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DIRECT TAX REVIEW
MAY 2017

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Supreme Court Rulings of the month

ALV to be determined notionally if assessee owns more than one house property

SLP dismissed against High Court's ruling that Annual Value of properties which are more than one, owned by assessee and which admittedly remained vacant throughout previous year would not be assessed under section 23(1)(c) but under section 23(1)(a) and annual value would be determined notionally.

Source: SC in Susham Singla Vs CIT, Patiala

SLP no. 9968/2017, date of publication May 18, 2017

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Sub-letting not principal business activity to constitute 'business income'

Assessee company, a partnership firm, was alloted a plot of land by BMC on monthly license basis under auction whereby assessee constructed the market area (i.e. Shopping Centre) thereupon and gave the same to various persons on sub-licensing basis. BMC permitted the assessee to carry out additions and alterations and allowing sub-letting of the shops and stalls. Taking note of circumstances under which BMC auctioned the market area to assessee, HC held assessee as 'deemed owner' of the premises in terms of Sec 27(iiib) read with Sec. 269UA(f) of the Act and accordingly assessed income as house property income. Distinguishes assessee's reliance on co-ordinate bench rulings in Chennai Properties and Rayala Corporation to argue that lease rentals were assessable as business income, observes that in those rulings assessees were in the business of letting out of properties and derived entire income from letting out of properties;

Aggrieved, assessee preferred an appeal before SC. Assessee argued before Supreme Court that even if it was treated as deemed owner of the premises in question, since the letting out the place and earning rents therefrom was the main business activity of the assessee, the income generated from sub-licensing the market area should be treated as income from business and not income from the house property.

However in the present case, assessee could not substantiate that its entire income or substantial income was from letting out of the property which was its principal business activity, clarifies that mere entry in the object clause that assessee is engaged in sub-letting of properties would not be the conclusive factor.

SC, thus, upheld HC order and ruled against the assessee.

Source: SC in Raj Dadakar & Associates Vs ACIT

Civil Appeal no. 6455-6460 of 2017(Arising out of SLP no. 17277-17282 of 2015), date of publication May 15, 2017

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Upholds Sec. 143(1) (a) adjustment disallowing preliminary expenses

Assessee a Public Limited Company, claimed share issue expenses as revenue expenditure, however, AO restricted the deduction to 1/10th of the expenditure applying provisions of Sec. 35D and treating the expenditure as capital expenditure while issuing intimation u/s. 143(1). On appeal, CIT(A) allowed appeal by holding

that the concept of 'prima facie adjustment' u/s 143(1)(a) could not be invoked as there could be more than one opinion on whether public issue expenses were covered by Sec. 35D or Sec. 37. ITAT upheld CIT(A)'s order and dismissed Revenue's appeal. On further appeal, Gujarat HC dismissed the same holding that a debatable issue could not be disallowed while processing return of income u/s 143(1)(a).

SC acknowledges that the issue on allowability of preliminary expenses as revenue expenditure was debatable in view of divergent HC views, but takes note of Gujarat HC ruling in Ahmedabad Mfg. & Calico (P) Ltd. wherein it was held that share issue expenses are capital in nature . Further SC held that as Gujarat HC ruling was binding in case of assessee (having registered office in Gujarat), SC remarks that *"so far as the present case is concerned, it cannot be said that the issue was a debatable one"*

Source: SC in DCIT Vs M/s Raghuvir Synthetics Ltd, Ahmedabad Civil Appeal no. 2315 of 2007, date of publication May 02, 2017

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SC upholds Sec. 40(a) (ia) disallowance on amounts 'paid' reverses HC's Vector Shipping ratio

The assessee is engaged in the business of purchase and sale of LPG cylinders. During AY 2006-07, assessee received freight payments of Rs. 32 lakhs from Indian Oil Corporation (IOC) with whom the assessee had entered into main contract for carriage of LPG. The transportation of LPG was done through three truck-owners, to whom a total freight payment of Rs 20 lakhs was made. As per AO, since the assessee has sub-contracted the transportation to these three persons within the meaning of 194C, he was liable to deduct tax on Rs 20 lakhs for AY 2006-07. AO thus disallowed these expenses u/s 40(a)(ia). CIT (A) & ITAT upheld the order of AO. On further appeal, HC too ruled in favour of Revenue.

SC rejects assessee's plea that since the word used in Sec. 40(a)(ia) is *'payable'*, no disallowance can be made where the freight charges had been paid during the year. SC acknowledges that grammatically, it may be accepted that the two words, i.e. *'payable'* and *'paid'*, denote different meanings, but holds that *"When the entire scheme of obligation to deduct the tax at source and paying it over to the Central Government is read holistically, it cannot be held that the word 'payable' occurring in Section 40(a)(ia) refers to only those cases where the amount is yet to be paid and does not cover the cases where the amount is actually paid."* SC remarks that if the provision is interpreted in the manner suggested by appellant-assessee, *"then even when it is found that a person, like the appellant, has violated the provisions of Chapter XVIIB .., he would still go scot free."*

Source: SC in Palam Gas Service Vs Commissioner of Income Civil Appeal no. 5512 of 2017, date of publication May 04, 2017

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High Court Rulings of the month

15% demand payment not pre-condition for stay application, AO misread CBDT's 2016 instruction

AO rejected assessee's stay application on the ground assessee was required to make a pre-deposit of 15% of the disputed demand for considering his stay application on merits in view of CBDT instruction

dated February 29, 2016, even Pr. CIT rejected the stay application mainly considering AO's order.

