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CHARTERED ACCOUNTANTS

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DIRECT TAX REVIEW

FEBRUARY 2019

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SUPREME COURT RULINGS OF THE MONTH

Period of limitation was to be governed by sec. 153(2A) if CIT exercised his revisionary powers; SC dismissed SLP

Where High Court held that once Commissioner exercised his revisionary powers then provisions of section 153(2A) would be applicable and, limitation would be one year from date of order being passed by Commissioner in revision petition, SLP filed against said order was to be dismissed.

Source: SC in PCIT Vs Param Transport (P.) Ltd

SLP No. 26986-27016 of 2018, date of publication February 25, 2019

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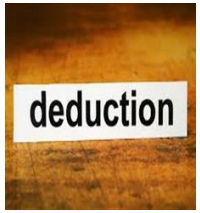
Substantial expansion would make an assessee claim 100% deduction afresh; SC upholds HC's ruling



Assessee claimed deduction under section 80-IC at the rate of 100 per cent for first 5 years and after 5 year period, assessee carried out substantial expansion of their industry and they claimed that, on that basis, they should be allowed exemption from profits and gains for another five years at the rate of 100 per cent instead of 25 per cent from 6th to 10th years as well.

High Court allowed the assessee's claim of 100 per cent exemption for the 6th to 10th years as well.

SC uphold the decision of High Court and held that "*The benefit of section 80-IC is, thus, admissible not only when an undertaking or enterprise sets up new unit and starts manufacturing or producing article or things. **The advantage of this provisions is also accrued to those existing units, if they carry out 'substantial expansion' of their units by investing required capital**, in the assessment year relevant to the previous year. 'Substantial expansion' is defined in clause (ix) of sub-section (8) of section 80-IC and it means increase in the investment in the plant and machinery by at least fifty per cent of the book value of plant and machinery (before taking depreciation in any year), as on the first day of the previous year in which the substantial expansion is undertaken".*

Source: SC in PCIT Vs Aarham Softronics

civil appeal no(S). 1784 to 1790 of 2019 and othrs misc appln. nos. 2880 of 2018 and others, date of publication February 21, 2019

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SLP granted against ruling that payer who failed to deduct TDS was liable for interest though payee had filed nil ITR

SLP granted against High Court ruling that where assessee-payer had failed to deduct tax at source under section 194C, it was liable to pay interest under section 201(1A) even if payee of such amounts had filed a nil return or a return showing a loss.

Source: SC in Punjab Infrastructure Dev Board Vs CIT, TDS 1, Chandigarh

SLP No. 19851 of 2017, date of publication February 21, 2019

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Income from sale of land used for nursery not taxable if same was declared as agricultural land in revenue records

During relevant year, assessee sold a piece of land. He did not declare any income from said sale on ground that land in question was agricultural land. Revenue authorities rejected assessee's claim taking a view that assessee could not establish that land was agricultural land and could not submit books of account and supporting documents such as bills and vouchers towards agricultural activities.

However, Tribunal, noted that land revenue records clearly showed that land specified was agricultural land and moreover, distance from nearest Municipality had also been shown to be beyond 8 Kms. - Further, even though assessee ran a nursery on agricultural land, same was held to be agricultural operation by jurisdictional High Court - Accordingly, Tribunal allowed assessee's claim. High Court by impugned order held that, on facts, no substantial question of law arose from Tribunal's order and dismissed the SLP.

