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CHARTERED ACCOUNTANTS

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DIRECT TAX REVIEW

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Inside this edition

SUPREME COURT RULINGS

Reassessment proceedings initiated on or after April 1, 2021 as per the provisions of the old regime stands dismissed as withdrawn

Ruling

Supreme Court dismisses transfer petitions preferred by the Revenue and the Assessee. The Revenue sought permission for withdrawal of its petitions holding that without savings clause on the old reassessment regime, the new regime became mandatory for all reassessment notice. Supreme Court stated that the reassessment proceedings initiated on or after April 1, 2021 as per the provisions of the old regime in the light of CBDT Notifications issued under Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 stands dismissed.

Source: SC in Rajinder Kumar vs CBDT

Transfer Petition (Civil) No. 1698/2021, dated November 15, 2021

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Sale of an immovable property has to be for a price- Deed executed without consideration is void

Facts

The appellant acquired the properties which is the subject matter of the appeal. A power of attorney was executed by the appellant in favour of a third person. On the basis of POA, first sale deed was executed by the third person in name of his minor sons and second sale deed in the favour of his wife for INR 5,500 and INR 6,875 respectively. Two separate suits were instituted by the appellant for injunction restraining the defendants from interfering with the possession of the appellant and from alienating the share of the appellant in the suit properties. The contention of the appellant was that he was the sole owner of the properties under consideration. The Trial Court dismissed the suits filed by the appellant holding that suit lands were intended to be purchased only by the third person. Being aggrieved, the appellant preferred two appeals before the District Court who granted the joint possession by setting aside the sale deeds. The revenue filed appeal before HC.

Ruling

The District Court passed the decree holding that the appellant is entitled to joint possession of the suit properties along with the third party. The order was passed by setting aside the impugned Judgment and order of the High Court. The impugned judgements of the HC were set aside and the appeal of the District Court was accordingly allowed.

Source: SC in Kewal Kishan vs Rajesh Kumar & Ors.

Civil Appeal No 6989 to 6992/2021, dated November 22, 2021

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HIGH COURT RULINGS

Bombay HC quashes faceless assessment order as draft assessment order wasn't served upon assessee

Facts

Petitioner company is engaged in the business of manufacturing tobacco products and real estate filed its return for the AY 2018-19 declaring total losses of INR 40.65 lacs. Notice u/s 142(1) was issued to the assessee initiating scrutiny assessment wherein the impugned assessment order was passed with additions to the tune of INR 120.94 crores. Petitioner therefore challenged assessment order by way of the present petition on the ground that draft assessment order proposing the variations prejudicial to the assessee was not served on the assessee. The petitioner also stated that Faceless Assessment Scheme is non-est and the impugned order of assessment and consequent notice of demand cannot be sustained and deserve to be quashed. The petitioner requested that to remand the matter for fresh adjudication in accordance with the procedure mandated by section 144B.

Ruling

HC in the present case held that sub-section 9 of Section 144B renders assessment under Section 144 non-est, if it is not made in accordance with the procedure laid down in the said Section. Reading of sub-section 9 of Section 144B clarifies that the procedure laid down under section 144B about breach of principles of natural justice is mandatory as the sub-section provides for consequences of rendering assessment in case of breach of procedure laid down in said Section. HC relied on the decisions of **Multiplier Brand Solutions Pvt. Ltd. (supra)** and held that the impugned order of assessment and consequent notice of demand cannot be sustained.

Source: HC in Golden Tobacco Limited vs NFAC

CWrit Petition No 1282 of 2021, dated October 28, 2021

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Mere 'change of opinion' does not entitle AO to reopen assessment even within the limitation period of 4 years

Facts

Petitioner being a private limited company engaged in the business of selling hair care products, providing consultancy services, treatment

in the hair care and beauty sector. Case of the petitioner was selected for scrutiny wherein copy of the agreement with Brand Equity Treaties Limited containing securities premium and advertisement details were called for by the AO which were duly provided by the petitioner. The revenue on the reason that advertisement and marketing expenditure incurred by petitioner was not deductible in view of provisions of Section 37 opened the case of the petitioner stating that any expenditure incurred for a purpose which is an offence or which is prohibited by law shall not be allowed under section 37. The petitioner therefore preferred the present writ petition challenging the notice issued under section 148.

