SUPREME COURT RULINGS OF THE MONTH

AO couldn't invoke rule 8D without considering claim of assessee; SC dismissed SLP

Where High Court opined that in respect of dividend income earned by assessee, AO without commenting upon correctness of assessee's working of expenditure to be disallowed, could not compute disallowance under section 14A by applying provisions of Rule 8D(2)(iii), SLP filed against said order of High Court was to be dismissed.

Source: SC in PCIT, Mumbai Vs Reliance Capital Asset Management Ltd

SLP No. 11379 of 2018, date of publication October 30, 2018

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SLP granted against ruling that no cancellation of registration if trust failed to convey change in object clause

SLP against High Court's decision holding that mere non-communication of changes in object clause of trust to Authority will not automatically cancel registration of a trust.

Source: SC in CIT(Exemptions) Vs Rajasthan Cricket Associations

SLP No. 24269 of 2018, date of publication November 02, 2018

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HIGH COURT RULINGS OF THE MONTH

AO's order rejecting ITR without providing opportunity to rectify defect u/s 139(9) liable to be set-aside

For relevant year, assessee filed its return declaring certain taxable income. Subsequently, assessee filed a revised return under section 139(5) within prescribed time period wherein value of closing stock was reduced and administrative cost was increased. The Assessing Officer rejected said revised return at the very threshold on ground that it was not accompanied with tax audit report. Tribunal upheld the order of AO.

Honorable HC set aside the impugned order and remanded back for fresh disposal and held that "*if, in the opinion of the Assessing Officer, the return was defective, then the procedure contemplated under sub-section (9) of section 139 ought to have been followed. This provision enables the Assessing Officer to intimate the defect to the assessee and give an opportunity to rectify the defect within a period of 15 days from the date of such intimation or within such period, which, on an application made in this behalf, the Assessing Officer, may, in his discretion, allow and if the defect is not rectified within the said period of fifteen days or as the case maybe, the further period so allowed, then, notwithstanding anything contained in any other provision of this Act, the return shall be treated as an invalid return and the provisions of this Act shall apply as if the assessee had failed to furnish the return*"

For the above reasons, on the peculiar facts and circumstances of the case, HC found that the assessee had not been given an opportunity to rectify defects as contemplated under sub-section (9) of section 139 of the Act and therefore, remanded the matter to the Assessing Officer

to redo the assessment after giving an opportunity to the assessee in terms of section 139(5) to rectify the defects.

Source: HC of Madras in Zeenath International Supplies, Chennai-1 Vs Commissioner of Income Tax, Central-I, Chennai

ITA No.1447 of 2008, date of publication October 24, 2018.

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Assessee couldn't be directed to pay part of demand during pendency of stay application

For relevant assessment year, assessee filed an appeal before Commissioner (Appeals) challenging demand raised in assessment order. Assessee also filed an application for stay of demand during pendency of appeal - Deputy Commissioner rejected assessee's stay application and communicated to assessee that it should pay 20 per cent of outstanding amount failing which collection and recovery would continue.

HC set aside Commissioner directions and held that *"**If the demand is under dispute and is subject to the appellate proceedings, then, the right of appeal vested in the assessee by virtue of the Statute should not be rendered illusory and nugatory**. That right can very well be defeated by such communication from the revenue/department as is impugned herein. That would mean that if the amount as directed by the impugned communication being not brought in, the assessee may not have an* opportunity *to even argue his appeal on merits or that appeal will become infructuous, if the demand is enforced and executed during its pendency. In that event, the right to seek protection against collection and recovery pending appeal by making an application for stay would also be defeated and frustrated. Such can never be the mandate of law".*

In the circumstances, the petition is disposed of with directions that the Appellate Authority shall conclude the hearing of the appeal as expeditiously as possible and during pendency of these appeals, the assessee shall not be called upon to make payment of any sum, much less to the extent of 20 per cent under the Assessment Order/Confirmed Demand or claim to be outstanding by the revenue.

Source: HC of Bombay in Bhupendra Murji Shah Vs DCIT.

