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DIRECT TAX REVIEW

MARCH 2017

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Supreme Court Rulings of the month

Apex Court admits SLP to decide genuineness of deduction claimed under sec.80-IA

SLP granted against High Court's ruling that where AO during original assessment had considered issue relating to deductions u/s 80-IA and 80HHC in detail, he could not initiate reassessment proceedings merely on the basis of change of opinion that assessee had claimed excessive deductions in return of income.

Source: SC in PCIT, Vadodra Vs Sun Pharmaceutical Industries Ltd.
SLP no. 2724 of 2017, date of publication March 11, 2017

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Supreme Court: Lessee can't claim depreciation on reimbursement of construction cost to lessor

A partnership firm had been constituted by 'M' and his family members. The said firm owned a price of land. The purpose of the partnership firm was to run a super speciality hospital and, accordingly, the firm started construction of the hospital building. Thereafter, an agreement was entered into between the firm and the company by which it was agreed that the firm would complete the construction of the building and hand over possession of the same on completion, on the condition that the entire cost of construction of the building would be borne by the assessee company. The assessee-company filed its return in which it claimed depreciation on the building part of the said property. AO rejected the claim of depreciation and added back the same.

Supreme Court upheld the order of High Court that it is only when assessee holds a lease right or other right of occupancy and any capital expenditure is incurred by it on construction or renovation or improvement of building, assessee would be entitled to depreciation to extent of such expenditure incurred. However where construction is carried out by owner-lessor and expenditure is only reimbursed by assessee-lessee, Explanation 1 to section 32(1) would not come to aid of assessee.

Source: SC in Mother Hospital (P) Ltd Vs CIT, Trichur
Civil Appeal no. 3360 of 2006, date of publication March 28, 2017

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SLP granted to decide whether recruitment services to foreign co. using information technology will be eligible for benefit u/s 10A

SLP granted against High Court's ruling that where assessee-company provide recruitment services to its foreign client using information technology, it would be entitled to benefit under section 10A

Source: SC in CIT-6, New Delhi Vs M.L Outsourcing services(P.) Ltd
SLP no. 2398 of 2015, date of publication March 28, 2017

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ITAT has powers to extend stay even for delay beyond 365 days if delay was not attributable to assessee

PEPSICO

SLP dismissed against High Court's ruling that where delay in disposing of appeal is not attributable to assessee, Tribunal has power to grant extension of stay beyond 365 days in deserving cases

Source: SC in DCIT Vs Pepsi Foods (P.) Ltd

SLP no. 20367 of 2015, date of publication March 27, 2017

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SLP granted to decide whether sec. 153C could be invoked on basis of hard disk seized from assesses CA

SLP granted against High Court's ruling that where in course of search carried out at premises of assessee's chartered accountant, a hard disk containing working papers belonging to assessee was seized, since said disk did not contain any incriminating material, proceedings under section 153C could not be initiated against assessee on basis of said hard disk.

Source: SC in CIT -7 Vs RRJ Securities Ltd

SLP no. 2316 of 2017, date of publication March 17, 2017

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Investment in property rightly added as unexplained investment, where source was not proved

SLP dismissed against High Court's ruling that where assessee had not discharged burden as regards source from which investment had been made, investment in property was an unexplained investment and same was rightly added to income of assessee.

Source: SC in R. Mallika Vs CIT, Chennai

SLP no. 11096 of 2014, date of publication March 17, 2017

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High Court Rulings of the month

Sec. 54F relief can be claimed under sec. 264 when time to file revised return has elapsed and assessment is completed

The assessee for assessment year 2009-10 had claimed a set off of capital gains from sale towards house property as against capital losses and the loss in respect of shares. The set off was not permitted. In the meanwhile, the assessee had purchased new property, apparently with the intention of seeking the benefit under Section 54F. The original property was sold on 20.06.2008; the new property was purchased in July, 2008. However, the benefit of Section 54F was not claimed when the return was filed on 30.09.2009. Set off was disallowed by the AO, which resulted into capital gain. By then, the time to file the revised return had elapsed and the assessment was completed. Assessee filed revised petition u/s 264 of the ITAct, 1961. The commissioner rejected the petition of the assessee.

