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CHARTERED ACCOUNTANTS

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DIRECT TAX REVIEW

OCTOBER 2019

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SUPREME COURT RULINGS

No penal provisions retrospectively applicable in case of the Black Money Act

Facts

Section 59 of the Black Money Act states that any individual holding any undisclosed assets or property or money may disclose the same to the Income Tax and the Government on or before September 30, 2015, and may pay the relevant taxes and penalties on the same on or before December 31, 2015. The Act was to be applicable from April 1, 2016, and it meant that any undisclosed asset or property identified by any assessing order on or after April 1, 2016 which is not protected by section 59 would be penalized under the Act.

For the convenience of the assessee, the date September 30, 2015 was replaced by July 1, 2015. This did not imply that the penal provisions of the Act were applicable retrospectively, as was interpreted by the HC-Delhi.

Ruling

The order of the HC was quashed by the Supreme Court. Further, the SC also clarified its stance that **any undisclosed income, property or asset uncovered by the AO would be charged to the income of the immediately preceding PY, and would be valued as per its value in the immediately preceding PY only.** Hence for example, any undisclosed income or asset discovered by the AO on April 1, 2016 would be added to the income of the assessee for the PY 2015-16, that is, if it is not disclosed on or before July 1, 2015, and the tax and penalty on the same has not already been paid on or before December 31, 2015.

Source: SC in Union of India vs.Gautam Khaitan
No. 1563, date of publication October 15, 2019

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Filing form 18 with the ROC is not adequate intimation for change in address to the AO

Facts

The assessee filed the return for the AY 2006-07 which was processed u/s 143(1) and a notice was issued u/s 143(2) of the Income Tax Act 1961. This notice was sent to the address of the assessee as intimated by him in his PAN. This address was the old address of the assesse company, and hence the assesse company stated that no such notice was received by them. Further, they stated that they had already intimated the AO about the change in address in a communication dated December 6, 2015. The order passed by the AO was upheld by CIT-A, ITAT and the HC which ruled in favour of the assessee company on the grounds that:

- The AO did not send the intimation u/s 143(2) to the correct address, and hence was not communicated to the assessee-company within the time as is prescribed in the Act.
- The assessee-company had communicated the change in address to the ROC in Form 18, and a copy of the same was also intimated to the AO.

- As the correct address had already been communicated to the AO by the assessee-company, the AO should have communicated the notice at the correct address and not the address as per the PAN details of the assesse.

The AO however appealed before the SC on the grounds that no communication relating to change in address of the assessee-company was communicated to the AO, and the same was not produced as evidence. As a result the notice u/s 143(2) was communicated to the old address saved in the PAN.

Ruling

The SC quashed the judgement of the HC, ITAT and CIT-A and ruled in favour of the AO on the following grounds:-

The communication dated December 6, 2015 was not produced by the assessing-company; hence the same argument stands void ab initio.

- Mere filing of Form 18 and intimation to the ROC is not fulfilling the duties on part of the assessee. The assessee is responsible for communicating the same appropriately to the AO.
- The notice was issued via e-module; the address was picked up by the system directly from the PAN database. It is the responsibility of the assessee to get the details updated in the PAN as well.

Source: SC in Principal CIT, Mumbai vs. I-Ven Interactive Ltd
No. 8132, date of publication October 18, 2019

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The Assessee-company unrepresented in the court of law :Appeal to recall judgement denied

Facts

The assessee was served a court notice by the SC at the old address of the company, but no one representing the company appeared in the court of law. Further, a notice in person was also served to the Chartered Accountant of the assessee-company (a dasti notice), yet the assessee-company remained un-represented. An ex-parte judgement made against the company came to the notice of the company through an article in the economic times which led to the company filing an appeal to recall the judgement on the grounds that the company was not intimated of any such notice. In its defense, the company also stated that the dasti notice sent to the Chartered Accountant was also not notified to the company, and the Chartered Accountant was anyways not a Principal Officer of the company, hence the notice could not be affected on the company.

The Chartered Accountant who was served the dasti notice defended himself by saying that he was the authorized representative of the company only in Income Tax office and other such matters, but not in court of law, or Supreme Court for that matter. He also stated that he mistook the dasti notice to be “some documents provided by the Income Tax office”, and because he had undergone a cataract surgery, he wasn’t in a position to understand the documents and intimate the same to the assessee company.