Ruling

HC in the present case held that as per order sheet entry it is clear that the Ld. AO in the original assessment was very well aware of the

issue of expenses incurred on advertisement and marketing by the petitioner and stated that once the Ld. AO had applied his mind in the regular assessment proceedings having incurred advertisement and marketing expenditure, it is not open for the AO to re-open the assessment. HC placed reliance on ***Aroni Commercial Limited vs DCIT*** and in ***Marico Limited vs. ACIT***. HC also stated that AO could not have reopened the assessment merely on the basis of change of opinion and could not have issued a notice of reopening of assessment to petitioner. The notice was therefore set aside on the ground of change of opinion, it is unnecessary to go into other contentions raised by Petitioner.

Source: HC, Bombay in Rich Feel Health and Beauty P. Ltd. vs ITO
Writ Petition No. 3263, 3264, 3296 of 2019, dated November 15, 2021

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Section 205 bars Department from denying to employee assessee the credit of TDS deducted by employer

Facts

The petitioner being a pilot by profession and an employee of M/s Kingfisher Airlines who deducted TDS to the tune of INR 7.20 lacs for AY 2009-10 and INR 8.71 lacs for AY 2011-12. The amount since had not been deposited by the Airlines in the CG Account, the credit when claimed by the petitioner was not given whereas demand had been raised with interest. An amount of INR 0.89 lacs was adjusted against the demand. The petitioner preferred an application under Section 154 and sought the refund of the adjusted demand. Thereafter, a notice of demand was issued to the petitioner for recovery of the outstanding arrears. The petitioner being aggrieved filed the present appeal with the prayer to cancel the outstanding demand and grant such other and further reliefs.

Ruling

HC placed reliance on ***Devarsh Pravinbhai Patel vs ACIT*** wherein it was held that the Department cannot deny the benefit of tax deducted at source by the employer of the petitioner during the relevant financial years. Credit of such tax would be given to the petitioner for the respective years. If there has been any recovery or adjustment out of the refunds of the later years, the same shall be returned to the petitioner with statutory interest. The reliance has also been placed on Gauhati HC ruling in the case of ***Om Prakash Gattani*** wherein it was held that mere deduction of tax at source would not close the chapter of tax liability unless it is deposited in the Government treasury. The HC in the present case held that the credit of the tax along with the statutory interest shall be given to the petitioner. Petition was accordingly disposed of.

Source: HC, Gujarat in Kartik Vijaysinh Sonavane vs DCIT
Special Civil Application No. 6193 of 2021, dated November 15, 2021

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Payments made cannot be treated as bogus purchases without appreciating the fact that amount has been paid via account payee cheque

Facts

Respondent was engaged in the business of Indian made Foreign liquor. The case of the respondent was selected for scrutiny. The

order was passed with additions on account of bogus purchase from the dealers who had issued false bills without delivery of goods. The respondent preferred an appeal before the CIT-A who confirmed the additions in part stating the same as alleged bogus purchases. The respondent thereafter preferred an appeal before the ITAT who passed the order in the favour of the revenue relying on the judgement of ***M/s. MPIL Steel Structure Limited vs. DCIT***. ITAT while making the addition stated that, the Ld. AO had relied upon the notification issued by the Sales Tax Department declaring certain persons as hawala dealers and name of such dealers were not mentioned in the order passed. ITAT relied upon the complete books of accounts, items wise stock register, bank statements evidencing the receipts of gift materials and issue thereof of the appellant while passing the favorable order. The respondent thereafter preferred an appeal before the HC.

Ruling

HC in the present case relied on the order passed by ITAT and held that Tribunal has not committed any perversity or applied incorrect principles to the given facts and when the facts and circumstances are properly analyzed and correct test is applied to decide the issue at hand, then, we do not think that question as pressed raises any substantial question of law. The appeal was thus decided in favour of the respondent.

