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Supreme Court Rulings of the month

SC to decide whether rental income from unsold flats of builder is taxable as business income



SLP granted against High Court's ruling that rental income received from unsold portion of property constructed by assessee, a real estate developer, is assessable as income from house property.

SLP granted against High Court's ruling that interest paid on partners' capital which was utilized for construction of property from which rental income was earned, was allowable under section 24(b).

Source: SC in Sane & Doshi Enterprises vs. CIT

SLP no. 2469 of 2015, date of publication January 31, 2017

HC couldn't uphold validity of reassessment notice when it was contrary to decision of Apex Court: SC



High Court dismissed writ petitions preferred by assessee challenging issuance of notice under section 148 and reasons which were recorded by Assessing Officer for reopening assessment.

Supreme Court held that impugned order passed by High Court was contrary to law laid down by Court in Calcutta Discount Ltd. Co. v. ITO [1961] 41 ITR 191 (SC) as Court has not made any observations on the merits of the cases, i.e. the contentions which are raised by the appellant challenging the move of the Income Tax Authorities to re-open the assessment. Each case shall be

examined on its own merits keeping in view the scope of judicial review while entertaining such matters, as laid down by this Court in various judgments and accordingly it was to be set aside and, matter was to be remanded back to High Court for disposal on merits.

Source: Supreme Court in Jeans Knit (P.) Ltd. vs. DCIT, Bangalore Civil Appeal No. 11189 of 2016, date of publication January 14, 2017

No direct investigation against high public functionaries on basis of legally inadmissible evidence: SC

Raids were conducted on the Birla and Sahara Group of Companies and incriminating materials in form of random sheets and loose papers, computer prints, hard disk, pen drives etc. were found. Evidence of certain highly incriminating money transactions were also found.

Supreme Court held that department had no evidence to prove that entries in these loose papers and electronic data were kept regularly during course of business of concerned business house and these detailed documents recovered by authorities had no evidentiary values and they could not have been relied on to direct registration of FIR and investigation in case of high public functionaries occupying important offices. The complaint should not be improbable and must show sufficient ground and commission of offence on the basis of which registration of a case can be ordered. The materials in question are not only irrelevant but are also legally inadmissible under section 34 of the Evidence Act and accordingly no case is made out to direct the investigation as prayed for.

Source: Supreme Court in Common Cause(A Registered Society) vs. Union of India

Writ Petition (Civil) No. 505 of 2015, date of publication January 19, 2017

High Court Rulings of the month

Payment made by the dealer for outright purchase of software is not "royalty"



The respondent-assessee was a dealer in computer software, having purchased the same from various companies. During the course of assessment proceedings, a disallowance was effected in terms of section 40(a)(ia) by the Assessing Officer on the ground that consideration for purchase was of the nature of 'royalty' under Explanation 4 and 5 of section 9(1)(vi) and tax ought to have been deducted at source in accordance with the provisions of section 194J.

On appeal, CIT(A) affirmed the order of the Assessing Officer. On appeal, Tribunal reversed the order of CIT(A).

The High Court held that the provisions of section 9(1)(vi) dealing with and defining 'royalty' cannot be made applicable to a situation of outright purchase and sale of a product. The Courts have consistently noted the difference between a transaction of sale of a 'copyrighted article' and one of 'copyright' itself. The provisions of section 9(1)(vi) as a whole, would stand attracted in the case of the latter and not the former.

Source: High Court of Madras in Vinzas Solutions India (P.) Ltd vs. CIT, Co. Circle 3(4), Chennai

Appeal No. 861 of 2016, date of publication January 24, 2017

Investment can be made out of advance received under sale agreement for sec. 54EC relief



The assessee entered into an agreement to sell for the subject property on 21-2-2006 and the sale deed was executed on 5-4-2007. The assessee had invested an amount of Rs. 50 lakhs from the advance received under the agreement to sale in the Rural Electrification Corporation Ltd. bonds on 2-2-2007. Assessing Officer as well as CIT(A) held that the assessee was not entitled to the benefit of section 54EC as the amount was invested in the bonds prior to the sale of the subject property on 5-4-2007.

The Tribunal, however, held that even when an assessee made investment in bonds as required under section 54EC on receipt of advance as per the agreement to sell, still it was entitled to claim the benefit of section 54EC.

High Court affirmed the order of the tribunal.

