

SUPREME COURT RULINGS OF THE MONTH

SC: Dismisses SLP against penalty deletion for accepting/repaying loans through 'journal entries'



SC dismisses Revenue's SLP challenging Bombay HC order in case of assessee (belonging to Lodha group of companies engaged in real estate business) for AY 2009-10; HC had dismissed Revenue's appeal against ITAT order deleting penalties u/s. 271D / 271E for violating provisions of Sec 269SS / 269T by accepting/repaying loans/advances through "journal entries" (i.e. otherwise than by account payee cheques/drafts); **ITAT had held that transactions by way of journal entries aimed at extinguishment of mutual liabilities constitutes "reasonable cause" u/s 273B;** Stating that the issue of reasonable cause is a question of fact, HC had held that "the view taken by the Tribunal on the facts before it, is a possible view and does not give rise to any substantial question of law."; SC holds that "We do not find any good ground to entertain this Special Leave Petition, which is, accordingly, dismissed."

Source: SC in CIT Vs Lodha Properties Development Pvt. Ltd
SLP No.42791 of 2018, date of publication December 13,2018

SC: Reassessment proceedings couldn't be initiated merely on basis of audit objections; SLP dismissed

Where High Court set aside reassessment proceedings on ground that said proceedings were based on mere audit objection that there was undervaluation of closing stock, SLP filed against said order was be dismissed.

Source: SC in PCIT Vs S. Chand & Co. Ltd
SLP No.38560 of 2018, date of publication December 27,2018

HIGH COURT RULINGS OF THE MONTH

HC: Upholds Sec. 263-order; Condemns AO's 'slipshod' acceptance of books despite huge surrender in survey



Assessee is engaged in the business of manufacturing/trading of yarn and fiber waste. A survey u/s 133A was conducted at the business premises of the assessee wherein a sum Rs. 2.15 crores was surrendered by assessee as additional income for subject AY 2008-09. The assessee filed its return of income for relevant AY declaring an income of Rs.1,35,36,300. AO completed assessment u/s 143(3) by making addition of INR 15,752 u/s 40 (a)(ia). Subsequently, the CIT passed an order u/s 263 holding the AO's order was erroneous in so far as it was prejudicial to the interests of the revenue. CIT observed that the AO had failed to make proper verification and the assessment order was passed without necessary verification. Accordingly, the CIT enhanced the income of the assessee by Rs. 1,83,80,208. Upon further appeal, ITAT quashed the order of CIT relying on SC decision in case of Malabar Industrial Company Limited [TS-6-SC-2000].

Aggrieved revenue filed an appeal before P&H HC.

Punjab & Haryana HC reverses ITAT order, upholds CIT's revisionary order u/s. 263 resulting in enhancement of assessee's income for AY 2008-09; **Takes note of CIT's observations that AO had failed to reject books of accounts despite assessee's own admission that there were**

discrepancies in the books, as well as a huge surrender of additional income of Rs. 2.15 cr. had been made during the survey; Further, taking note of the drastic fall in the GP rate as well as the net profit rate as compared to earlier years, CIT had remarked that, “This further indicates that the assessee has adopted a method to offset the amount surrendered,” and that AO had simply accepted assessee’s explanations without independent application of mind;

HC concluded by stating that, *“Before parting, it is considered appropriate to direct the Registry of this Court to forward a copy of this order to the Central Board of Direct Taxes (CBDT) to issue necessary instructions to all the Assessing Officers that in cases of search and seizure or where survey operations have been carried out by the Department and surrender made or concealed income detected, to ensure proper scrutiny of such cases and discuss reasons for rejecting or accepting the books of account of the assessee and not to merely record in slipshod or cursory manner that ‘the books of account produced and test checked’ as done by the Assessing Officer in the present case.”*

*Source: HC of Punjab and Harayana in PCIT Vs M/s Venus Woollen Mills, Ludhiana
ITA No.111 of 2015, date of publication December 18, 2018*

HC: Discharges taxpayer from ‘hurriedly’ launched prosecution as tax-demand agitated before various fora

Madras HC discharges assessee-individual from the prosecution launched u/s. 276C (2) for non-payment of determined tax, notes that since the assessee was agitating his case before various fora [CIT(A) / ITAT], he did not pay the income-tax demand raised of Rs. 14.84 lakh

and thereby prosecution was launched against him, however upon being successful in appeal, the demand itself was reduced substantially. HC remarks that, “the very edifice on which the prosecution was launched against the accused, has crumbled like a pack of cards,” and holds that, “it cannot be stated that the accused was willfully evading the payment of tax.” HC rejects revenue’s stand that assessee cannot be discharged from the prosecution as tax was due from him when the prosecution was launched, also remarks that, *“There was no supine indifference on the part of the accused in not paying the demanded tax, but, on the contrary, he had agitated before various fora and ...”*. HC opines that there was no necessity for the IT Dept. to have launched the prosecution hurriedly, “since the law of limitation u/s. 468 Cr.P.C. for criminal prosecution has been excluded by the Economic Offences (Inapplicability of Limitation) Act, 1974.”