Source: HC, Bombay in PCIT vs Allied Blenders and Distillers Pvt Ltd
ITA No. 1404 of 2017, dated November 22, 2021

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Addition made upon conjectures and surmises without any evidence is invalid

Facts

A survey action under Section 133A was conducted on the business premises of the assessee. Amongst the loose papers, a paper mentioning INR 2.62 crores was obtained on basis of which addition of the entire amount was made by the AO under section 69A. The assessee preferred an appeal before the CIT-A who allowed the appeal stating that the AO was not justified in invoking the provisions of Section 69A since addition upon conjectures and surmises without any evidence to dispute the explanation offered by the Assessee cannot be made. There should have been some money found with the Assessee. ITAT further upheld the order passed by the CIT-A stating that there is no concrete evidence which has been brought on record by the AO and the addition has only been made on the basis of surmise. Revenue preferred an appeal before the HC.

Ruling

HC held that, ITAT has not committed any perversity or applied incorrect principles to the given facts and when the facts and circumstances are properly analyzed and correct test is applied to decide the issue at hand, then, we do not think that questions as pressed raise any substantial questions of law. The appeal of the revenue therefore stands dismissed.

Source: HC, Bombay in PCIT vs Shri Parvez Mohammad Hussain Ghaswala
ITA No. 1651 of 2016, dated November 24, 2021

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ITAT RULINGS

PCITs revision order u/s 263 in respect of AO's rectification order u/s 154 is liable to be quashed where the order u/s 263 is time barred

Facts

The case of the assessee was taken up for scrutiny wherein the returned income was finally accepted. There was, however, no specific mention about the eligibility of the loss from specified business of INR 19.06 crores being eligible for being carried forward as such. Upon receipt of this assessment order, the assessee moved a rectification petition seeking a specific mention of the loss being eligible for carrying forward. The AO upheld this plea of the assessee observed that "on perusal of the record, the contention of the assessee was found to be correct" and that "during the year, the assessee is having loss". This observation in the rectification order was subjected to the revision proceedings u/s 263 as the ld. PCIT, on a perusal of the material on record, was of the view that as the AO had not examined this claim in sufficient detail, the loss cannot be allowed to be carried forward. The rectification order was thus cancelled. The assessee being aggrieved preferred the present appeal.

Ruling

ITAT relied upon the SC ruling in the case of ***Manmohan Das (supra)***, wherein it was held that "whether the loss or profits or gains in any year may be carried forward to the following year and set off against the profits and gains of the same business, profession or vocation has to be determined by the ITO who deals with the assessment of the subsequent year". It is for the ITO dealing with the assessment in the subsequent year to determine whether the loss of the previous year may be set off against the profits of that year. ITAT also stated that the very exercise of seeking a specific mention, by moving the rectification petition, about the eligibility for carrying forward of loss was thus, in a way, somewhat academic and more as a measure of abundant caution rather than the requirement of law. Once a loss has been disclosed in the return, and such a loss has not been disturbed in the scrutiny assessment proceedings, such a loss is treated to have been accepted, and quantification thereof cannot be disturbed. ITAT further held that just because the AO has missed the verification of the loss, we cannot bend the law to allow that examination now. The finality of time limits has to be respected and followed. The impugned revision proceedings were therefore quashed and appeal was decided in favour of the assessee.

Source: ITAT, Mumbai in Cargo Service Centre India (P.) Ltd. vs DCIT ITA No. 3612 (Mum.) of 2019, dated November 02, 2021

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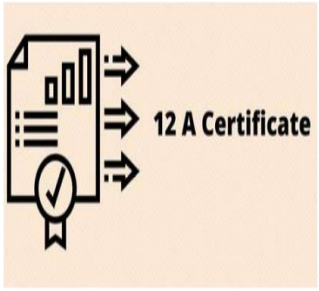
Declining registration under section 12AA to assessee-trust on the basis of mere surmises is not sustainable in eyes of law

Facts



The appellant, Artemis Education & Research Foundation filed an Application in Form No 10A seeking registration u/s 12A which was rejected on the ground that the applicant is to pursue only medical research which is not covered under the term 'education'. The appellant being aggrieved

by the order preferred the present appeal against the assessment order passed by CIT-A, Chandigarh wherein the Ld. CIT went wrong in rejecting the application filed for registration u/s 12AA and erred on the following grounds:

- not granting the registration for the reason that the appellant is pursuing only Medical Research.
- that the object clause of the appellant contains many clauses which are commercial in nature.
- for the reason that the area of operation is in contravention to sec. 11(1)(a).
- order under section 80G(5)(vi) is passed without any notice of hearing to the assessee which against the principles of natural justice.
- the order is bad in law and void ab-initio.

