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CHARTERED ACCOUNTANTS

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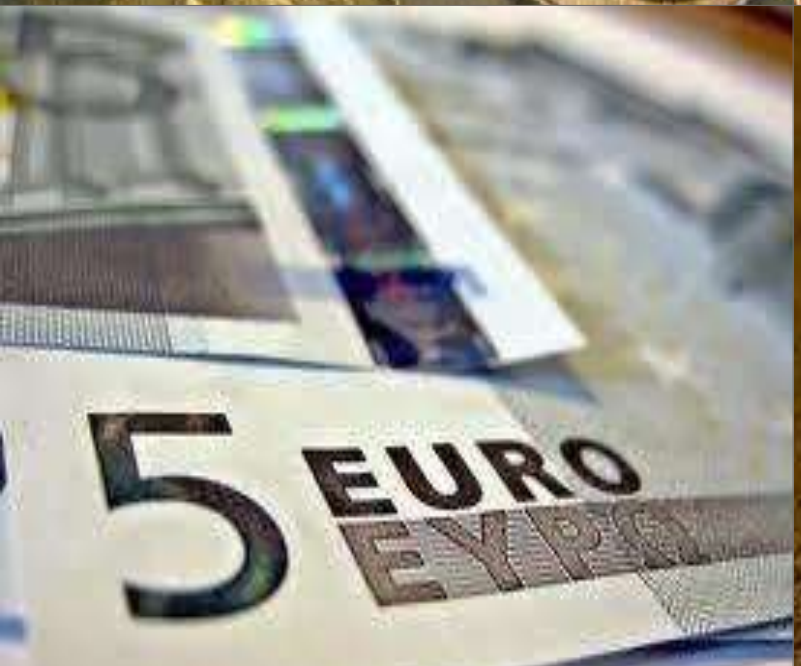
DIRECT TAX REVIEW
SEPTEMBER 2016



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Fees collected by University couldn't be held as Govt. funding just because fee collection is empowered by Statute

Supreme Court by impugned order held that to consider a University as wholly or substantially financed by Government as contemplated under section 10(23C)(iiiab), funds received from Government must be direct grants/contributions from governmental source and not fees collected from students under Statute - Further, where grants/direct financing by Government during six assessment years in question had never exceeded 1 per cent of total receipts of assessee-University, assessee could not be considered as directly or even substantially financed by Government so as to be entitled to exemption from payment of tax under section 10(23C)(iiiab) and, accordingly, denied exemption under section 10(23C)(iiiab).

Source: Visvesvaraya Technological University Vs ACIT

Supreme Court of India ,[2016] 73 taxmann.com 286 date of publication 29-09-2016

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Monthly maintenance charge payable by tenant is part of actual rent

High Court held that if monthly maintenance charges are stipulated in the rent agreement to be paid by lessor / licencee /tenant, the same shall form part of rent for the purposes of computing annual value of the property.

However, the rent agreement stipulates that these charges shall be paid by the owner, it is obvious and reasonable to presume that the same is factored into the rent, fee or compensation payable by the lessee or the licencee. In that event the same cannot be added to the rent agreed to be paid.

Source: Sunil Kumar Gupta Vs ACIT

High Court of Punjab and Haryana ,[2016] 73 taxmann.com 374 date of publication 29-09-2016

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Exemption can't be denied to an educational institution even if it's earning huge profits

Facts of the case

The petitioner(assessee) is a University established under the Gujarat Act No. 19 of 2005. The petitioner is a trust registered under the Bombay Public Trust Act and enjoys registration under section 12AA of the Act and approval under section 80G (5) of the Act. Later on, the petitioner was also declared as a "Deemed University" by the University Grants Commission vide notification dated 05.02.2007. The assessee filed exemption u/s 10(23C) (vi). CCIT rejected the application of the assessee. Main reason for rejection was that the assessee had accumulated sizeable profit of Rs. 1.14 crores, 47.35 lacs and 44.74 lacs for the assessment years 2009-10, 2010-11 and 2011-12 respectively.

