VERENDRA KALRA & CO
CHARTERED ACCOUNTANTS

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DIRECT TAX REVIEW
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Inside this edition

Govt. and embassies exempt from TCS on cash purchase of specified goods or services

CBDT has specified the following class or classes of buyers to whom provisions of sub section (1D) of section 206C shall not apply:

a) Government
b) embassies, Consulates, High Commissions, Legation or Commission and trade representation, of a foreign State
c) institutions notified under United Nations (Privileges and Immunities) Act, 1947

Source: NOTIFICATION NO. SO 2747(E) [NO.75/2016 (F.NO.370142/19/2016-TPL)], Dated 19-8-2016

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CBDT clarifies on Income Declaration Scheme, 2016

CBDT has issued Circular no 29/2016 providing clarifications on various queries. For complete details refer to our direct tax newsflash Vol5/2016 dated 24-08-2016.

Source: Circular no 29/2016 dated 24-08-2016

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CBDT seeks PAN of trust's founder and its trustee in registration Form 10A

CBDT has notified that from now onwards PAN of the author/founder and trustees/manager will be required to be filled in filing form 10A.

Source: NOTIFICATION NO. SO 2671(E) [NO.67/2016 (F.NO.370142/22/2016-TPL], Dated 9-8-2016

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CBDT keeps interest payment to MUDRA outside the purview of TDS under Sec. 194A

In exercise of the powers conferred by sub-clause (f) of clause (iii) of sub-section (3) of section 194A of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies the Micro Units Development & Refinance Agency Limited (MUDRA) for the purposes of sub-section (3) of said section

Source: NOTIFICATION NO. SO 2616(E) [NO.65/2016 (F.NO.275/28/2015-IT(B)], DATED 5-8-2016

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Now medium and long-term deposits can be redeemed in form of Gold under Gold Monetization Scheme

Central Government hereby notifies that for medium and long term government deposits, redemption of principal at maturity shall, at the option of the depositor, be either in rupees equivalent of the value of deposited gold at

the time of redemption or in gold; provided that where the redemption of the deposit is in gold, an administrative charge at a rate of 0.2 percent of the notional redemption amount in rupees shall be collected from the depositors; provided that the interest accrued on gold deposit for medium and long term shall be calculated with reference to the value of gold in terms of Indian Rupees at the time of deposit and shall be payable only in cash.

Source: NOTIFICATION F.NO.20/6/2015-FT (PT.7), DATED 02-08-2016

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Sum received from developer due to hardship caused on redevelopment of flat not a revenue receipt

Facts of the case

AO had made an addition of INR 22 lacs as corpus fund received by the assessee during FY 2006-07. AO has treated the same as unexplained credits and added the same to the assessee income under the head income from other sources which was confirmed by CIT(A). Aggrieved by the order, assessee filed appeal before ITAT.

Ruling of the Tribunal

ITAT ruled in favour of the assessee by contending that *"Compensation received by assessee, a member of cooperative housing society from developer on redevelopment was nothing but his share in profits earned by the developer which were essentially revenue in nature. The nature of payment in the hands of payer could not determine the nature in the hands of recipient. The corpus fund was received towards hardship caused to assessee on redevelopment, hence it was outside the ambit of income under section 2(24) and thus not taxable as a revenue receipt. The impugned receipt ends up reducing the cost of acquisition of the asset, i.e. flat, and, therefore, the same will be taken into account while computing capital gains on transfer".*

Source: Income Tax Officer, ward 6(3)(3) Vs Jitendra Kumar Soneja

ITAT- Mumbai ,[2016] 72 taxmann.com 318 dated 29-08-2016

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No addition u/s 69B on basis of inflated stock statement sent to bank for availing of higher credit

Facts of the case

During assessment proceedings, the Assessing Officer found a difference between of stock as per books of account and stock as per stock statement submitted to bank. He made an addition and treated the difference as unaccounted investment in stock. On appeal, CIT(A) confirmed the order of AO. On second appeal, the tribunal deleted the addition. On further, appeal to High Court.

Ruling of the Tribunal

Gujarat High Court ruled in favour of the assessee by contending that "*only on account of inflated statements furnished to the banking authorities for the purpose of availing of larger credit facilities, no addition can be made if there appears to be a difference between the stock shown in the books of account and*

in the statement furnished to the banking authorities. For the purpose of fulfilling the margin requirements of the bank purely on inflated estimate basis, when the stock statement had reflected inflated value of the stock, in wake of otherwise satisfactory explanation, both - for the purpose of value as well as quantity and taking into account the actual non-verification of stock there is no reason to interfere with the order of the Tribunal.