HC noted that AO's interpretation for reasons of rejection was made absolutely on misconception and/or misreading of the modified instructions dated February 29, 2016. HC noted that considering the modified instructions dated February 29, 2016 ('modified instructions') as a whole, there is no such requirement of pre-deposit of 15% of the disputed demand either at the time of submitting stay application or before the stay application of the assessee is considered on merits. Rejecting AO's interpretation of modified instructions, HC observed that Clause-4 provides is that the AO may/shall grant stay of demand till disposal of first appeal on payment of 15% of the disputed demand, unless the case falls in the category mentioned in para 4 [B] of the modified instructions.

Source: HC in PCIT Vs Jagdish Gandabhai Shah
Special Civil Application no. 5679/2017, date of publication May 05, 2017

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High Court dismisses taxpayer's writ, can't interfere with Settlement Commission's facts findings

Delhi HC dismisses assessee's writ, denies to interfere with Income Tax Settlement Commission ('ITSC') order rejecting assessee's settlement application absent manifest unreasonableness or perversity. ITSC had earlier allowed assessee's application to be proceeded with u/s. 245D(1), it subsequently rejected the same based on the report submitted by revenue u/s245(2B) suggesting that the amount declared by assessee never belonged to him but represented unaccounted sums collected by other assessees who were subjected to search. ITSC accepts revenue's stand that merely because an order was made u/s. 245D, assessee could not claim a vested right to relief, holds that ITSC has the right to declare any application invalid upon duly considering revenue's report. On writ before High Court,HC upheld in favour of ITSC's that their findings were based upon an analysis of the facts and clear linkages between the amounts disclosed before ITSC and the amounts declared by the searched entity was discernible. HC also remarks that "this court cannot review or second guess the findings of fact as would an appellate court."

Source: HC in PCIT Vs Meeta GutGutia
ITA no. 306 to 310 of 2017, date of publication May 25, 2017

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Notifications of the month

CBDT releases new rules for Sec 115BA(4) & form 10-IB for startups to opt for Lower Tax Rate

The Central Board of Direct Taxes (CBDT) recently released Form 10-IB for Start Ups enabling them to opt for lower tax rate. The Notification stated that "The option to be exercised in accordance with the provisions of sub-section (4) of section 115BA of the Income Tax Act by a person, being a domestic company, for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2017, shall be in Form No. 10-IB. The option in Form 10-IB can be filed either by electronically either under digital signature or electronic verification code.

Source: Notification No. 36/2017/F. No. 370142/7/2017-TPL dated May 2, 2017

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Quoting of Aadhar in return of income isn't mandatory for non-resident and super senior citizen

The Central Government hereby notifies that the provisions of section 139AA shall not apply to an individual who does not possess the Aadhaar number or the Enrolment ID and is:

(i) residing in the States of Assam, Jammu and Kashmir and Meghalaya;

(ii) a non-resident as per the Income tax Act, 1961;

(iii) of the age of eighty years or more at any time during the previous year;

(iv) not a citizen of India.

This notification shall come into force with effect from the 1st day of July, 2017.

Source: Notification No. 37/2017/F. No. 370133/6/2017-TPL dated May 11, 2017

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Interest income of minor not to be clubbed in the hands of the grandparents in case parents are dead

It has been brought to the notice of CBDT that in cases of minors, whose both parents have deceased, TDS deductors/Banks normally club the interest income accrued to the minor, in the hand of grandparents, issuing TDS certificates to the grandparents, which is not in accordance with the law. The Income-tax Act envisages clubbing of minor's income with that of the parents only and not any other relative. Ideally in such type of situations, the income should be assessed in the hands of the minor and the income-tax returns be filed by the minor through his/her guardian.

Vide notification dated 29th of May, 2017, CBDT has specified that in case of minors where both the parents have deceased, TDS on the interest income accrued to the minor is required to be deducted and reported against PAN of the minor child unless a declaration is filed under sub-rule(2) of Rule 37BA of the LT. Rules, 1962 to that effect.

Source: Notification No. 5/2017 dated May 29, 2017

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Declaration in Form 15G/15H to be furnished to the deductor/payer for each financial year

As per section 197A of the ITA, 1961 provides that TDS will not be deducted, if the recipients of certain payment on which tax is deductible furnishes declaration in From 15G/15H. Representations have been received for clarification on the issue as to whether a depositor should submit only one declaration in respect of the income each year before each person responsible for making the payment (Deductor) or Form 15G/15H has to be submitted each and every time the payment is due to be received from the deductor.