Ruling of the High Court

High Court set aside the impugned order by contending that the surplus made by educational institution after carrying out educational activities by itself would not indicate that institution did not exist for educational purposes but for purposes of making profit. Whether surplus so generated was utilized for purposes of educational activities also would be a relevant consideration. Thus, where Commissioner had not taken into account correct figures and was thus misguided into coming to conclusion that assessee had generated sizeable profit and rejected its application seeking exemption under section 10(23C) (vi) matter required readjudication. The proceedings are placed back before the Commissioner for fresh consideration and disposal in accordance with law.

Source: Ganpat University Vs Arvind Shankar

High Court of India ,[2016] 73 taxmann.com 373 date of publication 28-09-2016

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ICDS exemption for individual and HUF not liable for tax audit

CG notifies that the ICDS standards to be followed by all assessee (other than an individual or a HUF who is not required to get his accounts of the previous year audited in accordance with the provisions of section 44AB of the said Act) following the mercantile system of accounting, for the purposes of computation of income chargeable to income-tax under the head "Profits and gains of business or profession" or "Income from other sources".

This is notification shall apply to assessment year 2017-18 and subsequent assessment years.

Source: [Notification No.87/2016, F.No.133/23/2015-TPL] , Date of publication 29-9-2016

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Amendment to Form no. 3CD by CBDT to report ICDS adjustment

CBDT has notified form no. 3CD to report ICDS adjustment

Source: [Notification No.88/2016, F.No.133/23/2015-TPL] , Dated 29-9-2016

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Printing of official email address and office telephone number on Notice u/s. 143(2) of the ITA, 1961

CBDT through its letter in F. No. 225/214/2016/ITA.II dated 30.08.2016 directed various income-tax authorities to mention their e-mail address and office telephone number in all notices/letters/communications being issued by them to the taxpayers. The AO are directed to update their office details in the system. Until the e-mail address and office telephone number of Assessing Officers are automatically printed on notices u/s. 143(2), the Assessing Officers should put a stamp/mention the details of their official email address and office telephone number on notices u/s. 143(2) before sending it to the assessees.

Source: Notice/F.No DGIT(S)/ADG(S)-2/CASS 2016-17/93/2016 date of publication 24-09-2016

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HC allows business expense as assessee was doing new business with retained employees after transfer of old business

Facts of the case

The assessee-company was engaged in the business of providing automated teller machine (ATMs). A part of this business namely 'Outsourcing of ATMs' was transferred to another company EIPL. It retained a portion of employees and infrastructure even after the said transfer.

The Assessing Officer was of the opinion that the entire business was sold by the assessee and he was barred from entering into same line of business for three years. He held that in absence of any business activity, income could not arise and thus interest expenses could not be set off against business losses.

On further appeal, CIT(A) held that that even though the assessee had transferred a part of its business, it was still carrying on job work business to said company EIPL and also carried a new contract work for a company CLGSPL by utilizing the retained employees and infrastructure and also the income so earned was included in his profit and loss account and was acknowledged by the Assessing officer. He, thus held that the assessee had the right to claim all expenses under head income from business and resulting losses would be eligible for set off against other heads.

On further appeal ITAT affirmed the order of the CIT(A). Revenue on further appeal to High Court.

Ruling of the High Court

The High Court held that Tribunal was correct in law in holding the assessee was entitled to claim expenses.

Source: Commissioner of Income Tax, Chennai Vs ISC Investment & finance(P)(ltd)

High Court of Madras,[2016] 73 taxmann.com 279 dated 28-09-2016

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Interest waiver request to be reconsidered as assessee and his wife suffering from bipolar disorder

Facts of the case

The assessee had filed an application under section 220(2A) for the benefit of waiver or reduction of interest which was rejected by the Commissioner.

