combined effect of all those circumstances is determinative of the question as to whether or not a particular fact is proved.”

II. In terms of Evidence Act, 1872:

a. Primary Evidence – Section 62 of the Evidence Act .

To prove contents of documents, means best evidence must be given first.

Copies of a common original cannot be primary evidence of the contents of the Original. Eg: Carbon copy, printing, lithography, photography or tape recorded.

b. **Secondary Evidence** –Section 63 of Evidence Act

1. This is to be given in absence of primary evidence.
2. Certified copies are secondary evidence
3. **Section 79** presumption as to genuineness of certified copies: True copy not admissible under section 63 unless it can be shown that it has been made from or compared with the Original.

iii. Relevance of materials – Relevance of facts

In **CIT vs. Sahibgans Electric** [115 ITR 408 (CAL)] it was held that a relevant fact is *“Anything which has a bearing on the question at issue...”*

iv Satisfactory explanation:

1. In **Poonjabhai Vanmali and Sons vs. ITO** [1989] 33 TTJ 91 (AHD) it was held that Explanation must be one of reasonable man of ordinary prudence, appeals to human reasons, happening are quite probable.
2. What explanation would be considered satisfactory and how much of details should be furnished to make the explanation satisfactory normally depends on the facts of each case. **Rohini Builders v. Dy. CIT** [2001] 117 Taxman 25 (Ahd.- ITAT) (Mag.), [2002] 256 ITR 360 (Guj.) (HC) provides further clarity on this.

v. Burden of Proof and Onus of Proof

1. Burden is fixed
2. Onus is ambulatory
3. Extent of onus can shift & re-shift

vi. Some primary Rules of Evidence & Natural Justice

1. what is apparent is believed to be true.
2. what is believed to be true can be proved with evidence to be false.
3. the person seeking to counter the apparent truth has to lead evidence.
4. law can shift the burden of proof on the assessee to prove that apparent is real.
5. evidence gathered behind the back of the assessee cannot be used unless an opportunity of rebutting same is given
6. the rules of Natural Justice shall apply in admission of the evidence ; an opportunity of hearing and cross examination is a must.

vii. Relevance of Evidence Act to income tax proceedings stands settled in CHUHARMAL vs. COMMISSIONER OF INCOME TAX(1988) 172 ITR 0250(SC) wherein it was held that:

*“In this connection, reference may be made to the views expressed by Justice Tulzapurkar, as his Lordship then was, of the **Bombay High Court in the case of J.S. Parkar vs. V.B. Palekar (1974) 94 ITR 616 (Bom)**: TC42R.1775, where, on a difference of opinion between Justice Deshpande and Justice Mukhi, Justice Tulzapurkar agreed with Justice Deshpande and held on the question whether the evidence established that the petitioner was the owner of the gold seized, though there was no direct evidence placed before the taxing authorities to prove that the petitioner had actually invested moneys for purchasing the gold in question, the inference of the ownership of the gold in the petitioner in that case rested upon circumstantial evidence. There also gold was seized from a motor launch belonging to the petitioner in that case. There, a contention was raised that the provision in s. 110 of the Evidence Act where a person was found in possession of anything, the onus of proving that he was not the owner was on the person who affirmed that he was not the owner, was incorrect and inapplicable to taxation proceedings. This contention was rejected. The High Court of Bombay held that what was meant by saying that the Evidence Act did not apply to the proceedings under the Act was that the rigour of the rules of evidence contained in the Evidence Act was not applicable but that did not mean that when the taxing authorities were desirous of invoking the principles of the Act in proceedings before them, they were prevented from doing so. Secondly, all that s. 110 of the Evidence Act does is that it embodies a salutary principle of common law jurisprudence which could be attracted to a set of circumstances that satisfy its conditions.*

3. **We are of the opinion that this is the correct approach** and following this principle, the High Court in the instant case was right in holding that the value of the wrist-watches represented the concealed income of the assessee.”