The High Court held that the section 54F does not contain per se contain any impediment. Therefore, as far as the text of the provision goes, this Court is of the opinion that there is no bar in the grant of the relief despite the assessee apparently having committed mistake in claiming set off and failed to claim section 54F exemption in original return and revised return.

Source: High Court of Delhi in Rajesh Kumar Aggarwal Vs. Commissioner of Income Tax, Delhi

C.M Appeal no. 8240 of 2014, date of publication March 02, 2017

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Profits from sale of shares not meant for frequent transactions to earn quick profit to be treated as capital gain

The assessee claimed certain amount of short term capital gain on the transactions of shares. However, the AO made addition of such amount on account of short term capital gain on the shares treating it as business income on the basis of frequent transactions of purchase and sale of shares. On appeal, the CIT (Appeals) directed the AO to treat amount on account of short term capital gain as business income on grounds that the shares were held by assessee for various periods ranging from 246 days to 334 days and were then sold on one day. It is also to be noted that shares of this company were accumulated without any sales having taken place before purchases of total accumulated shares of particular scrip. Thereafter, the shares were held for sufficiently long period of time. Further, it was also found that as per partnership deed, assessee was debarred from engaging in trading in shares and mutual funds. Further, on sale of shares held by assessee-firm for various periods ranging from 1 day to 180 days, the assessee had incurred loss of around Rs. 1.27 crores. There could have been no motive to incur such loss by way of short term capital loss and get a set off against short term capital gain which would save tax at the rate of 10 per cent. The assessee could have very well shown the above loss as business loss and could have set off this loss against other business income which would have saved substantially more tax. But assessee had never claimed it as business loss.

On further appeal, the Tribunal also confirmed the orders of CIT(A). High Court upheld the order of ITAT.

Source: High Court of Gujarat in CIT-1 Vs Tejas Securities
Tax Appeal no. 34 & 35 of 2017, date of publication March 08, 2017

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Sec. 10(23C) approval denied as society deleted commercial objects from MOA with prospective effect

Assessee society filed an application in Form-56D seeking approval for exemption under section 10(23C)(vi). Assessee's case was that it was established for purpose of dissemination of organized education and it had been engaged only in said activity ever since inception - Commissioner noted that one object mentioned in original memorandum of association provided for establishment of institutes or bodies which satisfied requirements of UGC and to do all such acts as were necessary to secure recognition of such institutes. He thus opined that assessee-society did not exist solely for educational purpose and in fact had multiple objectives and, therefore, society did not qualify under section 10(23C)(vi). The assessee filed instant writ petition contending that said object had been subsequently deleted from memorandum and, thus, impugned order passed by the Commissioner was not sustainable.

High court held that the amendment made in the MOA &AOA can only be prospective and in that case, it shall apply only for the AY 2015-16 and cannot be considered for the AY 2014-15.

Source: High Court of Madras in B.S. Abdur Rahman Institute of Science & Technology Vs CCIT-3, Chennai
W.P No.1 of 2015, date of publication March 07, 2017

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No cessation of liability if creditors were untraceable but evidences of payments to them were produced

In course of assessment, the Assessing Officer made addition to assessee's income under section 41(1) in respect of cessation remission of trading liability of various transporters who transported the minerals for the assessee. He submitted that the assessee had failed to produce these transporters/trade creditors before the authority, despite the summons issued to them. CIT partly granted the relief. On further appeal, the Tribunal completely set aside the additions made by the revenue. On further, appeal High Court held that in legal parlance, merely because the creditor could not be traced on the date when the verification was made, same is not a ground to conclude that there was cessation of the liability. Cessation of the liability has to be cessation in law, of the debt to be paid by the assessee to the creditor. The debt is recoverable even if the creditor has expired, by the legal heirs of the deceased creditor. Under the circumstances, in the present case, it can hardly be said that the liability had ceased. If the liability had not ceased or the benefit was not taken by the assessee in respect of such trade liability, the conditions precedent were not satisfied for invoking section 41(1). Tribunal has clearly recorded the evidence and findings of facts in favour of the respondent-assessee that the assessee has produced the documentary evidence in the form of ledger accounts and proof of payments made through bank channel and PAN numbers also. There is no perversity in the same so as to give rise to any substantial question of law arising in the present case, requiring consideration under section 260A.