Source: SC in PCIT Vs P.S Raghupathy

SLP Diary No. 1562 of 2019, date of publication February 15, 2019

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SC quashes HC ruling that one bogus donation wouldn't establish activities of trust non-bonafide

Where registration of assessee trust u/s 12AA was cancelled for receiving a bogus donation but High Court by impugned order restored registration holding that one bogus donation would not establish that activities of trust are not genuine, it is held that reason assigned by High Court is erroneous and runs contrary to plain language of section 12AA(3) and, therefore, order of High Court is to be set aside and matter is remanded to appellate authority i.e. Commissioner (Exemptions) for consideration on merits

Source: SC in CIT Vs Jagannath Gupta Family Trust

Civil Appeal No. 1581 of 2019, date of publication February 01, 2019

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HIGH COURT RULINGS OF THE MONTH

Delay in filing appeal due to negligence of assessee's council to be condoned

Appellant-society, a state instrumentality of Government of Himachal Pradesh, had filed application under section 10(23C) (vi). After rejection of said application, assessee sent documents to its counsel for filing appeal before Tribunal. However, assessee received show cause notice issued by Registry informing that assessee's appeal was time barred. Assessee came to know that counsel to whom documents were mailed had taken no steps to file appeal in time while assessee was under a bona fide impression that appeal had been filed in time - Whether though there was some negligence on part of assessee in not pursuing matter in respect of filing of appeal after instrument/documents were sent to its counsel, but negligence was not of such a degree that Tribunal could dismiss appeal being time barred by limitation. Therefore, the Tribunal's endeavor ought to have been to decide the appeal on merits instead of rejecting the same on technical ground of being barred by limitation.

Source: HC of Himachal Pradesh in E-Governance Society Vs Commissioner of Income Tax (Exemption)

ITA No.119 of 2018, date of publication February 15, 2019

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Sale of booking rights of flat couldn't be treated as sale of residential house; sec. 54F relief available

For relevant year, the assessee filed her return wherein deduction was claimed under section 54F in respect of sale of a capital asset.

The Assessing Officer rejected assessee's claim on ground that the assessee had sold a flat which was in the nature of residential unit and therefore, section 54F would not apply.

The Commissioner (Appeals) as well as the Tribunal allowed the assessee's claim. On revenue appeal HC held that " *The assessee had booked the flat far back in January, 1981 and till the time, she sold for the same in the year 2005, completion of construction was nowhere in the sight. It was only with the intervention of the High Court and the steps taken by the Committee appointed by the High Court that the construction could be completed much later in the year 2011. In the peculiar facts of this case, therefore, there is no error in the view of the Tribunal. The revenue's appeal is dismissed*".

Source: HC of Bombay in CIT Vs Kalpana Hansraj

ITA No.767 of 2016, date of publication February 07, 2019

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AO to apply his discretion for deciding stay application and water-down pre-deposit condition

Delhi HC holds that AO has to apply its mind and decide the stay application on merits without seeking any pre-deposit for consideration of Application.

The assessee had requested for stay of demand and the AO had rejected the stay application on failure of assessee to deposit 20% of the demand as a pre-condition, for consideration of the application for exemption/stay of demand. HC refers to CBDT Office Memorandum dated 29.02.2016 which states that where the AO is of the view that the nature of addition resulting in the disputed demand is such that payment of a lump sum amount lower than 15% is warranted, AO shall refer the matter to the administrative Pr.CIT/CIT, who after considering all relevant facts shall decide the quantum/proportion of demand to be paid by the assessee as lump sum payment for granting a stay of the balanced demand. Further notes that figure of 15% mentioned has subsequently been increased to 20% by Office Memorandum dated 31.07.2017. Therefore, holds that ***"the concerned authorities and tax officials have to apply their mind to decide an application for stay of demand. This does not, however, mean that any particular AO in a given case has to impose a per se condition that pending consideration of the application for stay of demand certain minimum amount has to be deposited***". Further holds that the AO had to necessarily apply his/her mind to the application for stay of demand and pass appropriate orders having regard to the extant directions and circulars including the memorandum of 29.02.2016 and the AO could not have imposed a precondition of the kind that has been done in the impugned order.

Source: HC of New Delhi in Turner General Entertainment Network India Pvt. Ltd Vs ITO, New Delhi

W.P.(C) 682/2019 & CM APPL.3018/2019, date of publication February 08, 2019

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CIT can't invoke Sec. 263 on different aspect of same issue concluded by CIT (A)

Gauhati HC upholds ITAT order quashing revisionary order u/s. 263 on the ground that the issue pertaining to Sec. 80-IC deduction could not be re-examined by CIT as AO's order on the said issue had merged with the CIT (A)'s order.

