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CHARTERED ACCOUNTANTS

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DIRECT TAX REVIEW

NOVEMBER 2019

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SUPREME COURT RULINGS

Assessee's delay in filing appeal before Bombay HC against Tribunal order condoned by Supreme Court

Facts

Assessee sought condonation of delay of 1754 days in filing appeals against order passed by the Tribunal. Assessee had pleaded that it had no knowledge about passing of Tribunal order, until it was confronted with auction notices issued by competent authority, immediately upon which, assessee filed appeal with the HC. The High Court by impugned order dismissed appeals, holding that these were not fit cases in which inordinate delay of 1754 days in filing appeals deserved to be condoned. On appeal to the SC, the High Court did not specifically refute stand taken by assessee that it had no knowledge about passing of order. Unless that fact was to be refuted, question of disbelieving stand taken by assessee on affidavit, cannot arise and for which reason, HC should have shown indulgence to assessee by condoning delay in filing concerned appeal(s). Accordingly appeals are allowed.

Ruling

SC held that the HC did not specifically refute stand taken by assessee that it had no knowledge about passing of order. Unless that fact was to be refuted, question of disbelieving stand taken by assessee on affidavit, cannot arise and for which reason, HC should have shown indulgence to assessee by condoning delay in filing concerned appeal(s). Accordingly the appeal of the assessee was allowed.

Source: SC n Senior Bhosale Estate (HUF) vs. ACIT, dated November 7, 2019

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Sum received by assessee for relinquishing secretary ship of an educational society could not be treated as capital receipt

Facts

The issue involved in this appeal is essentially questioning the finding of fact recorded by the authorities below as to whether the amount received by the appellant is capital or a revenue receipt. The authorities below have concurrently found that going by the admission of the appellant, the amount received by the appellant cannot be treated as capital receipt but only as revenue receipt. The substance of the admission is that the appellant was holding the post of Secretary of the Institution until 1996 but he left the institution after new members were elected as the managing committee. That being the case, the question of appellant invoking the principle of capital asset does not arise. It may have been a different matter if it was a case of life time appointment of the appellant as Secretary of the concerned Institution. No such evidence was produced by the appellant.

Ruling

The conclusion reached by the HC was upheld by the SC that the amount received in the hands of appellant-assessee cannot be treated as capital receipt. Thus, the order of the AO is affirmed. Hence, no interference is warranted in this appeal. This appeal is dismissed and all pending applications are also disposed of.

Source: SC in H.S. Ramchandra Rao vs. CIT, Bangalore dated November 21, 2019

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HIGH COURT RULINGS

Mere non-compliance of a procedural requirement u/s 54(2) itself cannot stand in way of assessee in getting benefit u/s 54, if he is, otherwise, in a position to satisfy that mandatory requirement u/s 54(1) is fully complied with within time limit prescribed therein

Facts

The petitioner had entered into a Development Agreement for the development of the property and requested the Developer to allow him to decide on the construction quality and type of material to be used for superstructure and promised to bear the additional costs involved and to pay to the suppliers/professionals directly and the proposal was accepted by the developer. As the additional construction cost was not deposited by the assesse in the capital gain account, the revenue disallowed the deduction u/s 54 of the Income Tax Act, 1961.

Ruling

The claim of the assessee for deduction of the disputed sum towards the additional construction cost was rejected only on the ground that the said sum was not deposited in the capital gain account. In view of the findings rendered, the Revenue is not justified in making such objection. On the other hand, it has to verify as to whether the said sum was utilized by the petitioner within the time stipulated u/s 54(1) for the purpose of construction. If it is found that such utilization was made within such time, the Revenue is bound to grant deduction. Therefore, the Court was of the view that the matter needs to go back to the first respondent for considering the issue as to whether the disputed amount, claimed by the assessee as deduction, has been utilized by the petitioner towards the additional construction within the time limit prescribing u/s 54(1) and thereafter, to pass fresh order accordingly in the light of the findings and observations rendered. Therefore, the case was transferred to the AO for re-adjudication.

Source: Madras High Court in Venkata Dilip Kumar vs. CIT, Chennai
Date of publication: November 5, 2019

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Government employees enjoy protection and privileges under Constitution and other laws, which are not available to Public Sector Undertaking and Nationalized Banks employees

Facts

The case of the petitioner is that the petitioners are retired employees of various nationalized banks. The grievance of the petitioners is that in respect of the leave encashment amounts drawn by them upon their retirement, they are subject to payment of income tax except to the extent the same is exempted u/s 10(10AA) of the IT Act. The submission of the petitioners is that the employees of the Public Sector Undertaking and Nationalized Banks are discriminated against vis a vis CG and SG employees since they are granted complete exemption in respect of the cash equivalent of the leave salary for the period of earned leave standing to their credit at the time of their retirement whether on superannuation or otherwise. However, all others, including the employees of the Public

Sector Undertaking and Nationalized Banks are granted exemption only in respect of the amount of leave salary payable for a period of 10 months, subject to the limit prescribed. The petitioner further submits that the government has issued a notification in terms of Clause (ii) of sub-section 10AA of Section 10 whereby the limit to which such income is exempted is prescribed as Rs.3 lacs.

