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CHARTERED ACCOUNTANTS

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DIRECT TAX REVIEW
APRIL 2017

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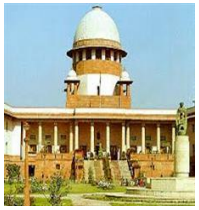
Supreme Court Rulings of the month

Writ wasn't maintainable if alternate remedy of filing appeal was available to assessee, SC dismissed SLP



SLP dismissed against High Court's ruling that where in respect of transfer of assessee's case to another place and assessment there, assessee had already filed a statutory appeal before Commissioner (Appeals), simultaneous writ petition should not be entertained.

Source: SC in Dev Bhumi Industries Vs Commissioner of Income Tax
SLP no. 8144 of 2017, date of publication April 26, 2017

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Reference to valuation officer could be made even if appeal was pending with High Court

Where assessment had not become final and conclusive because appeal preferred by revenue was pending before High Court, in view of proviso to sub-section (3) of section 142A, a valid reference to DVO could be made.

Source: SC in Commissioner of Income Tax, Ajmer Vs Sunita Mansingha
SLP no. 3064 of 2007, date of publication April 08, 2017

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Minor delay in furnishing buyers declaration would not make assessee liable for non-collection of TCS

SLP granted against High Court's ruling that no time limit is provided in section 206C(1A) to make a declaration in Form 27C collected from buyers and mere minor delay in furnishing Form 27C would not make assessee liable for non-collection of TCS

Source: SC in Commissioner of Income Tax(TDS),Ahmedabad Vs Siyaram Metal Udyog(P.) Ltd
SLP no. 3770 of 2017, date of publication April 11, 2017

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SLP granted against HC ruling that amendment u/s 11 to deny depreciation to trust was prospective in nature

High Court by impugned order held that amendment made in section 11(6) denying depreciation deduction in computing income of charitable trust is prospective in nature and it would operate with effect from 1-4-2015. SLP granted against this High Court Ruling.

Source: SC in PCIT Vs Sri Adichunchunagiri Shikshana Trust
SLP no. 4750 of 2017, date of publication April 12, 2017

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Expenses incurred by Textile Machinery on repair and replacement of old machinery

The assessee company company engaged in the business of manufacturing cotton yarns and textile, has claimed deduction in respect of as repairs and replacement of machinery. Assessing Authority disallowed the claim of the assessee on ground that it

related to installation of machinery and was in nature of capital expenditure. However, CIT Appeals allowed the claim of the assessee. Tribunal upheld the order of CIT(Appeals) and further High Court too upheld their order.

Revenue feeling aggrieved, preferred a reference application before the Gujarat High Court. It was noted by the Court that Court in CIT v. Saravana Spg. Mills (P.) Ltd. [2007] 293 ITR 201/163 Taxman 201 (SC) took a view that in case of textile mill there were several departments and in each department there were several machines performing different functions and, thus, in such a situation, repair/substitution of an old machine would not come within definition of word 'current repairs' and deduction could not be claimed thereunder and accordingly Supreme Court set aside the order passed by Gujarat High Court.

Source: SC in Commissioner of Income Tax, Gujarat Vs Sarangpur Cotton Mfg. Co. Ltd

SLP no. 2984 of 2007, date of publication April 08, 2017

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Sale on 'going concern' basis is 'slump-sale', not sale of depreciable asset u/s 50(2)

Assessee company was engaged in the business of manufacturing sheet metal components at Ahmedabad, sold his entire business in one go with all its assets and liabilities to another company and claimed the sale to be of 'slump sale' in the nature of long term capital gains as the undertaking was owned by assessee for almost 6 years. AO rejecting assessee's contention held that it was covered u/s 50(2) and framed assessment accordingly. On appeal, CIT(A) allowed assessee's claim of deduction. On further appeals before ITAT and HC, assessee succeeded. SC observed that Sec. 50(2) would apply to any block of assets transferred which assessee was using in running of his business. SC however opined that where the entire running business with assets and liabilities stood transferred in one go, such sale could not be treated as short-term capital assets and is in the nature of LTCG. SC upholds assessee's claim relying upon coordinate bench ruling in Artex Manufacturing Co. [TS-19-SC-1997-O] and Bombay HC ruling in Premier Automobiles Ltd. [TS-40-HC-2003(BOM)-O] wherein similar view was taken.

Source: SC in Equinox Solution Pvt. Ltd Vs CIT, Ahmedabad

Civil Appeal no. 4399 of 2007, date of publication April 19, 2017

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Rejects taxpayer's double-benefit claim, amalgamating Company's liability waiver taxable u/s 41(1) in hands of amalgamated company

Assessee company took over the sick company - HPL ('amalgamating company') through the scheme of amalgamation, however, while arriving at the benefit accruing to assessee u/s 72A on account of carry forward and set-off of amalgamating company's losses but HPL's waiver income u/s. 41(1) was not adjusted taking stand that as per Sec 41(1), the income has to be treated at the hands of 'first mentioned person' which is HPL (which ceased to exist) and therefore the waiver income u/s. 41(1) cannot be assessed in assessee's hands.