Ruling

ITAT held that the aims and objects having charitable nature, need to be seen for purpose of according approval under section 12A and cannot be throttled merely by relying upon selective aims and objects by making observation that there was a possibility that researches being carried out by assessee within premises of settler company would in turn further enhance commercial potential of hospital, thus, declining registration under section 12A on such ground that medical research to be carried out in hospital of settler company would convert the charitable activities into commercial activities was mere surmises, and not sustainable in law. ITAT also held that even otherwise negligence or indolence on the part of a trained practitioner who has been hired to protect the interest of the applicant, cannot be attributed to the litigant by declining the relief in the interest of justice.

Source: ITAT, Delhi in Artemis Education & Research Foundation vs CIT-A

ITA No. 7475/Del./2017 & ITA/Del./2021, dated November 24, 2021

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Ingredients of Section 68 i.e. identity and creditworthiness of the loan creditors and genuineness of the transaction are mandatory to prove the transaction is a lawful

Facts

The appellant being an NBFC Company and doing the micro finance. It lends money to various persons for the purpose of purchasing electrical & electronic appliances. During the course of proceedings, the AO noted that assessee has taken unsecured loans of INR 2.46 crores from the directors and its members and asked the assessee to furnish the details in respect of unsecured loans with copy of accounts, confirmation from the parties, bank statement and ITR filed by them. The assessee filed details in part regarding the unsecured loans. The AO, therefore, held that the company failed to fulfill the three ingredients of the provisions of Section 68 i.e., identity and creditworthiness of the loan creditors and genuineness of the transaction. Relying on various decisions, the A.O. made an addition of INR 32 lacs to the total income of the assessee under section 68. The assessee against the order passed by the AO preferred an appeal before the CIT-A who partly upheld the order passed by the AO. Aggrieved with such part the assessee has preferred the present appeal before the Tribunal.

Ruling

ITAT held that the assessee failed to fulfill the ingredients of Section 68 despite sufficient opportunities granted to the assessee. ITAT stated that the order of the Ld. CIT-A in my opinion is a reasoned one, therefore, I do not find any infirmity in his order. Accordingly, the order passed by CIT-A was upheld. In result, the appeal filed by the assessee was dismissed.

Source: ITAT, Delhi in Modline Finstock (P) Ltd. vs ITO

ITA No. 8547/Del/2019, dated November 26, 2021

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Reopening of case u/s 147 is justified in cases where no explanation in support is offered

Facts

The case of the appellant was reopened u/s 147 and additions on account of unexplained credits u/s 68 to the tune of INR 4.15 crores was made. The appellant preferred an appeal before CIT-A on the grounds that the order passed u/s 147 r.w.s. 143(3) are illegal, bad in law and without any jurisdiction. The appellant stated that it was the first year of the business of the assessee company and therefore, loans were taken for the purpose of purchasing properties i.e. for business purpose. CIT-A held that the information on the basis of which AO had initiated proceedings u/s 147 was certain and it could be construed to be sufficient and relevant material on the basis of which a reasonable person could have formed a belief that income had escaped assessment. Therefore, the reassessment proceedings initiated by the AO u/s 147 is valid and dismissed the appeal filed by the appellant. The appellant preferred an appeal before the ITAT.

Ruling

ITAT after perusal of all the relevant documents held that the Ld. AO has given a categorical finding that evidences were not produced related to creditworthiness and genuineness of the sources of funds and the parties thereon. Though the CIT(A) has mentioned in general statement that evidences were put up, but from the records it is seen that these are general statements and the source of the funds upon which the creditworthiness is depended has not been established by the assessee through any document and the condition of creditworthiness was not satisfied. From the perusal of records, it can be seen that the assessee has also not given plausible explanation in respect of genuineness of the transactions. ITAT also observed that no bank statement was placed on records. The case was thereafter remanded back to the file of the AO for proper adjudication on verification of the evidences. In the result the appeal of the assessee was dismissed.

Source: ITAT, Delhi in ITO vs Ekkta Buildwell P Ltd.

