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Newsletter

DIRECT TAXES

Judicial pronouncements

Sec. 2(24) – Definition of term ‘Income’

CIT Vs. Prabhukunj Co-op Hsg Soc Ltd. [TS-521-HC-2015 (Guj), Gujarat High Court, dtd. 24.04.2015, in favour of assessee]

Larger-bench applies triple test of 'mutuality'; Premium collection on plot sale non-taxable

Full bench of Gujarat HC rules that premium received by assessee (a co-operative housing society) upon transfer of plot by its outgoing member not taxable in the hands of society applying principles of mutuality; Rejects revenue's reliance on Bombay HC ruling in Presidency Cooperative Housing Society Ltd. as the principle of mutuality was never pressed nor discussed by the Court; Bye-laws of the society provided that upon transfer of a plot of land allotted to a member, assessee-society would collect 50% of the excess received (i.e. premium) by such outgoing member; Rejects Revenue's stand that principle of mutuality was not applicable as the receipt would remain in the fund of society in perpetuity and even upon winding-up, it would not be distributed among members

Section 11 – Income from property held for charitable or religious purpose

Jyothy Charitable Trust Vs. DIT(E) [TS-493-ITAT-2015 (Bang), Bangalore ITAT bench, dtd. 14.08.2015, in favour of assessee]

Trust's excess expenditure set-off against subsequent year income amounts to income application

ITAT allows carry forward of excess expenditure incurred by assessee-trust over its income for setting-off against subsequent years' income; Notes that Sec 11(1)(a) (dealing with application of Trust's income) does not contain any limitation with respect to such carry forward. ITAT holds that set-off of excess expenditure would amount to application of income of such later year; Separately, allows assessee's depreciation



claim for subject AY 2011-12, holds that Finance Act, 2014 amendment disallowing depreciation to Trusts only prospective.

Section 14A – Expenditure incurred in relation to income not includible in total income

HDFC Bank Limited Vs. DCIT [TS-553-ITAT-2015(Mum), Mumbai ITAT bench, dtd. 23.09.2015, in favour of revenue]

ITAT confirms Sec 14A disallowance for bank; Rejects sufficient “own-funds” plea

ITAT confirms Sec 14A disallowance with respect to interest expense for AY 2008-09, rejects assessee's contention that it had sufficient balance in the current deposit account/s (on which no interest is suffered) which must be considered as applied toward tax-free investments; Clarifies that “to attribute a particular liability or a class of liabilities, ...against a particular segment of assets, both accumulated over the years in the course of its business, would be incorrect”; As no case for financing by any dedicated source stands made out, holds that the investment in securities were made out of common pool of fund, further rejects assessee's stand that since taxfree investments were held as stock in trade, it would not attract Sec 14A disallowance.

Cheminvest limited Vs. CIT [TS-504-HC-2015(Del), Delhi high Court, dtd. 02.09.2015, in favour of assessee]

HC reverses Special bench ruling, no Sec 14A disallowance on interest absent exempt income

HC reverses ITAT's special bench ruling, holds no Sec 14A disallowance in respect of interest expenditure attributable for making strategic investments, absent earning of exempt income therefrom ; Observes that assessee made strategic investment in shares of Max India limited out of the borrowed funds, but did not earn any dividend income in subject AY 2004-05; Rules that since no exempt income was earned, there cannot be any disallowance u/s 14A; Rejects Revenue's action in invoking Sec 14A disallowance while claiming that the borrowed funds were utilized for the purchase of shares to earn exempt dividend income; Further rejects Revenue's strong reliance on SC ruling in Rajendra Prasad Moody to contend that "the interest expenditure incurred in relation to income not forming part of total income had to suffer the disallowance irrespective of the fact whether any income was earned by assessee or not.."; Accepts assessee's contention that the SC ruling was rendered in the context of allowability of deduction u/s 57(iii) of the Act where the expression used is "for the purpose of making or earning such income", while Sec 14A contains the expression "in relation to income which does not form part of the total income"

Section 28 – Profit and gains of business or profession

CIT Vs. Shriram Investments Ltd [TS-538-HC-2015(Mad), Madras high court, dtd. 15.06.2015, in favour of assessee]

