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Supreme Court Rulings of the month

Supreme Court Judgement on Aadhaar-PAN Linkage

Honorable Supreme Court in its landmark judgement has held that:

- a) From July 1, 2017 onwards every person eligible to obtain Aadhaar must quote their Aadhaar number or their Aadhaar Enrolment ID number for filing of income tax returns as well as for applications for PAN;
- b) Everyone who has been allotted permanent account number as on the 1st day of July, 2017, and who has Aadhaar number or is eligible to obtain Aadhaar number, shall intimate his Aadhaar number to income tax authorities for the purpose of linking PAN with Aadhaar;
- c) However, for non-compliance of the above point no. (ii), only a partial relief by the Court has been given to those who do not have Aadhaar and who do not wish to obtain Aadhaar for the time being, that their PAN will not be cancelled so that other consequences under the Income Tax Act for failing to quote PAN may not arise.

Source: CBDT, Press Release dated June 10, 2017.

High Court Rulings of the month

Hon'ble HC deletes sec 43B addition for unpaid VAT not routed through profit & loss account.

Assessee, collected VAT portion from the dealers, but did not deposit the same with the Government within the due-date of filing return of income u/s. 139(1).

However, AO made addition u/s. 43B despite VAT not routed through P&L account and no deduction claimed thereon. On further appeal, CIT (A) and ITAT deleted Sec. 43B addition, on the ground that the same was not claimed as deduction in the books of accounts.

Hon'ble High Court of Chhattisgarh rejected Revenue's stand relying on Delhi HC ruling in Noble & Hewitt (India) (P) Ltd wherein a distinction was made between Chowringhee's case and instances where P&L accounts and service-tax accounts are maintained separately following mercantile system of accounting and held that it is not for the Income Tax department to make out a case relating to the correctness or otherwise of the mercantile system of accounting, resorted to and maintained by an assessee.

Source: HC in ACIT Vs M/s Ganpati Motors

Income Tax Appeal No.30 of 2016 & 8 of 2017. Date of publication June 30, 2017.

Madras High Court upholds section 68 provisions for unexplained share-application money



Madras HC upholds ITAT order, confirms Sec. 68 addition in respect to unexplained share capital contribution in case of assessee-company for AY 2001-02. HC also noted apart from establishing the identity of the creditor, the assessee was unable to dislodge the findings of the assessing officer to the effect that the alleged contributors were not credit worthy, or that the transaction

was bonafide. On the basis of above facts the Hon'ble HC held that, the appellant, failed to establish the genuineness of the cash contributions as well as the capacity of the persons to have made such contributions in the first place.

Source: M/s B.R.Petrochem Pvt.Ltd. Vs ITO

Income Tax Appeal No.1498 of 2007, Date of publication June 30 2017.

ITAT Rulings of the month

Assessment u/s 147/148 held invalid and void ab ignition as notice u/s 143(2) not served

Tribunal has directed the Revenue to produce the record with regard to the assessment so that it can be verified whether notice under section 143(2) of the Act has been issued and served on the assessee before completing the assessment under section 147/148 of the Act, the Revenue was bound to produce the record. But the Revenue could not produce the record and just explained in the Bar that the record has been misplaced. Under these circumstances, we are bound to take an adverse inference in view of the provisions of section 114 of the Evidence Act to the effect that had the assessment record been produced, the same would have gone against the interest of the Revenue.

Source: ITO Vs Gravity System Pvt. Ltd

Income Tax Appeal No.5626 of 2012, Date of publication June 27 2017.

Construction in new flat prior to the execution of sale deed of flat would be eligible for deduction u/s 54

The assessee entered into agreement for sale of flat on 09.04.2012. In pursuance of said agreement, sale consideration was received and possession of land was handed over to the buyer. Subsequently, sale deed was executed and registered on 06.06.2012. The assessee having utilized sale consideration for construction of new flat, filed return claiming deduction under section 54. AO after taking sale deed into consideration, opined that whatever investment was made by the assessee for construction of a new house before the sale of existing property, same could not be allowed as deduction under section 54. The CIT (A) upheld the order of AO.

Tribunal opined that when there was an agreement for sale and physical possession of the property was handed over to the purchaser and the purchaser was in enjoyment of the property as his own, there was transfer of property as per the provisions of section 2(47) under the Act. Therefore, even though the assessee executed registered sale deed on 06.06.2012, that there was a transfer of property within the meaning of section 2(47) of the Act on 09.04.2012 when the assessee entered into an agreement for sale and handed over the physical possession. If the transfer of property took place on 09.04.2012, the payments were made on 23.04.2012 and 05.05.2012 are after the sale of the property.