*Source: HC of Madras in Sayarmull Surana Vs ITO, Chennai
Crl.R.C No. 111 of 2011 & Crl. M.P. No. 1 of 2011, date of publication December 19, 2018.*

HC: Trust utilizing minuscule income for charitable purposes, irrelevant while renewing Sec. 80G recognition

Karnataka HC sets aside ITAT’s order holding that assessee-trust was ineligible for renewal of recognition u/s 80G , holds the issue whether funds were used for charitable purposes can be adjudicated only during assessment proceedings and not at the time of renewal application. HC notes that revenue had rejected the renewal application on grounds that assessee-trust was using only a minuscule portion of income for charitable purposes and primarily funds applied were of business nature; Remarks, *“The only condition that requires to*

be fulfilled for the purposes of seeking renewal are as specified under Section 80-G(5)(ii).....That none of the clauses in Section 80-G(5)(ii) would be said to be applicable herein,”; Observes it only postulates that income derived from charitable trust may be used for charitable purposes; Highlights the applicability of income by assessee-trust can be gone into by the assessing authority at the time of assessing the income of the assessee and not at renewal stage.

**Source: HC of Karnataka in D.R.RANKA CHARITABLE TRUST Vs The Director of Income Tax (Exemptions), Bengaluru
ITA No.180 of 2010, date of publication December 07, 2018.**

HC: Allows Sec 54 benefit on flats received as part of residential property sales consideration



Bombay HC upholds ITAT order, allows exemption u/s 54 to individual assessee for flats received as part of consideration for sale of residential property for AY 2007-08. HC Noted that assessee had received sale consideration partly in cash and partly in form of new flats to be constructed and allotted to the assessee, **HC upholds ITAT's conclusion that new flats amounted to assessee's investment for acquisition of new residential house and AO was not justified in adding back price of such flats as part of consideration while also denying benefit u/s 54.** HC rejects revenue's contention that market value of such flats cannot be considered as investment in new residential house when assessee had not made payment in money terms or in kind.

**Source: HC of Bombay in Mr Peter Savio Pereira Vs PCIT
ITA No.483 of 2016, date of publication December 06, 2018.**

ITAT RULINGS OF THE MONTH

ITAT: Quashes reassessment post SC-order holding reassessment notice alleging PE as unsustainable

Delhi ITAT quashes reassessment order for Honda Motor Co for AYs 2005-06 and 2006-07 pursuant to SC ruling holding that impugned notice issued u/s 148 cannot be sustained once arm's length price procedure has been followed. Further notes that AO initiated reassessment proceedings on the ground that materials collected/impounded during survey operation established existence of assessee's PE through its Indian subsidiary and finally attributed 25% of global income to PE, Observes that though Allahabad HC dismissed assessee's writ petition against initiation of reassessment proceedings pursuant to impugned notice u/s 148, **SC had held that since the notice for the reassessment was based only on the allegation that assessee had PE in India, it could not be sustained once ALP procedure had been followed.** ITAT states that, "As the notice has been quashed by Hon'ble Supreme Court, reassessment proceedings, pursuant to the said notice and the impugned orders passed by the AO stand automatically cancelled."

**Source: ITAT Delhi in DCIT Vs Honda Motor Co. Ltd
ITA No.6018 & 6019 of 2015, date of publication December 21, 2018.**

ITAT: Sec. 194-IA TDS on property purchases applicable qua each transferee, not sale-deed value

Delhi ITAT holds assessee-individual (transferee) not liable to deduct TDS u/s. 194-IA as the property purchase consideration qua assessee was only Rs. 37.50 lakhs being less than Rs. 50 lakhs threshold

prescribed u/s. 194-IA (2), quashes TDS default proceedings u/s. 201(1)/(1A) for AY 2014-15. Assessee had jointly purchased an immovable property with other family members vide single registered sale deed, noting that the total consideration as per sale deed was Rs. 1.5 Cr. (of which assessee's share was Rs. 37.50 lakhs, being 1/4th undivided equal share of the property), AO had held assessee in default u/s. 201(1) for not deducting TDS @ 1% as per Sec. 194IA. ITAT holds that Sec. 194-IA (as introduced by Finance Act, 2013) is applicable only with respect to the amount related to each transferee and not with reference to the amount as per sale deed, cites Memorandum explaining Finance Bill, 2013 provisions; states that each transferee is a separate income tax entity therefore, the law has to be applied with reference to each transferee, since the sale consideration w.r.t. each transferee is less than Rs. 50 lakhs, ITAT concludes that Sec. 194-IA was not applicable.

