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DIRECT TAX REVIEW
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Penalty order is illegal and without jurisdiction if it was passed during pendency of assessment proceeding

Facts of the case

Certain addition was made to assessee income in reassessment proceedings. The assessee filed appeal before the Tribunal against such addition. The Assessing Officer levied penalty under section 271(1)(c) upon assessee, while the appeal was pending before the tribunal. On reference, the assessee contended that in terms of section 275(1) (a), penalty proceedings could not have been initiated pending appeal before the Tribunal.

Ruling of the High Court

The High Court ruled in favor of the assessee by contending that the language of section 275(1) (a) clearly shows that the order imposing penalty cannot be passed if the appeal against basic order of assessment is pending before the competent superior authority. Here, though 1st appellate authority had disposed of the appeal, further appeal of assessee before the Tribunal was very much pending. The order imposing penalty, therefore, appears to be premature and, therefore, illegal and without jurisdiction. The notices for initiation of those proceedings are during the pendency of appeal before the Tribunal. Essential ingredients of section 275(1) are clearly not in contemplation of notice issuing authority on these dates. The form or language of these notices shows clear non-application of mind in this respect. It is obvious that such notices initiating the penalty proceedings could not have been issued before order of the Tribunal.

Source: R.B Shreeram Durgaprasad Vs CIT, Nagpur

High Court of Bombay,[2016] 65 taxmann.com 293 (Bombay)

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Where assessee purchased business as going concern, consideration paid in excess of value of tangible assets was classifiable as goodwill eligible for depreciation and, therefore, further exercise to value goodwill was not warranted

Facts of the case

The assessee company purchased business of another company as going concern in slump sale. The amount paid over and above net value of assets was capitalized as goodwill. The valuation reports trifurcated value of goodwill into (a) technical knowhow; (b) valuation for business on hand and (c) non-compete fees. The assessee claimed depreciation on above items.

The Assessing Officer treated the transaction in nature of succession and did not admit the assesses claim for depreciation. He also did not accept valuation report. The Commissioner (Appeals) upheld order of the Assessing Officer. The Tribunal held that specific valuation could not be ascribed to any specific intangible asset in absence of specific material. It, therefore, agreed with lower authorities holding that the assessee was not entitled to depreciation on technical knowhow, valuation of business and non-compete fee mentioned in the report. It, however, accepted assesses alternate contention that entire sum paid towards intangibles could be considered as goodwill on which depreciation must be allowed. It, however, remitted matter to the Assessing Officer to determine

whether valuation of goodwill was appropriate. The assessee filed an appeal to High Court.

Ruling of the High Court

The High Court held that from an accounting perspective, it is well established that 'goodwill' is an intangible asset, which is required to be accounted for when a purchaser acquires a business as a going concern by paying more than the fair market value of the net tangible asset, that is, assets less liabilities. The difference in the purchase consideration and the net value of assets and liabilities is attributable to the commercial benefit that is acquired by the purchaser. Such goodwill is also commonly understood as the value of the whole undertaking less the sum total of its parts. In view of Accounting Standard 10 as issued by the ICAI the assesses contention was right that the consideration paid by the assessee in excess of value of tangible assets was rightly classified as goodwill. In the facts of the present case, the Tribunal has rejected the view that the slump sale agreement was a colourable device. Once having held so, the agreement between the parties must be accepted in its totality. The agreement itself does not provide for splitting up of the intangibles into separate components. Indisputably, the transaction in question is slump sale which does not contemplate separate values to be prescribed to various assets (tangible and intangible) that constitute the business undertaking, which is sold and purchased. The agreement itself indicates that slump sale included sale of goodwill and the balance sheet specifically recorded goodwill at Rs. 40.58 crore. Goodwill includes a host of intangible assets, which a person acquires, on acquiring a business as a going concern and valuing the same at the excess consideration paid over and above the value of net tangible assets is an acceptable accounting practice. Thus, a further exercise to value the goodwill is not warranted.ly the appeal of the assessee was allowed.

