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DTPA

Direct Taxes Professionals' Association



July, 2020

Headlines

- RECENT JUDICIAL PRONOUNCEMENTS RELATING TO REASSESSMENT PROCEEDINGS
- GST NOTIFICATIONS IN JULY, 2020
- RBI NOTIFICATIONS (JULY 2020)
- RBI MASTER CIRCULARS (JULY 2020)
- LATEST INCOME TAX JUDGEMENTS



Dear Members,

Hope all of you are in good health and safe. Covid-19 has given so many challenges and it has changed the ways of everybody's life. Under the leadership of our President CA Narendra Goyal, Journal Committee is publishing E-Bulletin which contains the recent Notification, Amendments and other useful information.

Hope Members will find this E-Bulletin useful and informative.

With regards

CA MAHENDRA K AGARWAL

Chairman- DTPA Journal Committee

29th June 2020

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Dear Members,

Trust all Members are keeping good health and are safe and healthy.

'Necessity is the mother of invention' and 'adversities give rise to opportunities'- so is the case with our knowledge sharing modes. DTPA Journal Committee under the able chairmanship of CA Mahendra Kumar Agarwal has availed one such opportunity to bring out a Bulletin as knowledge bank on a monthly basis in an online mode. The first DTPA BULLETIN for JUNE 2020 is ready and is being sent to all of you.

Since the concept is new, this first Bulletin contains only a few selected notifications and articles. Yet it will be an endeavour to increase the contents gradually and very shortly it should take the shape of a mini monthly Journal.

I would sincerely request all the Members to contribute useful articles and compilations, which I assure, will find place in the next bulletin, if found worthy of publication.

My best wishes to the DTPA Journal Committee Members and its Chairman.

With regards

CA Narendra Kumar Goyal

President -DTPA

29th June 2020

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RECENT JUDICIAL PRONOUNCEMENTS RELATING TO REASSESSMENT PROCEEDINGS

A. SUPREME COURT DECISIONS

1. Where High Court set aside reassessment proceedings on ground that no valid notice under section 148 could be issued against a dead person, SLP filed against said order was to be dismissed.

[ITO v Durlabhbai Kanubhai Rajpara [2020] 114 Taxmann.com 482 (SC)]

2. Where High Court upheld Tribunal's order holding that since in scrutiny assessment Assessing Officer had gone into assessee's claim for deduction of payment of royalty, he could not initiate reassessment proceedings on pretext that a binding decision of Supreme Court was overlooked at time of assessment, SLP filed against order of High Court was to be dismissed.

[Pr. CIT v Moser Baer India Ltd. [2020] 114 Taxmann.com 549 (SC)]

B. HIGH COURT DECISIONS

- 1) Reopening of assessment could be made only when Assessing Officer has a reason which is present in his mind when he forms his reason to believe that income has escaped assessment; assessment cannot be reopened under section 148 on any hypothesis or contingency that may emerge in future.

[Vinodbhai Jivrajbhai Rabdiya v ITO [2020]

114 Taxmann.com 535 (Gujarat)]

- 2) Where AO initiated reassessment proceedings in case of assessee on ground that it had received accommodation entries from a sham concern, since assessee failed to controvert said finding of AO, validity of reassessment proceeding deserved to be upheld.

[Vedanta Ltd. v Asst. CIT [2020] 114 Taxmann.com 510 (Delhi)].

- 3) Reopening notice issued on basis of amendment to Explanation 1 to section 115JB brought by Finance Act, 2009 with retrospective effect from 1-4-2001 which disallowed provision for bad and doubtful debt for purpose of computing book profits under section 115JB for imposition of tax, was not

justified.

[CIT v Saint Gobain Glass India Ltd. [2020] 114 Taxmann.com 507 (Madras)]

- 4) Where Assessing Officer issued reassessment notice on basis of sanction granted by Chief Commissioner, since Chief Commissioner was not specified officer under section 151(2) to grant such sanction, impugned notice was to be quashed.

[Miranda Tools (P.) Ltd. v ITO [2020] 114 Taxmann.com 584 (Bombay)]

- 5) Re-opening of assessment under section 147/148 invoking extended timeline under section 150 based on Tribunal's earlier year's findings was to be allowed as assessee had categorically agreed to be bound by findings of Tribunal for earlier year.

[Intec Corporation v Asst. CIT [2020] 114 Taxmann.com 611 (Delhi)]

- 6) Where notice for reopening under section 148 assessment was issued to petitioner as legal heir of dead person, it could not be said that impugned notice was issued in name of dead person and, thus, was without jurisdiction.

