Case Citation: (2026) ibclaw.in 5950 HC
JUDGMENT DATED: 30/09/2026

NEUTRAL CITATION
2026:GUJHC:62476-DB

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 56 of 2015
In
R/SPECIAL CIVIL APPLICATION/3107/2003

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CHIEF CONTROLLING REVENUE AUTHORITY & ANR.

Versus

GUJARAT ORGANICS LIMITED

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Appearance:
MS HETAL PATEL, ASSISTANT GOVERNMENT PLEADER for the Appellant(s) No. 1,2
MR SAURABH SOPARKAR, SENIOR ADVOCATE with MR SHAMIK BHATT and MR DHANESH DESAI, ADVOCATES for SINGHI & CO(2725) for the Respondent(s) No. 1

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CORAM: **HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL**
and
HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

Date : 30/09/2026

ORAL JUDGMENT

(PER : HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL)

1. Having heard learned Counsels for the parties and perused the record, it is noteworthy that this intra-court appeal is directed against the judgment and order dated 22.07.2013 passed by the learned Single Judge in quashing and setting aside the order dated 30.01.2003/01.02.2023

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passed by respondent No.1 namely, Chief Controlling Revenue Authority, Stamps, Gandhinagar and the final order dated 08.02.2010 passed by respondent No.2 namely, Collector in purported exercise of power under Section 39(1)(b) of the Gujarat Stamp Act' 1958 *(hereinafter referred to as 'the Act' 1958').*

2. The dispute in the present matter was with respect to the levy of stamp duty on an amalgamation order dated 19.11.1994 passed in Company Petition by this Court under Section 394 of the Companies Act' 2013 *(hereinafter referred to as 'the Companies Act').*

3. The specific case of the petitioner before the learned Single Judge was that the levy of stamp duty on the scheme of amalgamation finalized under the amalgamation order under Section 394 of the Companies Act, is impermissible in view of there being no computing provision under the Act' 1958.

4. It was submitted that though Section 2(g) of the Stamp Act, which defines "conveyance", was amended on 01.04.1994 by inserting clause (iv) therein to provide that every order made by the High Court under Section 394 of the Companies Act in respect of amalgamation of companies, by which property, whether movable or immovable, or any estate or interest in any property is transferred to, or vested in, any other person, inter vivos, and which is not otherwise specifically provided for by Schedule I, shall be included in the definition of "conveyance". However, there was no

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computation provision in Schedule I as to what would be the amount of stamp duty or the mechanism to levy the stamp duty on amalgamation order under Section 394 of the Companies Act.

5. It was noted by the learned Single Judge, as submitted before it, that corresponding amendment in the Stamp Act regarding computation provision/calculation was not made until 1997 and in absence of any computation provision under Schedule I, charging section will not have any effect. To give complete effect to the statute for levy of stamp duty, a charging section as well as the provisions/mechanism for computation in the statute, has to be provided.

6. By mere bringing the transaction under the meaning of amalgamation within the meaning of "conveyance" under Section 2(g)(iv), in absence of any corresponding provision for computation, there is no question of levy of stamp duty.

7. The notice issued by the respondent No. 1 as well as order of levy of stamp duty by respondent No. 2-Collector were, thus, without any jurisdiction.

8. The learned Counsel for the petitioner has referred to the decision of the Bombay High Court in ***Li Taka Pharmaceuticals Limited Vs. State of Maharashtra, [1996 SCC OnLine Bom67]*** to submit that even if it is accepted for the sake of argument without admitting that there would be a stamp duty upon a ‘conveyance’, an

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amalgamation order of the High Court under Section 394 of the Companies Act, the computation of stamp duty could be made only on the basis of share valuation ratio.

9. It was urged that what has been transferred with the assets and liability by amalgamation, cannot be considered as a transfer or sale of individual assets and liability. Moreover, the discussion in the Bombay High Court judgment is based on the computation provision therein under Article 25(1) of the Bombay Stamp Act, 1958, whereas there was no corresponding provision in the Act' 1958, which would provide mechanism for levy of stamp duty on the instrument, which is the order under Section 394 of the Companies Act included in the definition of "conveyance" under Section 2(g) (iv) of the Stamp Act.

10. On behalf of the State authorities, it was argued by the learned Assistant Government Pleader before the writ Court that the amalgamation scheme itself provided for the transfer of assets and liabilities, which was reflected in the balance sheet, and the ratio of the decision of the Bombay High Court in ***Li Taka Pharmaceuticals Limited (Supra)***, would have no application as the scheme of the statute in the State of Maharashtra was different. What would be applicable as per the statute in the State of Gujarat is the provision contained in the Section 2(g) of the Stamp Act. It was urged that once an amalgamation order under Section 394 of the Companies Act has been included within the scheme of the Act in the definition of "conveyance", the computation provision in

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Article 20(a) of the Stamp Act, after amendment as on 01.04.1994, is to be considered as a charging provision and the proper stamp duty would be as provided therein on the market value of the property which is subject matter of such conveyance.

