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DIRECT TAX REVIEW

MAY 2019

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SUPREME COURT RULINGS OF THE MONTH

SC: Sets aside HC order denying extension of time-limit for installment payment under IDS, 2016

SC sets aside HC order denying to grant extension of time for payment of third installment under the Income Tax Declaration Scheme, 2016 [IDS, 2016]. The assessee had filed declaration of undisclosed income under the IDS, 2016 but was unable to pay the third instalment of tax, surcharge and penalty within the stipulated time and had sought extension of time before HC by way of a writ petition, which was rejected. HC had ruled that **mere involvement in office work and marketing activities cannot be a good justification and ground to seek and ask for extension of time**. **Considering the facts and circumstances of assessee's case, SC holds it a genuine case for granting extension**.

Source: SC in Dal Chand Rastogi Vs CBDT

Civil Appeal No. 3981 of 2019(Arising out of S.L.P(c) No. 3986 of 2017), date of publication May 10, 2019

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SC: Dismisses SLP against block assessment quashing for non-issuance of Sec. 143(2) notice

SC dismisses revenue's SLP challenging Gujarat HC order quashing block-assessment u/s. 158BC, on the ground that no formal notice u/s.143 (2) was issued to assessee. HC had rejected revenue's stand that in view of long delay of over 26 months on part of assessee in filing return in response to notice u/s. 158BC, the return should be treated as invalid / non-est return and, accordingly there would be no requirement for issuing notice u/s.143(2). HC had noted that the assessee did file the return, though belatedly, further the AO did not discard such return but proceeded on the basis of such return, and framed an assessment assessing the income higher than the returned income. Thus, HC had ruled that, "***When the AO was rejecting the returned income, in view of the judgment of the SC in the case of Hotel Blue Moon, notice u/s. 143 (2) was necessary.***"

Source: SC in PCIT, Ahmedabad Vs Devebdrabath G. Chaturvedi

Civil Diary No. 1719 of 2018, date of publication May 10, 2019

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HIGH COURT RULINGS OF THE MONTH

HC: Allows manual return to claim loss carry forward considering Yokogawa ruling

Assessee has set up two units, one in Domestic Tariff Area (DTA) and other in Special Economic Zone ('SEZ'). The assessee had claimed deduction u/s 10AA without considering the losses of the ineligible unit i.e. the unit set up in the DTA while calculating the PGBP of the eligible unit. While filing the return online, the software of the Department did not allow the assessee to claim deduction u/s 10AA and instead set off the loss of ineligible business against eligible business. As a result, the net loss to be carried forward was "Nil".

The assessee then filed a return of Income manually and also filed an application to Assessing Officer (AO) pointing out the discrepancy in online filing of Form ITR 6. Inspite of several reminders thereafter, no response was received from the AO. Thus, the assessee filed the present Writ petition before Delhi HC seeking direction to the CBDT to

accept for the manual return of Income for AY 2017-18 and allow carry forward of business loss.

Delhi HC directs CBDT to either allow assessee (claiming Sec.10AA deduction) to file ROI manually or alter online utility to enable assessee to file return claiming the carry forward of losses of its ineligible unit, directs compliance by May 31, 2019. Taking note of amendment to Sec.10AA to overcome Yokogawa ruling and referring to CBDT Circular No 2/2018 that explain legislative intent behind the amendment, HC observes that "Once it is abundantly clear that the amendment in Section 10AA takes effect only from 1st April, 2018 and would apply only from AY 2018-19, it is clear that for all the AYs prior to 2018-2019, the law explained by the Supreme Court in Yokogawa India Ltd. (supra) would apply". **Thus, holds that legal position being not disputed by revenue, it is incumbent on respondent to correct the E-filing software and it cannot contend that the E-filing software will determine whether assessee can carry forward losses of ineligible unit**. **Draws support from Tara Export decision and notes that in case of software glitch that prevents assessee from either filing a return or claiming a benefit, the Courts have permitted the manual filing of return/claims.**

Source: HC of Delhi in Cosmo Films Limited Vs CBDT
W.P.(C) 3598/2019 & CM Appl.No. 16512/2019, date of publication May 20, 2019

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HC: Excludes time taken for pursuing remedy before HC from time-limit for passing Settlement Commission order

Gujarat HC holds that time taken by the assessee for in pursuing the remedy before HC would stand excluded while computing the time limit for passing the order by Settlement Commission. Pursuant to the order passed by the Settlement Commission treating the applications made by the assessee to be invalid, the assessee approached HC by way of writ petitions, whereby HC set-aside the Settlement Commission's order and restored matter to the file of the Settlement Commission, however, the operation of the judgment was stayed for a further period of four weeks so as to enable the revenue to approach the superior forum. **Accepts the assessee's contention that for the period between date of passing order by Settlement Commission (2.2.2018) till four weeks after date of passing HC order (4.2.2019), there were no applications pending before the Settlement Commission and such applications were restored to the file of the Settlement Commission only pursuant to the order of this court.** Therefore, holds that the period between 2.2.2018 to four weeks after 4.2.2019 cannot be taken into consideration for the purpose of computing the period of 18 months as contemplated u/s 245D(4A).