SC upholds Karnataka HC judgment in Revenue's favour, holds that waiver of liability due by amalgamating company after amalgamation is taxable in the hands of the amalgamated company u/s 41(1) as when the assessee is allowed the benefit of the accumulated losses,

while computing those loses, the income which accrued to it had to be adjusted and only thereafter net losses could have been allowed to be set off by the assessee company.

Source: SC in M/s. Mcdowell & Company ltd Vs CIT,Bangalore Civil Appeal no. 3893 of 2006, date of publication April 19, 2017

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High Court Rulings of the month

Credit of advance tax to be given under IDS

Assessee company filed writ to grant credit of advance tax paid and TDS deducted against the tax payable under the Income Declaration Scheme, 2016. The facts of the case was that no return was filed by assessee u/s 139 from AY 2010-11 onwards till date owing to non-audit of accounts, however, assessee paid advance tax in the past 5 years in terms of the un-audited accounts, consequently, assessee made declaration under the IDS and claimed credit for the advance tax paid and TDS deducted.

Revenue's took stand that TDS credit may be granted to assessee in terms of CBDT circular 25/ 2016 (which clarified that credit for TDS shall be given while computing tax liability under IDS), however, in absence of express mandate, advance tax credit cannot be granted under IDS which is a self-contained code in itself.

HC held that there is nothing in the IDS Scheme which provides that such past amounts are not to be reckoned for purposes of 'payments' under IDS and IDS only provides that tax and surcharge amounts under the scheme 'shall be paid on or before a date to be notified', opines that *"These words necessarily refer to all payments. They are not limited in their meaning to only what is paid immediately before, or in the proximity of the declaration filed"* and accepts assessee stand there is no 'intelligible differentia' for treating advance tax paid differently from TDS as both the taxes are in the nature of 'tax paid in advance'.

Source: HC in the case of Kumudam Publications Pvt. Ltd Vs CBDT W.P.C 11216/2016, date of publication April 03, 2017

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Local land laws relevant for characterization as agricultural land

Assesse company filed their income tax return for the declaring gain on sale of agricultural land as exempt since the land does not constitute "Capital Assets" as defined u/s 2(14). AO passed an order denying exemption giving reasons that land did not constitute agricultural land since no agricultural operations were carried out regularly and same was sold to a company engaged in the business of development of infrastructure activity. AO also ruled that though the land was located beyond the specified limits from the municipal limits i.e. beyond 8 kms, yet it was to be treated as capital asset. On appeal, CIT(A) held the land as agricultural and exempts capital gain.

ITAT upon re-inspection held that "*To the extent the land is actually used for dry crop, the land has to be regarded to be an agricultural land the balance 4/5th of the land could not be regarded to be the agricultural land*".

Bombay High Court reverses ITAT order, and held that *"merely because the assessees could not produce and utilize the land fully by employing labourers,and/or unable to give the crop statements should not have been the criteria"*

HC holds that Revenue fell in error in not considering the provisions of local land laws, as activities performed by assessee on the land were recognised as 'agricultural' activities under the Local land law,

Source: HC in the case of Shankar Dalal & others Vs CIT

IT Appeal no. 1/2/10/12/16 of 2015 & 80/81/82/83/84/85/86 of 2014, date of publication April 05, 2017

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Involvement with multiple concerns cannot make Vice President Remuneration unreasonable

AO disallowed 50% of the payments made by the assesse company on account of professional remuneration made to Vice- president.

On appeal, CIT(A) overturned AO's order as he believed remuneration paid to Mr. Singh was reasonable in consonance to his qualifications.

On further appeal, ITAT affirmed AO's order and upheld that the VP cannot perform multiple task for more than one concern.

HC reverses ITAT order and held that *"ITAT in the present case overlooked the materials that were to be taken into account, i.e. reasonableness of the expenditure having regard to the prudent business practice from a fair and reasonable point of view." And also remarks that "such a stereotyped notion can hardly be justified in today's business world where consultants perform different tasks, not only for one concern but for several business entities"*

Source: HC of New Delhi in the case of Sigma Corporation India Ltd VsD CIT

IT Appeal no. 795/2016 & CM No. 41578/2016, date of publication April 10, 2017

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Income Tax Appellate Tribunal Rulings of the month

Imposition of penalty is not mandatory u/s section 271B if assessee has reasonable cause

Assessee was carrying on business of Advertising Agency. During the course of assessment proceedings, AO took a view that since receipts of assessee was to extent of Rs. 4.40 crores which was in excess of limit prescribed by section 44AB, assessee was under an obligation to get his books of account audited and file audit report. On being confronted, assessee submitted that he being in business of advertising agency, only commission could be considered as income and not total receipts for which reliance were placed on Circular No. 452, dated 17-3-1986 and also on the decision of Bombay High Court in the case of CIT v. Heros Publicity Services [2001] 248 ITR 256/118 Taxman 638. Assessing Officer having rejected assessee's explanation, imposed penalty under section 271B.

