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Supreme Court Rulings of the month

SC dismisses SLP, no penalty u/s 271C for TDS default on 'debatable' nature of payments



SC dismisses revenue's SLPs for AYs 1994-95 to 2001-2002 against Delhi HC order in case of ITC Ltd. on the ground of delay of 190 days. HC had confirmed ITAT order on deleting penalty u/s. 271C and accepted that the question whether the payment of royalty by ITC Ltd.(assessee) to Airports Authority of India ('AAI') for the right to operate the executive lounge at the Airport constitutes 'rent' u/s. 194-I, was a debatable issue and had opined that in such circumstances, the assessee could take advantage of the exemption provided u/s 273 B by contending that there were bonafide reasonable grounds for the assessee not to have deducted tax at source from the payment made to AAI.

HC further had clarified that this was not a case where the assessee could be said to have deliberately avoided making payment of tax so as to attract penalty u/s 271C, thus upheld ITAT order for deleting impugned penalty u/s. 271C.

Source: SC of India in the case of Commissioner of Income Tax (TDS) New Delhi Vs, M/s ITC Ltd, Director
Special Leave Appeal nos. 13366 of 2018, date of publication June 01, 2018

Sec. 11 exemption was available on interest earned on corpus donation; SC dismissed SLP

Assessee received corpus donation on which it earned interest - Assessee claimed exemption under section 11 which was rejected by revenue. On appeal, High Court held that in view of specific direction of donors that said interest would also form part of corpus, assessee's claim for exemption under section 11 in respect of interest so earned was to be allowed. SLP filed against the said order was dismissed.

Source: SC of India in the case of Commissioner of Income Tax (Exemption), Kochi Vs Mata Amrithanandamayi Math Amritapuri
Special Leave Appeal nos. 11590 of 2018, date of publication June 14, 2018

SC granted SLP as sec. 12AA registration couldn't be denied if assessee was in industrial development



SLP granted against High Court ruling that assessee, a statutory body, constituted for performing functions of industrial development in terms of section 6 of Uttar Pradesh Industrial Development Act, 1976, could be regarded as carrying on activity of general public utility and, thus, its claim for registration under section 12AA was to be allowed.

Source: SC of India in the case of Commissioner of Income Tax Vs New Okhla Industrial Development Authority
Special Leave Appeal no. 3956 of 2018, date of publication June 14, 2018

SC admitted SLP to decide sec. 68 additions made on basis of statement of accommodation entry provider

During search proceedings, 'T', accommodation entry provider, submitted that he had received cash from assessee and in return he had given them entry of share capital in form of a cheque. On said basis, Assessing Officer concluded that share premium and share application money were unexplained credit under section 68. It was found that statement of 'T' was recorded at back of assessee and assessee was not allowed any opportunity to cross-examine him - Further, assessee had duly furnished declaration of director of share applicant company, share application form, certificate of incorporation from Registrar of Companies as well as income-tax return of share applicant company and assessing Officer did not make any verification about said documents. High Court by impugned order held that on facts, section 68 addition was not called for. SLP granted against said impugned order.

Source: SC of India in the case of Principal Commissioner of Income Tax, Delhi 2 Vs Best Infrastructure (India) Pvt. Ltd

Special Leave Appeal nos. 14821 of 2018, date of publication June 16, 2018

High Court Rulings of the month

Return filing timeline u/s. 153A applicable for availing loss carry-forward in search cases

Calcutta HC rules that in search cases, the due date for filing return, in order to avail carry forward of loss [as required u/s 139(3)], stands extended till the date specified in notice u/s. 153A(1)(a). HC

holds that since the search operations in case of assessee-individual were initiated on September 2, 2004, it was no longer necessary for assessee to file his regular return for subject AY 2004-05 by October 31, 2004 [i.e due-date u/s. 139(1)] and rules that in view of the non obstante clause contained in Sec. 153A (1), the obligation to file the return u/s. 139(1) remained suspended till such time specified in the notice issued u/s. 153A(1)(a). HC concludes that “for the purpose of carrying forward the loss in terms of Sec. 72 r.w.s. 80, in a case where search operations have been conducted u/s 132, the time to file the return within the meaning of Sec. 139(3) has to be regarded as the reasonable time afforded by the consequent notice u/s 153A(1)(a)”; Since the date of notice u/s 153A(1)(a) and the time afforded under such notice was not available on record, HC remits matter back to ITAT to pass an order in the light of the views expressed herein.

