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CHARTERED ACCOUNTANTS

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DIRECT TAX REVIEW

JUNE 2019

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SUPREME COURT RULINGS OF THE MONTH

SC granted SLP against HC's order confirming sec. 271C penalty even assessee had reasonable cause for fault

In course of assessments, for the AY 2010-11 to AY 2012-13 Assessing Officer found that tax deducted at source was deposited belatedly by assessee to Central Government's account for assessment years in question. AO thus passed a penalty order under section 271C. Tribunal taking a view that assessee had reasonable cause within meaning of section 273B, set aside said penalty order. High Court noted that from years 2009-10 onwards there had been delay in making payments as was borne out from records, moreover, only explanation offered by assessee was that there was failure of clerk who failed to discharge her duties properly. High Court thus taking a view that such explanation could not be accepted, set aside Tribunal's order deleting penalty.

SLP filed against decision of High Court was to be granted.

Source: SC in Eurotech Maritime Academy (P.) Ltd.Vs CIT(TDS)

Civil Appeal No. 1314-1316 of 2019, date of publication June 19, 2019

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HIGH COURT RULINGS OF THE MONTH

HC: Revenue can't retain tax wrongly paid, quashes Sec 264-order but directs passing refund orders

Madras HC allows assessee's writ, rules that revenue was unjustified in retaining the tax paid by the assessee towards the FBT for AY 2007-08 when same issue was decided in favour of assessee by ITAT for previous AY 2006-07. Further, notes that ITAT for AY 2006-07 had held in favour of assessee that statutory contribution made to a superannuation fund was outside the ambit of FBT, pursuant to which assessee filed an application u/s 264 for AY 2007-08 which was rejected by Pr.CIT on grounds of delay & absence of a 'revisable order'. HC opines that **"Whether the department had illegally collected the tax from the citizen or whether the assessee mistakenly paid the tax to the department, the consequence is one and the same".** Further states that the application must have been treated as one for refund and processed u/s 119 while agreeing that order u/s 264 was unsustainable in absence of a revisable order. Also opines that when the assessee was not liable to pay the tax in question, the Revenue had no business to retain it even if it was wrongly paid. Finally, stating that Pr. CIT failed to note that the issue was not one of revisability of an order but one of refund, directs Revenue to pass orders afresh u/s 119 within a period of eight weeks from the date of receipt of this order.

Source: HC of Madras in M/s Karur Vysya Bank Limited

Writ Petition(MD) no.12595 of 2018, date of publication June 25, 2019

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HC: Legal representative's non-intimation regarding assessee's death, cannot invalidate AO's assessment orders

Madras HC dismisses petitioner's (the legal representative, deceased assessee's son) appeal for AY's 1995-96 and 1996-97, upholds ITAT order directing AO to pass fresh assessment orders in the name of the legal representative, as the AO was not intimated by petitioner regarding the death of the assessee. Petitioner had contended that as his father had expired on 25.01.2006, and the AO had thereafter passed assessment orders in the name of his father on 23.03.2006,

therefore the said orders were non-est and void. Accepts revenue's stand that the death of assessee's father was not intimated to the AO before the said orders were passed, thus holds that, ***"The Assessments made in the name of dead person cannot be held to be non-est merely because the procedural requirements of taking on record the legal representative are not complied with***". Takes note of the provisions of sec.159, and holds that as the petitioner himself had filed the said appeal, he was thus very much aware of the facts of the assessments against his own father, moreover, nothing prevented him to bring on record the death of the assessee as the AO could not be expected to have knowledge of the same. Lastly, holds that ideally the CIT(A) should have taken note of the above facts and adjudicated the matter on merits or remanded the case back to AO, both of which he failed to do so.

Source: HC of Madras in V. Srinivasan Vs CIT, Madurai
T.C.A(Tax Case Appeal) No.s 2017 & 2018 of 2008, date of publication June 14, 2019

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HC: Upholds launching of prosecution for TDS default, pending determination of liability u/s. 201