Source: Triune Energy Services (P) Ltd Vs DCIT

High Court of Delhi ,[2016] 65 taxmann.com 288 (Delhi)

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Interest on FD is deductible under sec. 10B if FD is made to facilitate letter of credit and bank guarantee

Facts of the case

The assessee a 100 per cent Exports Oriented Undertaking (EOU) 'eligible' for deduction under section 10B, claimed deduction in respect of the income earned from deemed export drawback customer claims, freight subsidy and interest on Fixed Deposit Receipts (FDRs) made for business purposes. The Assessing Officer excluded the above receipts from the computation of eligible income under section 10B (4) on the view that the said receipts did not fall within the expression 'profit derived' from export of article. The Commissioner (Appeals) disallowed the appeal of assessee. On second appeal, the Tribunal agreed with the contention of the assessee as regards the deemed exports drawback forming part of the income eligible for deduction under section 10B. However, as regards other three items, viz., customer claims, freight subsidy and interest on FDRs made for business purposes; the Tribunal upheld the view of the Assessing

Officer and the Commissioner (Appeals). Aggrieved by the order, the assessee filed an appeal with High Court.

Ruling of the Court

The Court ruled in favor of the assessee by contending that The submissions made on behalf of the revenue proceed on the basic misconception regarding the true purport of the provisions of Chapter VIA and on an incorrect understanding of section 80A (4). The opening words of section 80A (4) read 'Notwithstanding anything to the contrary contained in section 10A or section 10AA or section 10B or section 10BA or in any provisions of this Chapter. . . . . . '. What is sought to be underscored, therefore, is that section 80A, and the other provisions in Chapter VIA, are independent of sections 10A and 10B. It appears that the object of section 80A (4) was to ensure that a unit which has availed of the benefit under section 10B will not be allowed to further claim relief under section 80-IA or 80-IB, read with section 80A (4). The intention does not appear to be to deny relief under section 10B (1), read with section 10B (4) or to whittle down the ambit of those provisions as is sought to be suggested by the revenue. The contention of the assessee as regards customer claims was that it had received the claim of certain amount from a customer for cancelling the export order. Later on, the cancelled order was completed and goods were exported to another customer. The sum received as claim from the customer was non-severable from the income of the business of the undertaking. The ITAT was not justified in holding that this transaction did not arise from the business of the export of goods. Even as regards freight subsidy, the assesses contention was that it had received the subsidy in respect of the business carried on and the said subsidy was part of the profit of the business of the undertaking. If the ITAT was prepared to consider the deemed export drawback as eligible for deduction, then there was no justification for excluding the freight subsidy. Even as regards the interest on FDR, the Court has been shown a note of the balance sheet of the assessee which clearly states that 'fixed deposit receipts (including accrued interest) are under lien with Bank of India for facilitating the letter of credit and bank guarantee facilities.'

Source: Riviera Home Furnishing Vs ACIT

High Court of Delhi ,[2016] 65 taxmann.com 287 (Delhi)

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No withdrawal of section 54 relief if new house was transferred to daughter within 3 years

Facts of the case

The assessee owned a residential property. He had sold the said property in April, 2010 and invested the sale proceeds in August, 2010 in another residential property. In November, 2010, he had settled the new property to his daughter out of love and affection. In the return filed for the assessment year 2011-12, the assessee claimed exemption under section 54 in respect of capital gains arising on sale of property. He submitted that the settlement of property in favor of the daughter was a gift falling under section 47(iii) and was not taxable. The assessing officer held that the settlement did not cover under section 54(i) or 54(ii) and

accordingly denied exemption. The CIT (A) allowed the claim of the assessee for exemption u/s 54. The department filed the appeal before Tribunal.

Ruling of the Tribunal

The Tribunal held that the assessee being a father has settled the property in favor of his daughter out of love and affection without any consideration. As far as the settlement is concerned, the assessee as a donor transferred the immovable property out of love and affection without consideration to the daughter. The same is a gift and does not attract capital gains as per the provision of section 47(iii). Coming to the exemption provisions of section 54, the assessee has complied with the provisions and the conditions laid down. The long term capital gains set off with the cost of acquisition of new asset purchased in the same year. But the issue arises whether the settlement or gift of such property claimed as exemption will call for addition on transfer within three years. The assessee settled the property in favor of the daughter duly following the process of law. However, it is made clear that during the restriction period, the daughter shall not transfer the property by any means. At this stage, the Bench has no information about status of the property. Hence, for limited purpose to examine the present status of the property, the issue required to be remitted to the file of the assessing officer.

