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Recent Orders

Kaushik N. Tanna vs. ACIT (ITAT Mumbai)
S. 254(1)/ Rule 34(5)(c): An order passed by the Tribunal even one day after the prescribed period of 90 days from the date of hearing causes prejudice to the assessee and is liable to be recalled and the appeal posted for fresh hearing.

Concept Communication Ltd vs. DCIT (ITAT Mumbai)
Bogus expenditure: A statement recorded u/s 133A under fear/ coercion cannot be relied upon by the AO if it is not corroborated by documentary evidence. The assessee is entitled to retract such statement. The AO is bound to give the assessee an opportunity to controvert evidence and cross examine the evidence on which the department places its reliance. A failure in providing the same can result in the order being a nullity.

Retraction being on affidavit was legal and valid and was not belated. Further retraction was supported by explanation of impounded documents to the Survey team. The impounded document did not contain any information which was not recorded in the books of accounts. Hence, in view of retraction and such retraction based on concrete evidence, no addition can be made on the basis of statement taken during survey without bringing on record some corroborative materials.

Anubhav Jain vs. ITO (ITAT Delhi)
Bogus Capital gains: Reliance by the AO on statements of third parties without giving the assessee an opportunity of cross-examination is a gross failure of the principles of natural justice and renders the assessment order a nullity. Not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected.

Council of ICAI vs. Gurvinder Singh (Supreme Court)
Professional Misconduct of CAs: A Chartered Accountant can be held guilty of professional misconduct even when he is acting as an individual in commercial dealings and is not acting as a CA nor discharging any function in relation to his practice as a Chartered Accountant. Under the CA Act, any action which brings disrepute to the profession or the Institute is misconduct whether or not related to professional work.

The Disciplinary Committee has, on facts, found the Chartered Accountant guilty of a practice which was not in the Chartered Accountant's professional capacity. This, it was entitled to do under Schedule I Part-IV subclause (2) if, in the opinion of the Council, such act brings disrepute to the profession whether or not related to his professional work.

DCIT vs. Piramal Realty Pvt. Ltd (ITAT Mumbai)
S. 68 Bogus share premium: If the overwhelming evidence in the form of audited accounts, ROC Form 2 & ROC Form 20B shows the 'nature' of receipt to be share premium, it has to be taken to be so. If the Department wants to contend that what is apparent is not real, the onus is on it to prove that it was the

Upcoming Due Dates

Date	Event Details
7th Dec	TCS & TDS Payment for Nov
15th Dec	PF & ESIC Payment for Nov Third instalment of advance tax for the assessment year 2019-20
20th Dec	Form GSTR-3B, GSTR-5 & GSTR-5A for Nov
25th Dec	PF Return filing for Nov
31st Dec	GSTR-9 Annual Return / Statement for FY 2018-19 by ALL registered persons Due date of GST ITC-04 for the period of July 2017 to September 2018 Form AOC 4 & MGT 7

assessee's own money which was routed through a third party. S. 68 does not (before & after the 2012 amendment) envisage the valuation of share premium. Consequently, the AO has no jurisdiction to determine whether the share premium is reasonable or not (Pratik Syntex (P.) Ltd. vs. ITO 94 taxmann.com 12 (Mum) distinguished).

Even amendment to section 68 brought by Finance Act, 2012 does not refer to valuation. The insertion of the proviso to section 68 of the Act by Finance Act, 2012 casts an additional onus on the closely held companies to prove source in the shareholders subscribing to the shares of companies. During the course of the hearing, the Ld Counsel explained that the explanatory memorandum to the Finance Bill 2012 makes it clear that the additional onus is only with respect to source of funds in the hands of the shareholders before the transaction can be accepted as a genuine one. Even the amended section does not envisage the valuation of share premium. This is further evident from a parallel amendment in section 56(2) of the Act which brings in its ambit so much of the share premium as charged by a company, not being a company in which the public are substantially interested, as it exceeds the fair market value of the shares. If one accepts the Ld CIT-DR's contentions that section 68 of the Act can he applied where the transaction is proved to be that of a share allotment that here the valuation for charging premium is not justified, it will make the provisions of section 56(2)(viib) of the Act redundant and nugatory. This cannot be the intention of the Legislature especially when the amendments in the two sections are brought in at the same time.

N. R. Ravikrishnan vs. ACIT (ITAT Bangalore)
Gains on exercise of ESOP: ESOP options provide valuable right to the assessee to exercise and have allotment of shares. They are thus 'capital asset' held by the assessee from the date of grant. If the assessee transfers the option itself, the capital gains will have to be assessed as long-term capital gains if the options have been held for more than three years.

It is not in dispute that ESOP options provided valuable right to the assessee to exercise and have allotment of shares. They were thus 'capital asset' held by the assessee from the date of grant i.e., 28.02.2003 and 02.02.2004 for which a consideration was paid to the assessee under the option Transfer Agreement. The contention that the assessee cannot exercise option in the absence of vesting is not relevant as the options were transferred without any exercise in the case on hand.