Source: ITAT Delhi in ITO Vs Vinod Soni/Babli Soni/Beena Soni/Pradeep Kumar Soni

ITA No.2736/2737/2738/2739 of 2015, date of publication December 12, 2018.

ITAT: Sec. 269SS inapplicable on loan transaction between husband and wife



Delhi ITAT deletes Sec. 271D penalty with respect to advance received by assessee-individual from his wife in violation of Sec. 269SS provision (which debar accepting cash loan) during AY 2013-14. **ITAT holds that the provisions of section 269SS of the Act are**

not applicable on the loan transaction between husband and wife;

Relies on co-ordinate bench ruling in Sunil Kumar Sood, held that “at the same time, the words 'any other person' are obviously a reference to the depositor as per the intention of the Legislature. The communication/ transaction between the husband and wife are protected from the legislation as long as they are not for commercial use. Otherwise, there would be a powerful tendency to disturb the peace of families. to promote domestic broils, and to weaken or to destroy the feeling of mutual confidence which is the most enduring solace of married life”

Source: ITAT Delhi in ITO Vs Nabil Javed

ITA No.3797 & 3798 of 2018, date of publication December 08, 2018.

ITAT: Grants exemption to international school; No requirement u/s 10(22) for audit, income application

Mumbai ITAT dismisses Revenue's appeal against CIT(A) order for AY 2008-09 allowing exemption u/s 10(22) to assessee trust running international school in Bombay, **Holds that “unlike the present Sec.10(23C)(vi), there were no conditions in relation to obtaining approval, audit of accounts, application of income, etc. u/s 10(22) for claiming exemption, the only requirement is that the university or the educational institute must exist solely for educational purposes in India”, relies on SC ruling in American Hotel & Lodging Association, Educational Institute.** Further holds that the recipient of the income must have the character of an educational institute in India and its character outside India or it being a part of university existing outside India is not relevant for deciding eligibility for exemption u/s. 10(22); Further, rejects AO's disallowance of expenditure citing non-production of records and evidence, holds that assessee's documents

and records were destroyed during the flood and thus, there was reasonable cause for non-furnishing of evidence, documents; Perusing income and expenditure account, holds that expenses incurred by assessee such as salary to teachers, staff, repairs & maintenance, rent, etc. were necessarily for running the school.

Source: ITAT Mumbai in DDIT Vs The American School of Bombay Education Trust, Mumbai

ITA No. 5581 of 2016, date of publication December 03, 2018.

PRESS RELEASES, NOTIFICATIONS AND CIRCULARS OF THE MONTH

CBDT allows manual filing of Form for non-deduction or lower deduction of TDS

In order to remove genuine hardship being faced by certain applicants in filing of online application in Form no. 13 for non-deduction or lower deduction of TDS, The Central Board of Direct Taxes (CBDT) has:

- allowed Non-Resident Indians (NRIs), who are not able to register themselves on TRACES, to file manual application in Form No. 13 before the TDS officer or in ASK Centers till 31-3-2019.
- allowed Resident Applicants to file Manual Application in Form No. 13 before the TDS officer or in ASK Centers till 31-12-2018.

Source: CBDT Press release dated 24-12-2018

CBDT sets rule to compute holding period of an asset where Indian branch of foreign bank converts into its subsidiary



The CBDT has amended the Rule 8AA of the Income-tax Rules, 1962 to provide that in case of conversion of an Indian branch of a foreign bank into its Indian Subsidiary, the period for which the asset was held by the Indian branch shall also be considered while calculating the period of holding of such an asset in the hands of the Indian Subsidiary.

Source: CBDT Notification No. SO 6054(E) [NO.86/2018 (F.NO. 370133/34/2016-TPL(PART))], dated 6-12-2018

CBDT lays conditions to avail benefit of Sec. 115JG where Indian branch of a foreign bank converts into its subsidiary

The CBDT has notified certain conditions for availing of the benefit of Sec. 115JG where Indian branch of a foreign bank is converted into its Indian Subsidiary Company.

Source: CBDT Notification No SO 6053(E) [NO.85/2018 (F.NO. 370133/34/2016-TPL)], dated 6-12-2018

CBDT advises banks not to deduct TDS if interest paid to senior citizens doesn't exceed Rs. 50,000

The CBDT has clarified that no tax is required to be deducted under section 194A in case of senior citizens where the amount of interest paid or payable during a financial year doesn't exceed Rs. 50,000.

Source: CBDT Notification No. 06/2018 [F.NO.PR.DGIT(S)/CPC(TDS)/NOTIFICATION/2018-19], dated 6-12-2018

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