Ruling

Held that merely because PSUs and Nationalized Banks are considered as 'State' under Article 12 of the Constitution of India for the purpose of entrainment of proceedings under Article 226 of the Constitution and for enforcement of fundamental right under the Constitution, it does not follow that the employees of such Public Sector Undertaking, Nationalized Banks or other institutions which are classified as 'State' assume the status of CG and SG employees. It has been held in multiple decisions that employees of Public Sector Undertakings are not at par with government servants, In the noted case of **A.K. Bindal v .Union of India [2003] 5 SCC 163,** while considering the issue of revision of the pay scales of employees of government companies/PSUs at par with government employees, it was held that the employees of government companies cannot claim the same legal rights as government employees. Therefore, the present petition was rejected, insofar as the petitioners' challenge to the provisions of Section 10(10AA) is concerned.

Source: High Court of Delhi, Kamal Kumar Kalia vs. Union of India

Date of publication: November 8, 2019

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Mere ritualistic giving of hearing and reproducing submissions made without understanding party's case would not satisfy test of natural justice and will amount to breach of natural justice.

Facts

The petitioner is an advertising agency, which enables its clients to place/display their advertisement on various media viz. print, TV etc. The Petitioner recover amount from its clients and makes payment to media owners for the advertisement of its clients, on its media. At the time of making payment, the petitioner's clients deduct tax at source u/s 194C of the Act and the petitioner again deducts tax at source u/s 194C of the Act while making payment to the media owners. However, SCN was issued by the respondent to the petitioner for failure to deduct tax on payments made to media owners for the services the media owners provided to the petitioner u/s 194J and failure to deduct tax on provisions for expenses, which it has itself disallowed u/s 40(a)(ia) of the Act.

Ruling

Held that in the impugned orders namely the dis-allowance made u/s 40(a)(ia) of the Act i.e. **the requirement to deduct tax at the time of credit in the books of accounts i.e. even before the payment is made, is not suffering from breach of natural justice**. Therefore, the impugned orders were passed in undue haste, in the absence of sufficient consideration being given to petitioner's submission. Therefore, the petition of the assessee is herewith allowed.

Source: High Court of Bombay, TLG India (P.) Ltd. vs. DCIT

Date of Publication: November 18, 2019

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Where assessee miserably failed to challenge reopening of assessment at appropriate time, he cannot challenge the assessment order straight away by filing a writ petition before the High Court

Facts

The assessee had quoted a wrong date of audit report not only in original return but also in revised return before reopening and also in return filed in response to notice issued u/s 148. The Assessee claimed that it is an inadvertent mistake or clerical mistake. The original return was filed within the due date. On the date of filing of the return, the petitioner did not get its account audited and had sought approval from the Registrar of Companies for extending the time limit to hold its Annual General Meeting. The petitioner was required to file an electronic return of income and such electronic return would get uploaded only when all the mandatory fields are filled, one such being the details of audit u/s 44AB of the said Act. Since the petitioner was liable for audit u/s 44AB of the said Act, the online return could not be uploaded without filling details of the audit return. Therefore, the petitioner mentioned the date of audit report as adhoc date to enable the online filing of the return.

Ruling

It is evident that the date of audit report furnished in the original return is not a true information or disclosure of material facts and therefore, the reasons for reopening the assessment indicating that there is a failure on the part of the assessee to disclose truly and fully material facts cannot be stated as a reason without any basis. At the same time, the question as to whether such mistake in furnishing the date of audit report will go to the root of the matter and affect the assessment proceedings is a different issue, which has to be considered and decided only by the next fact finding Authority.

Accordingly, this writ petition is disposed of, by directing the petitioner to file regular appeal against the impugned order of assessment before the concerned Appellate Authority.

