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DIRECT TAXES

Judicial pronouncements

Section 2(24) - Definition of term 'Income'

Dy CIT Vs. Indur Green Power Private Limited [TS-441-ITAT-2015, Delhi ITAT bench, dtd. 06.08.2015, in favour of assessee]

Consideration on sale of carbon credits not taxable being a 'capital receipt'

ITAT upholds CIT (A)'s decision of regarding consideration received on sale of carbon credits as capital receipt and thus, not taxable; AO held that receipts cannot be considered as profits derived from eligible business and thus, rejected assessee's claim of deduction u/s 80IA for AYs 2008-09 and 2009-10; Relies on Coordinate bench ruling in My Home Power Ltd vs. DCIT, later upheld by Jurisdictional HC wherein it was held that the receipt from sale of carbon credits is in the nature of capital receipt; Observes that CIT (A)'s decision being in consonance with the principles laid down by the aforesaid ruling, deserves to be upheld.

Section 10A – Special provision in respect of newly established undertaking in free trade zone, etc.

Austin Medical Solutions Pvt Ltd Vs. ITO [TS-431-ITAT-2015, Bangalore ITAT bench, dtd. 17.07.2015, in favour of assessee]

Allows Sec 10A deduction for suo-moto TP-adjustment; Follows jurisdictional iGate ruling, distinguishes Yokogawa

ITAT allows deduction u/s 10A (for software export activities) in respect of suo moto TP adjustment of Rs. 28.61 lacs for AY 2008-09; Follows decision of jurisdictional Karnataka HC in the case of iGate Global Solutions which upheld coordinate bench decision and allowed deduction u/s 10A for suo moto TP adjustment on similar facts as in assessee's case; As regards CIT (A)'s reliance on the Karnataka HC decision in Yokogawa India, opines that the decision dealt only with



issue whether deduction u/s 10A should be allowed before or after set off of losses of other units, unabsorbed depreciation and brought forward losses; Accordingly, distinguishes Yokogawa ruling, holds it is not applicable to assessee's case as it did not deal with allowability of Sec 10A deduction in respect of suo moto TP adjustment made by assessee

Section 43B – Certain deduction to be on actual payment

CIT Vs. Rathi Graphics Technologies Ltd. [TS-451-HC-2015, Delhi High Court, dtd. 06.08.2015, in favour of assessee]

No Sec 43B disallowance for converting interest liability into shares; Explanation 3C not triggered

HC upholds ITAT order, treats conversion of interest payable into equity shares as 'actual payment', Sec 43B disallowance not triggered; Pursuant to the rehabilitation scheme, assessee issued equity shares to one of the lenders and to that extent the interest payable to the lender was regarded as 'paid'. HC holds that "when pursuant to a settlement the creditor agrees to convert a portion of interest into shares, it must be treated as an extinguishment of liability to pay interest to that extent. In essence there will be no further outstanding interest to that extent."

Maruti Suzuki India Ltd. Vs. ACIT [TS -482-ITAT-2015(Del), Delhi ITAT Bench, dtd. 24.08.2015, in favour of assessee]

Rules on Sec 43B deductibility on un-utilized excise-duty; Directs P&L A/c recasting 'inclusively' u/s 145A

ITAT rules on Sec 43B deductibility in respect of un-utilised excise duty/modvat credit and excise duty paid under protest in juxtaposition to Sec 145A (which mandates 'inclusive method' for inventory valuation), directs recasting of P&L A/c in line with Sec 145A; During subject AY 2006- 07, assessee followed "exclusive" method for export goods valuation and claimed deduction u/s 43B for advance payment of excise duty unutilized as at year-end; Noting that Sec 145A starts with a non-obstante clause qua Sec 145, while Sec 43B starts with a non-obstante clause qua 'any other provision of the Act, ITAT holds that "harmonious reading of sections 145A and 43B brings out that the 'Business income' is firstly required to be mandatorily computed by following the 'Inclusive method'" and thereafter, if some part of tax or duty is unpaid/ paid in advance, it should be added/ deducted in the computation of income; Further, holds that "having allowed deduction on payment basis as per section 43B, the computation of income of the succeeding year determined under inclusive method as per section 145A, would require enhancement with such amount of tax or duty etc. allowed as deduction in the earlier year"; Rejects assessee's reliance on SC ruling in Shri Ram Honda and Bombay HC ruling in Indo Nippon Chemicals as they relate to AYs prior to insertion of Sec 145A.

