

DIRECT TAX – RECENT JUDGMENT

CA. Paras Savla, CA. Ketan Vajani

S. 80P Credit society entitle for the exemption

There is a vast difference between the credit societies giving credit to their own members only and the Banks providing banking services including the credit to the public at large also. The credit society, cannot be termed as Banks/Cooperative Banks and they are entitled to exemption under Section 80(P)(2) *PCIT v. Annasaheb Patil Mathadi Kamgar Sahakari Pathpedi Ltd. [2023] 150 taxmann.com 173 (SC)*

S. 153 C In absence of availability of incriminating material assessment does not survives

In none of the cases any incriminating material was not found during the search either from the Assessee or from third party. In that view of the matter, the assessments under Section 153-C of the Act is was set aside. *DCIT v. U. K. Paints (Overseas) Ltd. [2023] 150 taxmann.com 108 (SC)*

S. 271C Belated payment of TDS

Assessee remitted the TDS belatedly and it is not case of non-deduction of the TDS at all they are no liable to pay the penalty under Section 271C of the Income Tax Act. *US Technologies International (P.) Ltd. v. CIT [2023] 149 taxmann.com 144 (SC)*

S. 127 Transfer of cases under e-assessment regime

Neither the E-assessment nor the Faceless Assessment Scheme in any manner modifies the power to transfer cases from one Assessing Officer under a Principal Commissioner of Income Tax to another Assessing Officer under another Principal Commissioner of Income Tax who are holding non-concurrent charges. The aforesaid Schemes only authorise transfer back of the case to the Jurisdictional Assessing Officer holding original jurisdiction which he never loses as only the function of assessment is carried out by the Faceless Assessing Officer holding concurrent jurisdiction. But, when a 'case' is transferred under Section 127 of the Act, "all proceedings under this Act" gets transferred. The power under Section 127 of the Act to transfer the "case" or "all proceedings under the Act" is nowhere provided for under the aforesaid schemes. The Notifications dated 12th September, 2019 and 13th August, 2020 permits transfer in the first instance only from National e-Assessment Centre to the Jurisdictional Assessing Officer is untenable in law as there may be cases where no assessment is pending before the Faceless Assessing Officer, yet the case of the Assessee is transferred to Central Circle. Consequently, Section 127 of the Act to the extent it permits transfer from one Assessing Officer under a Principal Commissioner of Income Tax to another Assessing Officer under another Principal Commissioner of Income Tax who are holding non-concurrent charges remains untouched and continues to apply in its pristine form. *Sanjay Gandhi Memorial Trust v. CIT(E) [2023] 150 taxmann.com 459 (Delhi)*

S. 56(2)(ix) Forfeiture of Share

The amount forfeited by the assessee company out share capital issued by it shall not fall within the scope of sec. 56(2)(ix) of the Act. Further, the said amount shall constitute a Capital receipt in the hands of the assessee. Accordingly, the above said amount is not taxable in the hands of the assessee. *DCIT v. Mangal Credit and Fincorp Ltd. [2023] 150 taxmann.com 168 (Mumbai - Trib.)*

S. 139(9) Invalid Return cannot be processed by CPC

An order under section 139(9) dated 09.03.2017 treated return of income filed by the assessee as invalid return. Despite treating the return as invalid return, it has been processed by CPC, under section 143(1)(a) by disallowing the claim of the assessee. It is also noted that there is a pre-requisite of return to be available under section 139 or 142(1) for issuance of an intimation under section 143(1). Since the return has been held to be invalid by CPC, there exists no return under section 139 which could have been processed under section 143(1). Accordingly, the processing done by CPC of an invalid return is improper and not in accordance with the provisions of the Act and Rule 8 of the aforesaid scheme. *Durgapur Passengers Carriers Association v. ITO [2023] 150 taxmann.com 171 (Kolkata - Trib.)*