Source: Abdul Hameed Khan Mohammed Vs ITO

Income Tax Appellate Tribunal ,[2016] 65 taxmann.com 211 (Chennai)

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Anonymous donation received by a charitable and religious trust without specific direction could not be taxed

Facts of the case

The assessee was a religious trust registered under section 12AA and its income was exempt under section 11. The Assessing Officer added a sum which had been credited by the assessee under the head 'Donation Golak'. The explanation of the assessee that the said amount was less than 5 per cent of the total receipt was not accepted and the assessing Officer invoked the provisions of section 115BBC.

On appeal, the Commissioner (Appeals) deleted the addition holding that the assessee was a charitable and religious trust and provisions of section 115BC would not be applicable on it. Revenue filed an appeal.

Ruling of the Tribunal

The Tribunal held in favor of the assessee by contending that provisions of section 115BBC (1) are applicable for the anonymous donations received by any university or other educational institution or any hospital or any trust or institution referred to in sub clauses (iiiad) or (vi) or (iiiae) or (via) or (iv) or (v) of clause (23C) of section 10. However, sub-section (2) of section 115BBC provides that the said provisions are not applicable to any anonymous donation received by any trust or institution created or established wholly for religious purposes.

In the present case, the assessee is established for religious and charitable purposes and the anonymous donation was not received with specific direction

that such donation is for any university or other educational institution or any hospital or other medical institution run by the assessee-trust. Therefore, the Assessing Officer was not justified in making the addition by invoking the provisions of section 115BBC (1) and the Commissioner (Appeals) rightly deleted the said addition in view of the provisions of section 115BBC(2)(b). Accordingly, the appeal of the revenue was rejected.

Source: ITO(exemption) Vs Satyug Darshan Trust

Income Tax Appellate Tribunal ,[2016] 65 taxmann.com 15 (Chennai)

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No disallowance of interest unless AO proves that interest free loan is given from borrowed funds

Facts of the case

The assessee was running a coaching center for the IIT entrance examination. The assessee had advanced interest free loans/advances to friends and relative, the assessing officer disallowed interest paid on loan by contending that funds were diverted for non-business purpose. CIT (A) upheld the view of the assessing officer. The Tribunal deleted the addition made.

Ruling of the Court

The Court upheld the view of the Tribunal by contending that the assessing officer was not able to pin pointedly come to a definite conclusion that how interest bearing loans had been diverted towards interest free advances and since the Assessing Officer was not able to prove nexus between interest bearing loans vis-a-vis interest free loans/advances, therefore, once the assessing officer was not able to come to a definite conclusion as to nexus having been established about interest bearing loans having been diverted towards interest free loans/advances, and such being a finding of fact based on appreciation of evidence, no substantial question of law arise on this question as well.

Source: CIT Vs Ram Kishan Verma

High Court of Rajasthan ,[2015] 64 taxmann.com 358 (Rajasthan)

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Now CBDT would issue refunds up to Rs. 5,000 without adjustment of outstanding tax liability up to Rs. 5,000

The CBDT has issued a memorandum and directed the department that refunds up to Rs. 6,000/- and refunds in cases where arrear demand is up to Rs. 5,000/- may be issued without any adjustment of outstanding arrears under section 243 of the Act during FY 2015-16.

As on 9-1-2016, there are 64,938 cases of refunds below Rs. 6,000/- involving Rs. 1,148.14 Crore in non-CASS cases for AYs 2013-14 and 2014-15 pending in AST. It is requested that the Assessing Officers be directed to issue these refunds without any adjustment of arrears under section 246. Similarly, the non-CASS cases for these assessment years where the refund amount is more than Rs. 5,000/- but the outstanding arrear is Rs. 5,000/- or less may also be processed for issue of refund without any adjustment under section 246.