[Jagdish Madhavdas Ahuja v UOI [2020] 114 Taxmann.com 722 (Bombay)]

- 7) Where reopening notice was issued against assessee for reason that assessee was not eligible for exemption under sections 53(b) and 54(1)(i) in respect of consideration received from sale of a property being an agricultural and in form of a farmhouse along with water tank, servant quarter, etc., constructed on it as property in question was an agricultural land, since assessee had disclosed fully and truly all relevant material facts regarding this issue during original assessment proceedings, impugned reassessment notice issued after four years from end of relevant assessment year was unjustified.

[Arun Munshaw HUF v ITO [2020] 115 Taxmann.com 72 (Gujarat)]

C. Income Tax Appellate Tribunal

1) *Reassessment — Escapement of income — Assessee has taken legal ground regarding validity of notice issued under section 148 and thereby of assessment order passed by Assessing Officer u/s 147—Held, as per section 147, AO is authorized to reopen assessment proceedings if he has reason to believe that any income chargeable to tax has escaped assessment—Reason to believe that income of assessee has escaped assessment should be based on some tangible material which comes to knowledge of AO—A perusal of 'reasons to believe' for reopening of assessment reveal that Assessing Officer had received details of companies which had received share premium at a high rate—Name of assessee also figures in that list—Assessing Officer on basis of said information formed belief that assessee had introduced its unaccounted income in form of share application / share premium—Assessing Officer in this case had received only information that assessee had received a high premium along with share application money—However, this information alone, does not constitute any tangible material or to say any incriminating material to form a belief by Assessing Officer that income of assessee had escaped assessment or to say in other words that share application money received by assessee was an unaccounted money of assessee—Assessing Officer has not recorded that he had received any information that assessee had received share application money from some bogus / paper companies—No information has been pointed out in reasons recorded or receipt of any bogus transactions undertaken by assessee—Even name of companies from whom share premium received has not been mentioned nor there is any allegation that those share applicants were not traceable or they were bogus / paper companies indulged in sham transactions—Mere information that assessee had received a high premium, cannot be said to be a reason to form belief that income of assessee had escaped assessment—Assessing Officer raised a suspicion, regarding source of capital being not genuine or that it may be a modus operandi by assessee to introduce its undisclosed income by*

way of share premium, however, this was a mere suspicion of Assessing Officer without even an iota of any incriminating tangible material against assessee or even otherwise—Information received by Assessing Officer was general and vague information, that of course, can be used to some extent by an Assessing Officer to make further enquiries to ascertain true facts in a case of an ongoing assessment proceedings; however, in a concluded case of assessment, this general information without pointing out any incriminating information against assessee, can not be said to be a tangible information sufficient to form belief that income of assessee has escaped assessment—Suspicion of Assessing Officer, thus, was not based on any reliable information or tangible material coming to his possession in this respect—There must be a direct nexus or live link between material coming to notice of Assessing Officer and formation of belief regarding escapement of income—Powers of Assessing Officer to reopen an assessment, though wide, are not plenary—Words of statute are "reason to believe" and not "reason to suspect"—There can be no manner of doubt that words "reason to believe" suggest that belief must be that of an honest and reasonable person based upon reasonable grounds and that Income-tax Officer may act on direct or circumstantial evidence but not on mere suspicion, gossip or rumour—Assessing Officer has wrongly and illegally assumed jurisdiction in this case to reopen assessment—Reasons pointed out by Assessing Officer cannot be said to be reasons "to form belief" that income of assessee had escaped assessment—Assessment order framed by Assessing Officer is not sustainable in eyes of law, same is accordingly quashed—Assessee's appeal allowed.

Chandigarh Tribunal in Indo Techno Trade Limited v. ITO (2020)

GST NOTIFICATIONS IN JULY, 2020

1. Furnishing of 'Nil' GSTR 3B and GSTR 1 by short messaging service (SMS):

If a registered person has Nil or No entry in all the Tables in [FORM GSTR-3B](#) or [FORM GSTR-1](#), then he can file GSTR-1 and GSTR-3B through SMS from the registered mobile number. The verification shall be done by sending a One Time Password (OTP) to said registered mobile number- Rule 67A as substituted by N. No. 58/2020-Central Tax dated 01.07.2020

2. Extension of due date for filing FORM GSTR-4 for financial year 2019-2020

The due date for furnishing of GSTR-4 return by a composition taxpayer for the financial year ending 31st March, 2020 has been extended from 15.07.2020 to 31.08.2020- N. No. 59/2020-Central Tax dated 13.07.2020

GST Circulars in July, 2020

1. Disposal of pending GST Registration applications filed during COVID period on or before 30th July, 2020

Section 25(10) of the [CGST Act, 2017](#) read with [rule 9](#) of the [CGST Rules, 2017](#). provides for deemed approval of application of registration after a period of three working days, if the proper officer fails to take any action on the said application within the said period of three working days.