DCIT vs. Hemant Mansukhlal Pandya (ITAT Mumbai)
S. 68 Black Money in HSBC Bank Account (i) Non-residents are not required to disclose their foreign bank accounts and assets to Indian income-tax authorities (ii) The assessee cannot be asked to prove the negative that the credits found in HSBC Bank is not sourced out of income derived from India (iii) the Govt / legislature never intended to tax foreign accounts of non residents (iv) mere holding of an account outside India does not have led to the conclusion that the amount is tax evaded.

It is very clear from the clarifications issued by the Government itself that the legislature does not wish to take any action in respect of non residents holding foreign bank accounts. Further, even in the excel utility of return of income in the income-tax department website, the moment a person fills his residential status as non resident, the excel utility prevents filling of columns pertaining to foreign assets. Even, the Hon'ble Finance Minister has clarified that all accounts in foreign bank may not be illegal as they may belong to NRI. Thus, even the government has acknowledged the fact that an NRI foreign bank account is not illegal.

Periar Trading Company Private Limited vs. ITO (ITAT Mumbai)
S. 2(47) Transfer: Law on whether conversion of preference shares into equity shares constitutes a "transfer" and whether capital gains can be assessed on the basis of the market value of the equity shares explained (Santosh L. Chowgule 234 ITR 787 (Bom) & Trustees of H.E.H. The Nizam 102 ITR 248 (AP) distinguished. CBDT Circular dated 12.05.1984 referred.

Where one type of shares is converted into another type of share (including conversion of debentures into equity shares), there is, in fact, no "transfer" of a capital asset within the meaning of section 2(47) of the Income Tax Act, 1961. Hence, any profits derived from such conversion are not liable to capital gains tax under section 45(1) of the Act. However, when such newly converted share is actually transferred at a later date, the cost of acquisition of such share for the purpose of computing the capital gains shall be calculated with reference to the cost of the acquisition of the original share of stock from which it is derived.

Dr. Muthian Sivathanu vs. ACIT (ITAT Chennai)
S. 17(2)(vi) Perquisite: Gains arising to an employee from sale of shares allotted under ESOP (Employees Stock Option Plan) by foreign parent company cannot be assessed as "salaries". It is assessable as "capital gains". Fact that employer has shown the gains as "perquisite" in Form 16 is irrelevant.

The assessee had already acquired the asset viz., "stock" from the employee's stock options scheme when he was serving abroad in the parent company and during that assessment year, the assessee was non-resident. Therefore during the beginning of the relevant assessment year, the stock viz., the asset was already vested on the assessee. Any gain on sale arising out of such asset during the relevant assessment year when he is a resident but NOR has to be necessarily treated as capital gain in the hands of the assessee as per the provisions of the act.

Srinidhi Karti Chidambaram vs. PCIT (Madras High Court)
Entire law on whether complaint and sanction for prosecution of offenses can be quashed as being without proper application of mind explained in the context of s. 55 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (All judgements on the subject of prosecution of offenses discussed).

Before proceeding with any action, it is the duty of the assessing officer to arrive at a conclusion, as to whether, there is an undisclosed income under Section 2(11) and a duty is cast on the assessing officer to form an opinion, under Section 2(11). Expression, "undisclosed source of investment" depends on the existence of the above and the opinion is dependent on each one of the facts. Show cause notice issued is totally extraneous to Section 2(11) of the Act. At this juncture, it is pertinent to consider, what "satisfaction" means. "Satisfaction" means to be satisfied with a state of things, meaning thereby, to be satisfied in one's own mind. Satisfaction is essentially a conclusion of mind. The word "satisfied" means, "makes up its mind".

Shambhubhai Mahadev Ahir vs. ITAT (Gujarat High Court)
S. 254(2): (i) Mere pendency of appeal in the High Court does not preclude the Tribunal's power of rectification, (ii) Fact that there is difference of opinion between the two members of the Tribunal would, by itself, nor mean that the error sought to be rectified is not apparent on the record & (iii) The Tribunal has no jurisdiction to recall an order based on submissions made and upon consideration of materials on record. The power of rectification are circumscribed with the condition that the same can be exercised for correcting error be of law or facts apparent on record. The jurisdiction to correct errors vested in the Tribunal is not akin to review powers.

Whatever be the correctness of these findings it cannot be stated that the Tribunal arrived at such findings without proper consideration of materials on record. Several issues were presented before the Tribunal and were examined before coming to such specific finding. The Tribunal could not have recalled the entire order under purported exercise of rectification powers. It is well settled through series of judgements of this Court and the Supreme Court that power of rectification are circumscribed with the condition that the same can be exercised for correcting error be of law or facts apparent on record. The jurisdiction to correct errors vested in the Tribunal is not akin to review powers. As noted, the Accountant Member, while showing inclination to exercise rectification powers, had not cited any reason in support of his opinion.