Source: HC of Gujarat in M/s Akash Builders Vs PCIT(Central)
Special Civil Application no. 8122/8125/8128/8130-8134/8136/8138, date of publication May 14, 2019

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HC: Dismisses Revenue's low tax effect 'writ' matter, applies CBDT Circular

Karnataka HC division bench rejects revenue's plea that appeal filing monetary limits prescribed by CBDT (vide Circular dated February 5, 2019) are not applicable to writ matters, dismisses revenue's writ appeal against single Judge order allowing assessee's writ, as the entire tax effect was less than Rs. 2 lakh. HC notes that the writ was filed by the assessee in absence of an alternative remedy under the Act. HC

remarks that if the alternative remedy of appeal had been available, then it would have been covered by the monetary limit. ***HC states that, "Only because an alternative remedy is not provided and the assessee was compelled to file a writ petition, the Revenue cannot take advantage of it."***

Source: HC of Karnataka in CIT Vs Dinakar Ullal

Writ Appeall.No. 3063/2010, date of publication May 14, 2019

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HC: Distribution of immovable property towards share in partnership on retirement, not transfer u/s 45(4)

During relevant AY 2004-05, two partners of the assessee-firm retired and the firm continued by inducting another partner, pursuant to immovable properties transferred to the retiring partners, the AO had made capital gains addition u/s.45(4) in the hands of assessee-firm. The CIT (A) set-aside the AO's order holding that re-constitution of the firm did not fall within purview of Sec.45 (4). However, ITAT upheld the AO's order.

HC noted that two primary requirements are essential for the application of Sec. 45(4) i.e. (i) there should be a transfer of a capital assets; and (ii) there should be distribution of capital assets on the dissolution of a firm or otherwise.

Firstly, HC notes that it was only a case of reconstitution of partnership, next HC refers to **Sec. 4 of the Partnership Act** [relating to Nature of partnership] to note **that a partner has right to obtain a share in profits during the subsistence of a partnership and to get the value of his share in the net assets of the partnership upon firm dissolution or retirement.** Therefore, HC holds that "*When a partner retires from a partnership he receives his share in the partnership and this does not represent consideration received by him in lieu of relinquishment of his interest in the partnership asset*", thus holds that there is no element of transfer of interest in the partnership assets by the retiring partner to the continuing partners. HC reverses ITAT order and holds that Sec.45 (4) is not attracted on allotment of immovable property by assessee-firm to retiring partners towards their share in partnership.

Source: HC of Madras in M/s. National Company Vs The Assistant Commissioner of Income Tax

Tax Case Appeal No.s 365 & 366 of 2009, date of publication May 09, 2019

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HC: Allows Sec.54F benefit on transfer of residential unit in Co-operative Housing Society

Bombay HC upholds ITAT order for AY 2009-10, allows assessee-individual's Sec. 54F claim in respect of capital gains arising on transfer of jointly -owned inherited residential flat located in a Co-operative Housing Society, which is constructed on a leased land. AO had held that as the land on which the residential complex was situated was not actually owned by the Society, but was rather being enjoyed on a long term lease, thereby the assessee had not transferred the building 'and' the land appurtenant thereto as mandated by Sec. 54F, and was thus dis entitled to the said claim. **ITAT Upholds CIT(A) view that merely because the flat was constructed on a leased land, it would not change the nature of transaction**, also notes that there is no prescription u/s 54(1) that the words 'or' are to be read as 'and' in the context of Sec. 54F. **Further rules that a member of the Co-operative**

Society has possessory right over the plot of land allotted to him and thereby owns the constructed property along with other members, also even at the time of sale, the member never transfers the title in land to the purchase. Rejecting revenue's strange arguments, remarks that, "…..such a rigid interpretation would disallow every claim in case of transfer of a residential unit in a Co-operative Housing Society."

Source: HC of Bombay in PCIT Vs Sh. Rahul Uday Tuljapurkar
Income Tax Appeal No 416 of 2017, date of publication May 02, 2019

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ITAT RULINGS OF THE MONTH

ITAT: 'Distance learning' covered under charitable activities u/s. 2(15) as formal education

Jalandhar ITAT holds that distance learning provided by assessee-society to the students in its capacity as an authorized learning center of Punjab Technical University (PTU) would fall within the realm of rendering 'education' as appearing in the charitable activities definition u/s. 2(15), holds revenue erred in equating such services with that of a coaching institute. Notes that as an authorized learning center of PTU under the distance education programme, assessee was obligated to carry out educational programmes as prescribed by the university and make necessary provisions for infrastructure and faculty as specified by the university, local marketing, timely course completion, maintenance of records of students and MIS, designing of presentations, projects, assignments and exams, conducting internal exams, conducting seminars and open house discussions, etc. **ITAT states that "as per the literal meaning "education" is a process for facilitating learning or the acquisition of knowledge, skills, values and habits"** and holds that since the assessee was providing formal education, the lower authorities had erred in taking a contrary view and had wrongly concluded that the surplus of Rs. 12.66 lakh shown by the assessee was not eligible for exemption under Sec. 10(23C) (iiiad) of the IT Act.

