

## DIRECT TAX – RECENT JUDGMENT

CA. Paras Savla, CA. Ketan Vajani

### S. 119 CBDT Assessee's beneficial CBDT Circular retrospective effect

It is well settled that the benefit of the circular should be extended to the assessee especially when it is a beneficial circular in favour of the assessee. The Board thought fit to issue appropriate instructions vide Circular No 6/2016 dated 29.02.2016 on account of dispute which had arisen while interpreting the directions issued by the courts and tribunal. The department has clarified various aspects like period of holding on listed shares, the assessee can have investment portfolio and also a trading portfolio and may have income under the head capital gains as well as business income etc. Accordingly, it was held that the circulars that they being at least partially beneficial to the assessee has to be held to be retrospectively applicable in so far as the instructions/clarifications which enure in favour of the assessee's. *CIT v. Century Plyboards (I) Ltd. [2023] 148 taxmann.com 301 (Calcutta)*

### S. 148 Reassessment notice time barred for AY 2013-14 & 2014-15

All original notices under section 148 of the Act referable to the old regime and issued between 01.04.2021 to 30.06.2021 are beyond the prescribed permissible timeline of six years from the end of Assessment Year 2013-14 and Assessment Year 2014-15. Hence, all such notices are time barred as per the provisions of the Act as applicable in the old regime prior to 01.04.2021. Furthermore, these notices cannot be issued as per the amended provision of the Act - *Sunny Rashikbhai Laheri v. ITO [2023] 148 taxmann.com 438 (Gujarat)*

### S. 148 Reopening merely based on insight portal is not valid

The reassessment notice, other than merely quoting that the Insight portal contains information as stated by the Assessing Officer in his reasons for the reopening, does not further investigate the information or come to an independent assessment connecting the petitioner to the particular transactions specified in the information. The entire notice proceeds on the basis of suspicion that the assessee has entered into the fictitious transactions of the script. The Assessing Officer has not even bothered to compare the information furnished by the petitioner in its reply or go through the income tax return of the petitioner, which was before the Assessment Officer, wherein long term capital gain transactions of securities were specifically disclosed. In absence of the documents examination by the Assessing Officer while rejecting the objections of the petitioner, it was held that the entire exercise of a re-opening of assessment was purely based upon suspicion in the face of all the material disclosed by the petitioner to the Assessing Officer. *Anwar Mohammed Shaikh v. ACIT [2023] 148 taxmann.com 288 (Bombay)*

### S. 148 Reassessment for applying another section is change of opinion

It was held that it is a clear cut case of change of opinion inasmuch as there is no new material which is discovered by the concerned officer. The application of another section of the IT Act on the facts and circumstances of a case would only constitute a change of opinion and can by no stretch of imagination be construed as new material by the Revenue. The entire emphasis on the revenue not truly and fully disclosing facts is baseless inasmuch as in the present case, there is only one transaction which was under consideration for the assessee. The entire transaction has been considered by the Assessing Officer and has culminated into the order under Section 143(3) of the Income Tax Act dated 24th December 2018. As apparent from the reasons there were no new tangible material in the hands of the Assessing Officer. Once the assessment is concluded, it is deemed to have been concluded with application of mind by the Assessing Officer from all perspectives legal and factual. It was held that the defense of revenue is misdirected and misconstrued and unsubstantiated. It was also observed that, appropriate application of the law and correct advise to the concerned officer can save a lot of litigation and burden on the court as well as agony to the citizens. The case law referred by the Revenue also is totally meaningless and out of context and by no stretch of imagination applicable to the facts of this case. Suffice it to say that, it is misconstrued and misapplied, on the other hand, the judgments relied upon by the Assessee are relevant and support the contentions' so raised by the Assessee. *Lehman Brothers Investments (P.) Ltd. v. ACIT [2023] 148 taxmann.com 236 (Bombay)*

### S. 68, 148 Merely high value Debits and credits cannot be ground for reassessment

It was observed that there is no new tangible material as contended by the Revenue. Debits and Credits can in no way disclose the nature of transactions or lead to an inference of income escaped assessment. The Revenue have not taken any ground of extrapolation. The debits and credits cannot be a ground for further enquiry and verification and the same is impermissible. The Court find no live link or

nexus between the information received and the income escaping assessment. The Assessee is carrying on a retail business of electronic appliances. Usually, appliances would be supplied to clients wherever required and payment would be received in cash upon delivery. Therefore, the cash deposits from various places cannot be doubted be considered suspicious transactions. It was held that, there is no prima facie case made out that income has escaped assessment. *Digi1 Electronics (P.) Ltd. v. ACIT [2023] 148 taxmann.com 184 (Bombay)*

#### **S. 148A Reassessment**

The reassessment proceedings initiated with the notice under Section 148 (deemed to be notice under Section 148-A), issued between 01.04.2021 and 30.06.2021, cannot be conducted by giving benefit of relaxation/extension under the Taxation and Other Laws (Relaxation And Amendment of Certain Provisions) Act' (TOLA) 2020 upto 30.03.2021, and the time limit prescribed in Section 149 (1)(b) (as substituted w.e.f. 01.04.2021) cannot be counted by giving such relaxation from 30.03.2020 onwards to the revenue. In respect of the proceedings where the first proviso to Section 149(1)(b) is attracted, benefit of TOLA' 2020 will not be available to the revenue, or in other words, the relaxation law under TOLA' 2020 would not govern the time frame prescribed under the first proviso to Section 149 as inserted by the Finance Act' 2021, in such cases. *Rajeev Bansal v. UOI [2023] 147 taxmann.com 549 (Allahabad)*

#### **S. 241A Order to withheld refund need to speaking order**

The requirement as set forth in the provision related to power to withheld refunds have not been crossed by the Revenue in the present case. There are no worthwhile reasons recorded in writing. The reasons for withholding the refund are simply that the case was selected under CASS with a large number of "issues" to be examined. However, no details of any issue which requires examination has been set forth. There is then a passing mention of the fact that "it is also referred to transfer pricing", however, what has been referred, is absent. No other details are given either. While withholding a refund, the AO is required to look into various factors in relation to an Assessee, such as, the amount of tax liability which a scrutiny assessment may eventually lead to (as is underway in this case) vis-a-vis the amount of tax refund due; the financial standing or credit worthiness of the Assessee, and whether there would be any doubts in the Revenue recovering amounts from the Assessee. *OYO Hotels & Homes (P.) Ltd. v. DACIT[2023] 148 taxmann.com 410 (Delhi)*

#### **S. 50C Stamp duty value not applicable in case acquisition under National Highways Act**

The property was acquired under the provisions of the National Highways Act 1956. The property vests by operation of the said statute and there is no requirement for payment of stamp duty in such vesting of property. As such there was no necessity for an assessment of the valuation of the property by the stamp valuation authority. *PCIT v. Durgapur Projects Ltd. [2023] 148 taxmann.com 50 (Calcutta)*.