Midas Polymer Compounds vs. ACIT (ITAT Cochin)

S. 253: Delay of 2819 days in filing the appeal caused by the fault of CA/ Counsel has to be condoned. the expression "sufficient cause" should be interpreted to advance substantial justice. If there is "sufficient cause", the period of delay cannot be regarded as excessive or inordinate (All judgements considered).

Under the scheme of Constitution, the Government cannot retain even a single pie of the individual citizen as tax, when it is not authorised by an authority of law. Therefore, if we refuse to condone the delay, that would amount to legalise an illegal and unconstitutional order passed by the lower authority. Therefore, in our opinion, by preferring the substantial justice, the delay of 2819 days has to be condoned.

Catholic Syrian Bank Ltd vs. DCIT (ITAT Cochin)

S. 253 Condonation of delay: An assessee supported by large number of CAs & Advocates cannot seek condonation of delay on the ground that the officer handling the issue was transferred. A party cannot sleep over its rights and expect its appeal to be entertained. The fact that the issue on merits is covered in favour of the assessee makes no difference to the aspect of condonation of delay.

The assessee is a scheduled bank supported by a large number of personnel and also assisted by qualified Chartered Accountants and Advocates. The reason as come out from the condonation petitions filed by the assessee, as stated earlier, is that there was transfer of the officer who was handling the issue. We cannot accept such proposition as it cannot be considered as good and sufficient reason to condone the delay. It was submitted that the delay is to be condoned since the issue on merit covered in favour of the assessee. This submission ignores the fact that the object of the law of limitation is to bring certainty and finality to litigation.

DCIT vs. Rishabh Infrastructure Pvt. Ltd (ITAT Raipur)

S. 4: Law on whether compensation received on closure/ termination of business activity resulting in loss of source of income, impairing its profit making structure or sterilization of profit making apparatus can be assessed as a revenue receipt or it is a capital receipt which is not chargeable to tax explained after referring to important judgements on the subject.

Where, on a consideration of the circumstances, payment is made to compensate a person for cancellation of a contract which does not affect the trading structure of his business, nor deprive him of what in substance is his source of income, termination of the contract being a normal incident of the business, and such cancellation leaves him free to carry on his trade (freed from the contract terminated), the receipt is revenue : where by the cancellation of an agency the trading structure of the assessee is impaired, or such cancellation results in loss of what may be regarded as the source of the assessee's income, the payment made to compensate for cancellation of the agency agreement is normally a capital receipt.

PCIT vs. Shodiman Investments Pvt. Ltd (Bombay High Court)

S. 147 Reopening of s. 143(1) intimation: The submission of the Dept that in view of Rajesh Jhaveri 291 ITR 500 (SC), the AO can reopen the assessment for "whatever reason" is preposterous. The AO cannot reopen on the basis of info received from DIT (Investigation) that a particular entity has entered into suspicious transactions without linking it to the assessee having indulged in activity which could give rise to reason to believe that income has escaped assessment. Such reopening amounts to a fishing inquiry. The AO has to apply his mind to the information received by him from the DDIT (Inv.) and cannot act on on borrowed satisfaction.

The reasons clearly shows that the Assessing Officer has not applied his mind to the information received by him from the DDIT (Inv.). The Assessing Officer has merely issued a reopening notice on the basis of intimation regarding reopening notice from the DDIT (Inv.) This is clearly in breach of the settled position in law that reopening notice has to be issued by the Assessing Office on his own satisfaction and not on borrowed satisfaction.

Arun Kumar vs. ACIT (ITAT Delhi)

S. 10(38)/68 Bogus long-term capital gains from penny stocks: It cannot be inferred that the assessee has manipulated the share price merely because it moved up sharply. The AO has to produce material/evidence to show that the assessee/ brokers did price rigging/manipulation of shares. The AO must also show that the relevant evidence produced by the assessee in the form of bills, contract notes, demat statement, bank account etc to prove the genuineness of the transactions are false or fictitious or bogus (All judgements considered).

We note that in the absence of material/evidence the allegations that the assessee/brokers got involved in price rigging/manipulation of shares must therefore also fail. At the cost of repetition, we note that the assessee had furnished all relevant evidence in the form of bills, contract notes, demat statement and bank account to prove the genuineness of the transactions relevant to the purchase and sale of shares resulting in long term capital gain. These evidences were neither found by the AO nor by the ld. CIT(A) to be false or fictitious or bogus. The facts of the case and the evidence in support of the evidence clearly support the claim of the assessee that the transactions of the assessee were genuine and the authorities below was not justified in rejecting the claim of the assessee that income from LTCG is exempted u/s 10(38).

Sushila N. Rungta vs. TRO (Supreme Court)

Interpretation of statutes: Effect of repeal of a statute u/s 6 of the General Clauses Act on pending proceedings explained in the context

of the Gold Control Act and in view of law laid down in State of Punjab vs. Mohar Singh [1955] 1 SCR 893, New India Assurance Co. Ltd. vs. C. Padma (2003) 7 SCC 713 etc.