Writ Petitions Nos.2157 and 2160 of 2018, date of publication October 24, 2018.

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ITAT RULINGS OF THE MONTHS

Investor source of investment was genuine and there is no possibility of generation and use of unaccounted money, addition under section 56(2) (viib) deleted in respect of shares allotted at huge share premium

The assessee was a private limited Co. engaged in real estate business and initially had only two shareholders 'S' and her husband. On passing away of husband, his shares devolved on her daughter 'V'. The assessee-company proposed to acquire immovable property viz., the land. The value of the land was approximately Rs. 23.09 crores. Accordingly, 'S' who had the funds, brought in money and she was allotted 10100 shares with a share premium of Rs. 23.31 crores. AO invoked the provisions of section 56(2) (viib) holding that 10,100 shares were allotted to 'S' at an unrealistic premium. CIT upheld the order of

AO, aggrieved by which the assessee filed an appeal before the Chennai ITAT.

ITAT observed from the Finance Minister speech of Finance Bill 2012 that provisions of Section 56(2) (viia) were introduced only to curb generation and use of unaccounted money. The only shareholder apart from 'S' in the company was the daughter 'V', who was a new entrant in her parents' business and had no scope of possessing undisclosed cash. Further, as per ITAT, the benefit of such investment at an unrealistic share premium only passed on to her daughter because there were only two shareholders in the assessee company. ITAT stated that had 'S' gifted the money to her daughter and thereafter if the daughter would have brought the same into the assessee-company for allotment of equity shares at face value, invoking of the provisions of Section 56(2) (viib) would not have aroused and the same would have been also out of purview of taxation owing to the relationship of mother and daughter.

ITAT noted that in this case, the investor's source of investment was genuine and not in dispute. ITAT referred to Supreme Court ruling in the case Allied Motors Pvt. Ltd., wherein it was held that the Finance Minister's Budget speech explaining the provisions were relevant in construing the provisions. ITAT referred to various principles of interpretation of the Statute and stated that a harmonious reading of provisions of Section 56(2) (vi), (viib) and (x) would suggest that Section 56(2) (viib) had no implication in this case. Thus, **ITAT held that the provisions of Section 56(2) (viib), could not be invoked because by virtue of cash being brought into the assessee company by 'S' for allotment of equity shares with unrealistic premium the benefit only passed on to her daughter 'V'.** Thus, ITAT ruled in favour of the assessee and directed the deletion of the addition made under section 56(2) (viib).

Source: ITAT Chennai in Vaani Estates P. Ltd Vs ITO.
ITA No.1352 of 2018, date of publication October 17, 2018.

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NAV method couldn't be applied in case of preference shares to compute excess share premium chargeable to tax

The assessee is engaged in the business of film production in the field of providing visual effect sand animation facilities. During the course of assessment proceedings, the Assessing Officer noticed that the assessee has issued 6,10,825 noncumulative, non-convertible redeemable preference shares on 1.4.2010 having a face value of 10 each at a price of 500. Thus, the assessee has collected ` 490 as share premium. The above said preference shares are redeemable at 750 each after the expiry of five years from the date of issue. The shares were allotted to assessee's holding company Sahara India Commercial Corporation Limited.

AO noted that the fair market value of unquoted shares based on the balance-sheet of the assessee was 38 per share and therefore the reasonable premium would be ` 28 per share. Therefore, an addition of 28.22 crores as the excess premium was made by the AO. The CIT(A) ruled in favour of the assessee, aggrieved by which the Revenue filed an appeal before Mumbai ITAT.

ITAT noted that the preference shares and equity shares stand on a different footing as the equity shareholders are the real owners of the company and preference shareholders are not. ITAT observed

that the preference shareholders get preference over the equity shareholders on payment of dividend and repayment of equity and therefore the Net asset value of the company really represented the value of equity shares and not that of preference shares. Thus, the net asset value of the company cannot be linked or compared to the Preference shares. Further, AO had not drawn any support from provisions of Income Tax Act to hold that premium exceeding Rs. 28 was alleged excess premium. ITAT observed that the Revenue had suspected the nature of receipt of amount only for the reason that the value of share, by net asset value method (NAV) stood at Rs. 38/-, however the Revenue failed to understand that this value was related to 'equity shares' and cannot be adopted for preference shares.