AO had denied deduction u/s 80IC (available to mineral based undertaking) to assessee on the ground that each oil well of assessee was not an undertaking, however, CIT (A) had allowed assessee's claim, subsequently CIT initiated revision proceedings u/s 263 on the ground that the AO had not examined or applied his mind on the basic issue as to whether the assessee is actually a mineral based undertaking. HC holds that "***when the claim was disallowed by the AO but allowed by the CIT (A), the issue would stand concluded and there would be no scope for re-examination in the jurisdiction u/s. 263 of the Act as the assessment order has merged in the appellate order."*** HC remarks that *"The matter not having been examined in the same manner or to the same extent and depth is immaterial".*

Source: HC of Gujarat in PCIT Vs M/s Oil India Ltd
ITA No.7 of 2016, date of publication February 22, 2019

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ITAT RULINGS OF THE MONTH

Allows Sec.10AA deduction on FD Interest placed as margin money

Ahmedabad ITAT allows Sec. 10AA deduction on interest on deposits for AY 2011-12 being integral part of the business. Noted that interest is earned on the fixed deposits which are placed as margin money for letters of credits, and are thus integral part of the business, holds that the interest on such deposits can only be treated as business income. Rejects the AO's treatment as Income from Other Sources, relies on co-ordinate bench ruling in assessee's own case for earlier AY and Karnataka HC ruling in Hewlett Packard Global Soft Ltd. Further, holds that interest income would not be excluded while computing profits derived from the export of article or things or services for the purpose of Sec. 10AA.

Source: ITAT Ahmedabad in Zaveri & Co P. Ltd Vs DCIT
ITA No.630/864/of 2017, date of publication March 04, 2019.

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Sec. 54F relief allowable on deposit of amount in saving bank a/c opened for capital gain exemption

Assessee received certain compensation on compulsory acquisition of his land by RIICO. In return of income, assessee offered said receipts to tax as long term capital gains and claimed exemption under section 54F on account of sale consideration deposited in Capital Gain Account Scheme 1988 - Assessing Officer on verification of assessee's aforesaid bank account found that said account was not a Capital Gain Scheme Account and, therefore, denied exemption under section 54F and assessment order was passed bringing long term capital gains to tax - However, it was found that entire compensation stood deposited in savings bank account maintained with HDFC bank which was opened specifically for purpose of depositing compensation received by assessee [substantial compliance of section 54F(4)] and withdrawals had been limited to extent of purchase of plot of land and partial construction.

ITAT ruled in favour of the assessee and held that "*As has been stated above, the whole idea of opening a capital gains account scheme is to delineate the funds from other funds regularly maintained by the assessee and has to ensure that the benefit which has been availed by an assessee by depositing the amount in the said account is ultimately utilized for the purposes for which the exemption has been claimed, i.e., for purchase or construction of a residential house.* ***In the instant case, even though the saving bank account technically speaking is not a capital gain account, the essence and spirit of opening and maintaining a separate capital gain account has been achieved as well as demonstrated by the assessee. Therefore, merely because the saving bank account is technically not a capital gains account, it cannot be said that there is violation of the provisions of sub-section (4) in terms of not opening a capital gains account scheme****. The revenue has not disputed that the deposits in the said account are from the compensation received by the assessee from compulsory acquisition of his land by RIICO and the revenue has equally not disputed that there are any withdrawals other than for the purposes of purchase of plot of land and construction thereon"*.

Source: ITAT Jaipur in Goverdhan Singh Shekhawat Vs ITO
ITA No.517 of 2013, date of publication February 05, 2019.

