



## Inside this edition

- SC: Dismisses SLP against Sec. 43B disallowance deletion on 'unpaid service tax'
- SC: Remands matter to HC for deciding on re-opening validity in Nokia India's case
- HC: Mere distribution of money to retiring partners upon Firm reconstitution, not transfer u/s. 45(4)
- CBDT notifies ITR forms for AY 2019-20

& more...

## SUPREME COURT RULINGS OF THE MONTH

### SC granted SLP against HC's ruling that sec. 80-I relief was allowed without reducing sec. 80HH deduction



SC sets-aside the HC order and remands the matter to ITAT wherein it did not correctly appreciate CIT (A)'s finding that payment of Rs.3.25 crores made by the assessee under the compromise arrangement is not revenue expenditure. The assessee company made payment of Rs.3.25 crores under the compromise arrangement which the AO disallowed as not being revenue expenditure. SC notes ITAT's observation wherein it incorrectly observed that "CIT (A)'s order can only lead to a conclusion that the CIT (A) was of the view that the expenditure in question was not a capital expenditure but of a revenue nature". SC notes that "The High court did not notice the aforesaid observation of the Tribunal and upheld the order of the Tribunal." Therefore, holds that remanding the case is not likely to cause any prejudice to any party because the aggrieved party will have a right of appeal to the High Court and then to this Court against any adverse order.

**Source: SC in PCIT, Nagpur Vs Ballarpur Industries Ltd.**

**SLP(C) No. 1153 of 2018, date of publication April 27, 2019**

\*\*\*

### SC: Sets aside HC order dismissing Revenue's appeal without framing substantial question of law

SC sets aside HC order, holds HC was not justified in dismissing revenue's appeal without framing substantial question of law u/s 260A.



SC States that there lies a *distinction between the questions proposed by the appellant for admission of the appeal and the questions framed by the Court and the appeal is heard only on the questions framed by the Court*. Further, remarks that "if the High Court was of the view that the appeal did not involve any substantial question of law, it should have recorded a categorical finding ...and should have dismissed the appeal in limine.", therefore, remands the matter to the HC framing 3 substantial question of law on re-opening.

**Source: SC in PCIT, Nagpur Vs M/s A.A Estate Pvt. Ltd**

**Civil Appeal No. 3968 of 2019(Arising out of S.L.P(c) No. 29524 of 2017), date of publication April 18, 2019**

\*\*\*

### SC: Dismisses SLP; Sec. 194A TDS inapplicable on interest payment for delayed plot delivery

SC dismisses revenue's SLP challenging Calcutta HC, wherein HC had deleted Sec. 40(a)(ia) disallowance, and ruled that payment of interest by assessee (a State owned housing development co.) for delayed delivery of plot during AY 2005-06, was not in the nature of interest as defined in Sec. 2(28A), also TDS u/s.194A was not applicable. HC had noted that as per the terms of the contract, assessee was under an obligation to hand over the physical possession of the plot to the allottees on payment of land price, moreover, HC had also opined that the payment of interest to allottees was in the nature of compensation owing to assessee's failure to make the plots available within the stipulated time. HC had also accepted the reasoning given by Himachal Pradesh HC in case of H.P. Housing Board holding that payment for

delayed allotment of flats cannot be brought under the ambit of Sec. 2(28A), lastly, HC had rejected revenue's reliance on Madras HC ruling in Viswapriya Financial Services.



**Source: SC in PCIT, Kolkata Vs M/S West Bengal Housing Infrastructure Development Corporation Limited**

**SLP(C) No. 10127 of 2019, date of publication April 12, 2019**

\*\*\*

### **SC: Dismisses SLP against Sec. 43B disallowance deletion on 'unpaid service tax'**



SC dismisses revenue's SLP challenging Bombay HC judgment upholding deletion of sec 43B disallowance for unpaid service tax. HC had relied on its co-ordinate bench ruling in Ovira Logistics Pvt Ltd. and had dismissed revenue's appeal for AY 2006-07. HC had observed that **unpaid service tax relates to consideration amount not received from the parties to whom services were rendered. HC had ruled that when services are rendered, the liability to pay the service tax in respect of the consideration payable will arise only upon the receipt of such consideration and not otherwise.**

**Source: SC in PCIT Vs Tops Security Limited**

**SLP(C) No. 10049 of 2019, date of publication April 09, 2019**

\*\*\*

### **SC: Remands matter to HC for deciding on re-opening validity in Nokia India's case**

SC sets aside HC order dismissing revenue's appeal in limine in Nokia India's case. SC notes that the issue essentially relates to legality and

correctness of the notice issued u/s. 148 for AY 1999-00 which was quashed by ITAT. SC holds that HC was not justified in dismissing the appeal in limine on the ground that the appeal did not involve any substantial question of law. Frames 4 substantial questions of law on the re-assessment issue to be answered by the HC on their respective merits and remands matter back to HC for deciding revenue's appeal afresh on merits in accordance with law.