Ruling

The SC ruled against the company on the following grounds:

- The notice was served almost 3 weeks before the cataract surgery of the CA, giving him ample time to understand the notice served him in person and notify the same to the assessee company.
- As to the argument made by the assessee company that the CA was not the Principal Officer of the company, and hence the

notice could not be effected on him, the SC cited **section 2(35)** and also the ruling of **State of Rajasthan vs Basant Nehata 2005** proving that as the CA was holding the power of attorney of the assessee-company for AY 2009-10, hence the notice could be served to him.

- The explanations of the CA that he had a cataract surgery or that he thought that the dasti notice was some document of the Income Tax Department lacked credibility, hence they were altogether nullified.

Keeping in mind all such points, the SC ruled that the company was given ample amount of time and opportunities to represent itself in the court of law, and because the company remained un-represented, therefore the ex-parte judgement passed by the SC stands, and the appeal for recall of judgement was dismissed.

Source: SC in Principal CIT, Central-1 vs. NRA Iron & Steel (P.) Ltd. No. 2463, date of publication October 25, 2019.

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Where Tribunal having exhaustively analyzed entire evidence and taken a view which was a possible view and that being purely a finding of fact, no interference was warranted

Facts

Investigations were conducted by Securities and Exchange Commission in America in respect of parent company of assessee and was discovered during investigation that the assesse had been provided with amounts in India for unlawful purposes, which were not shown in assessee's books of account. As a result of disclosure made available from investigation carried out in USA, assessee sent two letters to revenue, in which it was stated that it did not desire to protract litigation and some reasonable amount, might be added by income tax authorities.

Based on the information received from USA and the admissions made by the assessee, the AO as well as the CIT-A spread over the amount of Rs. 62 lacs over the five AYs under consideration and added an amount in each AY, On further appeal, the Tribunal, based on certain investigations conducted in India, held that there was no material to show that assessee had kept any amount outside its books of account and accordingly, deleted undisclosed income of assessee as recorded by Securities and Exchange Commission in USA. On appeal by revenue, the HC reversed the finding of fact recorded by Tribunal, essentially placing reliance on two letters written by assessee and assumed that it was in form of admission of non-disclosure and an offer was given by assessee to pay tax and penalty, as case maybe.

Ruling

The SC quashed the order passed by the HC and held that placing reliance on written communication(s) cannot be treated as admission of non-disclosure. It is not the case of the Department that the amount referred to in the said disclosure has been received in the accounts of the assesse or spent for and on behalf of the appellant-assessee under instruction, so as to be treated as undisclosed income. On the other hand, the ITAT had exhaustively analyzed the entire evidence, including the two letters and had taken a view which is a possible view. That being purely a finding of fact, no interference was warranted. Therefore, the impugned judgment of the High Court was set aside and the judgment of ITAT was restored.

Source: SC in Goodyear India Ltd vs. CIT, Delhi, dated October 16, 2019.

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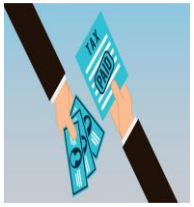
HIGH COURT RULINGS

Refund cannot be withheld on grounds of technical difficulty of system

Facts



The assessee in question, Vodafone Idea Ltd, a well-known public limited company engaged in providing telecommunication services, suffered sizeable deduction of TDS. After scrutiny, an assessment order was passed which allowed a refund of INR 150 crores (approx.) to the assessee. The same however was not forthcoming, and on several applications by the assessee, the Ld Counsel of the assessee stated that the refund was not being processed by the Central Processing Centre (CPC) because of TDS mismatch of INR. 1 arising due to rounding-off of figures, and that even though the demands have been stayed, or not reversed, the same position is not being processed by the CPC.

Ruling

The HC, Bombay ruled in favour of the assessee, stating that a mere computer glitch cannot overpower an assessment order. There was no dispute to the material facts of the case, and no reason why the amount should be withheld. As a result, the appropriate authority was directed to pay INR 150 crores (approx.) due to the assessee plus statutory interest.

Source: Bombay HC in Vodafone Idea Ltd vs.CIT dated October 4, 2019

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No addition as unexplained credit could be made in a case where mere change in nomenclature from jewellery in VDIS decalaration to bullion in sale bills has been noticed

Facts

In exercise of the powers vested u/s 263, the AO proceeded to assess the sale consideration as unexplained credits and made additions. Appellants being aggrieved by the same, filed appeals before CIT-A, Hubli, which was not entertained due to lack of jurisdiction and appeal filed to the AT, also came to be dismissed. However, the appeal was filed by the assessee before the HC was allowed and the matter was remanded back to the AO. The AO further called for details from the assessee and during the course of assessment having extracted the details of jewelry declared and sale of bullion and diamonds made by the assessees, proceeded and held that the additions to capital assets were unexplained and not out of the declaration made under VDIS on the ground that there was a disparity in the nomenclature of the jewelry declared and the jewelry sold by order. The Appellant-assessee being aggrieved by the same filed an appeal before CIT-A, which came to be dismissed by order. The assessee not being satisfied with the order of the CIT- A preferred further an appeal before the Tribunal, which was also dismissed.

