

## **DIRECT TAX – RECENT JUDGMENT**

CA. Paras Savla, CA. Ketan Vajani

### **Rejection of registration u/s. 12AA in the case of a trust running educational trust for the reason of acceptance of capitation fees held justified**

Assessee was a charitable trust and was running an educational institution. A search operation was carried out in the office of the assessee and various documents were seized. The seized documents revealed receipt of capitation fees by the assessee. The Treasurer and secretary of the trust in their statements had also admitted that trust was collecting capitation fee for admission of students. For this reason, the Commissioner rejected application of assessee for grant of registration under section 12AA. The same was upheld by the Tribunal on the ground that trust was not running charitable activities. The decision of the Tribunal was affirmed by the High Court. On appeal by the assessee, the Supreme Court held that there was no ground to interfere with impugned order of High Court and instant appeal filed against same was to be dismissed. The Supreme Court accordingly affirmed the order of the High Court reported at Travancore Education Society v. CIT [2016] 66 taxmann.com 362/[2014] 369 ITR 534 (Ker.)

Karnataka Chamber of Commerce and Industry Vs. CIT Hubli (2021) 126 taxmann.com 21 (SC)

### **Automatic vacation of stay granted by Tribunal upon expiry of 365 days held arbitrary and discriminatory and therefore liable to be struck down as offending Article 14 of the Constitution**

Since the object of the third proviso to Section 254(2A) is the automatic vacation of a stay that has been granted on the completion of 365 days, whether or not the assessee is responsible for the delay caused in hearing the appeal, such object being itself discriminatory is liable to be struck down as violating Article 14 of the Constitution of India. Also, the said proviso would result in the automatic vacation of a stay upon the expiry of 365 days even if the Appellate Tribunal could not take up the appeal in time for no fault of the assessee. Further, vacation of stay in favour of the revenue would ensue even if the revenue is itself responsible for the delay in hearing the appeal. In this sense, the said proviso is also manifestly arbitrary being a provision which is capricious, irrational and disproportionate so far as the assessee is concerned.

Consequently, the third proviso to Section 254(2A) will now be read so as to ensure that the stay of demand shall stand vacated after the expiry of the period or periods mentioned in the section only if the delay in disposing of the appeal is attributable to the assessee. The judgment of the Delhi High Court in Pepsi Foods (P.) Ltd. v. Asstt. CIT [2015] 57 taxmann.com 337/ 232 Taxman 78 (Delhi) affirmed.

DCIT Vs. Pepsi Foods Ltd [2021] 126 taxmann.com 69 (SC)

### **Dismissal of SLP against the order of the High Court where it was held that merely because cash deposits accepted were deposited in bank account the penalty u/s. 271D will not be levied**

Director of the assessee company obtained loan/cash exceeding Rs. 20,000 from financier. Loans so obtained were deposited by him in cash in bank account of assessee company. In response to SCN, regarding violation of provisions of section 269SS, assessee explained that amount so received by director was deposited in company's bank account on very same day and same was utilized to pay salaries, rents and EMI commitments. Thus, there was reasonable cause for having availed loan transactions in cash. Assessing Officer rejected assessee's explanation and levied penalty u/s. 271D. The Madras High Court held that merely because director deposited cash obtained by it in the current account of assessee-company on very same day and assessee utilized it to pay salaries, rent and EMI commitments, same could not be a ground to be taken as a mitigating factor to escape from rigour of levy of penalty under section 271D. [Ref : Vasan Healthcare (P.) Ltd. v. Addl. CIT [2019] 103 taxmann.com 26 (Mad.)]. The SLP filed by the assessee against the judgment of the Madras High Court was dismissed by the Supreme Court holding that there was no reason to interfere in the matter.

Vasan Healthcare (P.) Ltd. Vs. Additional CIT [2021] 125 taxmann.com 266 (SC)

### **The Direct Tax Vivad se Vishwas Act, 2020 – Pending prosecution for unrelated issue – Eligibility to file the declaration under the Act**

Where there was a pending prosecution for assessment year in question on an issue which was unrelated to tax arrear, holding that an assessee would not be eligible to file a declaration would defeat very purport and object of Vivad se Vishwas Act. Such an interpretation which abridges scope of settlement as contemplated under Vivad se Vishwas Act could not be accepted.

Macrotech Developers Ltd. v. Principal Commissioner of Income Tax - [2021] 126 taxmann.com 1 (Bombay)

**Compensation for pre-mature termination of Lease Agreement held allowable as deduction u/s. 37(1) + Deduction of Bad Debts u/s. 36(1)(vii) for Debtors acquired in a slump sale transaction.**

Issue I : Assessee terminated lease and licence in respect of two warehouses. The lesser deducted a sum of Rs. 45.16 lacs towards compensation for premature termination of lease agreement. The compensation so deducted amounting to Rs. 45.16 Lakhs was claimed as deduction. Assessing Officer disallowed assessee's claim. However, the Tribunal held that early termination of lease was a business decision and expenditure incurred in relation to same was wholly and exclusively for purpose of business and allowed assessee's claim. On department's appeal to High Court, the High Court affirmed the decision of the Tribunal and allowed the claim of the assessee.