Section 54G- Exemption of capital gain on transfer of assets in cases of shifting of industrial undertaking form urban area

Fibre Boards (P) Ltd. Vs. CIT [TS-454-

SC-2015, The Supreme Court of India, dtd. 11.08.2015, in favour of assessee]

Sets-aside HC order, Advances towards asset acquisition amounts to utilising capital gains

SC sets-aside HC's order wherein assessee was denied exemption u/s 54G as the notification dated September 22, 1967, declaring 'Thane' to be an urban area stands repealed, holds advances paid towards acquisition of assets amounts to utilization of capital gains; Opines that payment of advance for acquiring specified assets amounts to 'utilization' and HC's interpretation would otherwise render nugatory a vital part of the section; SC also rules on interpretation of "repeal" versus omission, holds that on omission of Sec 280ZA and its re-enactment with modification in Sec 54G of IT Act, Sec 24 of General Clause Act would apply, and the notification of 1967, declaring Thane to be an urban area, would continue for the purposes of Sec 54A; Rejects Revenue's contention that Sec 280Y(d) was only omitted by Finance Act, 1990 and not alongwith Sec 280ZA, notes that this would make no material difference as Sec 280Y(d) defined "urban area" for the purpose of Sec 280ZA and on omission of Sec 280ZA, it became redundant; Relies on Coordinate Bench rulings in State of Orissa and Ratan Lal Adukia vs. UOI to holds that HC erred by not referring to Sec 24 of the General Clause Act ('GCA').

Section 64 – Income of individual to include income of spouse, minor child, etc.

Kapoor Chand Vs. ACIT [TS-479-SC-2015, The Supreme Court of India, dtd. 14.07.2015, in favour of assessee]

Clubbing provisions inapplicable where minor child entitled to income

on attaining majority

SC sets aside Uttaranchal HC ruling, holds income of trust as not taxable in the hands of assessee despite the same having been created for the benefit of assessee's minor children; Erst-while Sec 64(1)(iii) providing for clubbing of income of a minor child in the hands of his parent not applicable in instant case; Court observes that one of the important terms of the trust deeds was income so earned by the trusts shall not be received by the minor children till they become major & that the same would be spent for their benefit only on attaining the age of majority; Relying on co-ordinate bench ruling in M.R. Doshi and Bombay HC ruling in Yogindraprasad N. Mafatlal, SC holds "... in the first instance it has to be shown that the share of income is at the hands of minor child which requirement is not satisfied in the present case" ; Further clarifies "... Explanation 2A is only to take care of the income even when a trust is created. It does not go further and make any provision to the effect that even when the income earned by the trust cannot be utilised for the benefit of the minor during his minority the Explanation 2A shall be attracted."

Section – 68 – Cash Credits

Subhlakshmi Vanijya Pvt. Ltd. Vs. CIT [TS-428-ITAT-2015, Kolkata ITAT bench, dtd. 30.06.2015, in favour of revenue]

ITAT upholds's CIT's revisionary powers to order share-transaction genuineness probe; Sec 68 proviso clarificatory

ITAT upholds CIT's revisionary order u/s 263 in bunch of appeals for AYs 2008-09 and 2009-10, assessee's in all these matters filed tax return offering meagre income and issued share capital at huge premium, while making gigantic



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investments in new companies at much higher price than their real worth; Upon reassessment, AO did not invoke Sec 68 (dealing with unexplained credit additions) and subsequently CIT exercising his revisionary power u/s 263 set aside the assessment orders directing AO to make fresh assessment after conducting detailed enquiry and upon satisfying on genuineness of transaction; Holds Sec 68 amendment as clarificatory, Memorandum explaining the provisions of the Finance Bill, 2012 makes it clear that the onus has always been on the closely held companies to prove genuineness of the transaction.

Bhagyalaxmi Steel Alloys Pvt. Ltd Vs. ACIT [TS-432-ITAT-2015, Pune ITAT bench, dtd. 15.07.2015, in favour of assessee]

Absent AO's independent investigation, disapproves income addition based on excise authorities' finding

ITAT deletes addition on account of suppression of production / extrapolation of sales based on information received from the Excise Dept. about clandestine removal of goods without payment of excise duty and erratic consumption of electricity; Absent any investigation carried out by AO, ITAT holds "where the evidence of clandestine removal of material without payment of Excise duty has been found by the Excise Department, ...the same could not be relied upon as evidence, while extrapolating the sales and the additional income thereon in the hands of the assessee during the Income-tax proceedings"; Notes assessee admitted clandestine removal before Settlement Commission of Excise Dept. and further offered additional income on account thereof, clarifies that no extrapolation of sales for entire year can be made in the hands of the assessee on the basis of the evidence found for clandestine removal for few days; Extensively relies on co-ordinate bench

ruling in SRJ peety Steels wherein similar addition was deleted.