The statement of objects and reasons makes it clear that over 22 years, the results achieved under the Act have not been encouraging and the desired objectives for which the Act has been introduced have failed. Following the advice of experts, who have examined issues related to the Act, the objects and reasons goes on further to state that this Act has proved to be a regressive measure which has caused considerable dissatisfaction in the minds of the public and hardship and harassment to artisans and small self-employed goldsmiths. This being the case, we are of the opinion that the repeal simpliciter, in the present case, does not attract the provisions of Section 6 of the General Clauses Act as a contrary intention is very clearly expressed in the statement of objects and reasons to the 1990 repeal Act.

PCIT vs. Talwalkars Fitness Club (Bombay HC)
S. 2(47) Transfer for Capital Gains: The fact that an agreement for sale of property is registered does not make it a conveyance. The sale or transfer is not complete on the date of the execution of the agreement if there are obligations to be fulfilled by both parties.

The sale or transfer was not complete on the date of the execution of the agreement as is now urged and erroneously understood by the Assessing Officer and the Commissioner. The Tribunal was right in its conclusion that on facts, the agreement executed on 14th February, 2011 is but an agreement for sale of immovable property. The law then prevailing required such an agreement to be registered. In any event merely because it is registered, that does not partake the character of a conveyance or a sale deed automatically. Thus, the possession also was not handed over but was to be handed over on compliance with certain obligations by the Vendor.

EPRSS Prepaid Recharge Services India P. Ltd vs. ITO (ITAT Pune)
S. 9(1)(vi) Royalty/ 40(a)(i): Law explained on whether payment of web hosting charges to Amazon Web Services LLC (USA) (AWS) constitutes "royalty" under Explanation 2 to s. 9(1)(vi) read with the India USA DTAA and whether there is any obligation to deduct TDS thereon u/s 195.

The aspect which needs to be seen is whether the assessee is paying consideration for getting any right in respect of any property. The assessee claims that it does not pay for such right but it only pays for the services. The claim of assessee before us was that it was only using services provided by Amazon and was not concerned with the rights in technology. The fees paid by assessee was for use of technology and cannot be said to be for use of royalty, which stands proved by the factum of charges being not fixed but variable i.e. it varies with the use of technology driven services and also use of such services does not give rise to any right in property of Amazon and consequently, Explanation under section 9(1)(vi) of the Act is not attracted.

ITO vs. Mohanraj Trading & Exchange (ITAT Mumbai)
S. 250/ 254: If a decision is challenged by the assessee both on the issue of jurisdiction as well as on merits, the appellate authority has to decide both issues. He cannot decline to decide one of the issues on the basis that the decision on the other issue renders it academic. This approach leads to multiplication of proceedings and leads to delay.

Examining the present case on the touchstone of above said case law, we find that the order of the ld. CIT(A) here directly falls under the ambit of Hon'ble High Court's order as above. The ld. CIT(A) has decided one issue and has left undecided another issues duly raised before him. Hence, we are of the considered opinion that these issues relating to validity of reopening were duly raised, which have been left undecided by the ld. CIT(A) and need to be remitted to the file of the ld. CIT(A). The ld. CIT(A) is directed to complete his appellate order by deciding on these issues regarding the validity of reopening which were duly raised before him by the assessee.

ITO (TDS) vs. The Distt. Manager, Punjab State Warehousing Corporation (ITAT Chandigarh)
S. 194C TDS: Law on whether the by-product allowed to be retained by the miller can be regarded as consideration 'paid' in kind by the procurement agency so as to create an obligation to deduct TDS thereon explained in the light of Kanchanganga Sea Foods Ltd. vs CIT 325 ITR 549 (SC) & other judgements.

Though, before the milling of the paddy, the Government / procurement agencies remain the owner of the paddy, however, the moment the paddy is milled, the Government / procurement agencies lose their ownership and control over the paddy and the by-product but have right only on the 'milled rice' for which they pay a stipulated amount of Rs. 15/- as milling charges. The relevant words in the clause (8) of the Agreement that "the Government / Procuring Agency shall have no right or responsibility in this regard" speaks that to retain the by-product cannot always said to be 'right' over a thing but sometimes it becomes a 'responsibility' also and the Government / Procurement Agencies are not willing to own this responsibility.

Deepak B Shah vs. ACIT (ITAT Mumbai)
S. 69A Black Money: If the assessee is a discretionary beneficiary of the HSBC Bank Account and is not the owner, addition u/s 69A cannot be sustained. In the case of a discretionary trust, the income of the trust cannot be added in the hands of the beneficiary. The trustees are the representative assessees who are liable to be taxed for the income of the trust.

We find that addition has been made by the AO U/s 69A of the Act to justify the addition on account of peak balance. We agree with the contentions of the Ld. AR that it is sine qua non for invoking section 69A of the IT Act., the assessee must be found to be the owner of money, bullion, jewellery or other valuable articles and whereas in the present case the money is owned and held by Mr. Dipendu Bapalal Shah a foreign resident in an account HSBC, Geneva and also admitted that he is the owner of the money in the HSBC Account Geneva.