CIT(A) uphled the penalty order. The Tribunal held that the provison with respect to impostion of penalty is not mandatory as section 271B states that no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provisions if he proves that there was reasonable cause for the failure. In the present case, the assessee was having a bonafide belief

on the basis of the supra reliance and held levy of penalty u/s 271B was not justified.

Source: ITAT in the case of Manoj S. Gugale Vs ITO, Ward-3, Ahmedabad

IT Appeal no.417 of 2016, date of publication April 21, 2017

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Circulars of the month

Clarifications on Non-Resident Seafarer receiving remuneration in NRE accounts maintained with Indian Bank

CBDT has clarified that only such income of a non-resident shall be subjected to tax in India that is either received or is deemed to be received in India and further clarified that salary accrued to a non-resident seafarer for services rendered outside India on a foreign ship shall not be included in the total income merely because the said salary has been credited in the NRE account maintained with an Indian bank by the seafarer.

Source: Circular No. 13 of 2017 dated April 11, 2017

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Due date of deposit of Form No. 1 under PMGKY, 2016 extended to 10.05.2017

CBDT has clarified that if due tax, surcharge and penalty under PMGKY, has been received on or before the 31stMarch, 2017, and deposit in the Bond Ledger Account under the Deposit Scheme has been received on or before the 30th April, 2017, the declaration in Form No.1 under PMGKY can be filed by 10thMay, 2017.

Source: Circular No. 14 of 2017 dated April 11, 2017

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Lease rent from letting out buildings/developed space along with other amenities in an Industrial Park/SEZ-- to be treated as business income

CBDT has clarified that Income from the Industrial Parks/ SEZ established under various schemes framed and notified under section 80IA(4)(iii) of the Income-tax Act, 1961 ('Act') is liable to be treated as income from business provided the conditions prescribed under the schemes are met.

In the case of Velankani Information Systems Pvt Ltd, the Hon'ble Karnataka High Court observed that any other interpretation would defeat the object of section 801A of the Act and government schemes for development of Industrial Parks in the country. SLPs filed in this case by the Department have been dismissed by the Hon'ble Supreme Court.

In a subsequent judgment dated 30.04.2014 in ITA No 76 & 78/2012 in the case of CIT vs. Information Technology Park Ltd. the Karnataka High Court has reaffirmed its earlier views.

In view of the above, CBDT has clarified that it is now a settled position that in the case of an undertaking which develops, develops and operates or maintains and operates an industrial park/SEZ notified in accordance with the scheme framed and notified by the Government, the income from letting out of premises/ developed

space along with other facilities in an industrial park/SEZ is to be charged to tax under the head 'Profits and Gains of Business'.

Source: Circular No. 16 of 2017 dated March 31, 2017

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No need to quote Aadhaar number in ITR when taxpayer isn't a resident in India; CBDT clarifies

Section 139AA of the Income-tax Act, 1961 as introduced by the Finance Act, 2017 provides for mandatory quoting of Aadhaar/Enrolment ID of Aadhaar application form, for filing of return of income and for making an application for allotment of Permanent Account Number with effect from 1st July, 2017.

It is clarified that such mandatory quoting of Aadhaar or Enrolment ID shall apply only to a person who is eligible to obtain Aadhaar number. As per the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016, only a resident individual is entitled to obtain Aadhaar. Accordingly, the requirement to quote Aadhaar as per section 139AA of the Income-tax Act shall not apply to an individual who is not a resident as per the Aadhaar Act, 2016.

Source: Press Release, dated April 05, 2017

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CBDT introduces digitally signed E-PAN card for applicants

In order to improve the Ease of Doing Business for newly incorporated corporates, CBDT has tied up with Ministry of Corporate Affairs (MCA) to issue Permanent Account Number (PAN) and Tax Deduction Account Number (TAN) in 1 day. The Certificate of Incorporation (COI) of newly incorporated companies includes the PAN in addition to the Corporate Identity Number (CIN). TAN is also allotted simultaneously and communicated to the Company.

CBDT has introduced the Electronic PAN Card (E-PAN) which is sent by email, in addition to issue of the physical PAN Card, to all applicants including individuals where PAN is allotted. Applicant would be benefited by having a digitally signed E-PAN card which they can submit as proof of identity to other agency electronically directly or by storing in the Digital Locker,

Source: Press Release, dated April 11, 2017

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