

In context of requirement for clearance from Committee of Dispute (COD) for filing of appeal before ITAT by assessee – being Public Sector of Govt. of Gujarat and whether SC ruling in ONGC covers the state govt. owned PSU's, Guj HC has authoritatively held that:

1. The directions made by the Apex Court and the observations in the four orders and the judgment have to be read in context and in backdrop of the controversy before the Apex Court, including the litigants who were before the Apex Court. There is not a single order made by the Apex Court which relates to a dispute between Union of India and a State, or a Department of Union of India and a State, or a Public Sector Undertaking of Union of India and a State, or between two States inter se, the term 'State' here to mean and include the State Government, a Department of the State Government or an Undertaking of the State Government.

(While so concluding Guj HC has dissented from DHC in 274 ITR 35; Raj HC in 259 ITR 686; & has concurred with APHC in 280 ITR 388)

2. Thus, on a conjoint reading of provisions of Sections 253 and 254 of the Act it becomes clear that the powers available to the Tribunal are governed by the said provisions. **Sub-section (5) of Section 253 of the Act is an inherent indicator pointing to the fact that the Tribunal does not have powers to determine as to whether an appeal should be admitted or not, except to the extent provided by sub-section (5) in a case where the appeal or the cross-objections are presented beyond the prescribed period of limitation. Only then the Tribunal has discretion whether to admit an appeal or permit the filing of cross-objections. There is no other provision which stipulates that the Tribunal has any right of holding that an appeal cannot be admitted.**
3. **The Tribunal does not have powers to record any finding / direction in case of any other person not before the Tribunal, nor does the Tribunal have powers to lay down anything in relation to an assessment year which is not before the Tribunal. The Tribunal cannot issue any directions to any party beyond the subject matter of appeal.**

4. *A conjoint reading of the provisions of the Act noted hereinbefore and the ITAT Rules referred to hereinabove, it becomes clear that the Tribunal being a creature of the Statute, having been constituted under the provisions of the Act cannot exercise any powers beyond the powers available under the Act, and cannot discharge functions not provided under the Act, as well as the ITAT Rules which deal with the procedural part of filing and hearing an appeal. The Tribunal, therefore, cannot arrogate to itself the powers and jurisdiction which the Tribunal does not possess.*