Provisions of S. 269SS not applicable to Loan Transaction between Husband and Wife: Delhi ITAT
While completing assessment against the assessee, the Assessing Officer found that the assessee has shown loan of Rs. 88,00,000/- from his wife, Mrs. Shahina Quereshi, during the year under consideration. Out of Rs. 88,00,000/-, the assessee explained that Rs. 63,000/- was received from Mrs. Shahina Qureshi directly and Rs. 22,00,000/- received by the assessee as advance against sale of his proty and Rs. 3,00,000/- was wrongly considered in the name of his wife rather the same was transferred by assessee's own account and hence, should be considered as capital not unsecured loan.

On second appeal, the Tribunal observed that the assessee received advance money of Rs. 22 lacs from the four parties for a property. Due to some reasons, the deal didnt materialized and the purchaser parties agreed to take another property which is in the name of assessee's wife. The said amount was transferred to his wife's account i.e., Mrs. Shahina Qureshi.

"I further note that there is no denial on the part of the AO that the amount of Rs. 22 lacs was received by the assessee from his wife, Mrs. Shahina Qureshi. However, while levying the penalty u/s. 271D of the Act, the AO did not appreciate the fact that the provisions of section 269SS of the Act are not applicable on the loan transaction between husband and wife. Thus, the question of levying of penalty

u/s. 271D of the Act does not arise on the impugned transaction, hence, I delete the penalty in dispute and allow the appeal of the assessee," the Tribunal said.

The Tribunal further noticed the decision in the case of Sunil Kumar Sood vs. JCIT wherein it was held that since the assessee had taken the loan from his wife for the purchase of house which is for the benefit of the whole family, the penalty levied u/s 271D of the Act is not leviable.

Mere Non-production of Parties won't constitute 'Concealment': New Delhi ITAT

After the assessment proceedings were completed under section 143(3) read with 147 of Income Tax Act, 1961, the AO made addition on account of unexplained bank deposits/loans including interest amounting to Rs.19,65,435/-, Rs.14,96,99/- and Rs.13,55,858/-. While passing final assessment order, the AO also initiated penalty proceedings under section 271 (1) (c) of the Act, for concealment of income.

With regard to the bank deposit, the assessee contended that these were monies received as advance from various parties against proposed sale of land. The copies of agreement to sell evidencing receipt of amount of Rs.8,50,000/- from parties concerned were produced before the Assessing Authority. The assessee further submitted that three parties from whom monies has been received had submitted confirmation to the effect, along with returns filed for assessment year 2000-2001. It was argued that these persons could not be produced before the AO, since summons issued was after 10 years of alleged sale.

While deleting the penalty order, the Tribunal held that "In our opinion assessee had filed details regarding deposits and sources from where deposits have been made in bank account. Merely because parties were not produced before Ld.AO to establish genuineness of transaction, cannot lead to concealment. At the most addition deserves to be sustained as has been already confirmed by this Tribunal. In our view alleged addition forms part of records and therefore there cannot be any concealment as has been alleged by authorities below. We are therefore inclined to delete penalty."

Premium earned on Allotment of Preference Shares by a Loss-Making entity can't be Taxed: Mumbai ITAT

The assessee company Piramal Realty Pvt. Ltd is engaged in the business of real estate and real estate development and incidental services. The AO during the course of assessment proceedings notice from the balance sheet of the assessee for the year under consideration as on 31.03.2012 that the authorized share capital has group up from ₹ 1 lacs to 150 lacs. He also observed that the paid up share capital has gone up from ₹ 1 lacs to 150 lacs. He noticed from the balance sheet that during the year under consideration the assessee has issued 59,850 cumulative compulsorily convertible preferential shares (CCPS) of ₹ 10 each to Piramal Estates Private Ltd. (PEPL) for consideration of ₹ 5,98,500 and also charged share premium for the same at ₹ 99,990/- i.e. ₹ 598,44,01,500/-. The AO noted that the assessee company is incorporated only on 14.12.2010 with a share capital of ₹ 1 lacs and it has incurred loss of ₹ 7,59,747/- during the assessment year 2011-12. He also noted that during the year under consideration, the assessee suffered a loss of ₹ 29,11,50,443/- and as a result of the same earning per share is negative. Accordingly, the AO required the assessee to justify such a huge premium of ₹ 99,990/-. According to AO, the assessee is unable to prove the nature and sources of credit as per in the books of account in term of section 68 of the Act and hence, he treated the share premium as unexplained under section 68 of the Act.

The Tribunal observed that, "we are of the view that valuation is not relevant for determining genuineness of the transaction for the purpose of section 68 of the Act. We are of the view that CIT(A) has rightly deleted the addition on account of the share premium relying on the decision of Hon'ble Jurisdictional tribunal in case of Green Infra Ltd. Vs. ITO (2013) 145 ITR 240. It is a settled position that what is apparent is real unless proved otherwise. It is a settled legal position that "apparent is real" and the onus to prove that the apparent is not the real is on the party who claims it to be so as held by Hon'ble Supreme Court in case of CIT Vs. Daulat Ram Rawatmull (1973) 87 ITR 349.