During COVID lockdown period, to avoid possible misuse of this deeming provision because of closure of either the central / state tax offices or functioning with skeletal staff, deemed approval of application of registration were held up on the portal with effect from 25th March, 2020. With offices opening since 15th June 2020, deemed approvals have been resumed for all those applications pending as on 30.06.2020, which had not been processed till 15th July 2020.

It has further been decided that:

- Registration applications received after 30.06.2020 which remain pending as on

31.07.2020 shall be deemed approved on 31.07.2020.

- 3 days deemed approval of application of registration would be resumed from 01st August, 2020. Accordingly, all the pending applications of registration shall be disposed of, on or before 30th July, 2020 as a special drive.
- Where during the lock down period, registration applications have been deemed approved on the portal because of technical glitches, GSTN shall forward the list of such GSTINs to the jurisdictional officers. In such cases, where ever required, proper officers may get the physical verification of business premises done.

[Circular No: CBEC-20/06/11/2020-GST/1137 dated 17.07.2020 issued by GST Policy Wing]

Press Release in July, 2020

Memorandum of Understanding (MoU) between CBDT and CBIC for sharing of data and information between two organisations [Press Release dated 21.07.2020 issued by CBDT]

A Memorandum of Understanding (MoU) was signed between the Central Board of Direct Taxes (CBDT) and the Central Board of Indirect Taxes and Customs (CBIC) today, for data exchange between the two organizations. This MoU will facilitate the sharing of data and information between CBDT and CBIC on an automatic and regular basis. In addition to regular exchange of data, CBDT and CBIC will also exchange with each other, on request and spontaneous basis, any information available in their respective databases which may have utility for the other organization. A Data Exchange Steering Group has also been constituted for the initiative, which will meet periodically to review the data exchange status and take steps to further improve the effectiveness of the data sharing mechanism.

RBI NOTIFICATIONS (JULY 2020)

SLNO	DATE	PARTICULARS
1	18.07.2020	Implementation of Section 51A of UAPA, 1967 - Updates to UNSC's 1267/ 1989 ISIL (Da'esh) & Al-Qaida Sanctions List - Addition of one individual
2	16.07.2020	Fair Practices Code for Asset Reconstruction Companies
3	10.07.2020	Exemption from Registration as NBFC – Alternative Investment Fund (AIF)
4	06.07.2020	Extension of timeline for finalization of audited accounts
5	02.07.2020	Credit flow to Micro, Small and Medium Enterprises Sector
6	01.07.2020	Distressed Assets Fund - Subordinate Debt for Stressed MSMEs
7	01.07.2020	Master Circular – Facility for Exchange of Notes and Coins
8	01.07.2020	Master Circular – Detection and Impounding of Counterfeit Notes
9	01.07.2020	Master Circular on Conduct of Government Business by Agency Banks - Payment of Agency Commission
10	01.07.2020	Master Circular - Disbursement of Government Pension by Agency Banks
11	01.07.2020	Master Circular – Lead Bank Scheme
12	01.07.2020	Master Circular – Scheme of Penalties for bank branches based on performance in rendering customer service to the members of public
13	01.07.2020	Master Circular on SHG-Bank Linkage Programme
14	01.07.2020	Special liquidity scheme for NBFCs/HFCs

RBI MASTER CIRCULARS (JULY 2020)

SLNO	DATE	PARTICULARS
1	01.07.2020	Master Circular on Conduct of Government Business by Agency Banks - Payment of Agency Commission
2	01.07.2020	Master Circular - Disbursement of Government Pension by Agency Banks
3	01.07.2020	Master Circular on SHG-Bank Linkage Programme
4	01.07.2020	Master Circular – Lead Bank Scheme
5	01.07.2020	Master Circular – Facility for Exchange of Notes and Coins
6	01.07.2020	Master Circular – Detection and Impounding of Counterfeit Notes
7	01.07.2020	Master Circular – Scheme of Penalties for bank branches based on performance in rendering customer service to the members of public

LATEST INCOME TAX JUDGEMENTS

1. SECTION 9 OF THE INCOME-TAX ACT, 1961 - INCOME - DEEMED TO ACCRUE OR ARISE IN INDIA

Salary : Where assessee was seconded to Australia during year where he received salary from its employer in Australia for services rendered in Australia, impugned salary income would be taxed in Australia and it would not be taxed in India merely because Australian employer had remitted salary to assessee's bank account in India - **Paul Xavier Antony samy v. Income-tax Officer, International Taxation 2(1), Chennai - [2020] 115 taxmann.com 143 (Chennai - Trib.)**

2. SECTION 32 OF THE INCOME-TAX ACT, 1961 - DEPRECIATION - ALLOWANCE/RATE OF Air Pollution Control Devices : Where Google Study done by Tribunal to confirm disallowance of cent percent depreciation on pollution control devices was not put to notice to assessee-company, order of Tribunal was to be set aside - **Ramco Industries Ltd. v. Deputy Commissioner of Income-tax, Corporate Circle-2 - [2020] 117 taxmann.com 382 (Madras)**

