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Newsletter

DIRECT TAXES

Judicial pronouncements

Section 2 – Definition

Gopal and Sons (HUF) Vs. CIT [Civil Appeal No. 12274 of 2016, The Supreme Court of India, dtd. 04.01.2017, in favour of revenue]

SC upholds deemed dividend addition on HUF despite shares issued in Karta's name

SC upholds deemed dividend addition u/s 2(22)(e) on assessee-HUF for AY 2006-07 with respect to loan/advances received from one concern (in which it beneficially held more than 10% share-capital); Rejects assessee's stand that since the company had issued shares in the name of karta and not in HUF's name, assessee was neither the beneficial nor the registered shareholder, hence Sec 2(22)(e) cannot be made applicable; Rules that since the shareholder (i.e Karta in this case) is a member of the said HUF and has substantial interest in the HUF (being its karta), the payment received by HUF from the company shall constitute deemed dividend by virtue of Explanation 3 to Sec 2(22)(e) and thus, "it is not even necessary to determine as to whether HUF can, in law, be beneficial shareholder or registered shareholder in a Company."

M/s. Shiv Shakti Flour Mills (P.) Ltd. Vs. CIT [ITA No. 6 of 2014, Gauhati High Court, dtd. 29.11.2016, in favour of assessee]

Gauhati HC endorses "purpose test" to treat transport-subsidy as a capital receipt

Gauhati HC sets aside ITAT order for AY 2001-02, transport subsidy received by assessee (an industrial undertaking) under Government scheme to boost industrial growth in north-eastern region constitutes a non-taxable capital receipt and not a supplementary trade receipt; Following the decision of jurisdictional HC in Meghalaya Steels Ltd. third ITAT member opined that the transport subsidy should be treated as a revenue receipt and based on the majority view ITAT held that



such receipt should be taxable in assessee's hands; Notes that the transport subsidy was received towards stimulation of industrial activity in the backward region, generation of employment opportunities and it wasn't meant for providing higher profit; Following the purpose test enunciated by SC in Sahney Steel & Press Works Ltd. and Ponni Sugars & Chemicals Ltd. rules that as "the receipts were to encourage investment in difficult and far flung states the same cannot be treated as revenue receipt".

Siemens Pub. Communication Networks P. Ltd. Vs. CIT [Special leave to appeal no. 6946/2014, The Supreme Court of india, dtd. 07.12.2016, in favour of assessee]

SC reverses HC; Subvention for subsidiary's losses from holding company, a non-taxable capital receipt

SC reverses Karnataka HC ruling, holds subvention receipts by Siemens from its German parent for recoupment of losses, a non-taxable capital receipt for AYs 1999-00 to 2001-02; HC had held subvention as revenue receipt relying on SC rulings in Sahney Steel & Press Works Ltd. and Ponni Sugars and Chemicals Ltd. wherein it was held that unless the grant-in-aid received by an assessee is utilized for acquisition of an asset, the same must be understood to be a revenue receipt;

SC distinguishes Ponni Sugars & Sahnay Steels on the ground that subsidies received therein were in the nature of grant-in-aid from public funds and not by way of voluntary contribution by parent as in the present case; Moreover, SC opines that “the voluntary payments made by the parent Company to its loss making Indian company can also be understood to be payments made in order to protect the capital investment of the Assessee Company.”; Therefore, SC holds that payments received by assessee cannot be held to be revenue receipts.

Section 10A / 10B – Special provision in respect of newly established undertaking in free trade zone, hundred percent export oriented undertaking

CIT Vs. M/s. Yokogawa India Ltd. [Civil Appeal No. 8498 of 2013, The Supreme Court of India, dtd. 16.12.2016, in favour of assessee]

SC lays down law on loss set-off for Sec 10A/10B units in Yokogawa case

Sec. 10A/10B are provisions of deduction and the stage of deduction is while computing gross total income of eligible undertaking under Chapter IV of the Income-tax Act and not at the stage of computation of total income under Chapter VI

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

Indiabulls Financial Services Ltd. Vs. Deputy Commissioner of Income Tax [(2016) 76 taxmann.com 268, High Court of Delhi, dtd. 21.11.2016, in favour of revenue]

Sec. 14A working of AO couldn't be invalid even if he didn't record dissatisfaction with calculation of assessee

Where Assessing Officer after carrying

out elaborate analysis and following steps enacted in statute, had determined amount of expenditure incurred for earning tax exempt income, merely because he did not expressly record his dissatisfaction about assessee's calculation, his conclusion could not be rejected.