Rent received after purchase of already let out Warehouse is 'House Property Income': Delhi ITAT

The bench has held that the rental income received after the purchase of an already let out warehouse is taxable as income from house property. The Tribunal clarified that the said income cannot be treated as business income even though the assessee is engaged in business of warehousing.

The assessee had purchased warehouse which was already let out. In its returns, they declared the rental income of around Rs 1.36 Cr against the said property. However, while computing the income, assessee treated the same as business income and claimed expenses under the heads finance costs, depreciation and other expenses aggregating to around Rs. 1.65 Cr. However, the Assessing Officer rejected the return and held that the dominant intention of

letting out the said warehouse was receiving rental income in view of the lease executed between both the parties and the same must be treated as House property income.

Upholding the assessment order, the Tribunal held that "In the case of the assesseee, after purchasing the warehouse from earlier owner, it has become the sole owner of the property. Though the ownership has been changed on record but the nature of usage of the warehouse remains the same. Before purchasing the warehouse by assessee, the earlier owner was receiving the income from warehouse as rental income and after change of ownership, the nature of payments made by occupier (Tupperware) remains the same. Thus, the nature of transactions or income generated through this warehouse did not change. The basis taken by assessee regarding the clauses of memorandum of association also holds no force now after the aforesaid decision of Hon'ble Supreme Court. In view of this, Ld. CIT(A) has rightly held that income from warehouse has to be assessed under the head income from house property not under the head income from business and profession."

EOU can claim Deduction of Interest Earned on Fixed Deposits u/s 10A: Pune ITAT

The bench has held that an Export Oriented Unit (EOU) is eligible to claim the deduction under Section 10A of the Income Tax Act in respect of interest earned on fixed deposits.

In the instant case, the assessee was 100% Export Oriented Unit. For the year under

consideration, the assessee had furnished return of income declaring total income of Rs.7,170/-. On scrutiny of returns, it was revealed that the assessee being a 100% EOU duly approved by Software Technology Park of India (STPI), had claimed deduction under section 10A of the Act at 20,05,769/-. It was also noted that the assessee during the year under consideration had received interest on fixed deposits of Rs. 3,43,708/-, which was shown as business income and had claimed as deductible under section 10A of the Act. The Assessing Officer was of the opinion that the interest earned on fixed deposits was to be treated as 'Income from other sources' and was not eligible to claim deduction under section 10A of the Act. The deduction claimed by the assessee under section 10A of the Act was, therefore, restricted by Assessing Officer.

On the second appeal, the Tribunal recalled its earlier decision relying on the decision of the Karnataka High Court and held that the assessee is entitled to benefit of deduction under section 10A of the Act on the interest earned in fixed deposits.

CA Certificate is a Material Evidence to allow Benefit of S. 40(a)(ia): Mumbai ITAT

The Mumbai bench of Income Tax Appellate Tribunal (ITAT) in M/s. Shree Ganeshaya Trading Pvt. Ltd. Versus ITO, ruled that CA certificate is a material evidence to allow the benefit of Section 40 (a) (ia) of the Income Tax Act.

In instant case Assessee engaged in the business of trading in shares and commodities. During the assessment proceedings Assessing officer while keeping in view provisions of Section 40(a)(ia) of the 1961 Act disallowed the two items viz; delayed pay-in-charges paid on account of non-clearing stock-brokers accounts in time and interest expenses on loan taken from a bank were not deducted at income tax at source. Accordingly, AO disallowed the aforementioned items and added to the income of the Assessee on grounds of non-deduction of income tax at source while making these payments.

Aggrieved by the order of CIT(A), the assessee carried the matter before this tribunal, the counsel for Assessee raised a major contention that Chartered Accountant Certificate was filed before CIT (A) with respect to interest payment without deducting income tax at source. The assessee also submitted that the said certificate was not accepted by the CIT (A) as additional evidence and the same rejected on the ground that certificate was obtained after filing the return of income and even after the assessment has done. With regard to the payment of delayed pay in charges, counsel for assessee said that it is not an interest payment instead charges paid on delayed payment on the purchase of shares to brokers.

The bench observed as "We are of the considered view that the CA certificate filed by the assessee is a material evidence for adjudicating this issue and we admit the said additional evidence filed by the assessee in the interest of justice. We are restoring the matter back to the file of the AO for necessary verification of the said CA certificate and thereafter if the contents of the CA certificate are proved to be correct , the AO is directed to grant relief to the assessee keeping in view second proviso to Section 40(a)(ia) in line with judgment of Hon'ble Delhi High Court in the case of CIT v. Ansal Land Mark Township (P) Ltd., (2015) 61 taxmann.com 45(Del)."