Source: High Court of Karnataka in PCIT, Bengaluru Vs Ramgopal Minerals

IT Appeal no. 100139 of 2015, date of publication March 30, 2017

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AO couldn't re-open assessment merely on basis of DVO's report

During the year under consideration, the assessee purchased one land at a price of Rs. 78 lakhs, however, stamp authorities valued the same at Rs. 1.85 crores. In the scrutiny assessment u/s 143(3), the AO added the difference of aforesaid amounts as deemed income, being unexplained under section 69. During pendency of the scrutiny assessment, the AO had made reference to the DVO as well. However, as according to the revenue, time limit to frame the scrutiny assessment was to over, the AO without waiting for the DVO's report finalised the scrutiny assessment under section 143(3).

Against assessment order, assessee preferred appeal before CIT(Appeals). In meantime, AO received DVO's report valuing property at an amount higher than that of stamp duty valuation. AO thus requested CIT (Appeals) to enhance deemed income on basis of DVO's report . CIT (Appeals), opined that no addition could be sustained either on basis of stamp duty valuation or valuation report of DVO. Thereafter, AO issued notice under section 148 to reopen assessment on basis of DVO's report. High Court held that since AO had completed scrutiny assessment under section 143(3), in such a case, opinion given by DVO was not per se information for purpose of reopening of assessment. However also once having failed before Commissioner (Appeals) to enhance unexplained investment by relying upon DVO's report, thereafter it was not open for Assessing

Officer to reopen assessment on very ground i.e. relying upon DVO's report. In view of the above, held that impugned reassessment proceedings deserved to be quashed.

Source: High Court of Gujarat in Akshar Infrastructure (P.) Ltd, Vs ITO, ward-1(1)

Special Civil Application No. 16481 of 2010, date of publication March 28, 2017

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Genuine hardship of the assessee has to be considered before directing them to deposit 15% of the demand amount

Assessee company engaged in e-commerce declared huge loss ever since the beginning of its inception. However, in scrutiny, Assessing Officer made addition and raised tax demand. Assessee disputed said demand before the CIT(A). On assessee's plea of financial hardship, Assistant Commissioner directed assessee to deposit 15% of disputed demand. Review petition filed by assessee was rejected by Principal Commissioner who denied the assesse'e appeal.

High Court while giving reference of Circular No.1914, and Circular dated 29-2-2016 held that while dealing with an application filed by an assessee, both the Assessing Officer, and the Principal Commissioner, are required to see if the assessee's case would fall under Instruction No.2B(iii) of Circular No.1914, or not? Both the Assessing Officer, and the Principal Commissioner, are required to examine whether the assessment is "unreasonably highpitched", or whether the demand for depositing 15 per cent of the disputed demand amount "would lead to a genuine hardship being caused to the assessee" or not?. Considering the above reasons , the writ petition is allowed and case is remanded back to the Principal Commissioner.

Source: High Court of Karnataka in Flipkart India (P.) Ltd , Vs ACIT, Circle 3(1)(1), Bengaluru

Writ Petition no. 1339-1342 of 2017, date of publication March 15, 2017

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Circulars of the month

Clarifications on the Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016

CBDT has issued Circular No. 9 of 2017 giving clarification that where the undisclosed income is represented in the form of deposits in an account maintained with a specified entity, it is not necessary that the said deposits should exist on the date of making payments under the Scheme or furnishing a declaration under the Scheme. However, where the undisclosed income is represented in the form of cash, it is clarified that such cash should exist on the date of making payment of tax, surcharge and penalty under the Scheme or on the date of making deposit under the Pradhan Mantri Garib Kalyan Deposit Scheme, 2016, whichever is earlier.

Source: Circular No. 09 of 2017 dated March 14, 2017

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Due date of deposit of Form No. 1 under PMGKY, 2016 extended to 10.04.2017

The Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016 (hereinafter 'the Scheme') has commenced on 17.12.2016 and is open for declarations upto 31.03.2017. Considering the rush in the banks during the last days of financial year, CBDT has issued Circular no. 12 of 2017 giving clarfication that if an assessee has made payment of tax, surcharge, penalty and deposit under the Scheme, in the banks by the closing hours of 31st March, 2017, he shall be allowed to file declaration in Form No.1 under the Scheme by the 10th of April, 2017.