Principal Commissioner of Income Tax Vs. U. K. Paints (India) (P.) Ltd. [(2016) 76 taxmann.com 348, High Court of Delhi, dtd. 06.12.2016, in favour of assessee]

AO can't invoke Rule 8D unless assessee's voluntary disallowance under Sec. 14A is unreasonable

AO cannot recompute disallowance u/s 14A by invoking Rule 8D without elucidating and explaining why assessee's voluntary disallowance is unreasonable and unsatisfactory. The AO's jurisdiction to go into the method prescribed in the Rules arise only if the amounts the assessee offers does not have any realistic correlation with the tax exempt income. The opinion of the AO in the latter part of Section 14A(2) is to be based upon an appraisal of objective material relating to the assessee's voluntary disallowance of amount/ amounts. Not only that, if in the course of assessment, the AO enquires from the assessee about the amounts spent, which are to be disallowed, and the assessee in fact discloses a larger amount (than the one given in the return), it is still incumbent upon the AO to enquire into such larger amounts and determine whether it has nexus with expenditure relatable to exempt income to attract Section 14A(1).

DCIT Vs. The Saraswat Co. Op. Bank Ltd. [ITA No. 8622/Mum/2010, ITAT Mumbai bench, dtd. 31.10.2016, in favour of revenue]

Mumbai ITAT rejects exclusion of strategic investments in Sec 14A-

disallowance computation, reverses CIT(A) order

Mumbai ITAT rules against taxpayer & reverses CIT(A), denies relief from Sec 14A in respect of strategic investment made by assessee (a cooperative bank) in its subsidiary company; Observes that the statute does not grant any exemption to strategic investments which are capable of yielding exempt income for arriving at Sec. 14A disallowance; Thus holds that any investment including strategic investments in subsidiary company as well as in other securities which are capable of yielding tax-free income (by way of dividend) shall be included for the purpose of computing disallowance u/s 14A.

Section 23 – Annual value how determined

Susham Singla Vs. CIT [(2016) 76 taxmann.com 349, High Court of Punjab & Haryana, dtd. 23.12.2016, in favour of revenue]

No vacancy allowance for properties remained vacant throughout the whole previous year

Annual value of properties which are more than one, owned by assessee and which admittedly remained vacant throughout previous year would not be assessed under section 23(1)(c) but under section 23(1)(a).

Section 23(1)(b) and (c) would apply only to those properties which were actually let out and for which rent was actually received or receivable by the assessee. These provisions deal with the concept of real income and not notional income. Thus, the annual value of the properties which are more than one, owned by the assessee and which admittedly remained vacant throughout the previous year would not be assessed under section 23(1)(c) but under section 23(1)(a).



DIRECT TAXES

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Sobha Interiors (P.) Ltd. Vs. Deputy Commissioner of Income tax [(2016) 76 taxmann.com 275, ITAT Bangalore bench, dtd. 23.11.2016, in favour of revenue]

Interest-free deposit paid to lessor should be considered to work-out ALV of property

While computing ALV of house property let out by assessee, notional interest on interest free security deposit has to be taken into consideration.

S. M. Chandrashekar Vs. ITO [(2016) 76 taxmann.com 278, ITAT Bangalore bench, dtd. 31.08.2016, in favour of assessee]

Benefit of vacancy allowance would be available even when house is under renovation

Where house was under renovation and, thus, remained vacant, benefit of vacancy allowance would be available to assessee

Section 32 – Depreciation

ADC India Communications Ltd. Vs. Asst. Commissioner of Income tax [(2016) 76 taxmann.com 269, Karnataka High Court, dtd. 15.11.2016, in favour of revenue]

Burden of proof lies on assessee when purchase invoice of plant doesn't match with report of department's valuer

If invoices produced by assessee in support of purchase of equipments were not relied upon by Assessing Authority finding them to be prima-facie highly inflated on face of valuation certificate given to revenue by Chartered Engineer, burden of rebuttal of evidence adduced by revenue was on assessee.