**Source: SC in PCIT Vs Nokia India Pvt. Limited**

**Civil Appeal No. 3450 of 2019(Arising out of S.L.P(c) No. 32222 of 2017), date of publication April 09, 2019**

\*\*\*

### **SC: Dismisses SLP against HC's denial to treat 'order granting early hearing' as 'administrative'**

SC dismisses revenue's SLP against Delhi HC judgment in case of Radhika Roy (assessee, co-founder of NDTV along with spouse Prannoy Roy). HC had set aside ITAT order granting early hearing to department without appropriate notice to assessee. HC had highlighted that ITAT's view is contrary to its own ruling in Olympia Paper & Stationery Stores case wherein it was held that **the Tribunal must pass the judicial orders, and not administrative orders, for expeditious and out of turn hearing of any appeal or application.** HC had also rejected ITAT's action in entertaining additional documents, which were not part of the record, without a formal application being moved by Department.

**Source: SC in DCIT Vs Radhika Roy**

**SLP No. 7801 of 2019, date of publication April 01, 2019**

\*\*\*



### Appeal proceedings can continue against co. whose name has been struck off from register of ROC

High Court by impugned order dismissed appeal filed by the Income Tax Department on ground that it was rendered infructuous as name of respondent company had been struck off from the register and the said company was dissolved and appeal filed against such Company which stood dissolved did not survive for its consideration on merits. SC held *"The High Court failed to notice section 560(5) proviso (a) of the Companies Act and further failed to notice Chapter XV of the Income-tax Act which deals with 'liability in special cases' and its clause (L) which deals with 'discontinuance of business or dissolution..... The aforementioned two provisions, namely, one under the Companies Act and the other under the Income-tax Act specifically deal with the cases of the Companies, whose name has been struck off under section 560(5) of the Companies Act... These provisions provide as to how and in what manner the liability against such Company arising under the Companies Act and under the Income-tax Act is required to be dealt with"*.

**Source: SC in CIT, Jaipur Vs Gopal Shri Scrips (P.) Ltd**  
**Civil Appeal No. 2922 of 2019, date of publication April ", 2019**

\*\*\*

### Quoting of Aadhaar in ITR of A.Y. 2019-20 is mandatory even if return for preceding year is processed without it



High Court by impugned order had permitted assessee to file Income tax returns for assessment year 2018-19 without linking their Aadhaar and PAN numbers and also directed that Income Tax

Department would not insist on production of their Aadhaar number. Aforesaid order was passed by High Court having regard to fact that matter was pending consideration in Supreme Court. Thereafter, Supreme Court decided matter and upheld vires of section 139AA, in view whereof, Linkage of PAN with Aadhaar card was mandatory, therefore return for the AY 2019-20 shall be filed in term of conformity to SC order.

**Source: SC in Union of India, Vs Shreya Sen**  
**Special Leave Petition No. 34292 of 2018, date of publication April 18, 2019**

\*\*\*

## HIGH COURT RULINGS OF THE MONTH

### HC: Payment for lounge services by Jet Airways not rent, TDS u/s.194-I inapplicable

Bombay HC rules against the revenue, holds that payment by Jet Airways (assessee) for usage of lounge space at the airport is not rent liable for TDS u/s. 194-I and rejects AO's reliance on Delhi HC ruling in case of Japan Airlines Ltd. HC notes that the decision was overruled by SC, wherein it was held that charges paid by the International Airlines for landing and takeoff services, as also for parking of Aircrafts are in substance not for use of the land. Also notes that SC decision does not automatically decide issue in appeal, however, drawing analogy, HC holds that, *"the payment for certain services, need not be seen in isolation. The real character of the service provided and for which the payment is made, would have to be judged."*; Further notes that the dominant part of the service is to provide quiet, comfortable and a

clean place for customers to spend some spare time and providing refreshments/beverages is only an incidental activity. HC Observed that the lounge is not exclusively used by assessee's customers, but even customers of other airlines would be allowed to use the facility, holds that the payment does not contain an element of rent.