Payment to NBFC for EMI default taxable on receipt basis; Propagates

'real-income' theory

HC rules that Additional Finance Charges ('AFC') collected by assessee (an NBFC) upon borrowers' default in payment of EMIs taxable on receipt basis, not on accrual basis as sought by Revenue for AYs 1997-98 to 2000-01; Accepts assessee's contention that when uncertainty was attached to the recovery of EMIs itself, recovery of additional burden in the form of AFC was equally uncertain, therefore it cannot be taxed on accrual basis. Follows coordinate bench ruling in Annamalai Finance Ltd wherein it was held that the test of real income is the chances or probabilities of realisation and whether there was a real accrual of income to the assessee company, thus rules that the 'actual receipt' theory for AFC income stands fortified; Further, observes that collection and accrual of AFC happens simultaneously, thus no loss was caused to Revenue owing to change in method of accounting as AFC collected was offered to tax on receipt basis.



Section 37 – General

ACIT Vs. Ashoka Buildcon Ltd. [(2015) 61 taxmann.com 330, ITAT Pune bench, dtd. 31.12.2014, in favour of assessee]

Provision made for foreseeable losses by following AS-7 is allowable

Where assessee is executing an infrastructure development fixed price contract, foreseeable losses of future

years can be recognized following rationale of AS-7 issued by ICAI and such a provision is an allowable deduction

Section 40 – Amount not deductible

CIT Vs. Ansal Land Mark Township (P) Ltd [TS-495-HC-2015(Del), Delhi High Court, dtd. 26.08.2015, in favour of assessee]

HC allows retrospective benefit of second proviso to Sec 40(a)(ia); Affirms Rajiv Agarwal ITAT-ruling

HC upholds ITAT order deleting Sec 40(a)(ia) disallowance for non-deduction of TDS for AYs 2008-09 and 2009-10 applying second proviso to Sec 40(a)(ia); Rules that second proviso inserted vide Finance Act, 2012 which provides that Sec 40(a)(ia) will not be attracted where payee has deposited tax is retrospective in nature; Approves ITAT's reliance on Agra ITAT ruling in Rajiv Kumar Agarwal, wherein it was held that second proviso to Sec 40(a)(ia), being "declaratory and curative" in nature, should be given retrospective effect; Appreciating Rajiv Agarwal ruling, HC remarks that Agra ITAT "has undertaken a thorough analysis of the second proviso to Section 40(a)(ia) of the Act and also sought to explain the rationale behind its insertion"

Section 57 – Deduction

Vodafone South Limited Vs. CIT [TS-557-HC-2015(Del), Delhi High Court, dtd. 21.09.2015, in favour of assessee]

HC allows interest deduction, rejects Revenue's pre-operative expense plea; Distinguishes Tuticorin Alkali (SC)

HC reverses ITAT's order, allows assessee's claim of netting off bank-interest expense against interest income (earned from advancing loan to holding co.) assessable under the head "income from other sources" ('IFOS');

Distinguishing SC ruling in Tuticorin Alkali, HC remarks that "Revenue was under a basic misconception that assessee was using a part of its 'surplus' borrowed funds to advance loan to its holding company.", further holds that assessee did not advance loan from "surplus funds" already borrowed by it for the purpose of setting up its business; Observes that assessee availed Bank loan and transferred the same to its Holding Co. on the same day, thus there was direct nexus between earning of interest income and payment of interest in terms of Sec 57(iii)

Section 68 – Cash Credits

Velocient Technologies Ltd Vs. CIT [TS-486-SC-2015, The Supreme Court of India, dtd. 24.08.2015, in favour of revenue]

Dismisses SLP; Payment through banks insufficient, "source" credit-worthiness paramount; Sec 68 addition sustained

SC dismisses assessee's SLP against Delhi HC judgment sustaining unexplained cash credit addition u/s 68 made by AO during reassessment proceedings; During AY 1993-94, assessee (a JV co.) had received Rs. 10.65 cr as interest-free loan from its foreign JV partner which was unilaterally forfeited by assessee in later AY, AO reopened assessment for AY 1993-94 doubting such unilateral forfeiture and made addition u/s 68 for the loan amount received holding that there was no rationale for lending such huge amount; HC had rejected assessee's stand that genuineness of transaction was established based on clearances from statutory authorities, receipt of amount through normal banking channels etc, thus addition based on unrelated event, i.e forfeiture of the loan was not justified when no fresh material was used in reassessment proceedings; HC had also observed that as-

sessee did not satisfactorily explain the identities of the foreign JV partners and whether it genuinely lent monies and remarked "the onus to prove that the amounts came from credible sources and creditworthiness of the entity or the source, was never discharged."