Source: HC of Calcutta in the case of Shrikant Mohta Vs CIT, Central II, Kolkata

ITAT Nos. 19 & 20 of 2015, date of publication June 25, 2018

ITAT Rulings of the month

Grants relief to Karnataka MLA, deletes Rs. 8.85 crores undisclosed income addition



Pursuant to survey operations u/s 133A in case of Arihant Credit Souharda Sahakari Ltd., AO impounded a diary maintained by the Shri S. K. Terdale, Asst. General Manager (Deposits and Loans). AO noticed from the

diary that details of receipt of deposits were recorded against name of certain persons, which, inter alia, included the name of the Abhaykumar Bharamgouda Patil (assessee, BJP MLA).

The amount of deposits alleged to have been received from the assessee was worked out at Rs. 885 lakhs in aggregate for AYs 2009-10 to 2011-12. Shri Tardale submitted the name and address of the assessee and also identified him as MLA of Belgaum South and also submitted that he did not have FD account opening forms of any of the depositors. Upon summoning, assessee refuted/disowned the entries recorded in the diary against his name and also stated that he is not associated with the bank in any manner.

Based on the above, the AO reopened the assessments for AYs 2009-10 to 2011-12. AO drawn inference that the entries found recorded in the diary got links with the loan given to the close relatives of the assessee. Thus, based on this information, AO concluded that the assessee adopted the above modus operandi in order to convert his black money into white and accordingly assessed the same as income of the assessee.

CIT(A) also confirms AO's order. Aggrieved by the order, assessee filed appeal before ITAT.

ITAT deletes addition towards undisclosed income relating to alleged deposits of Rs. 8.85 crores as GM could not substantiate his statements by bringing any other corroborative evidences. Furthermore, ITAT opines that "the absence of any document in the form of receipts issued by the recipient or in the form of acknowledgement for money transactions of high magnitude, does not satisfy the test of human conduct and human probabilities."; With respect to the failure of assessee to avail cross examination, ITAT agrees with assessee that he was not required to prove the

negative fact, likewise, as regards presumption u/s. 292C, ITAT holds that it is the primary responsibility of the bank to prove the entries recorded in the books / documents, which the bank has failed to discharge. ITAT upheld assessee's stand that presumption u/s 292C might be used against the person who was subjected to survey and not against others and highlighted that the presumption prescribed in sec. 292C was rebuttable presumption.

ITAT upheld assessee's reliance on Bombay HC in the case of Lata Mangeshkar where in HC had confirmed ITAT's finding that the evidences were not sufficient to prove even a single evidence, where the assessee could be said to have received money in black for which she did not pass a receipt. ITAT observed that in present case, the entries recorded in the diary were different from the entries found recorded in the regular books of accounts of the Society. ITAT stated that before IT authorities, the society could have furnished only its regular books of accounts and it could not have relied upon the diary.

Source: ITAT Panaji Bench in the case of Abhay kumar Rharamgorlda Patil Vs ACIT, Circle-1, Belagavi

IT. Appeal no. 35-37/Panaji/2018, date of pronouncement April 13, 2018

Revised return filed u/s 139(5) after issuance of scrutiny notice, valid



Mumbai ITAT rules that "There is no bar / restriction in the provisions of section 139(5) of the Act that the assessee cannot file a revised return of income after issuance of notice u/s. 143(2) of the Act."; Notes that AO had accepted the long term capital gains ('LTCG')

income offered by assessee-individual in the revised return but rejected claim of exemption u/s 54 on the ground that revised return was invalid since it was filed after issuance of notice u/s 143(2); Firstly, ITAT remarks that the AO did not entirely reject the revised return of income filed by assessee, but adopted a very selective approach, next opines that there is no such bar / restriction u/s. 139(5); Observes that as per Sec. 139(5), *“if an assessee discovers any omission or wrong statement in the original return of income he can file a revised return of income at any time before the expiry of one year from the end of the relevant AY or before completion of the assessment whichever is earlier”*, clarifies that assessee complied with both these conditions; Moreover, ITAT rules that even otherwise the Department cannot reject assessee's legitimate claim on technical grounds in view of principles laid down by SC in Goetz India, thus, restores the issue to the file of AO for examining assessee's exemption claim on merits.