3. SECTION 44 OF THE INCOME-TAX ACT, 1961 - INSURANCE BUSINESS

Where assessee-company was engaged in insurance business, profit arising from sale of investment could not be taxed as income from other sources - **Max Life Insurance Co. Ltd. v. Deputy Commissioner of Income-tax - [2020] 117 taxmann.com 345 (Delhi - Trib.)**

4. SECTION 80G OF THE INCOME-TAX ACT, 1961 - DEDUCTIONS - DONATION TO CERTAIN FUNDS, CHARITABLE INSTITUTIONS

When donation expenditure was disallowed

and added to total income of assessee, assessee was entitled to deduction under with respect to such donation under section 80G - **Max Life Insurance Co. Ltd. v. Deputy Commissioner of Income-tax - [2020] 117 taxmann.com 345 (Delhi - Trib.)**

5. SECTION 241A OF THE INCOME-TAX ACT, 1961 - REFUND - POWER TO WITHHOLD, IN CERTAIN CASES

Condition precedent : Mere issuance of notice under section 143(2), would not be a sufficient ground to withhold refund under section 241A - **Ericsson India (P.) Ltd. v. Additional Commissioner of Income Tax - [2020] 117 taxmann.com 381 (Delhi)**

6. Levy of fees u/s 234E is mandatory in nature and cannot be imposed as per discretion of AO, Block Development Officer v. ACIT - [2020] 117 taxmann.com 337 (Jaipur - Trib.)

Assessee made various payments and deducted tax thereon. However, the TDS statements were not submitted in time. Assessing Officer (AO) made adjustments towards late fee under section 234E. Assessee filed an appeal before CIT(A). Assessee contended that AO was not justified in levying late fee under section 234E when tax was deducted and paid to the account of the Central government within time, but statement was not furnished by the due date due to certain circumstances. CIT(A) upheld the order passed by AO.

Assessee submitted that it was having limited human resources and only one accountant. It was almost impossible to spare time for submitting TDS statements as it required professional help and consultation. Thus, due to paucity of staff and technical knowledge, there was delay in submitting TDS

statements. Therefore, default in submitting TDS statements was neither willful nor deliberate but due to unavoidable circumstances.

On appeal, Jaipur ITAT held that section 200A envisages the method and various adjustment which are required to be made while processing TDS statement and issuing intimation. It provides for adjustment on account of fee to be computed in accordance with the provision of Section 234E. Therefore, in case of default or delay in submitting TDS statements, late fee is levied as contemplated under section 234E and AO shall adjust this account while processing the statement.

Thus, the ITAT held that the nature of levy under section 234E is mandatory and AO has no discretion to take its own decision but he has to adjust in case of delay in submitting TDS statement.

7. BUSINESS EXPENDITURE

Merely because the assessee was increasing expenditure on its personnel and other expenses, cannot be the yardstick for deciding whether assessee had any need to avail the services. It is outside the domain of Assessing Officer to traverse in such direction.

MICHELIN INDIA PVT. LTD. (FORMERLY KNOWN AS MICHELIN INDIA TYERS PVT. LTD.) & ANR. VS JOINT COMMISSIONER OF INCOME TAX (OSD) & ANR. : (2020) 59 CCH 0132 DelTrib

8. SELECTION OF METHOD In favour of: Assessee

When the assessee purchases the products from its AE's and resales the same without any further value addition or further processing then RPM is the most appropriate method for determination of ALP of international transactions. Delhi Tribunal

TOPCON SOKKIN INDIA PVT. LTD. VS DEPUTY COMMISSIONER OF INCOME TAX : (2020) 59 CCH 0154 DelTrib

9. [2020] 117 taxmann.com 420 (Indore - Trib.)

M.P. Warehousing & Logistics Corporation v. Assistant Commissioner of Income-tax

Section 194-I of the Income-tax Act, 1961 - Deduction of tax at source - Rent (Applicability of) – Assessment year 2011-12 - Assessee, a State Government undertaking, was mainly engaged in work of storage and maintenance of warehouse for food grains procured by FCI and other local agencies - During relevant year assessee paid rent to Krishi Upaj Mandi Samiti without deducting tax at source - Assessing Officer thus treated assessee as assessee in default - Whether since payee i.e. Krishi Upaj Mandi Samiti, was a State Government Undertaking and its income was exempt under section 10(26AAB), assessee could not be treated as assessee in default for non-deducting tax on rent paid by it - Held, yes [Para 16] [In favour of assessee]

10. Loan waived by State Govt. couldn't be brought to tax u/s 28(iv): HC

Essar Shipping Limited v. CIT - [2020] 117 taxmann.com 389 (Bombay)

Assessee claimed deduction of loan amount by the Government which was subsequently waived. Assessing Officer (AO) passed assessment order disallowing the claim made by assessee. Assessee claimed that Government had written off the loan advanced to it as the said amount had become irrecoverable. AO observed that waiver of loan benefitted assessee in carrying on its business. In terms of section 28, said benefit enjoyed by assessee should constitute income in the hands of assessee. Accordingly, AO made additions to the total income of assessee.