Section 69 – Unexplained investments

ITO Vs. Chandamama [(2015) 61 taxmann.com 77, ITAT Patna bench, dtd. 06.07.2015, in favour of assessee]

No sec. 69 additions on basis of loose sheet found during search unless AO prove it as eligible info

Matter remanded for fresh consideration where Commissioner (Appeals) deleted disallowance made by Assessing Officer on account of excess purchase shown by assessee in comparison to purchase reflected in profit and loss account entered in CPU found and impounded during course of survey, without recording any finding as to whether assessee had been able to explain such difference

Where assessee had only established identity of creditors by furnishing their PAN cards/driving license/s, as well as confirmations therefrom, but no material toward capacity of creditors or genuineness of transactions, stated to be loans, had been furnished, impugned credits were added under section 68

No addition could be made under section 69 on basis of loose sheets found during survey when revenue failed to show that said documents represented

information from which a reasonable inference as to their representing 'transactions' could be drawn.

Section 153A – Assessments in case of search or requisition

CIT Vs. Kabul Chawla [TS-494-HC-2015(Del), Dekhi High Court, dtd. 28.08.2015, in favour of assessee]

Absent 'incriminating material', quashes additions during block assessment u/s153A; Distinguishes Anil Bhatia ruling

HC upholds ITAT order, quashes deemed dividend addition during block assessment u/s 153A as no incriminating material unearthed during search and assessments for subjects AYs 'completed' as on search-date; Rejecting Revenue's stand that additions can be made even in absence of any incriminating material, holds "Although Section 153A does not say that additions should be strictly made on the basis of evidence found in the course of the search...it does not mean that the assessment can be arbitrary or made without any relevance or nexus with the seized material" Further, rules that completed assessments can be interfered by AO during Sec 153A proceedings only on the basis of some incriminating material found during search.

Section 220 – When tax payable and when assessee deemed in default

Jyothy Laboratories Ltd Vs. DCIT [TS-556-HC-2015(MAD), Madras High Court, dtd. 23.02.2015, in favour of revenue]

HC dismisses writ; Upholds Revenue's "discretion" u/s 220(6) in granting partial demand stay

HC dismisses writ of mandamus filed by assessee seeking to direct Revenue to grant stay on entire outstanding demand (as against partial stay, pending appeal disposal by CIT(A).

HC interprets meaning of “discretion” u/s 220(6) as implying that “once the authority, having satisfied with the facts and circumstances of the case in appeal, treated the assessee as not a defaulter for a particular amount, it is automatic that stay in respect of such amount has been granted”, accordingly, states DCIT passed the order after exercising his discretion by treating assessee as not in default only to the extent of Rs 5 crores for which stay was allowed; Stresses that Income Tax Officers should not exercise such power arbitrarily or capriciously or based on matters extraneous or irrelevant, and should act as “quasijudicial authority vested with the power of mitigating hardship to the assessee”;

Section 201 – Consequence of failure to deduct or pay

Oil & Natural Gas Commission Vs. ACIT [TS-541-ITAT-2015(Ahd), Ahmedabad ITAT bench, dtd. 15.09.2015, in favour of assessee]

“Month or part-thereof” for Sec 201 (1A) interest calculation ≠ “full month”; British calendar prevails

ITAT rules that ‘every month or part thereof appearing in Sec 201(1A) (relating to interest levy for TDS default) means ‘a month reckoned according to the British calendar’ and rejects revenue’s argument; While calculating interest u/s 201(1A) for the period November 16, 2010 to December 14, 2012, AO computed the delay of 26 months treating part of November & December as two full months in addition to 24 calendar months; ITAT refers to Sec 201(1A) which uses expression “every month or part of a month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is deducted”; Holding Revenue’s interpretation as ‘incongruous’, ITAT opines that “The context in which the expression “month” is used here is a measure-

ment of period for which time value of money is to be compensated”; As expression ‘month’ is not defined for the purpose of Sec 201(1A), ITAT refers to Sec 3(35) of the General Clauses Act which defines “month” as “a month reckoned according to the British calendar”, further notes that the expression ‘reckoned’ in plain English refers to ‘count, compute or calculate’.