Source: High Court of Bombay in Subhash Vinayak Supnekar vs. CIT.II Pune

Civil Appeal No. 1009 of 2014, date of publication January 25, 2017

No addition on basis of loose papers of receipts recovered during search of third parties

A search and seizure proceedings were conducted in respect of 'T' Group and one of its directors namely 'B'. So far as the assessee was concerned, a chart found in the premises of 'B', containing 66 names with specific amounts which formed the basis of Assessing Officer's conclusion that undisclosed amounts aggregating over Rs. 1.67 crores were received from various parties. The Assessing Officer thus added said amount to assessee's taxable income.

Tribunal opined that particulars and details of cheques etc. reflected in chart, which formed sole basis for addition, could not be attributed to assessee and accordingly deleted the additions.

High Court ruled in favour of the assessee by contending that the Assessing Officer could have added these amounts only if he had made a searching enquiry into all the circumstances. That the amounts were reflected by way of cheques and these cheques were entered in the charts is not in dispute. If such is the case, whether those amounts were reflected in the assessee's bank accounts or not and were encashed by some other entity was a matter of appropriate enquiries. The Assessing Officer's failure to do so could not have resulted in the assessee being taxed for those amounts.

Source: High Court of Delhi in Phonenix Datatech Services (P.) Ltd vs. PCIT, Central-2, New Delhi

ITA No. 804/2016 date of publication January 24, 2017

ITAT Rulings of the month

6 months investment period given under sec. 54EC should be treated as six British Calendar Months



The assessee sold his ancestral property on 13-10-2008 and received the consideration of Rs. 1,05,00,000. The long term capital gains were computed by the revenue authorities at Rs. 17,69,104. The assessee invested amount of Rs. 17,50,000 in REC bonds on 24-4-2009 whereas bonds were allotted on 30-4-2009 and accordingly, claimed deduction under section 54EC. The AO held that since the investment in the specified securities as stipulated under section 54EC was not made on or before 12-4-2009, i.e., within six months from the date of transfer of the property, the assessee was not entitled to claim deduction under section 54EC. CIT(A) upheld the order.

ITAT allowed in favour of the assessee and held that Section 54EC clearly stipulates that investment should be made in specified assets at any time within a period of six months after the date of transfer of the asset. In the instant case, the assessee complied with this condition as the word "month" has to be reckoned as per the British Calendar. The REC bonds were subscribed by the assessee on 24-4-2009 and were allotted to the assessee by REC on 30-4-2009 which is within six months after the date of transfer of asset as per British Calendar month, hence, the assessee fulfilled the conditions laid down under section 54EC and as such assessee is eligible for deduction under section 54EC.

*Source: Income Tax Appellate Tribunal, Mumbai Bench in Niamat Mahroof Virji vs. ITO,17(3)(3),Mumbai
ITA Appeal No. 1964/2014(MUM) date of publication January 20, 2017*

Circulars of the month

Deduction of tax at source income tax deduction from salaries under section 192 of the income tax act,1961



CBDT has issued circular no. 01/2017 which contains the rates of deduction of income-tax from the payment of income chargeable under the head "Salaries" during the financial year 2016-17 and explains certain related provisions of the Act and Income-tax Rules, 1962. For complete details, please refer to the above circular.

Source: Circular No. 1 of 2017 dated January 2, 2017 and as corrected by corrigendum F.NO.275/192/2016-IT (B)], dated January 24, 2017

Clarifications on the Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016

The Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016 (hereinafter 'the Scheme') provides an opportunity to persons having undisclosed income in the form of cash or deposit in an account maintained with a specified entity to declare such income

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and pay tax, surcharge and penalty totaling in all to 49.9 % of such declared income and make a mandatory deposit of not less than 25% of such income in the Pradhan Mantri Garib Kalyan Deposit Scheme, 2016. The Scheme has commenced on 17.12.2016 and shall remain open for declarations/deposit upto 31.03.2017

In response to various queries raised by the stakeholder, the central government has given the following clarification:

- A person can make declaration in respect of any income in the form of deposit in an account maintained by the person with a specified entity and as per Explanation to section 199C(2) the banks and post offices come under the definition of specified entity.
- The Scheme is hence not available for declaration of an income which is represented in the form of assets like jewellery, stock or immovable property. Under the scheme, only income represented in the form of cash or deposit in an account maintained with specified entity can be declared.
- Declaration under the Scheme can be filed in respect of deposits made in an account maintained with a specified entity by any mode such as cash, cheque, RTGS, NEFT, or any electronic transfer system.
- A person who has been issued notice under section 142(1)/ 143(2)/ 148/ 153A/ 153C of the Income-tax Act for any assessment year is eligible to avail the Scheme subject to fulfilment of conditions specified in the Scheme.