Source: Office Memorandum F.No.312/109/2015-OT, dated 14-01-2016

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CBDT advises deductor to validate Sec. 197 certificate at TRACES before filing TDS/TCS return

Deductor deduct tax at lower rate on payment/credit to deductee on production of certificate duly issued by assessing officers under section 197. Deductor quote such certificate number in quarterly TDS statement. Instances of huge default of 'Short Deduction' have been observed due to wrong quoting of 197 certificate number. The scenario of wrong 197 certificate generally arises when the deductor accepts from deductee a manually issued lower deduction certificate by assessing officer & quotes the same in TDS statements. CPC (TDS) has provided the facility of validating the 197 certificate to the deductor on www.tdscpc.gov.in (TRACES). This enables a deductor to first validate the 197 certificates given to him by their deductee and then furnish the same in the TDS/TCS statement. If the 197 certificate is not valid as per TRACES validation, the deductor should always insist upon an ITD system generated certificate having a unique 10-digit alpha numeric number. This would minimize the generation of default of "Short Deduction due to 197 certificate”. This also applies to certificates issued under section 195(2) & 195(3) by LTU & international taxation officers.

Source: CBDT press release , dated 01-01-2016

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Section 92CC of the Income-tax act, 1961 - transfer pricing - advance pricing agreement (APA) - signing of 7 more unilateral APA

The Central Board of Direct Taxes (CBDT) entered into 7 more unilateral Advance Pricing Agreements (APAs) with taxpayers today (22nd January, 2016). This takes the tally of APAs signed so far to 39 (38 unilateral and one bilateral). In the current fiscal year, which is the third year, of APA programme, 30 agreements have been signed so far. Before the end of the financial year, more such agreements are expected to be signed. The 7 APAs signed today pertain to various sectors of the economy like investment advisory services, software development services and IT enabled Services. The agreements signed today also include one of the few agreements to be reached in the manufacturing sector.

The APA Scheme was introduced in the Income-tax Act in 2012 and the "Rollback" provisions were introduced in 2014. The scheme endeavors to provide certainty to taxpayers in the domain of transfer pricing by specifying the methods of pricing and setting the prices of international transactions in advance. Since its inception, the APA scheme has attracted tremendous interest from taxpayers for using this mechanism to achieve tax certainty up to nine years. The approach of the Income Tax Department to the APAs has been appreciated and acknowledged by the industry in India and abroad. The Income Tax Department is committed to providing a stable and predictable taxation regime and improving the ease of doing business.

Source: CBDT press release , dated 22-01-2016

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A woman can become Karta of HUF if she is eldest member of a family, rules Delhi HC

When someone makes mention of 'karta' in the context of an Indian family, he invariably thinks of a male member. That has just been changed in a landmark ruling by the Delhi High court this week. The Delhi high court has ruled in a landmark verdict that the eldest female member of a family can be its "Karta". "Karta" a unique position carved out by Hindu customs and ancient texts, denotes manager ship of a joint family and has traditionally been inherited by men. "If a male member of a Hindu Undivided Family (HUF), by virtue of his being the first born eldest, can be a Karta, so can a female member. The court finds no restriction in law preventing the eldest female co-parcenor of an HUF from being its Karta," Justice Najmi Waziri said in this unique judgment made public earlier this week. The Karta occupies a position superior to that of other members of HUF and has full authority to manage property, rituals or other crucial affairs of the family. These include taking decisions on sale and purchase of family assets, mutation of property, etc. The ruling came on a suit filed by the eldest daughter of a Delhi based business family staking claim to be its Karta on the passing away of her father and three uncles. The eldest son of a younger brother declared himself to be the next Karta but was challenged by the daughter of the eldest brother who is also the senior most member of the family. In the court order, Justice Waziri said that the "law gave equal rights of inheritance to Hindu males and females, its objective is to recognize the rights of female Hindus and to enhance their rights to equality apropos succession."