Source: High Court of Madras, Doosan Bobcat India (P.) Ltd. vs. DCIT
Date of Publication: November 21, 2019

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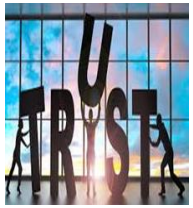
Expenditure on telecast of Samagams for public at large could not be held to be benefiting its founder

Facts



The assessee trust is carrying out 'religious activities', not enshrined in the objects of the trust. As a result, the disallowances and additions made by the AO and deletion made by the CIT-A, have been sustained. The assessee was mainly involved in imparting spiritual education through lectures/samagams (congregation) and on TV channels; and had also established a temple of Hindu Gods/ Goddesses for the general public. Assessee was predominantly carrying out religious activities in accordance with Hindu religion after analyzing the objects of the Trust as mentioned in the Trust Deed. AO concluded that the assessee was not created for religious purposes and since its **income was applied for purposes other than for which it was created**, it was not entitled to seek exemption u/s 11 and 12 of the Income Tax Act. Further, since the assessee could not furnish the necessary details of expenditure incurred for arrangement of samagams, it was treated as unexplained/anonymous donation.

Ruling

The asseessee's activities have been held to be religious by the AO then same is ether not charitable or assessee has transgressed its activities from the objects. The so called religious activities here in this case is nothing but spiritual activities, because trust has been imparting spiritual and religious discourses in various samagams for providing spiritual healing to the public at large. No such benefits have been ascribed by the AO based on hypothesis that TV telecast might give some benefit to the founder by enhancing his popularity as he has benefited by these TV programs.

In fact such kind of spiritual lecture telecasted by various TV channels is meant for general public at large and not for the benefit of the person delivering the lectures. Hence such **contention of the disallowance made by the AO is rejected**. HC ruled that without there being any material on record, the AO cannot hold that the assessee must have incurred expenditure which in turn must have come through anonymous donations. Thus, such reasoning is rejected. In the result appeal of the revenue is dismissed.

Source: High Court of Delhi, CIT vs. Bhagwan Shree Laxmi Narain.

Dated of Publication: November 19, 2019

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ITAT RULINGS

Rent paid for Infrastructure assets taken on Finance Lease allowed as Revenue Expenditure

Facts

The assessee company was engaged in the business of information technology education and knowledge solution which had taken

infrastructure/ movable assets on finance lease and claimed deduction of in respect of payment of principal amount of finance lease. The AO disallowed the claim and held that though the interest on such finance lease could be allowed as revenue expenditure, payment of principal amount was in nature of capital expenditure in respect of the value of leased assets and could not be allowed as revenue expenditure. On an appeal before the CIT-A, the same was dismissed. Secondly, the CIT-A confirmed the levy of penalty on the basis of quantum appeal.

Ruling

The Tribunal considering the totality of the facts and circumstances of the case and nature of infrastructure facilities provided to the assesse company on lease rent held that same had been provided through agreement for business purpose of the assessee company. Since the assessee used these items wholly and exclusively for the purpose of business though was not the owner of the same, the assessee company rightly claimed the same as revenue expenditure and rightly claimed the deduction of the same. Accordingly, the orders of the authorities were set aside and the entire addition deleted.

With respect to the penalty levied, the Tribunal held that it is a well settled position of law that quantum proceedings and penalty proceedings are independent and distinct in nature. Since the Ld. CIT-A did not mention point for determination and did not provide reasons for his decision while confirming the penalty or deleting the addition along with sufficient opportunity of being heard to the assessee, the matter was referred back by the Tribunal to the CIT-A for reconsideration. Appeal of assesse is thus allowed for statistical purpose.

Source: ITAT in NIIT Ltd. vs. DCIT

Date of publication: November 1, 2019

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Registration under section 12A can be cancelled from initial date when registration had been granted if assessee has not carried out any activity in line with its objects or activities carried out are not genuine

Facts

The Commissioner cancelled registration granted to the assessee on the following grounds:

- Firstly, the assessee could not furnish any details or evidences that the activities carried out by the assesse company during the AYs 2011-12 to 2016-17 were in accordance with its objects or whether it had actually carried out any genuine activities.
- Secondly, the expenditure which was stated for fulfillment of youth commitment for ideals of democratic and secular society was in actual payment for repaying back a loan amount, acquisition of shares, and interest payment on loan.

The assessee submitted that Commissioner (Exemptions) does not have the power to cancel the registration from retrospective date and any such cancellation can only be prospective, i.e., from the date of passing of the order.

Ruling

The court held that the assessee at the time of seeking registration itself has concealed the material facts and not disclosed the entire events of, transactions which had undergone from the date of inception of assessee company till the grant of registration and one of the conditions on which the registration has been granted stood violated from the day one and therefore, under these circumstances, the Commissioner (Exemptions) was fully justified in law and on facts in cancelling the registration from the date of granting of registration itself, i.e., from the AY 2011-12. Secondly, here in this case it was found that even after grant of registration u/s 12AA, no genuine activities has been carried out by the assessee either in furtherance of its objects or otherwise.