On appeal CIT(A) held that waiver of loan could not be treated as benefit or perquisite because it was a cash item. Amount would be includible under section 28(iv) only if it is a

non-cash item and cash item cannot be treated as perquisite. On revenue's appeal, ITAT held that written off of loan was inseparably concerned with the business of assessee and therefore benefit had arisen out of such business. The amount written was nothing but an incentive for assessee's business. The benefit was received by assessee in form of writing of liability. Therefore, it could not be said that the assessee received cash benefit. Thus, ITAT set aside the findings of CIT(A) and upheld the order passed by AO.

On further appeal, Bombay HC held that the Supreme court in case of Mahindra and Mahindra v. CIT (261 ITR 501) has held that for applicability of section 28(iv), income which can be taxed has to arise from the business and profession. That apart, the benefit which is received has to be in some other form rather than in the shape of money. Therefore, the amount of loan waived was to be construed as cash receipt in hands of assessee and couldn't be taxed under section 28(iv).

11. SECTION 2(14) OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS - CAPITAL ASSET

Agricultural land : Where assessee purchased agricultural land and Assessing Officer on basis of valuation report of Sub-Registrar made certain addition to purchase consideration under section 56(2)(vii)(b), matter was to be remanded back to Assessing Officer with a direction to find out as to whether agricultural land fell within meaning of capital asset under section 2(14) - **Prem Chand Jain v. Assistant Commissioner of Income-tax** - [2020] 117 taxmann.com 370 (Jaipur - Trib.)

12. SECTION 37(1) OF THE INCOME-TAX ACT, 1961 - BUSINESS EXPENDITURE - YEAR IN WHICH ALLOWABLE

Prepaid expenses : Where Assessing Officer had not examined submission of assessee and documents/invoices involved in respect of prepaid expenses, he was directed to

readjudicate issue - **Price water house Coopers (P.) Ltd. v. Assistant Commissioner of Income-tax** - [2020] 117 taxmann.com 371 (Kolkata - Trib.)

13. SECTION 68 OF THE INCOME-TAX ACT, 1961 - CASH CREDIT

Loan transaction : Where assessee had taken loan from six parties and confirmed loan transactions, rejection of claim of assessee without Assessing Officer considering these documents was not justified - **Ramanlal K. Darji v. Income Tax Officer** - [2020] 117 taxmann.com 410 (Mumbai - Trib.)

14. SECTION 92C OF THE INCOME-TAX ACT, 1961 - TRANSFER PRICING - COMPUTATION OF ARM'S LENGTH PRICE

Adjustments - AMP expenses : AMP spend, in absence of an explicit arrangement between assessee and AE for incurring AMP expenditure, could not have been considered as an international transaction - **NGC Network (India) (P.) Ltd. v. Additional Commissioner of Income-tax** - [2020] 117 taxmann.com 367 (Mumbai - Trib.)

15. SECTION 206C OF THE INCOME-TAX ACT, 1961 - COLLECTION OF TAX AT SOURCE

Scrap : Where assessee was only a dealer in scrap and scrap sold by assessee was not a result of manufacture or mechanical working of materials, assessee would not be liable to deduct TCS under section 206C - **Lala Bharat Lal & Sons v. Income Tax Officer** - [2020] 117 taxmann.com 411 (Lucknow - Trib.)

16. ITAT allowed PWC's FTC claim raised before AO subsequent to filing of return

Pricewaterhouse Coopers (P.) Ltd. v. ACIT - [2020] 117 taxmann.com 371 (Kolkata - Trib.) Assessee-Pricewaterhouse Coopers (P.) Ltd. was in the business of providing, inter alia, management consultancy services and

also accounting and business advisory services. The Company's operations are segregated into different line of services like advisory, taxation services.

Assessee raised claim of foreign tax credit (FTC) for the taxes paid in United States of America (USA) before Assessing Officer (AO) by way of application. However, AO rejected assessee's claim by contended that said claim was not be made at the time of filing of the Return of income.

The Tribunal held that at the time of filing of income tax return in India for AY 2014-15, the assessee had not claimed foreign tax payable as credit as no tax for the year under consideration was determined and paid in USA at that time and also the tax return was not filed in USA. Hence, the assessee after payment of taxes in USA, raised the aforesaid claim of foreign tax credit (FTC) before the Ld. AO by way of application in accordance with Rule 128 of the Income-tax Rules, 1962.