Ruling

There was no dispute to the fact that the appellant declared gold jewelry, silver and diamonds which were embedded in the said jewelry under the VDIS 1997 where the declaration was accepted upon the appellant by paying requisite taxes. The assesse-HUF in order to fund its capital has converted the jewelry acquired into standard bullion form and same was sold for which the sale bills had been tendered before the AO. The sale proceeds were received by the assessee through its bank which was not disputed by the Revenue. However, on finding of the tribunal, it was held that the findings of the AO were erroneous and the AO merely stated there was a change in nomenclature and it could not be accepted that the items declared under the VDIS was the same as sold by the appellant. In the light of above stated facts the HC held that the Tribunal committed a serious error in arriving at a conclusion that items sold by the respective appellant were different from the jewelry declared under the VDIS and as such the substantial questions of law was answered in favor of the assesse and against the Revenue.

Source: Karnataka HC in NR Gangavathi HUF vs. ITO, Hubli No. 100024, 100025, 100062 & 100063, date of publication October 9, 2019

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CIRCULARS & NOTIFICATIONS

CBDT notifies Class of persons for the payment of certain amount in cash u/s 194N of the Income Tax Act, 1961

The CG after consultation with the RBI specifies that the undermentioned persons are required to maintain a separate bank account from which withdrawal is made:

- Authorized dealer and its franchise agent and sub-agent; and
- Full-Fledged Money Changer (FFMC) licensed by the RBI and its franchise agent;

The bank account should be maintained only for the purposes of:

- purchase of foreign currency from foreign tourists or non-residents visiting India or from residents Indians on their return to India, in cash as per the directions or guidelines issued by RBI; or
- disbursement of inward remittances to the recipient beneficiaries in India in cash under Money Transfer Service Scheme (MTSS) of the RBI;

Further, a certificate is required to be furnished by the authorised

dealers and their franchise agent and sub-agent, and the Full-Fledged Money Changers (FFMC) and their franchise agent to the bank that withdrawal is only for the purposes specified above and the directions or guidelines issued by the Reserve Bank of India have been adhered to.

The said notification shall be deemed to have come into force with effect from the 1st day of September, 2019.

Source: Notification No. 80/2019, dated October 15, 2019

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Section 115BAA of the Income Tax Act, 1961

The section, inserted on September 20, 2019, states as:

- A domestic company **may opt to pay 22%** of its Income calculated without taking any benefit of:
  - Deduction
  - Additional depreciation
  - Exemption

- Any brought forward of losses due to additional depreciation
- Any brought forward MAT credit

- A company that has opted and paid taxes as per section 115BAA **cannot withdraw from such scheme**, and this scheme will be applicable for such company for future assessment years.
- There is no time limit specified within which the option is to be exercised, hence, it is possible that the **company take full benefit of its MAT credit or brought forward losses before switching** to the tax regime under this section.
- Any provision of **MAT shall not be applicable** to a person opting for tax under section 115BAA.
- The company **must exercise this option before filing the return** for the assessment year.
- This scheme is relevant for AY's beginning from April 1, 2020.

Source: CBDT, Circular No. 29/2019, dated October 2, 2019

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CBDT notifies an Infrastructure Debt Fund for the purposes of section 10(47) of the Income Tax Act, 1961

Section 10(47) grants exemption to Income of any specified income of a Infrastructure Debt Fund set up as per prescribed guidelines of the CG. Therefore, in exercise of the powers u/s 10(47) of the Income Tax Act, 1961, the CG notifies '**IDFC Infrastructure Finance Limited'** as an Infrastructure Debt Fund from AY 2020-21 and onwards. The above mentioned fund is subject to the following conditions:

- The said fund shall conform to and comply with the provisions of the Income Tax Act, 1961, rule 2F of the Income-tax Rules, 1962 and the conditions provided by the Reserve Bank of India in this regard; and
- shall file its return of income as required u/s 139(4C) of the Income-tax Act, 1961 on or before the due date

Source: Notification No. 83/2019, dated October 21, 2019

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