Deputy Commissioner of Income tax Vs. Zydus Wellness Ltd. [(2016) 76 taxmann.com 328, ITAT Ahmedabad bench, dtd. 23.12.2016, in favour of

assessee]

Depreciation allowable on goodwill even when it was claimed during assessment without filing revised return

Depreciation on 'goodwill' arising on amalgamation claimed by assessee company during course of assessment proceedings vide a revised computation of income without filing revised return of income was allowable.

The Assessing Officer is bound to entertain rightful claim of deduction made otherwise than by filing a revised return of income. Thus, justifiable and correct claim of depreciation on 'goodwill' arising on amalgamation claimed by the assessee company during the course of assessment proceedings vide a revised computation of income without filing revised return of income was allowable.



Section 72A – Provisions relating to carry forward and set off of accumulated loss and unabsorbed depreciation allowance in amalgamation or demerger, etc.

Deputy Commissioner of Income Tax Vs. Unique International (P.) Ltd. [(2016) 76 taxmann.com 181, ITAT Kolkata bench, dtd. 07.09.2016, partly in favour of revenue]

Calendar year to be considered instead of previous year to reckon

exp. of amalgamating co. under sec. 72A

Where amalgamating company was not engaged in business for more than three years, assessee-amalgamated company would not be entitled to set off brought forward depreciation/loss of amalgamating company against its income under section 72A.

Where in dispute of adopting either of sale deed valuation, or stamp duty valuation, assessee contended for first time before Tribunal that property in question was in nature of booking rights, and not land and building itself and, therefore, section 50C would not be applicable, matter was to be readjudicated.

Where assessee made contribution towards PF and ESI after expiry of due date but before date of filing return, it was entitled to claim benefit under section 43B.

Section 80IA – Deduction in respect of profit and gains from industrial undertakings or enterprises engaged in infrastructure development, etc.

CIT Vs. Best Corporation Ltd. [(2016) 76 taxmann.com 295, The Supreme Court of India, dtd. 21.10.2016, in favour of assessee]

Assessee has option to choose initial AY for claiming deduction under sec. 80-IA

Where Tribunal held that assessee was entitled to deduction under section 80-IA without setting off losses/unabsorbed depreciation pertaining to windmill, which were set off in earlier year, initial assessment year in section 80-IA(5) would only mean year of claim of deduction under section 80-IA, and assessee had option to choose first/initial assessment year of claim for deduction under section 80-IA and High Court upheld order of Tribunal, SLP was to be dismissed.

Section 115JB – Special provision for payment of tax by certain companies

CIT Vs. Metal & Chromium Plater (P.) Ltd. [(2016) 76 taxmann.com 229, Madras High Court, dtd. 09.11.2016, in favour of assessee]

MAT companies are also eligible for sec. 54EC relief

An assessee is entitled to relief under section 54EC for purpose of computation of tax under section 115JB.

Karnataka State Industrial Infrastructure Development Corporation Ltd. Vs. DCIT [ITA No. 1659 & 1660/Bang/2013, ITAT Bangalore bench, dtd. 09.12.2016, in favour of assessee]

Bangalore ITAT allows indexation benefit on long-term capital gains for working MAT liability u/s 115JB

Bangalore ITAT allows assessee's (a Government undertaking) appeal for AY 2008-09, holds that long term capital gains ('LTCG') arrived at by reducing indexed cost of acquisition from asset's sale proceeds to be considered for computing MAT liability u/s 115JB; Observes that clause (ii) to Explanation to Sec. 115JB provides that amount of income u/s 10 [other than provisions of Sec. 10(38)/ 11/ 12], credited to P&L a/c shall be reduced from book profits for MAT computation; Further observes that the term 'any income' used in Sec. 10(38) refers to only the amount of LTCG as computed u/s 48 which provides for computation of capital gains after the reduction of cost of acquisition; Thus rules that the "benefit of indexation of cost of acquisition should be given to the assessee while computing long term capital gain for the purpose of section 115JB of the Act".