- A person against whom a search/survey operation has been initiated is eligible to file declaration under the Scheme in respect of undisclosed income represented in the form of cash or deposit in an account maintained with specified entity.
- Credit for advance tax paid, TDS or TCS shall be allowed under the Scheme.
- Clause (d) of section 199-O of the Scheme provides that the Scheme shall not apply in relation to any undisclosed foreign income and asset which is chargeable to tax under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015. Hence, undisclosed income represented in the form of deposits in foreign bank account is not eligible for the Scheme.
- A person can avail the Scheme for any assessment year commencing on or before the 1st day of April, 2017. Hence, deposits made in bank account prior to financial year 2016-17 can also be declared under the Scheme.
- The amended provisions of section 115BBE of the Income-tax Act, 1961 shall apply to A.Y.2017-18, relating to F.Y. 2016-17. Hence, undisclosed deposits between 01.04.2016 to 15.12.2016 shall also attract tax at the rate provided in the Taxation Laws (Second Amendment) Act, 2016.
- The amount deposited or repaid against an overdraft account/cash credit account/any loan account maintained with a bank or any specified entity is eligible for being declared under the Scheme.
- The adjustment of cash seized by the Department and deposited in the Public Deposit Account may be allowed to be adjusted for making payment of tax, surcharge and penalty under the Scheme

on the request of the person from whom the cash is seized. However, the said amount shall not be allowed to be adjusted for making deposits under the above Scheme.

- If a person 'A' made an advance in cash for procurement of goods (other than immovable property) or services to person 'B' and person 'B' deposits this amount in his bank account or subsequently returns this amount to person 'A' in cash or through digital means as the purpose for which advance was made did not materialise, then in this case also person 'A' will be eligible to declare the said amount under the Scheme. No penalty under section 271D or 271E of the Act shall be attracted in this case.

Source: Circular No. 2 of 2017 dated January 18, 2017

Circular No. 41 of 2016 dated 21" Decembor' 2016, kept in abeyance

CBDT has issued Circular No. 41/2016 on 21.12.2016 regarding Indirect Tranfer Provision under the income tax act, 1961.

After the issue of circular No. 41/2016, the stakeholders have presented their concerns stating that the circular does not address the issue of possible multiple taxation of the same income. The representation made by the stakeholders are currently under consideration and examination.

Therefore, operation of Circular No. 41 of 2016 dated 21.12.2016 is kept in abeyance for the time being.

Source: Circular No. 4 of 2017 dated January 20, 2017

Clarification on Circular no. 21/2015 and 8/2016



Instructions were issued vide CBDT Circular No. 21/2015 dated 10.12.2015, to the effect that appeals/SLPs should not be filed in cases where tax effect does not exceed the monetary limits specified under Para 3 of the said circular. It was also clarified therein that an appeal should not be filed merely because the tax effect in a case exceeds the monetary limits prescribed in the said Circular.

In Para 8 of the aforesaid Circular No. 21/2015, it has been unambiguously and expressly provided that adverse judgements relating to the following issues should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified in Circular or even if there is no tax effect.

- Where the constitutional validity of the provisions of the act or rule under Challenge, or
- Where Board's order, Notification, Instruction or Circular has been held to be illegal or ultra vires, or
- Where Revenue Audit Objection in the case has been accepted by the Department.
- Where the additions relate to undisclosed foreign assets/ bank accounts.

The direction to 'contest on merits' negates the mechanical filing of appeals in these cases.

However it has been noticed that para 8(c) of Circular No. 21/2015, regarding cases where addition made on account of Revenue Audit Objection is deleted, is being erroneously interpreted and appeals are being mechanically filed by the department without proper examination of the case on merits. This is contrary to the instructions

contained in Circular No. 21/2015 and Circular No. 8/2016. It is therefore clarified that the import and intent of para 8 of the Circular No. 21/2015 is that even on issues mentioned in the said para, appeals against the adverse judgement should be filed on merits.

Accordingly, appeals should not be filed by the Department in violation of instructions mentioned above. Further, appeals that may have been filed in violation of these instructions may be withdrawn.

Source: Circular No. 5 of 2017 dated January 23, 2017

Notification/Instructions of the month

TATA Research Center approved for section 35

TATA Translational Cancer Research Centre ('TTCRC') under the aegis of TATA Medical Centre Trust (PAN:- AABTT2222Q) has been approved by the Central Government for the purpose of clause (ii) of sub-section (1) of section 35 of the Income-tax Act, 1961 (said Act), from Assessment year 2016-2017 onwards in the category of 'Scientific Research Association', subject to certain conditions specified therein.