Hence, in that sense, the assessee's activities were not being held to be genuine. Thus, the cancellation of registration u/s 12AA by the Commissioner (Exemptions) from AY 2011-12 was upheld.

Source: ITAT Delhi in Young Indian vs. CIT (Ex)

Date of publication: November 15, 2019

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Cancellation of registration of a charitable institution, which at the time of seeking registration did not disclose fully and truly all material facts

Facts

The material facts and information are hereunder:

- Firstly, the loan transfer had not been disclosed at any stage in the course of process of registration.
- Secondly, asset and liabilities has not been disclosed.
- Thirdly, the purpose and the object for acquiring entire shareholding was neither brought to the notice of Director (Exemptions) nor explained at the time of registration.

The Assessee Company, seeking registration as a charitable Institution, **had not disclosed fully and truly all material facts with clear conscience and probity.**

Ruling

Accordingly, the Commissioner (Exemptions) was justified in cancelling the registration from the AY 2011-12, because none of the activities of the assessee was carried out in accordance with its objects nor its activities can be held to be genuine.

Source: ITAT Delhi in Young Indian vs. CIT (Ex)

Date of publication: November 15, 2019

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While passing assessment order, Assessing Officer had followed permissible view in law which could not be said to be 'unsustainable in law'

Facts

The assessee's are the employees of IBM India Pvt. Ltd. who went to Switzerland on company's foreign assignment. The undisputed facts are that the residential status of all the assessee's for the relevant year is "non-resident" and that they actually rendered services outside India during the period under consideration. The employer deducted tax at source u/s 192 on the entire gross salary earned by the assessee's. The assessee's however claimed in their respective returns of income that the foreign assignment allowance component inter alia included in the gross salary was received by them outside India and that too for the services rendered outside India and therefore fell outside the ambit of total income u/s. 5(2) of the Act. In the assessments completed u/s 143(3), the AO accepted the assessee's claim for exclusion of such foreign assignment allowance from the ambit of total income. This action of the AO has been interfered with by the Ld. CIT on the ground that AO's action is erroneous as well as prejudicial to the Revenue. Ld. CIT invoked the revisionary jurisdiction on the broad allegation that the AO had failed to conduct enquiries which the facts of the case required the AO to conduct. Further, the Ld. CIT held that before passing of the assessment order, there was lack of application mind to the facts and incorrect application of applicable legal provisions in the facts of the case. As a result the AO passed an order which in the opinion of ld. CIT was unsustainable in law and therefore liable for revision u/s 263 of the Act.

On combined reading of the assessment order, AO had carried out such enquiry as the circumstances warranted and permitted before accepting the claim of the assessee and passing assessment order accordingly. It was an entirely different matter that the Commissioner did not agree with the conclusion derived by the AO from the enquiries made. Failure to carry out an enquiry is one thing and in such cases the commissioner would be justified in saying that the mere failure to make any enquiry was erroneous and prejudicial to the interests of the Revenue. But it would not be open to him to hold that the assessment order was erroneous and prejudicial to the interests of the revenue merely because he is of the opinion that some more enquiries are required to be made and he could not agree with the conclusion arrived at by the AO from the enquiries made.

Ruling

The assessee had led before the ld. CIT sufficient documentary evidence which proved that the SCN had proceeded on assumption of incorrect facts and wrong interpretation of applicable legal provisions. It was also established before the ld. CIT that before completion of assessment, the AO had indeed made enquiries into the foreign assignment allowance and after being satisfied about its

non-taxability, the order u/s 143(3) of the Act was passed. On receipt of these objections, though the ld. CIT did not agree with the submissions, we find that ultimately the reasons on which the ld. CIT proceeded to pass the order did not contain any substantive legal or factual material by which he was able to prove that the said explanations suffered from any infirmity. Subsequently, all the appeals of the assessee's are allowed and the stay applications are dismissed.