The bench also declared that contention of assessee with respect to delayed payment to stock brokers cannot be accepted since making delayed payment of purchase consideration in fact 'interest' within meaning of Section 2(28A) of the 1961 Act and the assessee was required to deduct income-tax at source on such interest within the provisions of Section 194A of the Act.

ITAT Cuttack deletes Addition since Contribution to EPF and ESI was deposited before due date of filing Income Tax Return

The bench in Das & Sons Infracon Pvt. Ltd Vs. DCIT, deleted the addition since contribution to EPF and ESI was deposited before the due date of filing Income Tax Return.

The bench observed as "The addition was made on the ground that the employees' contribution to EPF & ESI were not deposited within the time prescribed under the P.F.Act. We find that no disallowance can be made for deduction of the same u/s.36(1) (va) r.w.s.2(24)(x) of the Act". The bench while considering the judgment of apex court in Rajasthan State Beverages Corporation Ltd., directed the AO to delete the addition since the contribution to EPF and ESI was deposited by assessee within the due date of filing return of income.

Property incapable to Let Out not taxable as House Property Income on Notional basis: Delhi ITAT

In the instant case, the assessee had a self-occupied property in New Delhi and another property in Bharatpur. While completing the assessment proceedings, the Assessing Officer treated the Bharatpur property as self-acquired property and computed the ALV of the Delhi property and brought to tax. The Tribunal noted that the farmhouse situated at Dera Mandi, New Delhi is self-occupied property, and the second property at Bharatpur is in the dilapidated condition, and not liable as such as per the submission of the Ld. AR. ALV of such property is NIL.

Recent Updates

Notification No. 80/2018/ F.No. 370149/194/ 2017-TPL

The 12th November, 2018 S.O.5676(E).— In exercise of powers conferred by clause (d) of sub-section (1) of section 10 of the Prohibition of Benami Property Transactions Act, 1988 (45 of 1988), the Central Government hereby specifies that the New Delhi Bench of the Adjudicating Authority appointed under section 7 of the said Act shall exercise jurisdiction under the said Act over the whole of India except the State of Jammu and Kashmir. This notification shall come into effect from the date of its publication in the Official Gazette.

Notification No. 79/2018/ F.No. 370149/194/ 2017 - TPL

The 12th November, 2018 S.O. 5675(E).—In exercise of the powers conferred by section 7 of the Prohibition of Benami Property Transactions Act, 1988 (45 of 1988), the Central Government hereby appoints an Adjudicating Authority at New Delhi to exercise jurisdiction, powers and authority conferred by or under the said Act. This notification shall come into effect from the date of its publication in the Official Gazette.

VIPCAA Wishes Its Members A Very Happy Birthday &

Suman Agarwal	December 6th
Gopal Goyal	December 6th
Kamal Bagrodia	December 9th
Sangit Agrawal	December 9th
Shankar Daruka	December 9th
Ashok Agarwal	December 9th
Raj Agarwala	December 10th
Shambhu Chowdhury	December 10th
Karan Mundhra	December 11th
Arun Singh	December 11th
Indra Gupta	December 11th
Rajesh Chandak	December 12th
Sonal Jain	December 13th
Ritesh Bardia	December 14th
Prakash Agarwal	December 15th
Prem Sinha	December 15th
Vineet Kapoor	December 21st
Ranjan Agarwal	December 25th
Mukesh Agarwal	December 31st
Rajesh Agarwal	December 31st

[Notification No. 82/2018/F.No. 370142/40/2016-TPL (Part-I)]

The 19th November, 2018 G.S.R. 1128(E).—In exercise of the powers conferred by section 139A read with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:

1. Short, title and commencement

(1) These rules may be called the Income–tax (Twelfth Amendment) Rules, 2018.

(2) They shall come into force from the 5thday of December, 2018.

2. In the Income-tax Rules, 1962,

(I) in rule 114,

(A) in sub-rule (3), after clause (iv), the following clauses shall be inserted, namely:__

"(v) in the case of a person, being a resident, other than an individual, which enters into a financial transaction of an amount aggregating to two lakh fifty thousand rupees or more in a financial year and which has not been allotted any permanent account number, on or before the 31st day of May immediately following such financial year;

(vi) in the case of a person, who is the managing director, director, partner, trustee, author, founder, karta, chief executive officer, principal officer or office bearer of the person referred to in clause (v) or any person competent to act on behalf of the person referred to in clause (v) and who has not been allotted any permanent account number, on or before the 31st day of May immediately following the financial year in which the person referred to in clause (v) enters into financial transaction specified therein.";

(B) in sub-rule (6),

"(i) for the words, brackets and figures "under sub-rule (4) or intimation of Aadhaar number in subrule (5)", the words, brackets and figures "under sub-rule (4), intimation of Aadhaar number in subrule (5) and issue of permanent account number" shall be substituted; (ii) for the words "number and intimation of Aadhaar number", the words "number, intimation of Aadhaar number and issue of permanent account number" shall be substituted.";

(II) in Appendix II, in Form number 49A and Form number 49AA, for serial number 6 and entries relating thereto, the following serial number and entries thereto shall be substituted, namely: "6.Details of Parents (applicable only for individual applicants)

Enhancements in E-Way Bill System w.e.f 16.11.2018

1. Checking of duplicate generation of e-way bills based on same invoice number : The e-way bill system is enabled in a way that if the consignor has generated one e-way bill on the particular invoice, then he or consignee or transporter will not be allowed to generate one more e-way bill on the same invoice number. If the transporter or consignee has generated one e-way bill on the consignor's invoice, then if any other party (consignor, transporter or consignee) tries to generate the e-way bill, the system will alert that there is already one e-way bill for that invoice, and further it allows him to continue, if he wants.