11. Taking note of all these submissions, the writ Court has made the following observations in paragraph nos. '11', '12', '13, 14 and 15:-

> *11. The submissions of learned counsel, Shri Singhi are required to be considered with reference to the definition of 'conveyance' as defined in Section 2(g) of the Stamp Act, which is a charging section. Amendment in the Gujarat Stamp Act has been made, by which, any such transfer of property pursuant to the order of the High Court in exercise of power under Section 394 of the Companies Act for the scheme of amalgamation would be treated as conveyance and thereby such amendment in 1997 corresponding amendments have been made in the Stamp Act. However as rightly emphasized, though the amendment was made in the year 1994, corresponding amendment in the provisions of the Stamp Act with regard to the exact calculation and manner of calculation was made in the year 1997 and, therefore, the effect of the statute could not have been given unless the provision for the computation has been provided in the statute itself. This aspect which has been considered by the Hon'ble High Court at Bombay in a judgment in case of Li Taka Pharmaceuticals Ltd. (supra) would have application to the facts of the present case, which have been referred to by learned counsel, Shri Singh. It is required to be mentioned that amendment in the Stamp Act in the State of Maharashtra was made pursuant to the judgment in case of Li Taka Pharmaceuticals Ltd. (supra). The amendment in the State of Gujarat also followed, however, it was only in 1997, the amendment was made regarding the calculation of the stamp duty or as provided, clause (da)*

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was substituted by amendment in 2000. The Gujarat Government by Gujarat Act No.8.2000 dated 30th March, 2000 was brought into force on 01.04.2000 and there was a specific reference to the 'conveyance' as provided in 2(d), which reads as under :

> *"(d) CONVEYANCE, so far as it relates to amalgamation of companies by an order of the High Court under section 394 of the Companies Act, 1956, where the aggregate amount comprising of the market value of shares issued or allotted in exchange of or otherwise, or the face value of such shares,whichever is higher and the amount of consideration, if any, paid for such amalgamation*
>
> | | | |
> |---|---|---|
> | *(i)* | *Does not exceed Rs.100 crores* | *2 percent of the aggregate amount* |
> | *(ii)* | *Exceeds Rs.100 crores but does not exceed Rs.500 crores* | *Rs.2 crores plus 1 per cent of the amount which exceeds Rs.100 crores* |
> | *(iii)* | *Exceeds Rs.500 crores* | *Rs.6 crores plus 0.5 per cent of the amount which exceeds Rs.500 crores"* |

Clause (a) of Explanation III provides "in relation to the transferee company whose shares are listed and quoted for trading on a Stock Exchange, means the market value of share as on the appointed date mentioned in the scheme of amalgamation or when appointed date is not so fixed, the date or order of the High Court".

12. Thus it has two aspects; one with regard to the amendment in the definition of 'conveyance' by which the transfer of property pursuant to the order of the High Court under Section 394 of the Companies Act; and second regarding the scheme of amalgamation etc., which was covered for the purpose of stamp duty. This

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amendment was made in the year 1994. Therefore, the contention that when he amendment has been made in the definition of 'conveyance' which includes such order of the High Court, it would be liable for the stamp duty is required to be considered. Though this amendment was already made in the Stamp Act with effect from 4th April, 1994, the order of amalgamation was made by the High Court on 17.11.1994. The amendment in the definition of 'conveyance' as provided in the Stamp Act would cover the said transfer pursuant to the order of the High Court under Section 394 of the Companies Act, 1956. However at the same time, there was no corresponding amendment with regard to the calculation or charge of the stamp duty with necessary amendment in the schedule. Therefore the submissions which have been made that at the time of amalgamation of the present petitioner, the definition of 'conveyance' was already amended by amendment in the Stamp Act. The facts remains that there was no provision for the calculation of the duty which came much later. Therefore assuming and accepting that it would render the present petitioner liable for the duty under the Stamp Act and would remain liable when subsequently amendment has been made as to manner and method of calculating the duty. Again it is required to be addressed what was the manner and method of the calculation and in absence of any statutory provision, it has to have a same proposition as laid down in a judgment in case of Taka Pharmaceuticals Ltd. (supra) by the Hon'ble Bombay High Court. In the said judgment, the Hon'ble Bombay High Court has clearly observed that in case of amalgamation what is transferred is a going concern and that the assets and liabilities are not separately transferred. The Hon'ble Bombay High Court in a judgment in case of Taka Pharmaceuticals Ltd. (supra) has specifically observed as under :