Source: Commissioner of Income Tax, Vs Vrundvan Roller Floor Mill

High Court of Gujarat ,[2016] 72 taxmann.com 250 dated 30-08-2016

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Losses of amalgamating co. could be set-off even if HC approved amalgamation scheme after date of filing of return

Facts of the case

The assessee-company amalgamated with the Medlek Asia Pvt. Ltd. It filed return for the AY 2009-10 and claimed deduction of carried forward unabsorbed business loss and depreciation of amalgamated company. AO framed assessment without making any disallowance of such claim of deprecation and business loss. Later on, AO reopened assessment and issued a notice in which he recorded that the assessee company has wrongly claimed the losses. Further, the AO noticed from the documents of amalgamation that both the companies had approved of the scheme of amalgamation with effect from 1-4-2008 which was the appointed date of scheme of amalgamation and the High Court had granted sanction to the scheme of amalgamation on 12-8-2010. Accordingly, the Assessing Officer rejected the claim of the assesse as the amalgamation process would be complete only after receiving the order of approval of the High Court and after submission of the approval to Registrar of Companies. Assessee, on petition to High Court.

Ruling of the High Court

High Court ruled in favour of the assessee by contending that "*when once a scheme has been sanctioned by the High Court, which would relate back to the appointed date and such order is passed before the order of assessment is passed, it cannot be stated that the assessee should be denied the benefit of such development merely on the ground that during the accounting period when the return was filed, the High Court's order sanctioning the scheme was not passed. The very effect of the order of the High Court sanctioning the scheme relating back to the appointed date would be that for all practical purposes including for recognizing the benefit of unabsorbed deprecation and losses of a merging company with those of principal company would be available from such date*".

Source: Deputy Commissioner of Income Tax, Vs IRM Ltd

High Court of Gujarat ,[2016] 72 taxmann.com 288 dated 31-08-2016

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Amendment which denies double deduction to trust on purchase of capital asset is applicable from April 1, 2015

Facts of the case

The assessee, a charitable institution registered under section 12A, claimed depreciation on capital assets which was disallowed by the Assessing Officer. On appeal, CIT(A) allowed the claim of the assessee. On second appeal, Tribunal

dismissed the appeal of the revenue. On further, appeal was filed by revenue to High Court.

Ruling of the High Court

Section 11(6) inserted with effect from 1-4-2015 by the Finance (No. 2) Act, 2014 provide that where any income is required to be allowed or accumulated or set apart for application, then, for such purposes the income shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as an application of income under this section in the same or any other previous year. The plain language of the amendment establishes the intent of the Legislature in denying the depreciation deduction in computing the income of Charitable Trust is to be effective from 1-4-2015. This view is further supported by the Notes on Clauses in Finance (No. 2) Bill, 2014, memo explaining provisions and circulars issued by the CBDT in this regard. CBDT Circular reported in 371 ITR 22 makes it clear that the said amendment shall take effect from 1-4-2015 and will accordingly apply in relation to the assessment year 2015-16 and subsequent assessment year. Section 11(6) is prospective in nature and operates with effect from 1-4-2015. In the result, the appeal of the revenue is dismissed.

Source: PCIT, Bangalore Vs Sri Adichunchunagiri Shikshana Trust

High Court of Karnataka ,[2016] 72 taxmann.com 133 dated 16-08-2016

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AO couldn't make additions relying on books of account which were rejected by him

Facts of the case

The AO rejected the account books of the assessee after verification. Thereafter he made a certain addition to the income of the assessee relying upon the same account books**.** The Tribunal upheld the action of the AO. Assessee on further appeal to High Court.

Ruling of the High Court

It is a matter of fact that the AO rejected the account books of the assessee but has made addition by relying upon the same account books. The facts in the instant case are similar to the facts narrated in **Dhiraj R. Rungta's case (supra**). Therefore, the issue raised in the appeal would stand governed by the judgment rendered in Dhiraj R. Rungta's case (supra). When the AO found mistakes in the account books of the assessee on verification and consequently rejected the same, then he ought not to have made addition by relying upon the same account books. Instead he ought to have made the best judgment assessment on the basis of the history and nature of business and the net profit rate as shown by the assessee in the previous year. Accordingly, High Court, directed the AO to reconsider the matter.

Source: Prasant Oil Mill Vs ITO, Ward 2(1)

High Court of Gujarat ,[2016] 72 taxmann.com 136 dated 13-08-2016

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Payer isn't assessee-in-default if he relies on sec. 197 certificate and tax is payable under Act

High Court upheld the order of the Tribunal by holding that once certificate u/s 197 of the ITA, there is no obligation on part of payer to pay tax as long as certificate issued under section 197 is in force and not cancelled and, therefore, payer cannot be treated as an assessee-in-default even if tax is found payable under Act. Special Leave Petition (SLP) filed against the High Court ruling by revenue was dismissed by the Supreme Court.

Source: Commissoner of Income Tax Vs Bovis Lend Lease Ltd

Supreme Court ,[2016] 72 taxmann.com 137 dated 13-08-2016

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Reassessment could be made if AO had info that assessee had close connection with entry operators

Facts of the case

The AO completed the assessment of the assessee for the AY 2012-13 under section 143(3) accepting the total income declared by it. Subsequently the AO issued on the assessee a notice under section 148 for reopening of its assessment for the above assessment year for the reasons that information was received from the Competent Authority, Kolkata that one 'K' was very known entry operator of Kolkata and had been giving entries of bogus share capital, etc. to various beneficiaries across the country and the instant assessee was also a beneficiary of 'K' to the extent of Rs. 183 lakhs pertaining to AY 2012-13.