Source: ITAT Jalandhar, Shaheed Udham Singh Vs ITO(Exemptions)
ITA Nos. 562 of 2016, date of publication May 02, 2019

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ITAT: DVO's Valuation Report obtained for sec.50C purposes, can be challenged in appeal

Ahmedabad ITAT holds that the valuation report of the Departmental Valuation Officer (DVO) u/s.50C(2) can be challenged before appellate authorities, notes provisions of Sec.23A(1)(i) of the Wealth Tax Act have been incorporated, with necessary modifications in Section 50C which enables such challenge. Further, observes that in terms of Sec.23A (6) of the Wealth Tax Act which is also incorporated in Sec. 50C, DVO has to be given an opportunity of hearing when the valuation report is challenged before CIT (A)/ITAT. Notes that assessee-individual has challenged DVO's valuation in respect of a bungalow sold by him during AY 2013-14 and CIT (A) dismissed such challenge holding that as Sec. 50C is a 'deeming provision', its scope could not be enlarged. Further holds that CIT (A) did not adjudicate the issue of correctness of DVO's valuation on merits and also failed to give an opportunity of hearing to DVO. Thus remits the matter to CIT (A) to adjudicate correctness of DVO's report by passing a speaking order within 3 months of the ITAT order, after giving an opportunity to both the assessee and DVO.

Source: ITAT Ahmedabad in Lovy Ranka Vs DCIT, Ahmedabad.
ITA No 2107/Ahd/2017, date of publication May 01, 2019

CIRCULARS/ NOTIFICATIONS OF THE MONTH

IT Dept. specifies procedure, format and standards for issuance of amended Form 16

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

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CBDT: Amends Form 15H allowing deductor to consider Sec. 87A benefit

CBDT amends Form 15H to provide that the form shall be accepted in case of assessee whose tax liability is Nil after considering rebate available u/s 87A.

Note 10 to Form No 15H provides for **non-acceptance of declaration if the amount of income of the nature** referred to in section 197A(1C) or the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the previous year in which such income is to be included exceeds **the maximum amount which is not chargeable** to tax after allowing for deduction(s) under Chapter VIA, if any, set off of loss, if any, under the head “income from house property” for which the declarant is eligible.

Section 87A of the Act has been amended vide Finance Act, 2019 which provides that a resident individual, having total income up to Rs. 5 lakh, shall be entitled to a rebate of an amount being the amount of tax chargeable or Rs. 12,500/-, whichever is less.

However, **at present, the note 10 of Form 15H does not take into account the maximum allowable rebate of Rs 12,500**/- provided under section 87A as above, which is available to the assessee in respect of the tax calculated on income, there could be cases, where, though income of the assessee would be above the minimum amount chargeable to income-tax, tax liability may be nil after taking into account the rebate available under section 87A. Deduction of tax in such cases may cause undue hardship to senior citizens.

Accordingly, Income-tax Rules, 1962 have been amended by way of insertion of proviso in Note 10 of Form No 15H and have already been notified vide Notification No G.S.R. 375(E) dated 22nd May, 2019 giving **clarification that Form 15H can be accepted even though assessee's income subject to Form 15H is higher than the income for which declaration can be accepted as per Note 10 to Form 15H.**

Source: CBDT, Press Release, dated 24.05.2019

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CBDT: Extends TDS related due dates for deductors in Odisha

CBDT extends TDS related due dates for deductors in state of Odisha in order to redress genuine hardship faced due to the severe disruption of normal life and breakdown of communication systems caused by cyclone "Fani".

Extends due date for deposting TDS for April 2019 from May 7 to May 20, 2019.

Further due date for filing of Quarterly TDS Statement for the last quarter of FY 2018-19 is extended from May 31, 2019 to June 30, 2019;

Also extends the due date for issue of TDS certificates in Form 16 and 16A from June 15, 2019 to July 15, 2019.

Source: CBDT, Order u/s 119, dated 24.05.2019

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CBDT : Condones audit report filing delay for trusts for AY 2016-17 & 2017-18, subject to conditions

CBDT condones delay in filing of audit report in Form 10B in case of trusts/ associations for AY 2016-17 and 2017-18, provided the audit report for the previous year has been obtained before filing of return of income, and has been furnished subsequent to the filing of return, but before the due date specified u/s.139.

In all other cases involving delay in filing report for years prior to AY 2018-19, CBDT authorizes CITs to admit application for condonation of delay, clarifies that CITs while entertaining such applications, will satisfy themselves that the assessee was prevented by a reasonable cause from filing such application within the stipulated time; Further, directs that all such applications shall be disposed off by September 30, 2019. CBDT has issued this circular in supersession of earlier circular/instruction in this regard, after considering representations received in this respect.

Source: CBDT [Circular 10/2019], dated 22.05.2019

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