Therefore, assessee was entitled to get the credit of TDS. AO was directed to examine the correctness of the assessee's claim for foreign tax credit (FTC), as per India USA-Treaty, and allow the claim of the assessee in accordance with law.

17. Sale of scrap not generated out of manufacturing activities isn't liable to TCS

Lala Bharat Lal & Sons v. ITO - [2020] 117 taxmann.com 411 (Lucknow - Trib.)

Assessee was dealing in the business of trading of scrap. Assessing Officer (AO) held that assessee was liable to collect TCS @ 1% of the sale amount. Assessee contended that sale or trading done by it did not tantamount to sale of scrap as defined in Explanation to section 206C, as the same had not been generated from manufacture or mechanical working done by the assessee.

Assessee further submitted that the ITAT in case of Navine Fluorine International Ltd. v. Asstt. CIT [2011] 10 taxmann.com 78/45 SOT 86, had held that for invoking the Explanation to section 206C of the Act, it is

necessary that waste and scrap sold by the assessee should arise from the manufacturing or mechanical working of the material.

On appeal, ITAT, following the ruling of Tribunals, held that the words 'waste' and 'scrap' should have nexus with manufacturing or mechanical working of materials. Where the assessee had not generated any scrap in manufacturing activity and where the assessee was only a trader, having not sold scrap as such, but having sold products which were re-useable and had resulted from ship breaking activity, he was not supposed to collect tax under section 206C of the Act. Thus, assessee could not be fastened with the liability to deduct TCS under section 206C.

18. SECTION 5 OF THE INCOME-TAX ACT, 1961 - INCOME accrual

Duty drawback : In case of exports income in form of duty drawback and cash compensatory assistance accrues only when same is sanctioned by custom authorities and not when assessee raises a claim in respect thereof - **Commissioner of Income-tax v. Asea Brown Boveri Ltd. - [2020] 117 taxmann.com 415 (Karnataka)**

19. SECTION 28(I) OF THE INCOME-TAX ACT, 1961 - BUSINESS INCOME - CHARGEABLE ASEfficiency gain :

Where assessee company, engaged in business of distribution of electricity in Delhi, had no right to appropriate efficiency gain amount and said amount was at disposal of Delhi Electricity Regulatory Commission (DERC), said amount could not be included in business profit of assessee - **Deputy Commissioner of Income-tax v. Tata Power Delhi Distribution Ltd. - [2020] 117 taxmann.com 463 (Delhi)**

20. SECTION 36(1)(III) OF THE INCOME-TAX ACT, 1961 - INTEREST ON BORROWED CAPITAL Setting up of business :

Where assessee, engaged in real estate business, having taken huge amount of

loan, entered into development agreement for development of a township, it could be concluded that assessee set up its business during relevant year and, thus, assessee's claim for deduction under section 36(1)(iii), was to be allowed - **Jindal Realty (P.) Ltd. v. Assistant Commissioner of Income-tax** - [2020] 117 taxmann.com 419 (Delhi - Trib.)

21. SECTION 41(1) OF THE INCOME-TAX ACT, 1961 - REMISSION OR CESSATION OF TRADING LIABILITY

Deferred sales tax loan : Surplus arising on repayment of deferred sales tax loan at NPV is a capital receipt not liable to tax under section 41(1) - **Principal Commissioner of Income-tax v. Mangalore Refinery & Petrochemicals Ltd.** - [2020] 117 taxmann.com 391 (Bombay)

22. SECTION 80HHC OF THE INCOME-TAX ACT, 1961 - DEDUCTIONS - EXPORTERS

Computation of : Technical services could not be reduced by 90 percent while computing profits of business as per Explanation (baa) to section 80HHC - **Commissioner of Income-tax v. Asea Brown Boveri Ltd.** - [2020] 117 taxmann.com 415 (Karnataka)

23. SECTION 80-IA OF THE INCOME-TAX ACT, 1961 - DEDUCTIONS - PROFITS AND GAINS FROM INFRASTRUCTURE UNDERTAKINGS Disallowance : Incidental income arising to assessee company by way of disallowance made by revenue is admissible in profits for purpose of deduction under section 80 IA - **Deputy Commissioner of Income-tax v. Tata Power Delhi Distribution Ltd.** - [2020] 117 taxmann.com 463 (Delhi)

24. SECTION 92C OF THE INCOME-TAX ACT, 1961 - TRANSFER PRICING - COMPUTATION OF ARM'S LENGTH PRICE

Adjustments- AMP expenses : Where, assessee, engaged in online selling of travel products and solutions, had presence in different countries through group companies, AMP expenditure incurred by it on brand

'MMT' exclusively owned by it, did not result in any international transaction - **Make My Trip (India) (P.) Ltd. v. Deputy Commissioner of Income-tax** - [2020] 117 taxmann.com 421 (Delhi - Trib.)