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CIRCULARS/ NOTIFICATIONS OF THE MONTH

Monetary limits for filing/withdrawal of Wealth Tax appeals by the Department before ITAT, HCs and SLPs/ appeals before SC through extending the scope of Circular 3/2018

Reference is invited to CBDT's Circular No. 3/2018 dated 11.07.2018 ("the Circular") vide which monetary limits for filing of income tax appeals by the department before Income Tax Appellate Tribunal, High Courts and SLPs/ appeals before Supreme Court were specified. Para 11 of the Circular states that the monetary limits specified in para 3 shall not apply to writ matters and Direct tax matters other than Income tax and filing of appeals in such cases shall continue to be governed by relevant provisions of statute and rules.

There is no charge under Wealth-tax Act, 1957 w.e.f 1.4.2016. Therefore, as a step towards litigation management, it has been **decided by the CBDT that monetary limits for filing of appeals in Income tax cases as prescribed in Para 3 of the Circular shall also apply to Wealth Tax appeals through extension of the Circular to Wealth tax matters in a mutatis mutandis manner and with modifications as prescribed hereunder.**

For the purpose of Wealth Tax appeals:

A. Para 4 of the Circular shall be read as follows:

"For this purpose, 'tax effect' means the difference between the tax on Net Wealth assessed and the tax that would have been chargeable had such Net Wealth been reduced by the amount of wealth in respect of the issues against which appeals is intended to be filed. However, the tax will not include any interest thereon, except where chargeability of interest itself is in dispute. In case the chargeability of interest is the issue under dispute, the amount of interest shall be the tax effect. In case of penalty orders, the tax effect will mean quantum of penalty deleted or reduced in the order to be appealed against."

B. Para 11 of the circular shall read as follows:

"The monetary limits specified in para 3 above shall not apply to writ matters."

The said extension of the Circular to wealth tax appeals shall come into effect from the date of issue of this Circular.

Source: CBDT Circular No. 05/2019, dated 05-02-2019

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Clarification regarding liability and status of Official Assignees under the Income-tax Act

Under provisions of the Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920, where an order of Insolvency is passed against a debtor by the concerned Court, property of the debtor gets vested with the Court appointed Official Assignee. The Official Assignee then realizes property of the insolvent and allocates it amongst the creditors of the insolvent. Consequentially, Official Assignee has the responsibility to handle income-tax matters of the estate assigned to him. In this regard, a clarification has been sought regarding applicability of Section 160(1) (iii) which applies on a 'Representative Assessee' in the case of an Official Assignee. Further, clarity regarding status of the Official Assignee's i.e. their fallibility in the appropriate category of 'persons', as defined in Section 2(31), has also been sought.

As per provisions of Section 160(1) (iii), a 'Representative Assessee' amongst other situations specified therein, becomes liable in respect of any income which the Assignee receives or is entitled to receive while managing the property for benefit of any person. As per the two insolvency Acts, Official Assignee manages the property of the debtor for the benefit of the creditors. Further, the Insolvency Act, 1909, in unambiguous terms, provides that an insolvent ceases to have an ownership interest in the estate once an order of adjudication is made under section 17 of the Insolvency Act. Thus, it is clarified by the CBDT that since Official Assignee does not receive the income or manage the property on behalf of the debtor, they cannot be considered as a 'Representative Assessee' of the debtor under the Act while computing the tax-liability arising from the estate of the debtor.

As property of the insolvent is vested with the Official Assignee as per specific provisions of the Act/Law regulating functioning of the Official Assignee's, they have to be treated as a 'juristic entity' for purposes of the Income-tax Act. **Hence, it is clarified by the CBDT that for purpose of discharge of tax-liability under the Act, the status of Official Assignees is that of an 'artificial juridical person' as prescribed in Section 2(31)(vii), not being one of the 'persons' falling in sub clauses (i) to (vi) of Section 2(31).**

Therefore, Official Assignee is required to file income tax return electronically in the ITR Form applicable to 'artificial juridical person' separately for each of the estate of the insolvent and the income shall be taxed as per the rates applicable in a particular year to an 'artificial juridical person'.