Source: ITAT Mumbai Bench in the case of Mahesh H. Hinduja Vs ITO, Ward-21(3)(3), Mumbai

IT. Appeal no. 176/Mum/2017, date of publication June 22, 2018

ITAT: Allows loss carry-forward claim in Sec.153A return, though not claimed u/s 139(1)



Splendor Landbase Limited (assessee-Company) is engaged in the business of real estate development. Assessee filed its return of income for AY 2010-11 u/s 139 claiming carry forward of business loss of Rs. 3.31 crores (including unabsorbed depreciation of Rs 40.35 lakhs) and showing income from other sources. However,

during scrutiny assessment, AO denied carry forward of business loss and unabsorbed depreciation on the ground that return was filed belatedly. Subsequently pursuant to search and seizure proceedings and in compliance of notice u/s 153A, assessee again filed return of income declaring the impugned income/loss. While completing the assessment u/s 153A r.w.s.143(3), AO again denied to carry forward impugned loss taking stand that assessment once framed u/s 143(3), the same could not be disturbed in proceedings u/s 153A in the absence of any incriminating material found in search. On appeal CIT(A) rejected carry forward of business(excluding depreciation) of Rs. 2.78 crores, however allowed carry forward of depreciation. Both aggrieved, assessee and revenue filed an appeal before Delhi ITAT.

Delhi ITAT allows carry forward of business loss claimed by assessee-company in the return of income filed u/s 153A (relating to assessment in search cases), observes that Sec. 153A starts with non-obstante clause which inter alia overrides Sec. 139, holds that return filed u/s 153A is a separate return and once accepted and assessed, it replaces the original return u/s. 139(1), finds force in assessee's stand that return u/s 153A is deemed to be return u/s 139(1) and restrictive provision of Sec. 80 will not apply.

ITAT observed assessee's contention that the unabsorbed depreciation ought to be allowed to be carried forward since it was not covered by the limitation of Sec. 80. In this regard, ITAT upheld CIT (A)'s observation that *“the carry forward of unabsorbed depreciation is governed by sub-section (2) of S. 32 of the Act which is placed in Chapter –IV of the Act according to which the total income is to be computed, while s. 72 and s.80 are part of Chapter-VI of the Act”*. Thus, ITAT upheld CIT (A)'s action of directing the AO to verify

the claim of alleged depreciation and allow set off in the next/subsequent years.

Source: ITAT Delhi Bench in the case of M/s Splendor Landbase Limited Vs ACIT, Central Circle, New Delhi

IT. Appeal no. 2461/Del/2016, date of pronouncement June 06, 2018

ITAT: Deletes unexplained cash credit addition as assessee not maintaining books of accounts

Pursuant to information received from ITD system, AO came to know that assessee deposited cash in bank accounts. AO initiated proceedings u/s 147 after recording reasons. AO was of the opinion that the returned income of the assessee did not in any manner justify the claim of receipts of cash from sales and deposits in the bank accounts. AO proceeded by invoking the provisions of Sec. 68 and made addition of Rs. 56.03 lakhs in AY 2010-11, Rs. 84.50 lakhs in AY 2011-12 and Rs. 4.50 lakhs in AY 2012-13. CIT (A) upheld AO's order.

Aggrieved, assessee filed an appeal before Delhi ITAT.

ITAT deletes the addition and hold that sec u/s 68 is applicable only when the credits are found in the books of account of assessee.

In this regard, ITAT referred to coordinate bench order in Om Prakash Sharma, wherein it was held that "It is correct that since no books of account are maintained in the ordinary course of the business of the assessee, in the absence of any corroborative evidence to support action u/s 68 of the Act, no such addition is tenable." ITAT also referred to SC ruling for Baladin Ram which had observed that "...the pass book supplied by the bank to the assessee in the present

case could not be regarded as a book of the assessee, that is, a book maintained by the assessee or under his instructions". ITAT also observed jurisdictional HC ruling in Ms. Mayawati, wherein it was remarked that "Therefore, a cash credit appearing in assessee's pass book relevant to a particular previous year, in a case where the assessee does not maintain books of account, does not attract the provisions of Sec. 68".