Therefore, it is hereby clarified that the amended new Forms 15G & 15H vide CBDT Notification No. 76 dated, 29th September, 2015

require the depositor to furnish the details of all investments up to that date including the current Fixed Deposit for which the Form 15G/15H is being given and which are to be listed in Form 15G/15H to enable the deductor/payer to ascertain, whether the Form 15G/15H can be accepted.

Source: Notification No. 6/2017 dated May 30, 2017

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Due date of furnishing Statement of Financial Transaction extended to June 30, 2017

CBDT has extended the due date of furnishing of the statement of financial transactions under Rule 114E(5) of the Rules, read with sub section (1) of section 285BA of the Act for assessment Year 2017-18 from 31st May 2017 to 30th June 2017 in case of persons throughout India who are liable to furnish the said statement.

Source: CBDT order [F.NO.279/MISC./M-63/2017-ITJ], dated May 31, 2017

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CBDT clarifies process of furnishing Statement of Financial Transaction in form 61A

CBDT has clarified that ITDREIN (Income Tax Department Reporting Entity Identification Number) will be generated only in those cases wherein there are reportable transactions. Thus, it is mandatory only when at least one of the transaction type is reportable. Thus no NIL SFT return is required to be filed. (Since a NIL form can only be filed after generation of an ITDREIN). A functionality "SFT Preliminary Response" has been provided on the e-Filing portal for the reporting persons to indicate that a specified transaction type is not reportable for the year.

Source: CBDT, press release, dated May 26, 2017

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CBDT enables linking of PAN with Aadhaar in case of name mismatch

The Income Tax Department has made it easy for taxpayers to link their PAN with Aadhaar. Responding to grievances of taxpayers regarding difficulties in linking PAN with Aadhar their names did not match in both systems (Eg. Names with initials in one and expanded initials in another), the Department has come out with a simple solution now.

Taxpayers can go to www.incometaxindiaefiling.gov.in and click on the link on the left pane-> Link Aadhaar, provide PAN, Aadhaar no. and ENTER NAME EXACTLY AS GIVEN IN AADHAAR CARD (avoid spelling mistakes) and submit. After verification from UIDAI, the linking will be confirmed.

In case of any minor mismatch in Aadhaar name provided by taxpayer when compared to the actual data in Aadhaar, One Time Password (Aadhaar OTP) will be sent to the mobile registered with Aadhaar. Taxpayers should ensure that the date of birth and gender in PAN and Aadhaar are exactly same. In a rare case where Aadhaar name is completely different from name in PAN, then the linking will

fail and taxpayer will be prompted to change the name in either Aadhaar or in PAN database.

There is no need to login or be registered on E-filing website. This facility can be used by anyone to link their Aadhaar with PAN.

This facility is also available after login on the e-filing website under Profile settings and choose Aadhaar linking. The details as per PAN will be pre-populated. Enter Aadhaar no. and ENTER NAME EXACTLY AS GIVEN IN AADHAAR CARD (avoid spelling mistakes) and submit.

Taxpayers are requested to use the simplified process to complete the linking of Aadhaar with PAN immediately. This will be useful for E-Verification of Income Tax returns using OTP sent to their mobile registered with Aadhaar.

Source: CBDT, press release, dated May 26, 2017

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CBDT releases draft rules for valuation of unquoted equity share

Finance Act, 2017 inserted a new section 50CA of the ITAct, 1961(W.e.f 1.4.2018)AY 2018-19 to provide that where consideration for transfer of unquoted equity shares of a company is less than the FMV of such share determined in accordance with the prescribed manner, the FMV shall be deemed to be the full value of consideration for the purpose of computing income under the head "Capital Gains".

The Central Board of Direct Taxes (CBDT), in this regard, has recently issued draft rules for determining the fair market value (FMV) of unquoted equity shares for the purposes of section 56(2)(x) and section 50CA of the Income-tax Act, 1961 (the Act).

The proposed draft rules are as under:

The fair market value of unquoted equity shares =(A+B+C+D - L)× (PV)/(PE) where,

A= book value of all the assets (other than jewellery, artistic work, shares, securities and immovable property) as reduced by

(i) any amount of income-tax paid, if any, less the amount of income-tax refund claimed, if any, and

(ii) any amount shown as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;

B = the price which the jewellery and artistic work would fetch if sold in the open market on the basis of the valuation report obtained from a registered valuer;

C = fair market value of shares and securities as determined in the manner provided in this rule;

D = the value adopted or assessed or assessable by any authority of the government for the purpose of payment of stamp duty in respect of the immovable property.

L= book value of liabilities, but not including the following amounts, namely:—

(i) the paid-up capital in respect of equity shares;

(ii) the amount set apart for payment of dividends on preference shares and equity shares;

(iii) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;

(iv) any amount representing provision for taxation, other than amount of income-tax paid, if any, less the amount of income-tax claimed as refund, if any, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;

(v) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;

(vi) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;

PE = total amount of paid up equity share capital as shown in the balance-sheet;

PV= the paid up value of such equity shares

Source: CBDT, press release, dated May 5, 2017

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