Assessee filed writ petition in High and states that if the liability of interest was substantial, he would not be in a position to discharge the liability and the only property belonged to him was attached by the department. Unless the property was sold, he would not be in a position to pay even principal amount but none of the reasons in the application was considered by the Commissioner.

Assessee has already stated that he has already paid 1.40 lakhs with respect to the liability and had also produced a document stating that he assessee and his wife were suffering from bipolar disorder and was under treatment.

Ruling of the High Court

The Supreme Court had clearly indicated that when an application is considered under section 220(2A) it has to be considered in a judicious manner. The Commissioner had stated that there is a threat by the assessee and waiver of interest cannot be done by threat. The said reason alone would not justify denial of the benefit of waiver or reduction of interest. The denial of reduction or waiver of interest has to be considered in the light of the statutory provisions as enumerated in section 220(2A). Under such circumstances, the matter requires reconsideration by the Commissioner.

Source: V.M Mathai Vs P. CIT, Kochi

High Court of Kerala,[2016] 73 taxmann.com 262 (Kerala) date of publication 27-09-2016

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No extension of time-limit under Sec. 54F in absence of genuine hardship

High Court of Punjab and Haryana held that application of assessee to condone delay and for the grant of extension of time to comply with the requirements of section 54-F for claiming a deduction thereunder, was rightly rejected by the CBDT, on the ground that the assessee had failed to demonstrate compliance of section 119 (2)(c)(ii) as relaxation in terms of section 119 (2) (c) can be sought by the assessee at the time of claiming deduction and such claim can be made only within the time period, as prescribed under the Act for making such claim. There is nothing in section 119 (2) which gives any power to the Board to extend the time to claim the deduction. Thus, assessee could have applied for relaxation for claiming the benefit under section 54-F only within the time prescribed under that section and that too, if before making such claim, he had complied with the required conditions to claim such deduction.

Source: Shivinder Singh Brar , Karta of HUF Vs CBDT

High Court of Punjab and Haryana,[2016] 74 taxmann.com 28, dated 28-09-2016

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AO should treat land as agricultural land if survey dept. found it beyond 8 kms from municipal limits

Facts of the case

The assessee a HUF, filed its return and claimed NIL income under the head LTCG as the land being agricultural land and situated beyond 8 kms of municipal limits. AO issued notice u/s 148 for reason to believe that the land was situated within 8 kms. Of municipal limits. On being requested by AO Inspector of Survey and land records (Maintenance) furnish that the distance road route to the said agricultural land measures at 9.13 kms. AO based on the report of Investigation wing held that the land was situated 8 kms from the local limits of a municipality and accordingly assessed long term capital gain in assessee hands. On further appeal, CIT(Appeals) decided the matter in favour of the assessee. ITAT also dismissed the appeal of the revenue. Revenue on further appeal to High Court.

Ruling of the High Court

High Court also decided in favour of the assessee by contending that revenue department and survey authorities are competent to measure the land and issue appropriate certificates, and the same cannot be ignored by the Assessing Officer, by relying on the report of the investigation wing. In such matters, it would be appropriate, to take the assistance of the survey authorities, to arrive at the conclusion. On the facts and circumstances of this case, it is also stated that in the matter giving weightage to the evidence adduced in this regard, report of the departmental inspector vis-a-vis certificates of the revenue authorities, produced before the Assessing Officer, the latter should be given weightage and accepted, unless the contrary is proved.