Tribunal held that in view of language employed by section 54 of the Act, it is not the requirement that the sale consideration has to be invested in purchase of property. It is immaterial whether the assessee invested the sale consideration in purchasing of new flat on receipt of the money after the date of sale or one year before the sale of property. In this case, the assessee invested the sale consideration one

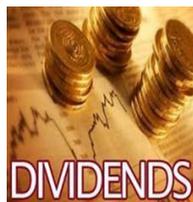
year before the sale of property, therefore, the assessee is eligible for deduction under section 54 of the Act. In view of the above, the Tribunal directed AO to allow the claim of the assessee under section 54 of the Act while computing taxable income.

Source: ITO Vs Devichand Kanthilal Shah

Income Tax Appeal No.3353 of 2016, Date of publication July 01 2017.

Circulars of the Month

Trade Advances in the nature of commercial transactions would not fall within scope of Sec. 2(22) (e).



CBDT has clarified that 'trade advances' which are in the nature of commercial transactions would not fall within the ambit of the word 'advance' in section 2(22)(e) of the Income Tax Act 1961. Accordingly appeals may not be filed on this ground by officers of the department and those already filed, in Courts/ Tribunal may be withdrawn/not pressed upon.

Source: Circular no 19/2017 dated June 12, 2017

CBDT clarified that seized assets can't be adjusted against advance tax is prospective in nature

Section 132B of the Income Tax Act 1961, provides for adjustment of seized assets/requisitioned asset against the amount of any existing liability. The CBDT has already clarified by inserting explanation 2 to section 132B of the act from 01.06.2013 that, existing liability does not

include advance tax payable. However, the dispute continued on the issue as to whether the said amendment was clarificatory in nature having retrospective applicability or it has only prospective applicability.

Accordingly it has been clarified by CBDT that insertion of Explanation 2 of section 132B shall have a prospective applications and so, appeals may not be filed by the department on this issues for the cases prior to 01.06.2013 and those already filed may be withdrawn/not pressed upon.

Source: Circular no 20/2017 dated June 12, 2017

Provisions of Sec 194I are not applicable on 'Passenger Service Fees 'paid by Airline to Airline operator.



There has been dispute on applicability of the provisions of section 194I of the Act, on payment of Passenger Service Fees (PSF) by an Airline to an Airport Operator. CBDT has now clarified that section 194I will not be applicable to PSF by accepting the judgment of Hon'ble Bombay High Court in case of CIT v/s Jet Airways (India) Ltd, where is has declined to admit the ground relating to the applicability of provisions of section 194I on PSF charges holding that no substantial question of laws arises and relied on the Judgement of the Hon'ble Supreme Court dated 04-08-2015 in the case of Japan Airlines and Singapore Airlines where the Apex Court held that the word 'Rent' concludes that the payment must be for the use of land & building and mere incidental, minor, insignificant use of the same while providing other facilities and service would not make it payment for use of land & buildings to attract the provisions of sec 194I.

Source: Circular no 21/2017 dated June 12, 2017

Notifications of the Month

Central Government specifies revised cost inflation index.

CBDT has notified the new cost inflation index applicable w.e.f. AY 2018-19 onwards vide notification no. 44/2017, complete details of the same was given in our VKC News Flash DT 2017 Vol. 2017 dated 08.06.2017.

Source: Notification No. 44/2017/F.no 370142/11/2017-TPL dated June 05, 2017

CBDT notifies Bonds issued by Power Finance Corporation Limited as 'long term specified asset' for availing the benefit of section 54EC.



The central Government notifies that any bond redeemable after three years and issued on or after the 15th June 2017 by the Power Finance Corporation Limited is termed as 'long term specified asset' for the purpose of availing the benefit under section 54EC. Before this only bonds issued by National Highway Authority of India (NHAI) & Rural Electrification Corporation (REC) are eligible for the exemption under section 54EC.

Source: Notification No. 47/2017/F.no 370142/18/2017-TPL dated June 08, 2017

CBDT specifies different variation rates under section 92C.

The central Government notifies that where the variation between the arm's length price determined under section 92C and the price at which the international transaction or specified domestic transactions has actually been undertaken does not exceed one percent of the latter in respect of whole sale trading and three percent in all other cases. The price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price for the AY 2017-18 & 2018-19.