Source: ITAT Kolkata Bench 'C', Bodhisattva Chattopadhyay vs. CIT, Kolkata

Date of Publication: November 15, 2019

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Receipt exempt from tax under Income tax law cannot be considered for purpose of computation of book profit u/s 115JB of the Income-tax Act 1961

Facts

The assessee is a public limited company which is engaged in the business of manufacturing and selling of pellets, hot/cold rolled coils/sheets, galvanized coils/sheets and plates and slag cement. The assessee has filed its return of income for AY 2006-07 declaring the total income of INR 'Nil' under normal provision of Income Tax Act, 1961 and book profit of INR 960.77 crores u/s 115JB of the Income Tax Act, 1961. Subsequently, a revised return of income was filed, wherein the loss to be c/f under the normal provision of the Act, was increased to be INR 10.45 crores on account of disallowances of consumption of work rolls, additional depreciation on account of loss on forward contracts capitalized and additional deduction u/s 43B of the Act, on payment basis. The case was selected for scrutiny and the assessment was completed u/s 143(3) determining total income of INR 159.27 crores under the normal provisions of the Act, and book profit of INR 1,297.87 crores u/s 115JB of the Income Tax Act, 1961. The assessee carried the matter in appeal before the first appellate authority. The Ld. CIT(A) for detailed reasons recorded in his appellate order decided all issues in favour of the assessee . Aggrieved by the Ld. CIT(A) order, the revenue is in appeal and the assessee has filed cross objection on the issue, i.e. where, the sales tax incentives is considered as capital receipt , the same should also not be considered while computing the book profits u/s 115JB.

Ruling

The settlement has resulted in loss to the above extent; the said amount needs to be added to the cost of the concerned capital assets. Depreciation shall be allowed on the enhanced value of the capital assets. This issue is decided in favour of the assessee."

The ITAT special bench of Kolkata Tribunal, in the case of **Sutlej Cotton Mills Ltd. v. ACIT [1993] (45 ITD 22),** held that a particular receipt, which is admittedly not an income cannot be brought to tax under the deeming provisions of section 115JB of the Act. As a result, the appeal filed by the revenue is dismissed and cross objection filed by the assessee is allowed.

Source: ITAT Mumbai Bench 'E, Assistant CIT Tax vs. JSW Steel Ltd.

Dated of Publication: November 29, 2019

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CIRCULARS & NOTIFICATIONS

Amendment to the rules under the Prohibition of Benami Property Transactions Act, 1988

CBDT makes amendment in the Prohibition of Benami Property Transactions Rules, 2016, rule 10 which shall be called the Prohibition of Benami Property Transactions (1st Amendment), Rules, 2019 under the provisions of section 46-Appeals to Appellate Tribunal.

For the sub-rules (1) and (2) of rule 10, the following rules shall be substituted:

- An appeal under sub-section (1) and sub-section (1A) of section 46 of the Act shall be made to the Appellate Tribunal in Form 3 annexed to these rules.
- An Appeal filed under:
  - Section 46(1) of the Act shall be accompanied with a fee of Rs. 10,000,
  - Section 46(1A) of the Act shall be accompanied with a fee of Rs. 2000.

Source: CBDT Notification dated November 29, 2019

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CBDT approves a Scientific Research Association/Institution for the purposes of section 35(1)(ii) of the Income Tax Act, 1961

Section 35 of the Income Tax Act, 1961 allows deduction for any expenditure (not to be of capital nature) laid out or expended on Scientific Research related to the business of the taxpayer. In view of the said section, CG has approved **M/s International Centre for Research in Agroforestry, South Asia Regional Programme, NASC Complex, Delhi (ICRAF)'** in the category of 'Scientific Research Association' from AY 2019-20 onwards.

The said association is however subject to the following conditions:

- The **sole objective of the approved Organization shall be to undertake scientific research** and shall **carry out research by itself,**
- Shall **maintain separate books of accounts**, reflecting therein the amounts used for research and should get such books audited by an accountant, furnish the report of such audit to CIT /DIT by the due date of furnishing the return of income u/s 139(1) of the Income Tax Act, 1961,
- Shall **maintain a separate statement of donations received and the amounts applied for scientific research** and a copy of such statement duly certified by the auditor shall accompany the report of audit referred to above.

Further, the CG shall withdraw the approval, if the approved organization:

- fails to maintain separate books of accounts,
- fails to furnish its audit report,
- fails to furnish its statement of donations received and sums applied for scientific research,
- ceases to carry on its research activities or its research activities are not found to be genuine
- Ceases to conform to and comply with the provisions of section 35(1)(ii) of the Act read with rules 5C and 5D.

Source: CBDT Notification No. 99/2019 dated November 27, 2019

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CBDT notifies Recognized Association for Speculative Transactions under the provisions of section 43(5) of the Income Tax Act, 1961

As per Section 43(5) of the Income tax Act, 1961 any derivative transaction entered in to any recognized stock exchange, is **not**

treated as speculative transaction and the loss from such transaction can be set off against its normal business Income. In lieu of the said section the Central Government has notified **'M/s National stock Exchange of India Ltd. Mumbai'** as an unrecognized association' for the purposes of the said clause.

Source: CBDT Notification No. 100/2019 dated November 27, 2019

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