Source: CIT, Coimbatore vs K.R.N Prabhakaran (HUF)

High Court of Madras,[2016] 73 taxmann.com 305, date of publication 30-09-2016

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Govt. cuts interest rates on PPF and Sukanya Scheme for 3rd quarter

Government has reduced the rates on various small saving scheme, for the third quarter of financial year 2016-17 starting from 1st October, 2016 and ending on 31st December 2016. Details as under:

Instrument	ROI w.e.f 1-07-2016 to 30.09.2016	ROI w.e.f 1.10.2016 to 31.12.2013
Savings Deposit	4.0	4.0
1 Year Time Deposit	7.1	7.0
2 Year Time Deposit	7.2	7.1
3 Year Time Deposit	7.4	7.3
5 Year Time Deposit	7.9	7.8
5 Year Recurring Deposit	7.4	7.3
5 Year Senior Citizens Savings Scheme	8.6	8.5
5 year Monthly Income Account Scheme	7.8	7.7
5 Year National Savings Certificate	8.1	8
Public Provident Fund Scheme	8.1	8
Kisan Vikas Patra	7.8 (will mature in 110 months)	7.7 (will mature in 112 months)
Sukanya Samriddhi Account Scheme	8.6	8.5

Source: OFFICE MEMORANDUM [F.NO.1/04/2016-NS.II], dated 29-9-2016

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Books of account couldn't be rejected due to non-maintenance of day-to-day stock register

Facts of the case

The assessee was a manufacturing unit. AO rejected assessee's books of account on ground that the assessee had not maintained day-to-day stock register and there were serious discrepancies in the stock register. Assessee contended that AO had wrongly assessed the income on the basis of the stock register, as there were differences as compared to the audited books of accounts.

On appeal, the CIT(Appeals) held that change of method of accounting on account of modvat could not be a reason for rejecting the books of account and section 145(2) was not applicable to assessee's case.

On revenue's appeal, the Tribunal upheld the action of the AO in rejecting the books of account of assessee. Assessee on further appeal to High Court.

Ruling of the High Court

The High Court held that if the stock register is not tallying with the other books of accounts only because some of the items were not deleted from the stock register. Taking into account the decision of this Court in CIT v. Symphony Comfort Systems Ltd. not maintaining the day to day stock register is not a ground to reject the books of account.

A low rate of gross profit as compared to the previous year, in the absence of any material pointing towards falsehood of the accounts books, cannot by itself a ground to reject the accounts books u/s 145(3).

In view of above observations and considering the facts of the case, the view taken by Commissioner (Appeals) is required to be accepted by setting aside the impugned order of the Tribunal.

Source: Jaytick Intermediates (P.) Ltd. Vs ACIT

High Court of Gujarat ,[2016] 73 taxmann.com 195, date of publication 21-09-2016

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CITs to take lenient view for pending assessment if issues are identical with IDS declarations

It is clarified that where a declaration is made under the Scheme for years not under assessment on an identical issue which is pending assessment under section 143(3)/147 of the Act and the person offers to pay the tax and interest, if any, on such issue for the year pending assessment under section 143(3)/147 of the Act, the person shall be treated as having "co-operated' in any enquiry" within the meaning of section 273A of the Act. Therefore, the Principal Commissioners or Commissioners are advised to take a lenient view on receipt of a valid application under section 273A of the Act in respect of an issue for the said assessment year which is identical to the issue on which a valid declaration has been made under the Scheme for other assessment year(s) subject to payment of the entire amount payable under the Scheme.

Source: CIRCULAR [F.NO.282/227/2016-IT (INV.V)/26/2016], Date of publication 22-09-2016

Both employees and employer contribution to PF covered under the ambit of sec. 43B

Facts of the case

PROVIDENT FUND

The AO made additions towards belated payment of employees' contribution to PF, on the ground that the employees' contribution to provident fund is deductible under the provisions of section 36(1) (va), if the same is paid on or before the due date specified under the Provident Fund Act. He rejected assessee's contention that both, employer's contribution and employees' contribution are allowed, once deposited on or before the due date of furnishing return of income under section 139(1).

On appeal, CIT(A), held that the assessee would be entitled to deduction of employees' contribution to PF made before the due date of filing return of income under section 139(1). Revenue on further appeal to ITAT.