ITA No. 5704, 5809 Del/2018, dated November 26, 2021

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HIGH COURT RULINGS

Nil withholding certificate cannot be denied by Revenue on the ground that lease rental is not subjected to TDS

Facts

Petitioner is a foreign company, tax resident of Ireland and is engaged in the business of aircraft leasing and as regularly filed returns of income in India since the Assessment Year 2019-20, and thereafter. It entered into an Aircraft Specified Lease Agreement with Air India Limited (AIL) for lease of one aircraft (Airbus A320-200), referenced as MSN 7662, for a period of 12 years. Petitioner made applications under Section 197 of the Act for Nil rate of withholding tax on the premise that under Articles 8 and 12 of the India Ireland DTAA, they were liable to pay tax only in Ireland. These applications made by the petitioner for the financial years 2016-17, 2017-18, 2018-19, 2019-20 and 2020-21 were allowed by the Assessing Officer, thereby allowing the petitioner to receive considerations from AIL without any deduction of tax at source. Application moved for financial year 2021-22 was issued prescribing 10% as the withholding tax rate which is not in line with the earlier certificate/ order issue in respect of the petitioner – as taken note of hereinabove. Aggrieved by the same, this petition has been preferred.

Ruling

HC held that the impugned order cannot be sustained on the ground that the AO is obliged to take into consideration application under Section 197. HC held that the reasons proceed only on the basis of the liability, if any, which may, or may not, be fastened upon another group company. HC stated that by itself, cannot be a justification for denying the 'Nil' rate certificates to the petitioner. HC therefore quashed and set aside the impugned order and remanded the matter back to the AO to pass a fresh order within a period of four weeks. The petition was therefore dismissed.

Source: HC, Delhi in Celestial Aviation Trading Limited vs. ITO
ITA No. TS-6464-HC-2021(Delhi)-O dated November 12, 2021

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ITAT RULINGS

Method for testing arm's length price should be consistently applied to all the International Transactions

Facts

The assessee being wholly owned subsidiary of Perlos Oyj, Finland, is engaged in the business of manufacture and supply of molded components for telecommunication industry. The assessee imports raw materials like display window, key pads from its Associated Enterprises and had entered into an agreement with its AE for availing various managerial services for which it has paid management fees and aggregated all transactions with its AEs and has adopted Transactional Net Margin Method (TNMM) to bench

mark all international transactions, except transaction pertaining to payment of interest on ECB (External Commercial Borrowings) which was benchmarked under Comparable Uncontrolled Price method (CUP) and concluded that international transactions with its AEs are at arms' length price. The case was taken up for scrutiny wherein a reference was made to the TPO to determine arm's length price of international transactions of the assessee with its AEs. The TPO has accepted TP study conducted by the assessee by adopting Transactional Net Margin Method in respect of all international transactions. However, in respect of procurement of management services, determined Nil arm's length price by holding that the assessee did not bring any evidence on record to suggest that it was in need for services for which it has paid to its AEs. The AO thereafter proposed a draft assessment order with addition of INR 17.25 crores. The assessee challenged the draft assessment order and filed an objection for making adjustment for management fees paid to its AEs.

Ruling

ITAT in the present case held that the operating margin of the

assessee and method adopted for testing arm's length price does not prove fact of rendering services and payment of management fees and stated that payment of management fees has to be examined, qua, evidences without going into aspect of operating margin of assessee and TP study conducted for that purpose. ITAT placed reliance on HC, Delhi ruling in the case of ***DCIT vs. Magneti Marelli Powertrain India P. Ltd.*** wherein it was held that once the AO has tested aggregate international transactions by adopting a particular method, then he cannot select few transactions and apply different method to test arm's length price of said transactions. ITAT held that in the present case, the assessee has failed to bring on record any evidences to justify payment of management fees, therefore, we are of the considered view that case laws relied upon by the assessee on the issue of necessity of availing services and question of cost benefit analysis of said expenditure has no application to present issue in hand. Therefore, findings of the DRP were upheld and the appeal filed by the assessee were dismissed.

Source: ITAT, Chennai in Lite-On Mobile Pay India Pvt. Ltd. vs. DCIT ITA No. 3194 & 478/CHNY/2017 dated November 03, 2021

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