Source: Notification No. 50/2017/F.no 500/1/2014-APA-II dated June 09, 2017

CBDT notifies Intimation of Aadhaar No. is mandatory from 1st July 2017 in return of income & application for PAN allotment.



CBDT has clarified that every person, who is eligible to obtain Aadhaar number shall, on or after the 1st day of July, 2017, quote Aadhaar number –

- (i) in the application form for allotment of permanent account number;
- (ii) in the return of income.

If Aadhaar number is not allotted, then mention the Enrolment ID of Aadhaar Application Form.

Source: Notification No. 56/2017/F.no 370142/40/2016-TPLI dated

June 27, 2017

CBDT to provide PAN related information to 'National Intelligence Grid'



Central Board of Direct taxes, exercising powers u/s 138(1)(a) of the ITA, 1961, hereby directs that Principal Director General of Income-tax (Systems), New-Delhi shall be the specified authority for furnishing information to the Joint Secretary (Ops.), NATGRID, Ministry of Home Affairs, Government of India, as notified vide Notification No. 54/2017 dated 21-6-2017 under sub-clause (ii) of clause (a) of sub-section (1) of section 138 of the Act.

Following 'bulk information' shall be furnished:

- a) All Pan numbers
- b) Name, father's name, gender, date of birth, photograph, signature/thumb impression of all PAN Card holders; and
- c) All information available in ITD database regarding residential/office addresses, addresses for communication, E-mail addresses and phone/mobile numbers of all PAN Card holders.

Source: CBDT order (F.NO.225/300/2016-ITA.II) dated June 21, 2017

Deadline to furnish Form 16 to employees extended till June 15, 2017

Rule 31 inter alia provides that certificate of deduction of tax source be furnished in Form No. 16 annually by the employer to the employee, if

the deduction or payment of tax is under section 192. Vide this notification, the due date to furnish the said Form No. 16 has been extended to 15th June from 31st May of the financial year immediately following the financial year in which the income was paid and tax deducted.

Source: Notification No. GSR 546(E) [F.No 42/2017 (F.No. 370142 /17/ 2017-TPL] dated June 27, 2017

Notification of transactions for which the condition of Chargeability to STT for claiming exemption under section 10(38) shall not apply

Section 10(38), prior to its amendment by Finance Act, 2017 provided that the income arising by way of a transfer of long term capital asset, being equity share in a company shall be exempt from tax if such transfer is undertaken after 01.10.2004 and chargeable to Securities Transaction Tax (STT) under Chapter VII of the Finance (No.2) Act, 2004.

In order to curb the practice of declaring unaccounted income as exempt long term capital gain by entering into sham transactions, the Finance Act, 2017 amended the provisions of Section 10 (38) to provide that exemption under this section for income arising on transfer of equity share acquired or on after 01.10.2004 shall be available only if the acquisition of share is chargeable to STT. However, to protect the exemption for genuine cases where the STT could not have been paid, it was also provided that the Central Government shall notify the acquisition for which the condition of chargeability to STT shall not apply.

In view of the above, vide this notification, it has been notified that the condition of chargeability to STT shall not apply to all transactions of acquisitions of equity shares entered into on or after the 01.10.2004 other than the specified transactions such as acquisition of listed shares in preferential issues of a company whose shares are not frequently traded in a recognised stock exchange; acquisition of existing listed equity share in a company not through a recognised stock exchange of India and acquisition of shares of company during the period of its delisting. However, to protect the interest of genuine investors, exceptions are also provided in the specified transactions.

Source: Notification No. 43/2017 dated June 05, 2017

Form No. 60 may be filed manually or electronically

Section 139A(5)(c) requires every person to quote such number in all documents pertaining to such transactions prescribed by the CBDT in the interests of the Revenue and entered into by him. Accordingly, Rule 114B enlists the transactions in relation to which Permanent Account Number (PAN) to be quoted for the purpose of Section 139A(5)(c). Second proviso to the said rule provides that any person who does not have a PAN and who enters into any transaction specified in that rule, shall make a declaration in Form No. 60 giving therein the particulars of such transaction. Vide this notification, the said proviso has been amplified to enable filing of Form No. 60 in paper form or electronically under the electronic verification code in accordance with the procedures, data structures, and standards specified by the PDGIT (Systems) or DGIT (Systems).

Source: Notification No. 51/2017 dated June 09, 2017

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