Source: Notifications No. 01 of 2017, F.No.203/4112015/ITA-II, dated January 2, 2017

Procedure for registration and submission of statement of financial transactions(SFT) as per section 285BA of Income-tax Act, 1961 read with Rule 114E of Income-tax Rules, 1962

Section 285BA of the Income Tax Act, 1961 requires specified reporting persons to furnish statement of financial transaction. Rule 114E of the Income Tax Rules, 1962 specifies that the statement of financial transaction required to be furnished under sub-section (1) of section 285BA of the Act shall be furnished in Form No. 61A. CBDT has prescribed a detailed procedure in this regard.

Source: Notifications No. 1 of 2017 dated January 17, 2017

CIAB approved for section 35

M/s Center of Innovative and applied Bio- processing ('CIAB') (PAN:- AABAB8297N) has been approved by the Central Government for the purpose of clause (ii) of sub-section (I) of section 35 of the Income-tax Act, 1961 (said Act), from Assessment year 2016-2017 onwards in the category of 'Scientific Research Association', subject to certain conditions specified therein.

Source: Notifications No. 07 of 2017, F.No.203/02/2016/ITA-II, dated January 31, 2017

CIAB approved for section 35

M/s Christian Medical College Vellore Association (PAN:- AAATC1278N) has been approved by the Central Government for the purpose of clause (ii) of sub-section (I) of section 35 of the Income-tax

Act, 1961 (said Act), from Assessment year 2016-2017 onwards in the category of 'University, College or Other Institution', subject to certain conditions specified therein.

Source: Notifications No. 08 of 2017, F.No.203/04/2016/ITA-II, dated January 31, 2017

Banks can also issue National Saving Certificates

As per the amendment made by the CG, banks are now allowed to issue National Saving Certificates.

Source: Notification NO.GSR 54(E) [F.NO.7/10/2014-NS], dated January 18, 2017

Highlights of Economic Survey 2016-17



Finance Minister Shri Arun Jaitley Presented Economic Survey 2016-17 in the Parliament on 31-01-2017. For complete details refer to our VKC Budget 2017.

Source: Government of India, Ministry of finance, dated January 31, 2017

CIT to condone delay in payment of first installment of IDS in genuine cases

Representations have been received from field authorities and stakeholders that there has been delay in payment of 1st instalment of tax, surcharge and penalty under the Income Declaration Scheme

(the Scheme) in some cases owing to some technical errors in the system, non-deposit of cheque by collecting banks, payment made by filling wrong challan etc.



In this context, it is clarified that as per section 187(3) of the Scheme, non payment of tax etc. on or before the notified dates shall render the declaration invalid and the assessee shall be liable for consequences in accordance with the provisions of section 197(b) of the Scheme.

However, keeping into consideration that delay in payment of first instalment in some of the cases were owing to some genuine technical difficulties, the Central Board of Direct Taxes, in exercise of the powers under section 195 of the Scheme read with section 119 of the Income-tax Act, 1961, hereby directs the jurisdictional Principal Commissioner/Commissioner to accept the request for condonation of delay in payment of tax etc., payable under the Scheme in cases where payment has been made through cheque, RTGS, electronic transfer etc. on or before the date of 30th November, 2016, but the same has been credited by banks after the due date of 30th November, 2016, but on or before the 05th December, 2016.

Source: Instruction No.2 of 2017 [F.NO.142/8/2016-TPL (PART), dated January 16,2017

Varishtha Pension Bima Yojana 2017



**Varishtha
Pension Bima Yojana**

The Union Cabinet chaired by the Prime Minister Shri Narendra Modi has given its post facto approval for launching of Varishtha Pension Bima Yojana 2017 (VPBY 2017). The scheme will be

implemented through Life Insurance Corporation of India (LIC) during the current financial year to provide social security during old age and protect elderly persons aged 60 years and above against a future fall in their interest income due to uncertain market conditions. The scheme will provide an assured pension based on a guaranteed rate of return of 8% per annum for ten years, with an option to opt for pension on a monthly / quarterly / halfyearly and annual basis. The differential return, i.e., the difference between the return generated by LIC and the assured return of 8% per annum would be borne by Government of India as subsidy on an annual basis.

VPBY 2017 is proposed to be open for subscription for a period of one year from the date of launch.

Source: Press Information Bureau, Govt. of India dated January 24, 2017

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