Karnataka HC upholds launch of prosecution proceedings u/s.276B against petitioner [a real estate co.] for failure to deposit the TDS deducted to the account of Central Government within the prescribed time-limit. Rejects petitioners stand that without determining the liability of the accused in an adjudication proceedings u/s.201 and without quantifying the penalty u/s.221, revenue should not have resorted to prosecution for the alleged offence. Referring to Sec.201, HC clarifies that, ***"in case of failure to deduct or to pay the tax deducted at source, accused may invite penalty consequent upon the adjudication or it may also, 'without prejudice to any other consequences', lead to prosecution of the accused***". Further notes that petitioner /accused never disputed its liability and that TDS was remitted only subsequent to survey conducted by the Department, **relies on SC ruling in Madhumilan Syntex Ltd. and Madras HC in Rayala Corporation wherein it is held that prosecution u/s.276B is not controlled either by Sec.201 (1A) or Sec.221.** With respect to assessee's reliance on CBDT Instruction dated April, 2008 [which permitted TDS deposit within 12 months from the date of deductions to obviate any penal consequences]. HC observes that no material was produced to show that the petitioner has deposited the amount within the extended time.

Source: HC of Karnataka in M/s Golden Gate Properties Ltd, Sri Pratap & Sri Sanjay Raj Vs DCIT(TDS Circle)
Criminal Petition No.868/2014, date of publication June 10, 2019

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HC: Restores back proceedings to AO to re-consider Taxpayer's defective return claims

Karnataka HC restores back proceedings to the AO to re-consider assessee-individual's additional claims made in revised return filed belatedly beyond Sec.139(5) due-date (in a case where the original return itself was also filed belatedly) for AY 2016-17. AO had passed an assessment order u/s 143(3) without considering the claims made by assessee towards deduction/exemption u/s. 48 and sec. 54F in the revised return on the grounds that, (1) as the original

return was filed belatedly and was invalid as per sec.139 (1), thus the question of filing a revised return would not arise, (2) the revised return itself was time barred in terms of sec.139 (5) due date. HC observes that no whisper was there in the assessment order about the revised return filed by the assessee except observing that the returns filed by the assessee were invalidated being defective returns, thus states no opportunity was provided to the assessee u/s. 139(9) to remove the defects pointed out by AO, nor an opportunity was provided to file a return pursuant to the notice issued u/s. 142(1). HC holds that even if Revenue's arguments were to be accepted that no revised returns could be accepted enlarging the claim of deduction/exemption filed beyond the time prescribed, **it was sine-qua-non for the AO to consider the claims of deduction/exemption made and thereafter return the claims, if the assessee was dis-entitled to the same by 'assigning the reasons'**. Further, remarks that, "**The reasons are the soul and heartbeat of the orders without which the order is lifeless and void."** Lastly, chooses not to express any opinion on the merits/demerits of the case, and quashes the demand and recovery notice issued by revenue.

Source: HC of Karnataka in Deepak Dhanaraj Vs ITO, Bengaluru Writ Petition No. 14037/2019, date of publication June 07, 2019

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ITAT RULINGS OF THE MONTH

ITAT: Firm conversion into Company - a case of 'vesting', not 'distribution' of property u/s. 45(4)

Ahmedabad ITAT dismisses revenue's appeal, deletes capital gains addition u/s.45 (4) with respect to revaluation of asset upon conversion of assessee-firm into a company. During subject AY 2011-12, assessee had revalued land and the revalued amount was distributed to the partners' Capital accounts in their profit sharing ratio (PSR), thereafter, assessee got converted into a Pvt. Ltd. company in subsequent AY, whereupon shares were allotted to the partners of the erstwhile firm in their PSR. ITAT rejects revenue's stand that the **allotment of shares equivalent to the amount of increase in the value of land, was nothing but distribution of capital assets as per Sec.45 (4)**. **Refers to the distinction between 'vesting of the property' and 'distribution of the property**' as highlighted by assessee, assessee had submitted that upon conversion of firm into Company under Part IX of the Companies Act, the properties vest in the company as they exist, whereas, distribution on dissolution presupposes division, realization, encashment of assets and appropriation of the realized amount. Further remarks that, "***The difference between "vesting of property" and "distributions of property"*** as discussed above does not permit section 45(4) of the Act to be invoked." Opines that "when a firm is converted into company …, properties of the erstwhile firm vest in the company". Relies on co-ordinate bench rulings in Alta Inter-chem Industries, Gulabdas Printers and Well Pack Packaging to hold that upon firm conversion into company, the very first condition u/s. 45(4) of transfer by way of distribution of capital assets is not satisfied.