Source: Taxmann.com , dated 30-01-2016

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SC: Upholds HC order, no penalty u/s 271C absent "contumacious" conduct on assessee's part

Facts of the case

The two Swedish assessee-companies, engaged in the business of telecommunications in India, failed to deduct taxes under section 192 from the children's education expenses reimbursed to expatriate employees. On being pointed out, the companies deposited the additional taxes on the aforesaid allowance immediately along with interest under section 201(1A). Thereafter, penalty proceedings were initiated under section 271C. The assessees submitted that while taxes were being deducted from all foreign currency payments made in Sweden, it was due to inadvertence that the taxes were omitted to be deducted from the children's education expenses reimbursed to them; that they as employers bona fide believed that the said payments were not taxable in India; that in any case this represented a negligible portion of the total taxes deposited against the expatriate employees; that there was no intention whatsoever to defraud the revenue, and that in these circumstances, the penalty proceedings should be dropped. Alternatively, it was also pleaded that under the double tax avoidance treaty, the salary and

allowances/perquisites of expatriate employees were exempt from Indian taxes if his stay in India did not exceed 183 days and correspondingly, there was no obligation to deduct tax under section 192. It was further pleaded that provisions of section 192 were not applicable to territories outside India. The Assessing Officer, however, imposed the penalties. On appeal, the Commissioner (Appeals) cancelled the penalties. On revenue's appeal.

Ruling of the Court

It could be a case of bona fide belief that the assessees were not liable to deduct tax under section 192 from the foreign currency payment made in Sweden to the expatriate employees representing the reimbursement of the children's education expenses. Even the smallness of the amount, being only 5 per cent of the total payments made to the expatriate employees which had suffered tax, could be taken into consideration as a factor in favour of the assessees. However, the plea of inadvertence seemed stronger, in the sense that the assessees could not have any motive to withhold the deduction of taxes in respect of a payment which formed a small portion of the total payments, except due to inadvertence. It would be too much to say that there could have been a motive to avoid a payment of a small amount of tax and invite a huge penalty. The conduct of the assessees had not been contumacious or defiant. Once it was revealed that they did not deduct the tax from the payment in question, they hastened to pay the taxes with interest.

In view of above, Commissioner (Appeals) was justified in cancelling the penalties. The appeals were accordingly dismissed.

Source: Bank of Nova Scotia Vs CIT(Delhi)

Supreme Court of India, dated 07-01-2016

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Employer not liable to deduct TDS at flat rate of 20% on non-furnishing of PAN by employees

Facts of the case

The assessee is a public sector undertaking engaged in the business of manufacture and sale of Iron and Steel , has filed its eTDS returns in form No. 24Q. The assessee-employer deducted TDS as per section 192 in respect of salary of the employees who failed to furnish their correct PAN. AO applied a flat rate of 20% as per section 206AA and held assessee liable for short-deduction of TDS.

Ruling of the Tribunal

ITAT held that as per section 206AA if the deductee fails to furnish PAN, then the deductor shall deduct tax at the rates which is higher of (i) at the rates specified in the relevant provisions of the Act, or (ii) at the rate or rates in force, or (iii) at the rate of twenty percent. Hence, a careful study of the provisions of section 206AA made it clear that it is not automatic that tax shall be deducted at a flat rate of 20% wherever PAN is not furnished. Unlike other provisions, TDS on salary cannot be deducted by applying flat rate of tax on gross payment. It is not necessary that all payments would come under 20% flat rate, in some cases the rate of tax may be at 10% and in some cases it may be at 30%. Therefore, unless,

this was done, the A.O. could not apply flat rate of 20% and compute the short deduction of tax.