25. SECTION 234B OF THE INCOME-TAX ACT, 1961 - INTEREST, CHARGEABLE AS

Book profits : Interest under sections 234B and 234C was not liable to be paid with respect to tax liability determined under minimum alternate tax (MAT) - **Principal Commissioner of Income-tax v. Mangalore Refinery & Petrochemicals Ltd.** - [2020] 117 taxmann.com 391 (Bombay)

26. ITAT quashed re-assessment as it was completed by AO without issuing scrutiny notice u/s 143(3) Oracle Financial Services Software Ltd. v. DCIT - [2020] 117 taxmann.com 474 (Mumbai - Trib.)

Assessee submitted that while reopening assessment under section 147, the Assessing Officer (AO) failed to issue notice under section 143(2). In the absence of statutory notice, AO couldn't proceed to compute income in reassessment proceedings. Thus, the order passed under section 143(3) read with section 147 was without jurisdiction and was bad in law.

Assessee further submitted that said lapse was not a procedural irregularity and was not curable as the requirement of notice under section 143(2) could not be dispensed with. ITAT called the AO with assessment records for ascertaining the fact that whether notice under section 143(2) was issued or not. However, assessment records were not available with AO and same was not produced. Revenue submitted that it was mentioned in the assessment order itself that notice under section 143(2) was served upon the assessee. Since the fact was mentioned in the assessment order, it could be reasonably presumed that said notice was issued and

served upon assessee.

The ITAT held that since the revenue failed to produce assessment records, it could be presumed that no notice was ever issued or served upon assessee. Assessment framed without issuing notice was invalid and liable to be quashed. Accordingly, it was held that the assessment framed by AO under section 143(3) read with section 147 was without jurisdiction and was invalid.

27. **Order passed by AO is erroneous and prejudicial to interest of revenue where the AO did not examine the important aspect of the matter while completing the assessment proceedings.**

Bangalore Tribunal

TANGLIN DEVELOPMENTS LTD. VS DEPUTY COMMISSIONER OF INCOME TAX : (2020) 59 CCH 0168 BangTrib

28. **INCOME FROM OTHER SOURCES: In favour of: Assessee**

Where the assessee was not intending to run a unit in Hotel himself but rather he had purchased the unit and given this unit for being run under the 'Hotel Operations and Maintenance Agreement' to be run by the managing company, the loss incurred from said unit would be considered as income from other sources. Delhi Tribunal

ROHIT KAPUR VS ADDITIONAL COMMISSIONER OF INCOME TAX : (2020) 59 CCH Del Trib

29. **BUSINESS EXPENDITURE In favour of: Assessee (partly)**

Although, handing out gold items or semi-precious items may be frowned upon by the revenue authorities, all the same it cannot be a reason for disallowing the expenditure, especially when it is settled law that the revenue cannot step into the shoes of a businessman and direct how the business should be conducted. Delhi Tribunal

RAJEEV VERMA VS ASSISTANT COMMISSIONER OF INCOME TAX :

(2020) 59 CCH 0166 Del Trib

30. **REVISION: In favour of: Assessee**

Since the clause (i) of section 92BA was omitted and there is no provision in any other section of Income Tax Act saving pending proceedings initiated under omitted provision, it will be presumed that clause (i) of section 92BA never existed in Statute Book, hence jurisdiction exercised by PCIT u/s. 263 invoking clause (i) of section 92BA, for reference by A.O. to TPO is null in eye of Law. Gauhati Tribunal **BHARTIA-SMSIL (JV) VS INCOME TAX OFFICER : (2020) 59 CCH 0135 GauTrib**

31. **SEARCH AND SEIZURE In favour of: Assessee**

The date of satisfaction would be when A.O. assumes position as that of A.O. of other person. Delhi Tribunal **ASSISTANT COMMISSIONER OF INCOME TAX VS KUBER PRODUCTS PVT. LTD. : (2020) 59 CCH 0160 DelTrib**

32. **ACCOUNTS In favour of: Revenue**

Rejection of books of accounts is justified where the sales and other expenses of assessee are not verifiable and the books of accounts maintained by the assessee were not reliable.