2. CKD/SKD/Lots for movement of Export/ Import consignment : CKD/SKD/Lots supply type can now be used for movement of the big consignment in batches, during Import & Export also. Delivery challan and tax invoice need to accompany goods as prescribed in Rule 55 (5) of CGST Rules, 2017.

3. Shipping address in case of export supply type : For Export supply type, the 'Bill To' Party will be URP or GSTIN of SEZ Unit with state as 'Other Country' and shipping address and PIN code can be given as the location (airport/shipping yard/border check post/ address of SEZ), from where the consignment is moving out from the country.

4. Dispatching address in case of import supply type : For Import supply, the 'Bill From' Party will be URP or GSTIN of SEZ Unit with state as 'Other Country' and dispatching address and PIN code can be given as the location (airport/shipping yard/border check post/ address of SEZ), from where the consignment is entering the country.

5. Enhancement in 'Bill To - Ship To' transactions: EWB generation is now categorized to four types now Regular and Bill to Ship to, Bill from Dispatch from & combination of both.

6. Changes in Bulk Generation Tool : Facility of EWB generation through the Bulk Generation Tool has been enhanced.

Notification No. 78/2018 - Customs New Delhi, the 29th November, 2018 G.S.R.- (E)

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 57/2000-Customs dated the 8th May, 2000 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (i) vide number G.S.R. 413 (E), dated the 8th May, 2000, namely:

2. In the said notification, after the second proviso, the following proviso shall be inserted, namely:-

"Provided further that no replenishment of the gold or silver shall be available to the exporter where the exporter avails, in respect of exported product -

(i) Cenvat credit on inputs under the Central Excise Act,1944; or (ii) input tax credit on inputs or services or both under Chapter V of the Central Goods and Services Tax Act, 2017; or (iii) refund of input tax credit or refund of integrated tax under section 54 of the Central Goods and Services Tax Act, 2017."

Father's Name not Mandatory in PAN: Govt amends Rules

The Central Board of Direct Taxes (CBDT) has amended the Rule 114 of the Income-tax Rules, 1962 (I.T.Rules) inter alia provides for the manner in which an application for allotment of a permanent account number (PAN) shall be made in Form No.49A and Form No.49AA (PAN application Forms).

Income Tax Dept to proceed against 80,000 People for not Filing Returns Post-Demonetisation

The Income Tax department will start proceeding against people who have not filed their returns post-demonetisation even after receiving notices from the department, a senior official said on Wednesday. "Around 3 lakh notices were sent to persons who did not file returns post the demonetisation. These are statutory notices. About 2.25 lakh people filed their returns thereafter. In 80,000 cases, where the returns were not filed, the department is chasing and the assessment will have to be framed," he said. Apart from the post-demonetisation exercise, the department is also pursuing those who have not filed their returns on time.

CBDT explains Scope of 'Limited Scrutiny Cases selected under CASS where issues referred by Law-Enforcement/Intelligence

Under CASS cycles 2017 and 2018, some of the cases were selected for scrutiny as a 'Limited Scrutiny' case. In 'Limited Scrutiny' cases, Assessing Officer cannot travel beyond the issue(s) for which the case was selected. The field authorities asked the Board to consider the issue that in several cases under 'Limited Scrutiny', information pointing out specific tax-evasion for the relevant year, is available with the concerned AO, however, in view of the restrictive nature of enquiry/investigation, the same presently cannot be acted upon.

After examining the issue in deep, the Board said that issues arising from such information can also be examined during the course of conduct of assessment proceedings in such 'Limited Scrutiny' cases with prior administrative approval of the concerned Pr. CIT/CIT. It was said that in such 'Limited Scrutiny' cases, Assessing Officer shall not expand the scope of enquiry/investigation beyond the issue(s) on which the case was flagged for 'Limited Scrutiny' & issue arising from nature of information," the Board said.

The board prescribed further procedures to be adopted while examining the additional issue.

Recent Happenings At VIPCAA

VIPCA successfully organized its 11th Annual Conference on 17th Nov 2018, at Royal Bengal Room, Salt Lake.
The event was attended by over 600 Members









The newsletter contains information about the latest updates & case laws relating to Direct Taxes, Indirect Taxes & Company Law Matters. The information is not an advice, and should not be treated as such. We will not be liable in respect of any special, indirect or consequential loss or damage.