Source: ITAT Ahmedabad, DCIT, Ahmedabad Vs Vishal Engineering and Galvanizers
ITA Nos. 2316/Ahd/2014, 2945/Ahd/2015, 3055/Ahd/2015, date of publication June 28, 2019

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ITAT: Denies Sec.12AA registration to assessee-society; Holds 'playschool' not an integral part of education

ITAT denies registration to assessee (registered under the Societies Registration Act,1860) u/s 12AA, **holds that 'playschool' is not an integral part of the term 'education' as envisaged u/s 2(15), in view of SC ruling in case of Sole Trustee, Lok Sikshan Sansthan Trust**. Assessee was a franchisee of a playschool chain, **wherein the agreement did not provide for running a 'primary school'** in the future, thereby revenue opined that the stated objects of the assessee did not fit into the concept of 'education' as enunciated by the SC ruling. Takes note of the aforesaid SC decision which had explained that the word 'education' as per sec.2(15), connotes the process of training and developing the knowledge, skill, mind and character of students by normal schooling, thereby holds that a playschool cannot, by any stretch of imagination, be regarded as a scholastic instruction; Further states that, "Now, children would get 'educated' merely by playing with each other", thereby rules that **'Education', though not to be understood pedantically, has to have the elements of structured courses, designed to impart knowledge/training; accreditation; examination, etc., and cannot be understood in a loose sense**. Further rejects assessee's reliance on P&H HC decision in case of Infant Jesus Education Society on facts, lastly concludes that the dominant objective of the assessee is to make profit, and cannot be regarded as 'charitable' per se.

Source: ITAT Amritsar in Green Educational Society Vs CIT(Exemption), Chandigarh.

ITA No 684/Asr/2017, date of publication June 21, 2019

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ITAT: Holds CIT has no revisionary jurisdiction u/s 263 when AO's assessment order void

Pune ITAT quashes CIT's exercise of jurisdiction u/s. 263 when assessment order passed by AO was void for AY 2010-11. Notes that AO, in the present case, had not disposed off assessee's objections against reassessment u/s 147 by separate speaking order but had had dealt with the objections in the reassessment order itself. **HC Observes that CIT had himself admitted that the assessment order was void by opining that 'since, the copy of reasons recorded for re-opening of the assessment were not furnished to assessee till date of completion of assessment, the order of the AO is void'**. HC further opines that "…Incase the order is void, then the same cannot be held to be erroneous and prejudicial to the interest of revenue"; Thus, ITAT concludes that "where the Commissioner himself has given a finding that the re-assessment proceedings have not been correctly carried out against the assessee and the Assessing Officer has failed to fulfill his obligation, then under such circumstances…revisionary jurisdiction cannot be exercised against such order".

Source: ITAT Pune in Pioneer Distilleries Vs PCIT, Aurangabad

ITA No 479/PUN/2017, date of publication June 28, 2019

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CIRCULARS/ NOTIFICATIONS OF THE MONTH

Clarifies entire 'disability' pension exempt for all ranks of disabled armed forces personnel

CBDT clarifies that the entire disability pension exemption, i.e. 'disability' as well as the 'service' element would be available to all armed forces personnel (irrespective of rank, which includes both officers and jawans) and not just disabled armed forces 'officers' , who have been invalided for such service on account of bodily disability attributable to or aggravated by such service; Further clarifies that such exemption would not be available to personnel who have been retired on superannuation or otherwise.

Source: CBDT, Circular No. 13/2019, dated 24-6-2019

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CBDT: Extends due-date for filing TDS Return Form 24Q & Form 16 to mitigate taxpayers' hardships

CBDT extends the due date for filing of Form 24Q [i.e. quarterly TDS statement in respect of salaries] for FY 2018-19 from 31st May, 2019 to 30th June, 2019, also extends the due date for issue of Form 16 [i.e. TDS certificate for salaries] from 15th June to 10th July; States that this has been done in order to redress the genuine hardships of deductors in timely filing of TDS statement in Form 24Q, on account of revision of its format and consequent updating of the File Validation Utility for its online filing.

Source: CBDT, CIRCULAR F. NO. 275/38/2017-IT-B (INV.V)/147 dated 03-06-2019

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CBDT: Revises compounding guidelines; advises strict approach for Black money, Benami law contraventions

CBDT issues guidelines for compounding of Offences under Direct Tax Laws, 2019, in supersession of its earlier guidelines dated December 23, 2014. The new guidelines shall come into effect from 17.06.2019 and shall be applicable to all applications for compounding received on or after the aforesaid date.

Source: CBDT, CIRCULAR F. NO. 285/08/2014-IT (INV.V)/147, DATED 14-6-2019, dated 15.06.2019

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