Section 148 – Issue of notice where income has escaped assessment

Rollatainers Ltd Vs. ACIT [TS-441-ITAT-2015, Delhi ITAT bench, dtd. 06.08.2015, in favour of revenue]

ITAT upholds reassessment based on 'audit objections' not involving law interpretation

ITAT upholds reassessment initiated by AO based on audit objection regarding excess deduction u/s 43B towards interest transferred to its subsidiary company and not "actually paid" for AY 2003-04; Rejects assessee's stand that reassessment was on account of change of opinion. Rejects assessee's stand that audit objections cannot lead to reassessment, draws distinction between communication of law and interpretation of law; Applies ratio laid down by SC in PVS Beedis Pvt. Ltd read with exception carved out by SC in Indian & Eastern Newspaper Society, to infer that "...whereas the initiation of reassessment proceedings on the basis of an interpretation to the provisions of law by the audit party was forbidden, the communication of law or the factual inconsistencies by the internal audit party, do not operate as a hindrance in the initiation of re-assessment proceedings"

Section 194H – TDS on Commission

United Breweries Ltd Vs. ITO [TS-452-ITAT-2015, Visakhapatnam ITAT bench, dtd. 10.08.2015, in favour of assessee]

Sales Promotion discounts to retail-

ers not "commission" absent agency relationship; Sec 194H inapplicable

ITAT holds assessee (a liquor manufacturer) not liable to deduct TDS u/s 194H on incentive payments to retailers under the trade-discount scheme; Assessee supplied liquor to State owned co. which in turn sold it to retailers, assessee also made incentive payments to retailers (through del credere agents) under the sale-promotion scheme (as assessee's turnover was ultimately dependent upon sales effected by retailers). ITAT ; holds that payments merely formed part of the sale-promotion scheme, further there was no direct connection between assessee and retail dealers; Thus, no principal-agent relationship existed.

Chapter XX – Appeals & Revision

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

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

INTERNATIONAL TAXATION

Judicial pronouncements

Chapter – X- Special provision relating to Avoidance of tax

Serco BPO (P.) Ltd. Vs. Authority of Advance Ruling [(2015) 60 taxmann.com 433, Punjab & Haryana High Court, in favour of revenue]

Only 'TRC' would provide India-Mauritius treaty benefits; HC rejects charge of treaty shopping

Certificate of Residence issued by Mauritius is sufficient evidence for residence under DTAC. The expression "is liable to taxation" in DTAC means "the right of Government to tax" and not "actually taxed".

Commissioner of Income tax Vs. Firestone International (P.) Ltd. [(2015) 60 taxmann.com 235, Bombay high Court, in favour of assessee]

TP addition should be considered only on international transactions with AE and not on entire turnover

ALP can only be considered on value of international transactions alone and not on entire turnover of assessee

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CENTRAL EXCISE

Commissioner of Central Excise Vs. Birla Vxl. [(2015) 59 taxmann.com 408, CESTAT New Delhi bench, dtd.

04.04.2014, in favour of assessee]

Interest on receivables allowed as deduction in computing excisable value

In computing value liable to excise duty, interest on receivable is earned by manufacturer, is eligible for deduction.

Every case of denial of deduction claimed by assessee would not attract penalty.

Pearl Polymers Ltd. Vs. Comm. Of Central Excise [(2015) 59 taxmann.com 410, CESTAT Bangalore bench, dtd. 07.11.2014, in favour of assessee]

Principle of unjust enrichment won't apply when same amount was paid twice

Where assessee had paid same amount twice over, question of unjust enrichment cannot apply to refund thereof, as burden of said amount was borne by assessee himself and not by some other person.

Comm. Of Central Excise Vs. Pethe Brake Motors (P.) Ltd. [(2015) 60 taxmann.com 294, The Supreme Court of India, dtd. 01.05.2015, in favour of assessee]

Using Director's surname on goods doesn't amount to using other's brand name; SSI exemption available

Use of director's surname on excisable

goods cannot amount to use of other's brand name by assessee-company; hence, SSI-exemption cannot be denied to assessee.

Comm. Of Central Excise Vs. Andhra Pradesh Paper Mills Ltd. [(2015) 60 taxmann.com 291, The Supreme Court of India, dtd. 05.05.2015, in favour of a ssessee]

No evasion penalty if there was conflict of judicial opinion and matter was settled only after judgment of SC

When there was conflict of judicial opinion before issue stood settled by judgment of Supreme Court, it is not a case where evasion penalty should be imposed

SERVICE TAX

Gupta Global Resource (P.) Ltd. Vs. Comm. Of Customs & Central Excise [(2015) 60 taxmann.com 118, CESTAT Mumbai bench, dtd. 24.03.2014, in favour of revenue]

Damages deducted by service recipients from amount payable to service providers will form part of taxable value

Deductions made by service recipient from amount payable to service providers towards damages payable by service providers for damages caused to properties of service recipients, will form part of value of taxable value

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

5 th Sept.	Payment of Excise duty for the month of August
6 th Sept.	Payment of Service Tax & Excise duty paid electronically through internet banking for the month of August
7 th Sept.	TDS/TCS Payment for the month of August
10 th Sept.	Excise Return ER1/ER2/ER6
15 th Sept.	PF Contribution for the month August
15 th Sept.	Due for payment of 2nd installment for Corporate and 1st installment for Non-Corporate.
21 st Sept.	ESIC payment of for the month of August
30 ^h Sept.	Due date for filing income tax return for the A.Y. 2015-16.