> *"In our view, it would be a question of fact what stamp duty would be payable by the party on an amalgamation scheme. It is not too be forgotten that by amalgamation scheme, what is transferred is a going concern and not assets and liabilities separately. As a going concern, what is the value of*

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the property is to be taken into consideration. Normally, that would be reflected in an amalgamation scheme by the shares allotted to the shareholders of the transferor company. It cannot be said that the assets are separately transferred and liabilities are separately transferred by the amalgamation scheme. As such, by amalgamation scheme, virtually, a transferee company in effect purchases the transferor company for a specified sum which is paid in terms of the shares of the transferee company to the shareholders of the transferor company. For this purpose, what is to be kept In mind is that by sanctioning the amalgamation scheme, the Court is sanctioning not transfer of the assets or liabilities separately but the going concern is transferred which is valued at a particular amount and that valuation would be on the basis of share exchange ratio." (Emphasis Supplied)

Therefore, it would be difficult for us to accept the contention of the learned Advocate General that while assessing the amalgamation document, the stamp authority is entitled to recover stamp duty on the following two components separately :

(a) Market value of shares (predetermined as per Exchange Ratio or the one prevailing on the day the Scheme of Amalgamation comes into operation, as the case may be) of the transferee company allotted to the sharesholders of the transferor company and any other form in, which net amount of consideration is paid; and

(b) The liabilities of transferor company which are being transferred to and are going to become liabilities of the transferee company. (Liabilities are also certified).

13. Thus it is evident that the stamp duty could be levied at the most on the basis of the share valuation ratio and the reliance could be made on the share exchange report submitted by the Shah & Co., Chartered Accountants,

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Bombay, which suggests that the value of one share of the Transferee Company for the purpose of amalgamation was taken at Rs.299/-. Submission has been made referring to this aspect that how the equity shares allotted by the Transferor Company to the shareholders of the Transferee Company for the purpose of stamp duty. Thus the value of the share would be Rs.4,27,570/- and stamp duty at the rate of 8% on the said amount as per Article 20(a) would be Rs.34,205 as sought to be canvassed. Further as could be seen in the Gujarat Amendment Act No.8/2000 as stated above, the Legislature has referred to this aspect as to how it should be valued and explanation as quoted hereinabove has specifically referred to the fact that it has to be calculated by means of the market values of the share on the date of the order of the High Court.

14. Therefore the submissions which have been made much emphasizing and referring to the judgment in case of Taka Pharmaceuticals Ltd. (supra) which has been quoted hereinabove clearly referred to this method includes valuation or share valuation. Thus it is evident that on the basis of the price of the share allotted to the Transferer Company, valuation of the share could be arrived at on the date when the scheme of amalgamation was sanctioned by the High Court for the purpose of Stamp Act. Therefore, the submissions and the impugned notice which proceeds on the assumption that it is an independent transfer of assets and liability is misconceived.

15. Therefore the stamp duty leviable on such assets and liability pursuant to the order of the High Court in a scheme of amalgamation, it should be based on valuation of shares (share valuation ratio). The amendment made in 1997 laying down the method of calculation with regard to the stamp duty would have a prospective operation and it could not have to be revert back the transaction or things which have been taken place in 1994 before such amendment was made. It is well accepted that unless the statutes provides specifically otherwise it would always have a prospective effect. In the facts of the case as discussed above, by amendment

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in the Stamp Act, definition of 'conveyance' was made so as to cover the transfer of assets by an order of the High Court under Section 394 of the Companies Act for amalgamation etc. However as there was no corresponding amendment to give effect such provision till 1997, transaction which has taken place before such amendment could be brought in the Stamp Act for the purpose of calculation of the stamp duty. The judgment and the ration of the Hon'ble Bombay High Court in a judgment in case of Taka Pharmaceuticals Ltd. (supra) would be applicable as a guideline. Again it is required to be mentioned that the submission that once the transaction or the order of the amalgamation was made in 1994 and the amendment in the definition of 'conveyance' was made earlier and, therefore, the transaction is liable for the stamp duty, which is prescribed by the amendment in schedule in 1997 cannot be accepted. Such amendment with regard to the assessment or charge of the duty cannot have a retrospective effect. In fact in absence of any statutory provision for charging or levying the duty or tax, it will not have any effect as submitted by learned counsel, Shri Singhi. However assuming that liability for the stamp duty cannot be accepted once the amendment in the definition of 'conveyance' has already taken place, it would revert back to the same day or the order of the High Court i.e. July, 1994. Therefore as observed in a judgment in case of Taka Pharmaceuticals Ltd. (supra), it has to be assessed based on share valuation ratio."