ITAT further noted that concerned funds on share allotment were received in earlier years and not in the concerned financial year, and thus Revenue was mistaken to invoke Section 68 for making the addition. ITAT directed to delete the addition and thus ruled in favour of the assessee.

Source: ITAT Mumbai in ACIT Vs Golden Line Studio Pvt. Ltd ITA No.6146 of 2016, date of publication October 26, 2018.

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PRESS RELEASES, NOTIFICATIONS AND CIRCULARS OF THE MONTH

CBDT releases draft amendment to rules for filing of Form 10G, 56 & 56G via online mode only

In view of the digital advancement that the Government in general, and the Income-tax Department in particular, have made, it is imperative that manual filing of these applications should be done away with so as to ensure not only faster processing of the same but also reduce interface between the Department and the applicant.

In view of the above, these rules and forms are proposed to be amended by way of substituting—

- Rules 2C and 2CA with a new rule 2C and rule 11AA with new rule 11AA; and
- Form Nos. 56 and 56D with a new Form No 56 and Form No 10G with a new Form 10G.

Source: CBDT Draft Notification dated 29-10-2018

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Central Govt. notifies more than 60 Session Courts as Designated Special Courts for Benami Act

In exercise of powers conferred by sub-section (1) of section 50 of the Prohibition of Benami Property Transactions Act, 1988 (45 of 1988) and in consultation with the Chief Justices of the respective High Courts, the Central Government hereby designates the court(s) of Session, as Special Court(s) for the area(s) specified in the said Table against the said courts, for the trial of offences punishable under the provisions of the said Act.

Source: CBDT NOTIFICATION NO. SO 5323(E) [NO.67/2018 [F.NO.149/144/2015-TPL (PT. IV)], dated 16-10-2018

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CBDT further extends due date for tax audit and return filing till Oct. 31, 2018

CBDT has further extended the 'due date' for filing of Income-tax Returns as well as reports of Audit (which were required to be filed by September 30, 2018) from 15th October, 2018 to 31st October, 2018.

Source: CBDT F.No. 225/358/2018/ITA.II dated 08-10-2018

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Notification of transactions in equity shares in respect of which the condition of chargeability to STT at the time of acquisition for claiming concessional tax treatment under section 112A shall not apply

The Finance Act, 2018 has withdrawn exemption under section 10(38) and has inserted new Section 112A in the Income-tax Act, 1961, to provide that long-term capital gains arising from transfer of a capital asset being an equity share in a company or a unit of an equity-oriented fund or a unit of a business trust, shall be taxed at 10% of such capital gains exceeding one lakh rupees. The said section, inter alia, provides that the provisions of the section shall apply to the capital gains arising from a transfer of long-term capital asset, being an equity share in a company, only if securities transaction tax (STT) has been paid on acquisition and transfer of such capital asset. However, to provide for the applicability of the concessional tax regime under section 112A to genuine cases where the STT could not have been paid, it has also been provided in Section 112A(4) that the Central Government may specify, by notification, the nature of acquisitions in respect of which the requirement of payment of STT shall not apply in the case of acquisition of equity share in a company. In view of the above, vide this notification, it has been notified that the condition of chargeability to STT shall not apply to transactions of acquisition of equity shares entered into before 1.10.2004; or on or after 1.10.2004 which are not chargeable to STT, except certain specified transactions, namely, acquisition of existing listed shares in preferential issues of a company whose equity shares are not frequently traded in a recognized stock exchange in India; acquisition of existing listed equity shares in a company not entered through a recognised stock exchange of India; and acquisition of equity shares of company during the period of its delisting. However, to protect the interest of genuine investors, exceptions are also provided under the first two specified transactions, in respect of which the condition of chargeability to STT shall not apply.

Source: CBDT Notification No. 60/2018 dated 01-10-2018

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