Source: Rashtriya Ispat Nigam Ltd Vs. ACIT(TDS)

Income Tax Appellate Tribunal ,Visakhapatnam [2016] 65 taxmann.com 292

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HC: Allows 50% additional depreciation in second year; Rejects Revenue's 'restrictive' interpretation of Sec 32(1) (iia)

Facts of the case

During AY 2007-08, the assessee, Rittal India Pvt. Ltd. acquired and installed new plant and machinery and claimed 50% of the additional 20% depreciation u/s 32(1) (iia) as new machinery was acquired after October 1, 2006. As the machine was put to use for a period of less than 180 days assessee was granted benefit of 50% of additional depreciation (i.e. 10%). Subsequently assessee claimed the remaining 10% depreciation in AY 2008-09 which was disallowed by AO and CIT(A). Revenue argued that additional depreciation u/s 32(1) (iia) is allowed in the year of purchase and balance claim, if any cannot be carried forward for the subsequent year. Revenue stated that the provision does not provide for such carryover. However, in appeal ITAT allowed assessee’s claim.

Ruling of the Court

Karnataka HC upholds ITAT order, allows balance additional depreciation claim u/s 32(1)(iia) (which provides for further 20% depreciation on new plant and machinery installed) in AY 2008-09 i.e. year subsequent to installation year; Assessee had claimed 50% of additional depreciation (i.e. 10%) in AY 2007-08 as new machinery was put to use for less than 180 days, while balance 50% was claimed in subsequent AY 2008-09; Rejects Revenue’s stand that additional depreciation is allowed only in the year of purchase and balance claim remaining un-utilized cannot be carried forward to subsequent year in the absence of specific provision to the effect; HC holds that grant of additional depreciation is a onetime benefit to encourage industrialization and thus should be construed reasonably, liberally and purposively; Rules that “the balance 10% additional deduction can be availed in the subsequent assessment year, otherwise the very purpose of insertion of Clause (iia) would be defeated because it provides for 20% deduction which shall be allowed”

Source: CIT Vs M/s Rittal India Pvt. Ltd

High Court of Karnataka, dated 24-11-2015

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ITAT: Allows capital gains exemption benefit u/s 54 despite construction of house completed beyond 3 years

Facts of the case

The assessee, Anand Arvind Shah sold a house property on May 11, 2006 for Rs. 1.18 crores and claimed deduction u/s 54 in respect of an open plot purchased by it on March 31, 2008. Assessee furnished payment receipt for five payment instances made between May 18, 2006 and June 8, 2006 under the heads 'against land' in first three occasions and 'without interest deposit' in the

latter two. During scrutiny assessment AO sought to treat the investments as loans and advances given to builder and thus issued Sec 131 notice. In reply to the said notice builder furnished following document: land purchase deed executed on March 30,2007, permission for change of land user on November 21, 2007, Xerox copy of society's registration certificate dated December 28,2006, AUDA's permission letter dated December 15, 2009 for developing the land for the purpose of construction. Based on these documents AO concluded that all the required permissions were obtained after assessee's investment and thus denied Sec 54 benefit. AO also pointed out that capital gains were not deposited in capital gains account scheme. CIT(A) allowed assessee's appeal and pointed out that there was no need to deposit the amounts in Capital Gains Accounts as assessee made the investments before the due date for filing the return of income u/s. 139(1). CIT(A) relied on CBDT circular No. 471 and 672 to observe that merely because the society and developer failed to finish construction on time could not be ground to deny assessee the benefit of Sec 54. Aggrieved, Revenue preferred an appeal before Ahmedabad ITAT.

Ruling of the Tribunal

ITAT allows capital gains exemption u/s 54 for AY 2007-08 despite construction of house completed beyond prescribed period of three years from date of sale of original capital asset; Notes that assessee sold a house property in March 2006 and invested capital gains in construction of new property, as construction was not completed till December 2009, Revenue sought to tax advances paid to builder; Notes that assessee had already invested capital gains in construction of residential house; Relies on SC ruling in Fibre Boards (P) Ltd, Delhi HC ruling in R.L. Sood and Bombay HC ruling in Mrs Hilla J.B. Wadia wherein it was held that advances given for new assets amounts to utilization of capital gains; Thus rules that "assessee's act of having made substantive payment of Rs. 1,15,00,000/- to housing society/builder followed by his getting the specified residential house constructed satisfies all the necessary conditions stipulated in section 54 of the Act.

Source: ITO Vs Anand Arvind Shah, Ahmedabad

Income Tax Appellate Tribunal, dated , dated 08-01-2016

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