**Source: HC of Bombay in CIT(TDS) Vs Jet Airways (India) Ltd  
ITA No 628 of 2018, date of publication April 29, 2019**

\*\*\*

#### **HC: Senior citizen gets breather, lifts attachment on bank accounts for meeting daily expenses**

Bombay HC grants limited relief to a senior citizen (assessee), lifts provisional attachment of his bank accounts without disturbing the attachment of immovable properties, till the litigation with respect to alleged undisclosed foreign income is over. Based on the foreign Bank account details and high value share transactions revealed during search-seizure operation u/s. 132, AO had formed a belief that assessee has sizable undisclosed income as well as substantial undisclosed foreign income / investment despite which he did not file any return, thus, to protect revenue's interest, AO had provisionally attached all the bank accounts of assessee and two immovable properties. **HC observes that by such action, the Department has virtually prevented the petitioner-assessee from accessing his own funds in the bank accounts which would undisputedly cause great difficulty in meeting his day to day expenses, as also to cater to special requirements pertaining to medical attention for himself and his aged mother.** Thus, without harming the interest of the revenue, HC grants limited relief to assessee by releasing the bank accounts

from attachment while maintaining attachment on two properties; Further noting that valuation of the two flats exceeds Rs. 17 cr., HC remarks that, "Even if the Department were to succeed substantially in its present stand, the petitioner's tax, interest and possible penalty liabilities are unlikely to exceed the valuation of the two immovable properties."

**Source: HC of Bombay in Darius Sammotashaw Vs Dy. Director of Income Tax (Inv) Unit 2(4).**

**Writ Petition No 675 of 2019, date of publication April 10, 2019**

\*\*\*

#### **HC: Grants charitable exemption; Golf club's activities not in the nature of business**

Bombay HC upholds ITAT order granting exemption u/s 11 on interest income earned by golf club and rejects revenue's claim that assessee's activities were in the nature of commerce or business. Further, notes that assessee's principal activity was of providing golf club and allied facilities to its members for promotion of the sport, thus rules out applicability of proviso to Sec 2(15). Notes Tribunal's finding that the assessee had invested its surplus funds in specified deposits earning interest which reduced the assessee's loss and such interest was exempt u/s 11. Thus concludes that no question of law arises for its consideration.

**Source: HC of Bombay in CIT(Exemptions) Vs The Bombay Presidency Gold Club Ltd**

**Income Tax Appeal No 235 of 2017, date of publication April 05, 2019**

\*\*\*

## HC: Mere distribution of money to retiring partners upon Firm reconstitution, not transfer u/s. 45(4)



Bombay HC upholds ITAT order, rules that mere distribution of money to retiring partners upon reconstitution of assessee-firm does not result in 'transfer' as envisaged u/s.45(4), follows Full Bench Judgment of Karnataka HC in case of Dynamic

Enterprises; The assessee-firm [originally consisting of 2 partners] was running the tubelight fittings business for over 13 years, during subject AY 2010-11, a Deed of Retirement cum Reconstitution of the partnership was executed whereby the original 2 partners retired from the firm and 3 new partners were admitted, while doing so the firm evaluated its goodwill and the retiring partners were paid their share in the goodwill. Court rejects revenue's stand that the goodwill credited by the firm was nothing but capital gains arising on distribution of the capital asset by way of "dissolution of the firm or otherwise" in terms of Sec.45(4). **HC observes that there was neither dissolution of the firm nor the firm was discontinued, holds that "admittedly there was no transfer of capital asset upon reconstitution of the firm"**. Court distinguishes revenue's reliance on co-ordinate bench ruling in A. N. Naik Associates, as the issue of transfer of capital asset was not the focal point therein.

**Source: HC of Bombay in PCIT Vs Electroplast Engineers**  
**ITA Nos 137 of 2017, date of publication April 04, 2019**

\*\*\*

## ITAT RULINGS OF THE MONTH

### ITAT: No denial of housing project related deduction u/s. 80IB (10) for non-receipt of completion certificate

Pune ITAT upholds CIT (A)'s order allowing pro-rata deduction u/s 80-IB (10) to the assessee-developer for completed units, holds that merely because completion certificate was not received within 5 years stipulated u/s 80-IB (10), deduction cannot be denied. Further hold that assessee had commenced construction of project in 2005 and had completed the project and filed application for issue of completion certificate by March, 2011. Further notes that housing project was approved, therefore, holds that **"Once the same have been completed within stipulated time, merely because the completion certificate has not been received, cannot result any denial of claim of deduction u/s 80IB (10) in respect of completed units"**. With regards to additional floors constructed without any approval from the authorities, which was approved after payment of compounding fees, ITAT holds that no deduction u/s 80-IB(10) would be allowed on such floors, therefore allows only pro-rata deduction.