Ruling of the Tribunal

Tribunal held that there is no difference between employees' and employer's contribution under the PF Act. Act prescribed only one due date for depositing the contribution, i.e., 15th of subsequent month with the grace period of 5 days which indicates that there is no difference between employee and employer contribution. If the legislature intends to differentiate employees and employer contribution, then there would have been two due dates like in the case of Income-tax Act. Further as per section 43B, it is clear that an extension is granted to the assessee to make the payment of PF contributions or any other fund till the due date of furnishing return of income under section 139(1). Therefore, there is no difference between employees' and employer's contribution to PF and if such contribution is made on or before the due date of furnishing return of income under section 139(1), then deduction is to be allowed under the provisions of section 43B.

Source: DCIT vs Eastern Power Distribution Company of A.P. Ltd

ITAT , Visakhapatnam ,[2016] 73 taxmann.com 206 date of publication 21-09-2016

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Existence of incriminating material during search is essential for assessment of other person under sec. 153C

Facts of the case

Before the High Court the assessee-company submitted that the assessment u/s 153C, read with section 153A was altogether without jurisdiction because such assessment was made on the basis of survey conducted under section 133A upon other person during which no incriminating material was found in respect of the assessee.

Ruling of the High Court

The High Court held that where no material belonging to a third party is found during a search, but only an inference of an undisclosed income is drawn during the course of enquiry, during search or during post-search enquiry, section 153C would have no application. Thus, the detection of incriminating material

leading to an inference of undisclosed income is a sine qua non for invocation of section 153C. According appeal of the revenue is dismissed.

Source: CIT Vs Veerprabhu Marketing Ltd

High Court of Calcutta ,[2016] 73 taxmann.com 149, date of publication 17-09-2016

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Apex Court slams High Court for treating amount of share capital as business income

Facts of the case

The Karnataka High Court held, following Shree Nirmal Commercial vs. CIT 193 ITR 694 (Bom) and 213 ITR 361 (FB), that share capital and refundable deposits received by a housing company from its shareholders in consideration of allotting area to them is assessable as business profits. It was also held that the principles of mutuality are not applicable. It was also held that deposits received from the shareholders for future maintenance is assessable as business income. Assessee on further appeal to the Supreme Court.

Ruling of the Supreme Court

After hearing the leaned counsels for the parties and perusing the relevant material, Supreme Court modify the order of the High Court by holding that the amount (Rs.45,84,000/-) on account of share capital received from the various share-holders ought not to have been treated as business income.

Source: G. S. Homes & Hotels (P.) Ltd Vs DCIT

Supreme Court of India ,[2016] 73 taxmann.com 120(SC)/[2016] 387 ITR 126 (SC), date of publication 16-09-2016

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Government provides TDS exemption on interest and rental payments to 'Tirumala Tirupati' Temple

CG hereby notifies that no deduction of tax shall be made from payments of the nature specified in section 193 or section 194A or section 194-I of the said Act to the Tirumala Tirupati Devasthanams, Tirupati, Andhra Pradesh.

Source: Notification No. 81/2016/F. No. 275/49/2012-IT(B), dated 9-9-2016

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CBDT extended the due date for furnishing of form 15G/15H declarations by payer

CBDT has revised the due date for uploading of form 15G/15H. The details are as under:

S.No	Particulars	Original due date	Extended due date
1	Form 15G/H received during the period from 1.10.2015 to 31.3.2016	30.06.2016	31.10.2016
2	Form 15G/H declarations	15.07.2016	31.10.2016

	received during the period from 1.4.2016 to 30.6.2016		
3	Form 15G/H declarations received during the period from 1.7.2016 to 30.9.2016	15.10.2016	31.12.2016

The due date for furnishing of 15G/15H declarations for the 3rd and 4th Quarter of financials year will remain same.