Section 245C – Application for settlement of cases

CIT Vs. Income Tax Settlement Commission & Others [TS-499-HC-2015 (Bom), Bombay high Court, dtd. 14.08.2015, in favour of assessee]

Subsequent income-revision does not mean full/true disclosure not made in SetCom application

HC quashes Revenue’s writ challenging Settlement Commission’s jurisdiction to entertain assessee’s settlement application u/s 245C(1); Rejects Revenue’s stand that as assessee disclosed additional income only during the course of hearing u/s 245D(4), it did not comply with the condition of full & true disclosure of income as mandated u/s 245C (1); Rules that revision of already disclosed income would prima facie show that full disclosure was not made in the original application, however clarifies that this principle is not ‘cast in stone’ and depends on facts of the case; Opines that “if an additional income is declared during the course of the hearing in view of what emerges during debate before the Commission, it cannot

be said that the original application did not make true and full disclosure of its undisclosed income”.

CIT Vs. Suman Dhamija [TS-480-SC-2015, The Supreme Court of India, dtd. 01.07.2015, in favour of revenue]

CBDT Instruction fixing monetary limit for appeals prospective, inapplicable to pending cases

SC sets aside HC orders, holds CBDT Instruction No. 3/2011 specifying minimum monetary tax effect of Rs 10 lacs for Revenue appeals before HC as not having retrospective effect; HC had dismissed Revenue’s appeals considering the aforesaid CBDT instruction; SC observes that all the appeals in present case were preferred prior to 2011, further observes that the instruction clearly indicates that it shall govern only such cases which are filed after the issuance of the instruction; SC rules that the CBDT instruction does not apply to pending cases i.e cases filed before 2011; Thus, remits matter back to HC for re-adjudicating the appeals on merits.

INDIRECT TAXES

Judicial pronouncements

CENTRAL EXCISE

Commissioner of Central Excise Vs. Hitkari Fibres Ltd. [Civil Appeal No. 4757 of 2006, The Supreme Court of India, dtd. 03.09.2015, in favour of assessee]

No Excise duty Price-escalation not contemplated at or before time of removal

Price-escalation which was not contemplated at or before time of removal, cannot form part of transaction value especially when there is no allegation of understatement of value – Duty is payable at place, price and time of clearance of goods.

Shyam Steel Industries & Anr. Vs. Deputy Commissioner of Central Excise and Service Tax [WP 299 of 2015, Calcutta High Court, dtd. 19.06.2015]

Trade discount quantified subsequent to clearance is an admissible deduction from transaction value

The Hon'ble High Court stated that the Commissioner of Central Excise rightly

held that the value of the goods cannot be determined at the time of removal of such goods from the factory. This is for the reason that the normal transaction value is not available for such removals at that time as the assessee at that time cannot determine the quantity of discount being extended to the buyers. This can be done only at a later stage, precisely at the end of discount scheme period offered to the dealers which is

usually after four months. As per paragraph 9 of the Central Board of Excise and Customs circular dated 30th June, 2000 referred to above, discount of any type made known prior to the clearance of the goods but quantified subsequently and passed on to the customers is an admissible deduction from the transaction value and as such the assessment for such transactions may be made on a provisional basis.

Due Dates of key compliances pertaining to the month of October 2015

5 th October	Payment of Excise duty for the month of September
6 th October	Payment of Service Tax & Excise duty paid electronically through internet banking for the month of September
7 th October	TDS/TCS Payment for the month of September
10 th October	Excise Return ER1/ER2/ER6
15 th October	PF Contribution for the month September
15 th October	Due for filing TDS return for the quarter ended on 30th September
21 st October	ESIC payment of for the month of September
25 th October	Service tax Return for the half year ended on 30th September.
31 st October	Due date for filing income tax return of A.Y. 2015-16 of Corporate assessee and assessee required to get accounts audited u/s. 44AB file for assessee.

OUR OFFICES:

- MUMBAI**

303, Konark Shram, 3rd Floor, 156 Tardeo Road, Tardeo, Mumbai-400 034.

Tel. : 91-22-31921942 –3

- PUNE**

E-2-B, 4th Floor, The Fifth Avenue, Dhole Patil Road Pune.

Tel. : 91-20-32549007-8 Fax : 91-20-30529401

- SURAT**

'SNK House' 31-A, Adarsh Soc, Opp. Seventh Day Adventist High School, Athwalines, Surat-395 001.

Tel. : 91-261-2656273-4 & 3299540 & 47

Fax : 91-261-2656868

- AHMEDABAD**

304, Super Plaza, Sandesh Press Road, Vastrapur, Ahmedabad -380054

Tel : 91-079-40032950

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