Relying on the above judgements ITAT observed that the account of the assessee in the books of the bank was different from the books of the assessee and clarified that since no books of account were maintained in the ordinary course of business of the assessee, no such addition u/s 68 was tenable.

Source: ITAT New Delhi in the case of Smt Babbal Bhatia Vs ITO, Ward-45(2), New Delhi

IT. Appeal no. 5430-5432/Del/2011, date of publication June 08, 2018

ITAT: Allows assessee's full exemption claim u/s. 54, despite property jointly held by spouse and son



Delhi ITAT allows assessee-individual's exemption claim u/s 54 in entirety for investing the capital gains in a property, which though stood in joint name of assessee, her husband and their son during AY 2012-13; Rejects revenue's stand that exemption benefit should be denied to the extent of son's share in the property; Notes that the entire sale proceeds have been invested in the purchase of new residential flat as required u/s. 54. Rules that the son of assessee who is a legal heir and is jointly holding the property even though he may not have

contributed in the purchase of the said property, exemption u/s 54F cannot be denied and relied on Delhi HC ruling in Ravindra Kumar Arora wherein the meaning of the assessee has been given wide and liberal interpretation so as to include a legal heir also.

Source: ITAT, Kolkata in the case of Uma Nandwani Vs ITO, Ward-2(4), Meerut

IT. Appeal no. 1413/Del/2016, date of pronouncement June 26, 2018

Press release/Notifications/Instructions/Letters of the month

CBDT: Notifies Cost Inflation Index for FY 2018-19 at 280



CBDT notifies Cost Inflation Index for FY 2018-19 at 280; This notification shall come into force with effect from April 1, 2019 and shall accordingly apply to the AY 2019-20 and subsequent years.

Source: CBDT Notification No.26/2018/F.No.370142/3/2018-TPL Dated 13-06-2018

IT Dept. launches instant e-PAN allotment facility 'free of cost' for Aadhaar holders

IT Dept. provides for instant e-PAN allotment in near to real time, free of cost for limited period; Individuals (other than minors) with a valid Aadhaar number (with updated Mobile number) can avail the e-PAN allotment facility.

Source: CBDT Press release Dated 29-06-2018

CBDT: Proposes amendments in Forms 36/36A for filing appeals / cross objections before ITAT



BDT issues draft notification substituting old Forms 36/36A with new Forms for filing appeals / cross objections before ITAT, with a view to rationalise these Forms to make them more informative; The new Forms seek additional details about appellant, respondent, pending appeals, amount disputed in appeal or cross-objections.

Source: CBDT Press release Dated 13-06-2018

CBDT: Notifies Income-tax & Benami Transactions Informants Reward Scheme, 2018

CBDT notifies revised Income-tax Informants Reward Scheme, 2018, in supersession of the earlier reward scheme issued in 2007, with the objective of obtaining people's participation in the Income Tax Department's efforts to unearth black money and reduce tax evasion. Under the revised scheme, a person can get reward up to Rs. 50 lakh for giving specific information in prescribed manner to the designated officers of Investigation Directorates in Income Tax Department about substantial evasion of tax on income or assets in India which are actionable under the Income-tax Act, 1961; Further, with the objective of attracting and encouraging people to give information about such income and assets actionable under Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, reward up to Rs. 5 crore has been introduced in the new

reward scheme; CBDT assures that the “Identity of the informant shall be kept confidential”, however, cautions that a person giving false information/evidence/ statement will be liable to prosecution; Likewise, CBDT notifies Benami Transactions Informants Reward Scheme, 2018, which is aimed at encouraging people to give information about benami transactions and properties as well as income earned on such properties by such hidden investors and beneficial owners. Under this scheme, a person can get reward upto Rs. 1 crore for giving specific information in prescribed manner to the Joint or Additional Commissioners of Benami Prohibition Units (BPUs).

Source: CBDT Press release Dated 01-06-2018

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