Issue II : Assessee purchased certain assets on slump sale basis and in process certain debts which were part of current assets were reduced. The assessee wrote off a sum of Rs. 1.76 crores claiming same as bad debts and eligible for deduction u/s. 36(1)(vii). The Assessing Officer and the CIT (A) denied the claim of the assessee for the reason that the assessee was claiming double benefit in respect of the same item. Once as a reduction from the cost of undertaking under slump sale and again as bad debts. Tribunal held that lower authorities had completely ignored fact that under Adjustment to Purchase price' purchaser reassigned some debts amounting to Rs. 2.44 crores to assessee and assessee reduced same from purchase price. The Tribunal also held that the finding of lower authorities that debts were transferred as part of net current assets in slump rule and assessee would get double benefit if allowed deduction in respect of write off book debts were wrong and against facts of case. The Assessee had rightly written off debts and same were addressable under section 36(1)(vii). On department's appeal to the High Court, it was held that the Tribunal was justified in its view and the claim of the assessee was allowable u/s. 36(1)(vii) of the Act.

Pr. CIT Vs. Lee & Murihead (P.) Ltd. [2020] 119 taxmann.com 499 (Bombay)

**Notice for reassessment u/s. 148 cannot be issued merely for making fishing inquiries – permissible if there is a application of mind and satisfaction of the AO**

Notice under section 148 is not permissible for mere verification or for a fishing inquiry. However, in a case where there was tangible material as on date in hands of Assessing Officer that assessee had received shareholders' funds from shell companies, and Assessing Officer, after due application of mind, had recorded a satisfaction of his own that income had escaped assessment, reopening of assessment was justified

Navnidhi Dyeing And Printing Mills (P.) Ltd. v. Asst. CIT [2021] 125 taxmann.com 365 (Gujarat)

**Dismissal of appeal for the reason of not filing E-Appeal held not valid**

Commissioner (Appeals) could not reject an appeal filed by assessee on a technical ground that same was not 'e-filed' within period of limitation prescribed under circular no. 20/2016.

CIT Vs. A.A. Antony - [2021] 125 taxmann.com 170 (Madras)

**Exemption u/s. 54 for the Investment made in the name of the wife of the assessee**

Assessee sold a residential house and invested sale consideration in purchase of a plot of land for the construction of a new residential house. The investment in the plot of land was however made in the name of the wife of the assessee. The assessing officer denied the exemption u/s. 54 for the reason that the investment is not made in the name of the assessee. This was confirmed by the CIT (A). On appeal to the Tribunal, it was held that mere fact that investment in new property was made in name of his wife could not be a reason for disallowance of deduction under section 54 to the assessee

Shankar Lal Kumawat Vs. ITO [2021] 125 taxman.com 347 (Jaipur Trib.)

**Incomes to be included for the computation of Book Profit for the purpose of section 40(b)(v) of the Income-tax Act for eligible Partners' Remuneration**

Assessee was engaged in the manufacturing of aromatic chemicals. The Assessing Officer noticed that the total income of assessee included dividend income, interest on deposit, interest on income-tax refund and interest on recurring deposit, which were covered under the head "Income from other sources". AO held that that these incomes were not directly related to the business income, therefore these amounts were required to be ignored while computing the "book profit" for computation of remuneration admissible under section 40(b)(v). The assessing officer relied on Explanation 3 to section 40(b)(v) for the above contention. Accordingly the excess remuneration was added back to the total income of assessee. CIT(A) upheld the order passed by the assessing officer.

On further appeal, Tribunal held that a bare reading of Explanation 3 of section 40(b) make it evident that selection of any head of income, more particularly of the head Profit or gain of business or profession, is nowhere required or envisaged by the Legislature. There is no warrant to select the head of income so far as the computation of the permissible amount of the remuneration under section 40(b) is concerned. As regards Explanation 3 to section 40(b), the Tribunal held that the assessing officer does not get jurisdiction to go behind the net profit shown in the Profit & Loss account except to the extent of the adjustments provided in Explanation 3. He is not empowered to decide the head under which the income is to be taxed. The net profit as shown is not to be allocated into different components. Thus, this income could not be excluded for purpose of working out book profit to ascertain the ceiling of the partner's remuneration.

Mac Industries Vs. ITO (2021) 124 taxmann.com 570 (Surat Trib.)