Section 201 – Consequences of failure to deduct or pay

CIT Vs. Punjab Infrastructure Dev. Board [ITA No. 73/2016, Punjab & Haryana High Court, dtd. 20.12.2016, in favour of revenue]

Deductee-payee's 'loss' return cannot absolve deductor from 'automatic' interest liability u/s 201(1A) for TDS-default

Punjab and Haryana HC reverses ITAT order, holds assessee-deductor (a State owned infrastructure development company) liable for interest u/s 201(1A) with respect to TDS default on contractor payments during AYs 2007-08 to 2011-12, despite nil/loss return filed by payee-deductee; Rejects assessee's stand that in view of first proviso to Sec 201(1) inserted vide Finance Act, 2012 being retrospective in nature, assessee-payer will not be deemed in default u/s 201(1) owing to 'loss' return filed by payee and hence, interest u/s 201(1A) cannot be levied; HC clarifies that the retrospectively or prospectivity of amendment will not affect assessee's case, states that in view of SC ruling in Hindustan Coca Cola Beverage P. Ltd., even prior to 2012 amendment, the liability to pay interest u/s 201(1A) was there in cases where deductee had paid due taxes; Further, HC observes that even if first proviso to Sec 201(1) is held retrospective, the persons who are not deemed in default by virtue complying first proviso conditions, will not be excluded from the ambit of 'such person' appearing in Sec 201(1A) as subsections (1) and (1A) of Sec 201 are without prejudice to each other, explains that Legislature drew a distinction in Sec 201 between tax and interest; Also, HC holds that assessee-deductor cannot unilaterally assess deductee's tax liability, accepts Revenue's reliance on Sec 197 which establishes that where the deductor wishes to reduce its liability on account of a possible absence of liability or a re-

duced liability of deductee, the deductee must obtain a certificate; Rules that though taxes paid/ loss return filed by deductee will absolve deductor from liability to deduct TDS, but it will not absolve him from 'automatic' interest liability u/s 201(1A) which should be calculated from the date on which tax should have been deducted to the date on which payee filed its return.

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

M/s Andrew Telecommunications India Pvt. Ltd. Vs. Pr. CIT [Writ Petition No. 1021 of 2016, Bombay High Court, dtd. 13.12.2016, in favour of assessee]

AO obliged to grant stay pending CIT(A) appeal if 15% demand paid

Bombay HC sets-aside CIT's order refusing to grant stay of demand to assessee for AY 2012-13; During relevant AY, assessee filed a loss return which was assessed at a demand of Rs. 16.90 cr., further, pending appeal before CIT(A), assessee filed stay of demand application which was rejected and Revenue directed adjustment of entire refund of Rs. 12.25 cr due to assessee for AYs 2006-07 and 2007-08 against the aforesaid demand; Rejects Revenue's stand that entire amount of refund be adjusted against the outstanding demand, HC observes that in view of para 4(A) of Office Memorandum ('O.M') dated Feb 29, 2016, AO is obliged to grant stay on payment of 15% of disputed amount where outstanding demand is disputed before the CIT(A); Further, HC notes that in view of para 4(E), AO can adjust the refund to the extent of demand required for granting stay; Accordingly, HC grants interim stay of demand pending appeal disposal by CIT(A) subject to a condition that 15% of disputed demand (i.e Rs. 2.53 cr) is adjusted against the refund due.

Section 234B /234C – Interest for defaults in payment of advance tax / interest on excess refund

IAN Peter Morris Vs. Asst. Commissioner of Income Tax [(2016) 76 taxmann.com 271, The Supreme Court of India, dtd. 29.11.2016, in favour of assessee]

Salary income can't be charged Sec. 234B, 234C interest for advance tax default

In case of receipt of income by way of 'salary', question of payment of advance tax does not arise and, consequently, provisions of sections 234B and 234C also have no application in such a case.

Section 245D – Procedure on receipt of an application under section 245C

RNS International Ltd. Vs. Income Tax Settlement Commissioner [Writ Petition No. 46275-46289 of 2016, Karnataka High Court, dtd. 07.12.2016, in favour of assessee]

Sec 245D(4A) time-limit for passing Settlement Commission order mandatory, not directory