12. It is not in dispute that the computation provisions by insertion of clause (d) in Article 20 was brought into force in the year 1997 for the first time and between 01.04.1994 till the year 1997, there was no computation provision providing the mechanism for levy of stamp duty though charging section was brought into being with the insertion of clause (iv) in Section 2(g) of the Act' 1958.

13. The submission made by the learned Counsel for the

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respondent is based on the computation provision in Article 20(a), which provides levy of stamp duty on a conveyance, not being a transfer, charge or exempted under Article 56.

14. However, as per the ratio of the decision of the Bombay High Court in ***Li Taka Pharmaceuticals Limited (Supra)*** that by the scheme of amalgamation what is transferred is assets minus liabilities and there is no question of any transfer of these two components of a going concern separately.

15. The fundamental principle that by the amalgamation scheme, the assets and liabilities are not separately transferred, but the interest in a going concern is transferred, is not disputed. The principle that in a case of amalgamation of a scheme sanctioned by the High Court, computation of stamp duty should be based on its valuation arrived at on the basis of shares allotted by the transferee company to the transferor company, is also not disputed, rather is substantiated by the insertion of clause (d) in Article 20 with the amendment of 1997.

16. Pertinent is to note that in the scheme of the computation provision brought with clause (d) in Article 20, the aforesaid principles and the ratio of the Bombay High Court decision that as by the amalgamation scheme, the assets and liabilities are not separately transferred and the computation of stamp duty should be based on its valuation arrived at on the basis of shares allotted by the transferee company, to the transferor company has been recognized.

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17. In the said situation, it can be concluded safely that the computation provision of Article 20(a) of the Act, which provides the mechanism of levy of stamp duty on a conveyance based on the market value of the property which is subject matter of conveyance, cannot be invoked to make any computation of stamp duty on the scheme of amalgamation.

18. It is also noted by the learned Single Judge in the judgment impugned that that the stamp duty could be levied at the most on the basis of the share valuation ratio and not on the basis of value of assets or liabilities separately, and hence, in absence of any computation provision corresponding to the charging section, namely Section 2(g)(iv), there was no question of levy of stamp duty on a conveyance or instrument dated 19.11.1994, the amalgamation order passed by the High Court under Section 394 of the Companies Act.

19. We may also take note of the judgment of Apex Court in ***C.I.T., Bangalore Vs. B.C. Srinivas Setty, [(1981) 2 SCC 460]***, relied by the learned Senior Counsel for the respondent where the Apex Court has dealt with the questions whether the transfer of the goodwill of a newly commenced business can give rise to a capital gain taxable under Section 45, Income Tax Act' 1961. While holding that the goodwill generated in a newly commenced business cannot be described as an "asset" within the terms of Section 45, and therefore, its transfer is not subject to income tax under the

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head "capital gains", it was observed that where there is a qualitative difference between the charging provision and a computation provision, the question would be as to whether it is possible to apply the computation provision at all if a certain interpretation is pressed on the charging provision that pertains to the fundamental integrality of the statutory scheme provided for each head.

20. It was observed that from the general arrangement of the provisions in the Income Tax Act, where under each head of income the charging provisions are accompanied by a set of provisions for computing the income subject to that charge, it must be inferred that all transaction encompassed by Section 45, Income Tax Act, 1961 must fall under the governance of its computation provision. A transaction to which those provisions cannot be applied must be regarded as never intended by Section 45 to be the subject of the charge. Thus, the charging provision and the computation provision together constitute an integrated code. When there is a case to which computation provision cannot apply at all, it is evident that such a case was not intended to fall within the charging section.

21. Taking clue from the judgment of the Apex Court that in absence of a specific set of provisions for charging section as well as corresponding computation provisions, which together constitute an integrated code, any general provision for computation which is not specific cannot be construed to integrate with the charging section, we are of the considered

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opinion that the plea of the State to apply the provisions of Article 20(a) as contained in Schedule I of the Stamp Act' 1958, to levy stamp duty on the amalgamation order treating it as a 'conveyance' within the general meaning of Article 20(a) read with Section 2(g) of the Gujarat Stamp Act, cannot be accepted.

22. For the above discussion, we cannot attach any illegality to the judgment impugned. The present appeal is accordingly, dismissed being devoid of merit. No order as to costs.

(SUNITA AGARWAL, CJ.)

(DIVYESH A. JOSHI, J.)

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