**Source: ITAT Pune in DCIT, Circle -3, Pune Vs M/s. Samarthshree Promoters & Developers**  
**ITA Nos.2898 to 2900 (PUN) of 2016, date of publication April 04, 2019**

\*\*\*

### ITAT: Deletes share premium addition u/s. 68; Distinguishes SC's NRA Iron ruling

Kolkata ITAT deletes addition u/s 68 made towards share capital / premium received by assessee co. during AY 2012-13. Notes that



assessee has proved identity of share applicants [by furnishing their PAN, ITR returns, balance sheets], genuineness of transactions [by providing money trail through bank account] and creditworthiness [applicant companies have capital and reserves in several crores of rupees and the investment made in assessee company was a small part thereof]. Further notes that the notices u/s. 133(6) and summons u/s. 131 issued by AO to share subscribing companies / its directors were complied with, observes that the respective directors had appeared in person before the AO. ITAT Observes that assessee had even proved the source of money deposited into the respective bank accounts of share applicants, which in turn was used by them to subscribe to the assessee company as share application, thus holds that source of source was also proved though not required as per law and distinguishes revenue's reliance on SC ruling in case of NRA Iron & Steel Pvt. Ltd, highlights that the source of funds were never established by the investor companies therein unlike in case of assessee where the entire details of source of source were duly furnished.

**Source: ITAT Kolkata in M/s Baba Bhootnath Trade & Commerce Ltd. Vs ITO, Ward-9(2), Kolkata.**

**ITA No 1494/Kol/2017, date of publication April 16, 2019**

\*\*\*

### **ITAT: Considers flats allotment-date over sale-agreement date for capital-gains**

Mumbai ITAT considers date on letter of allotment of rights in property over revenue's reliance on date of sale agreement for determining period of holding of the property. The assessee during AY 2013-14 sold

the flat which was acquired vide Allotment Letter dated February 2008 and the agreement of sale was executed by the builder in assessee's favor in March, 2010, the assessee had offered LTCG while the AO considering the date of agreement treated it as STCG. **ITAT notes that the assessee vide the allotment letter dated February 2008 has acquired right in a specific property which is clearly earmarked in the layout plan and further states that the agreement of sale executed by the builder in assessee's favor in March 2010 was nothing but mere improvement in assessee's existing rights to acquire a specific property and part & parcel of the same transaction**, relies on Bombay HC ruling in Vembu Vaidyanathan.

**Source: ITAT Mumbai in ACIT-25(2), Mumbai Vs Shri Keyur Hemant Shah**

**ITA No.6710/Mum/2017, date of publication April 02, 2019**

\*\*\*

## **CIRCULARS/ NOTIFICATIONS OF THE MONTH**

### **CBDT notifies amendments in Form 16 and TDS return Form 24Q**



CBDT notifies amendments in Form 16 [i.e. TDS certificate for salaries] and Form 24Q [i.e. quarterly TDS statement in respect of salaries]. Amended forms seek more details especially about exempt allowances u/s.10. The amendments shall come into force on 12th day of May, 2019.

**Source: CBDT [Notification No. 36/2019/F.No. 370142/4/2019-TPL], dated 12-4-2019**

\*\*\*

**CBDT notifies ITR forms for AY 2019-20**

CBDT notifies ITR forms for AY 2019-20.

*Source: CBDT [Notification No. 36/2019/F.No. 370142/4/2019-TPL], dated 01-4-2019*

\*\*\*



## CONTACT DETAILS:

### Head Office

75/7 Rajpur Road, Dehradun

T +91.135.2743283, 2747084, 2742026

F +91.135.2740186

E [info@vkalra.com](mailto:info@vkalra.com)

W [www.vkalra.com](http://www.vkalra.com)

### Branch Office

80/28 Malviya Nagar, New Delhi

E [info@vkalra.com](mailto:info@vkalra.com)

W [www.vkalra.com](http://www.vkalra.com)

For any further assistance contact our team at  
[kmt@vkalra.com](mailto:kmt@vkalra.com)

© 2019 Verendra Kalra & Co. All rights reserved.

*This publication contains information in summary form and is therefore intended for general guidance only. It is not a substitute for detailed research or the exercise of professional judgment. Neither VKC nor any member can accept any responsibility for loss occasioned to any person acting or refraining from actions as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor.*