Karnataka HC allows assessee's writ, quashes order passed by Income Tax Settlement Commission ('ITSC'), being barred by limitation for AYs 2006-07 to AY 2012-13, upholds invocation of Sec 245HA(1)(iv) [which provides for abatement of proceedings before Settlement Commission, if ITSC is unable to pass final settlement order within the time-limit prescribed u/s 245D(4A)]. HC clarifies that word 'shall' used in Sec 245D(4A) suggests that the timeline is mandatory and not directory; HC distinguishes Revenue's reliance on Bombay HC ruling in Star Television News Ltd. (which was affirmed by SC), notes that Bombay HC therein had read down the provisions of abatement contained in Sec 245HA(1)(iv) as the delay in proceedings was not attributable to appli-

cant; HC rules that "only when the Settlement Commission is prevented from fulfilling its mandatory statutory duty due to any reason attributable to the applicant, only in that situation, the time-limit for disposal of an application under s.245D(4A)(i) will have to be read as 'may'...", observes that order passed by ITSC in present case was beyond the time after the proceedings before it stood abated.



INTERNATIONAL TAXATION

Shrenuj Gems & Jewellery Ltd. Vs. ITO [(2016) 76 taxmann.com 277, ITAT Mumbai bench, dtd. 16.11.2016, in favour of assessee]

No addition of notional interest under TP when same credit period was offered to AE and non-AE

ALP adjustment in respect of interest during credit period allowed for realization of export proceeds in case of AEs not to be made if same Credit period was allowed to non-AEs also.

Differential operating margin to be applied only on international transactions with AE and not on total turnover.

Liquid Controls India (P.) Ltd. Vs. Asst. Commissioner of Income tax [(2016) 76 taxmann.com 273, ITAT Ahmedabad bench, dtd. 21.11.2016, in favour of assessee]

While determining ALP, differential operating profit margin can be applied only on international transactions entered into by assessee with its AE and not on total sales turnover.

Where difference of operating profit margin at which international transaction had actually been undertaken as against arm's length price determined by Assessing Officer was within tolerance range of (±) 5 per cent as provided in proviso to section 92C(2), impugned adjustment deserved to be set aside.

INDIRECT TAXES

Judicial pronouncements

CENTRAL EXCISE

Bharat Rolling Mills Vs. Commissioner of Central Excise [(2016) 76 taxmann.com 356, Allahabad CESTAT bench, dtd. 17.06.2016, in favour of assessee]

No denial of SSI benefit just because assessee has wrongly availed of credit during exemption period

In view of fact that assessee had only taken and not utilized Cenvat credit prior to 18-11-2009, when it started paying tax on clearances, it was only a venial breach of provisions and, in that case substantial benefit should not be denied to assessee

SERVICE TAX

N. Bala Baskar Vs. Union of India [(2016) 76 taxmann.com 222, The Supreme Court of India, dtd. 14.12.2016, in favour of revenue]

Service receiver has no locus standi to challenge service-tax circular; SLP dismissed

If the person to whom the burden of service tax is ultimately passed on is entitled to challenge levy of service-tax, it would lead to disastrous consequence. Millions of consumers would come and challenge such levy of taxes. Thus, service receiver has no locus standi to challenge service-tax circular on Joint Development Agreement.



Gujarat State Fertilizers & Chemicals Ltd. Vs. Commissioner of Central Excise [(2016) 76 taxmann.com 357, The Supreme Court of India, dtd. 22.11.2016, in favour of assessee]

Service-tax can't be levied on receipt of share in common expenses

Where two assessees, namely, 'GSFC' and 'GACL' received acid through common pipeline from Reliance Industries and said acid came first to premises of 'GSFC', where handling facilities were installed, and from there it was shared between 'GSFC' and 'GACL' in ratio of 60:40 respectively and further by an agreement handling

facilities expenditure was shared equally by both parties, payment of handling expenditure which was made by 'GACL' to 'GSFC' was share of 'GACL' and it could not be treated as common service provided by 'GSFC' to 'GACL' in order to levy service tax upon 'GSFC'

Due Dates of key compliances pertaining to the month of January 2017:

5 th Jan.	Payment of Excise duty for the month of December
6 th Jan.	Payment of Service Tax & Excise duty paid electronically through internet banking for the month of December
7 th Jan.	TDS/TCS Payment for the month of December
10 th Jan.	Excise Return
15 th Jan.	PF Contribution for the month of December
21 st Jan.	ESIC payment of for the month of December
31 st Jan.	TDS/TCS return for the quarter ended on 31st December.

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