Source: Notification No. 10/2016/F. No. DGIT(S)/CPC(TDS)/DCIT/15GH/2016-17

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IDS payments shall not be reflected in 26AS; Govt. reiterates its stand on confidentiality of information

Govt. reiterated that information contained in a valid declaration is confidential and shall not be shared. In respect of declarations filed with the Commissioner of Income tax, Centralized Processing Centre, Bengaluru [CIT (CPC)], the declaration shall not be shared even with the jurisdictional Principal Commissioner / Commissioner and payments made under the Scheme shall not be visible to the jurisdictional officers. Form2 and Form4 required to be issued in such cases shall be system generated by the CPC.

Similarly, the declaration filed with jurisdictional Principal Commissioner/Commissioner shall not be shared with any authority within or outside the department including the jurisdictional Assessing Officer. Further, the payments under the Scheme shall neither be reflected in 26AS statement nor can be viewed by the AO in the Online Tax Accounting System (OLTAS) of the Department in the interest of confidentiality.

Source: News/ Ministry of India/dated 15-09-2016

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Dress code at work place not uniform, ONGC in –default for non-deducting TDS on uniform allowance

Facts of the case

During AY 2008-09, survey was carried out at assessee's (ONGC) premises and certain materials were collected during the same which pertained to lapses in tax deduction to uniform allowance. During AY 2010-11, AO observed that assessee failed to deducted TDS on uniform allowance given to employees and held assessee in default u/s 201(1) (1A) for not deducting TDS. AO observed that during the year there was no uniform prescribed by assessee and therefore uniform allowance would not fall within the exemption clause u/s 10(14) (i)

r.w.r. 2BB. As per statement of senior accounts officer of the assessee, uniform was prescribed till 16-11-1995, after which it was discontinued, however benefit of uniform allowance was continued. AO referred to the dictionary meaning of term 'uniform' to conclude that unless there was a precise dress code with colour patterns, the same would not qualify as a uniform. AO thus concluded that assessee was liable to deduct tax and thus disallowed the expenditure of such allowances. On appeal, CIT(A) confirmed AO's order. On further appeal before ITAT, assessee produced a circular dated March 29, 2010 which pertained to 'compulsory wearing of uniform'. ITAT opined that the circular did not prescribe any uniform and merely prescribed a dress code.

Ruling of the High Court

Gujarat HC confirms ITAT order, holds 'assessee' in default u/s 201(1)/(1A) for not deducting TDS on payment of 'uniform allowance' to its employees for AY 2010-11. HC refers to dress code specifications viz. half/full sleeve shirts for males, salwar kameez/ western business suits for women, clarifies that a dress code would not include the term'uniform', further referring to Webster's Dictionary, HC rules that "the term 'uniform' in the context of dressing carries a precise meaning and a meaning which is entirely different from a far broader concept of a general dress code. HC accepts revenue stand and denies granting exemption u/s 10(14), accordingly hold assessee in default u/s 201 for TDS default.

Source: ONGC vs ACIT(TDS)

High Court of Gujarat ,TS-525-HC-2016(GUJ), date of publication 16-09-2016

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Dispute with auditor is a reasonable cause u/s 273B for the delay in furnishing the tax audit report

Facts of the case

The assessee filed return of income for AY 2008-09 on 23-05-2009 through e-filing. Assessment u/s 143(3) was completed on 27-12-2010 and penalty proceedings u/s 271B were initiated as the assessee firm could not get the accounts audited within the time limit prescribed u/s 44AB of the Act i.e. 30-09-2008(applicable in case of assessee). Assessee firm got the accounts audited on 01-05-2009 and filed the ROI on 23-05-2009 which resulted delay of almost 08 months. Assessee on further appeal.

Ruling of the Tribunal

Trinubal held in favour of the assessee by contending that dispute with the statutory auditor is a reasonable cause within the meaning of Section 273B as held in the case of Kripa Industries (I) Ltd. vs. JCIT by ITAT Pune Bench (2002) 76 TTJ 502 (Pune) that there is no mala fide reason for not obtaining the accounts audited in time and penalty u/s 271B should not be imposed.

Source: Gemorium vs ITO(TDS)

ITAT Jaipur, date of publication 21-09-2016

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