Source: Circular No. 12 of 2017 dated March 31, 2017

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Notification/Instructions of the month

CBDT to condone delay in payment of 1st installment of IDS in genuine cases

The Board Considering the fact that some of the declarants under IDS Scheme faced technical difficulties in depositing the first instalment at the banks, vide Instruction No. 2/2017 dated 16-1-2017 in F.No. 142/8/2016-TPL (Part), Board has already issued directions to the jurisdictional Principal Commissioners/Commissioners to accept the payment of tax etc., payable under IDS in cases where remittance had been made through cheque, RTGS, electronic transfer etc. on or before 30th November, 2016, but the same was credited by banks after 30th November, 2016 but before 5th December, 2016.

However, some instances have been brought to the notice where the declarant effected the full payment within the due date and same was also acknowledged by the bank, but it was intimated later by the bank that fund transfer did not materialize within the prescribed timeframe and the money was either returned back to the declarant or credited to Govt. A/c after 5th December, 2016. Such instances clearly refer to the circumstances over which the declarant had absolutely no control. Only, in such cases, the concerned Pr.CIT/CIT is hereby authorized to deal with the applications on a case to case basis after verifying the claim of the declarant through the relevant bank statements/certificates etc. and consider on merits the condonation in appropriate cases provided the amount payable as per the first instalment as well as second instalment is paid by 31st March, 2017 by the concerned declarant.

Source: CBDT Order No. [F.NO.225/86/2017-ITA.II], dated 28-3-2017

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CBDT mandates reporting of cash deposits in ITR; notifies new ITR Forms for AY 2017-18

CBDT has made amendment in Rule 12 of Income tax Rules, 1962, wherein it mandates reporting of cash deposit in all the ITR forms, if aggregate cash deposits, in all the bank accounts during the period (i.e. 09.11.2016 to 31.12.2016) is INR 2,00,000 or exceeding that and has accordingly amended all ITR forms.

Source: CBDT NOTIFICATION NO. SO 1006(E) [NO. 21/2017 (F.NO.370142/5/2017-TPL)], dated 30-3-2017

New ITR Forms for the AY 2017-18

CBDT has notified new ITR forms for the AY 2017-18 in the month of March 2017. CBDT has prescribed simplier ITR-Forms with fewer columns. However, such ITR 1 is applicable only for individuals having income up to Rs 50 lakhs. Further, Individual taxpayers either having dividend income above 10 lakhs or having unexplained credit (taxable at 60% under Section 115BBE) can't opt for ITR-1.

The CBDT has scrapped ITR- 2A. Now all assessees (other than those earning salary income and business income) would be required to file ITR-2 only.

Earlier taxpayers opting for presumptive taxation were required to file ITR-4S. But now they are required to file 'ITR-4 SUGAM' for presumptive income. A new column has been prescribed to mention digital receipts as the rate of presumptive income is 6% for such receipts. Taxpayer earning income from business or profession are now required to file ITR-3 instead of old ITR-4.

Source: CBDT, dated 31-03-2017

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Electronic notice shall be valid only if it contains name and office of tax authority: CBDT

CBDT has inserted Rule 127A of the IT Rules 1962, regarding authentication of every notice and other document communicated in electric form by an income tax authority. It Shall be deemed to be authenicated when:

A) In case of electronic mail, if the name and office of such income-tax authority:
   a. is printed on the email body (if the notice or other document is in the e-mail body itself) or
   b. is printed on the attachment to the e-mail, if the notice or other document is in the attachment

   and the e-mail is issued from the designated e-mail address of such income-tax authority.

B) in case of an electronic record, if the name and office of the income-tax authority:
   a. is displayed as a part of the electronic record, if the notice or other document is contained as text or remark in the electronic record itself; or
   b. is printed on the attachment in the electronic record, if the notice or other document is in the attachment.

   and such electronic record is displayed on the designated website.

Source: CBDT NOTIFICATION NO. GSR 283(E) [NO.17/2017 [F.NO.370142/4/2017-TPL], dated 23-3-2017

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