Source: CBDT Circular No. 04/2019, dated 28-01-2019

Notification of the new scheme called the Centralized Verification Scheme, 2019 substituting the Centralized Communication Scheme, 2018

For the purposes of verification of information in its possession relating to any person Section 133C empowers the prescribed income-tax authority to issue a notice to such person requiring him, on or before a date to be specified therein, to furnish information or documents verified in the manner specified therein, which may be useful for, or relevant to, any inquiry or proceeding under this Act. Further, Section

133C (3) empowers the CBDT to make a scheme for centralized issuance of notice and for processing of information or documents and making available the outcome of the processing to the Assessing Officer.

Accordingly, in exercise of powers conferred by Section 133C (3), the CBDT has vide this notification, notified a new scheme called 'the Centralised Verification Scheme, 2019' by substituting 'the Centralised Communication Scheme, 2018' notified vide Notification No. 12/2018, dated 22.02.2018 w.e.f. date of publication of this notification in Official Gazette.

In brief, this Scheme provides details regarding its applicability; manner of issuance and service of notice; response to notice; processing of information and documents; personal appearance and power to specify procedures and processes. The complete text of the scheme can be viewed from the notification No. 5/2019 dated 30.01.2019

Source: CBDT Notification No. 5/2019, dated 30-01-2019

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Amendment to Notification No. 24/2018, dated 24.05.2018 Notification No. 9/2019, dated 31-01-2019

The Central Board of Direct Taxes (CBDT) has specified the procedure, format and standards for filing an application for grant of certificate of no or low tax deduction or collection certificates under the Income-tax Act, 1961.

Where a company, other than a company in which public are substantially interested, issues shares at a premium to a person being a resident, Section 56(2) (viib) brings to tax in the hands of such company, the difference between the aggregate consideration received for such shares as exceeds the fair market value of the shares under the head "Income from Other Sources".

However, such provision would not be attracted where the consideration for issue of such shares is received by a company from a class or classes of persons as may be notified by the Central Government in this behalf. In exercise of such powers conferred and in supersession of Notification No. 45/2016, dated 14.6.2016, the Central Government had earlier, vide notification no. 24/2018 dated 24.05.2018, **notified that the provisions of Section 56(2)(viib) shall not apply to consideration received by a company, being an eligible start-up for the purposes of deduction under section 80-IAC, for issue of shares that exceeds the face value of such shares, if the consideration has been received for issue of shares from an investor in accordance with the approval granted by the Inter- Ministerial Board of Certification under clause (i) of sub-para (3) of para 4 of the notification number G.S.R. 364(E), dated 11th April, 2018 issued by the Department of Industrial Policy and Promotion.**

However, vide this notification, Notification no 24/2018 has been amended to now provide that consideration received by a company from an investor for issue of shares that exceeds the face value of such shares, if such issue of shares is approved by the CBDT under para 4 of notification number G.S.R. 364(E) dated 11.04.2018 issued by Department of Industrial Policy and Promotion as modified by notification number 34(E) dated 16.01.2019.

This notification shall be deemed to have come into effect from 16.01.2019

Source: CBDT Notification No. 08/2019 [F.NO 173/616/2018 [F.NO.149/144/2015-TPL (PT. IV)], dated 09-01-2019

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PRESS RELEASES/INSTRUCTIONS/OFFICE MEMORANDUM OF THE MONTH

Aadhaar-PAN linking is mandatory now which has to be completed till 31.3.2019 by the PAN holders requiring filing of Income Tax Return

Constitutional validity of Aadhaar has been upheld by the Hon'ble Supreme Court of India in September 2018. Consequently, in terms of Section 139AA and Order dated 30.6.2018 of the CBDT, Aadhaar-PAN linking is mandatory now which has to be completed till 31.3.2019 by the PAN holders requiring filing of Income Tax Return. Procedure for Aadhaar PAN linking has been published vide Notification no. 7 dated 29.6.2017 by PDGIT (Systems).

Source: CBDT Press Release dated 14-02-2019

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