Ruling of the High Court

At the initial stage what is required is reason to believe, but not established fact of escapement of income. Therefore, at this stage only question whether there was relevant material to form a reasonable belief is to be seen. In the background of facts, there is a specific information received about 'K' and it has been prima facie found that the assessee is also the beneficiary of the said 'K'. At this stage of the proceeding, the factum of said aspect whether the assessee is beneficiary or not is not to be finally adjudicated upon by the Assessing Officer. Therefore, the Court is not in a position to dwell into it, but only has to examine whether there is a reasonable belief arrived at or not. From the basis of aforesaid circumstance prevailing on record, it appears that the Assessing Officer is justified prima facie in arriving at conclusion to reopen the assessment. A liberty is always available to the assessee to justify or to deal with the same, but this is not the stage where the process of reopening based upon aforesaid material is to be intercepted. Accordingly, High Court held that AO was justified in issuing notice u/s 148 and the reasons were sufficient enough to permit him to exercise jurisdiction to reopen the assessment.

Source: Peass Industrial Engineers Ltd Vs DCIT

High Court of Gujarat,[2016] 72 taxmann.com 302 dated 31-08-2016

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CBDT directs expeditious disposal of pending public grievances

As per the Central Action Plan 2016-17, it was communicated that all public grievances pending as on 30th April, 2016 were to be disposed of by 30th June, 2016. It is regretted that the Officers have not disposed of such grievances within that timeline.

A review of status of public grievances may come up in the next PRAGATI interaction to be held by the Hon'ble. Prime Minister on the 24th August, 2016. The respective CCIT-wise lists of overdue grievances have already been shared with you by respective Zonal Members. It may be ensured that all grievances pending beyond 60 days are disposed of expeditiously. The number of grievances pending beyond 6 months should be brought down to zero before 24th August, 2016. Action taken may be reported through your Zonal Members. Online reports of disposal should be uploaded on the CPGRAMS portal.

Source: LETTER D.O.F. No.DIR.(HQRS.)/CH.(DT)/39(2)/2015/244-513, DATED 17-8-2016

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Rent receipts taxable as business profits and not as house property income if letting out is business of assessee: SC

Facts of the case

Assessee company is in business of renting its properties and is receiving rent as its business income, the said income should be taxed under the Head "Profits and gains of business or profession" whereas the case of the Revenue is that as the income is arising from House Property, the said income must be taxed under the head "Income from House Property". Assessee aggrieved by the judgement delivered by the High Court filed appeal before Supreme Court.

Ruling of the Supreme Court

Assessee submitted that the issue involved in these appeals is no more res integra as this Court has decided in the case of **Chennai Properties and Investments Ltd. v. Commissioner of Income Tax [2015] 373 ITR 673 (SC)** that if an assessee is having his house property and by way of business he is giving the property on rent and if he is receiving rent from the said property as his business income, the said income, even if in the nature of rent, should be treated as "Business Income" because the assessee is having a business of renting his property and the rent which he receives is in the nature of his business income.

In view of the law laid down by this Court in the case of Chennai Properties (supra) and looking at the facts of these appeals, and in the opinion of the Supreme Court, the High court was not correct while deciding that the income of the assessee should be treated as Income from House Property. Accordingly, the impugned judgements are set aside and appeals of the assessee is allowed.

Source: Rayala Corporation P. Ltd Vs ACIT

Supreme Court of India,[2016] 72 taxmann.com 149 dated 12-08-2016

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Compensation paid to 'Pollution Control Board' couldn't be held as penalty; allowable as business exp.

Facts of the case

During the course of assessment proceedings, the assessee was asked by the Assessing Officer to explain the nature of penalty charges of Rs. 12.50 lakhs debited to profit and loss account. The assessee claimed that the said amount was deducted by the Pollution Control Authorities on account of failure to install Pollution Control Equipment at the factory premises i.e., for non-performance of statutory obligation of the state Pollution Control Board. On appeal, the CIT(Appeals) reversed the order passed by the AO on the ground that payment was not exactly made in way of penalty but in response to the order of Government. On appeal, however, the Tribunal reversed the order passed by CIT (Appeals) on ground that that Rs. 12.50 lakh was levied as penalty by the West Bengal Pollution Control Board because the assessee had failed to comply with the order of the Pollution Control Board. Assessee on further appeal to High Court

Ruling of the High Court

High Court ruled in favour of the assessee by contending that "*the payment in the case was for the purpose of compensating the damage to the environment and this compensation had been recovered on the 'polluter pays principle' adopted by the Organization for Economic Cooperation and Development. The compensation was paid because the assessee had failed to install the pollution control device within the time prescribed. Therefore, payment does not hit by explanation-1 to section 37 of the Income-tax Act. The payment is undoubtedly for the purpose of business or is in consequence of business carried on by the assessee and is thus covered by section 37".*

Source: Shyam Sel Ltd Vs DCIT, CC XIII, Kolkata

High Court of Calcutta,[2016] 72 taxmann.com 105 dated 12-08-2016

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