KAMAL KUMAR VS INCOME TAX OFFICER : (2020) 59 CCH 0175 Jaipur Trib

33. **CHARITABLE TRUSTS In favour of: Assessee**

Where the primary and dominant purpose of an institution like the assessee is the advancement of the object of general public utility within the meaning of section 2(15) and as such, the income from securities held by the assessee would be exempt from any tax liability u/s 11. **BAR COUNCIL OF DELHI VS COMMISSIONER OF INCOME TAX (EXEMPTION) : (2020) 59 CCH 0174 DelTrib**

34. **INCOME In favour of: Assessee**

Rule 8D(2) will be a last resort when it becomes impossible to arrive at a just conclusion on amount of expenses that has to be disallowed as attributable or incurred in earning exempt income. **MPHISIS SOFTWARE & SERVICE (INDIA) PVT. LTD. VS ASSISTANT COMMISSIONER OF INCOME TAX : (2020) 59 CCH 0176 BangTrib**

35. SECTION 2(22) OF THE INCOME-TAX ACT, 1961 - DEEMED DIVIDEND

Change in shareholding : Where Assessing Officer made addition to assessee's income by invoking provisions of section 2(22)(e) on ground that assessee was holding more than ten percent shareholding in both lender and borrower companies, in view of fact that as per annual return filed before ROC, assessee had already transferred its shareholding in borrower company to lender company before advancement of loan out of surplus funds, impugned addition was to be deleted - **Assistant Commissioner of Income-tax v. Gurdeep Singh - [2020] 117 taxmann.com 451 (Chandigarh - Trib.)**

36. SECTION 14A OF THE INCOME-TAX ACT, 1961 - EXPENDITURE INCURRED IN RELATION TO INCOME NOT INCLUDIBLE IN TOTAL INCOME

Interest bearing funds : Where High Court upheld Tribunal's order allowing partial relief to assessee under section 14A by taking a view that no investment was made by assessee in shares and securities out of interest bearing funds, SLP filed against said order was to be dismissed due to low tax effect - **Commissioner of Income Tax v. Weizmann Ltd. - [2020] 115 taxmann.com 247 (SC)**

37. SECTION 45 OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS - CHARGEABLE AS

Shares : Validity of reassessment proceedings could not be upheld on ground that assessee earned bogus long term capital gain on sale of shares when assessee gave full details of its share transactions carried out in relevant year

at time of completing assessment under section 143(3) - **Gateway Leasing (P.) Ltd. v. Assistant Commissioner of Income-tax - [2020] 117 taxmann.com 442 (Bombay)**

38. SECTION 127 OF THE INCOME-TAX ACT, 1961 - INCOME-TAX AUTHORITIES - POWER TO TRANSFER CASES

Scope of : Where High Court disposed of revenue's appeal by directing revenue to file same in Competent Court of jurisdiction, SLP filed against said order was to be dismissed due to low tax effect - **Commissioner of Income Tax 1 Chandigarh v. Kuantum Papers Ltd. - [2020] 115 taxmann.com 224 (SC)**

39. SECTION 143(1) OF THE INCOME-TAX ACT, 1961 - ASSESSMENT - ADDITIONS TO INCOME

Estimate basis : When income of assessee is determined on estimate basis then no penalty under section 271(1)(c) can be imposed for concealment and furnishing inaccurate particulars of income - **Anil Abhubhai Odedara v. Income Tax Officer - [2020] 117 taxmann.com 490 (Rajkot - Trib.)**

40. Mother's property cannot be attached for tax recovery if it was transferred through will before arising of demand

Rajesh T. Shah v. Tax Recovery Officer - [2020] 117 taxmann.com 549 (Bombay)

Issue before court was whether the revenue was entitled to attach the properties belonging to private trust for recovering dues of trustee being a director of company which had allegedly defaulted in paying tax dues. The revenue contended that the property being attached did not belong to trust but was a property of trustee's late mother. Therefore, properties could be attached to the extent it devolved upon director of the defaulting company as her legal heir.

Assessee contended that at the time of passing of order, will of his mother was not probated as there was an outstanding caveat pending in

the court registry. A true copy of the letters of administration issued by court along with the will annexed thereto had been placed on record by an affidavit. Assessee further submitted that the properties were belonging to his mother and on her death have been inherited by the trust under will. Such properties were not standing in the name of the assessee and he did not have any right or interest in it.

On writ, Bombay HC held that it was evident that the properties which belonged to the trust were settled by will of assessee's mother before initiation of recovery proceedings by the revenue against assessee. Properties were not belonging to the assessee or his legal heir or representatives. There was no question of the said properties being diverted to the trust for evading payment of due tax as the trust was formed in 1978 and will was made in 1985. Thus, the order of attachment was set aside and quashed.

41. No reassessment to treat LTCG on sale of shares as bogus if full details were provided during scrutiny assessment

Gateway Leasing (P) Ltd. v. ACIT - [2020] 117 taxmann.com 442 (Bombay)

A notice under section 148 was issued to assessee to submit return of income. Assessee filed return of income declaring the income originally assessee by Assessing Officer (AO). It also sought reasons for issuing notice under section 148. Department furnished reasons stating that information was received from investigation wing of IT department that a search and seizure action was carried out in the premises of third person. It was revealed that a syndicate of persons were acting in collusion and managing transactions in the stock exchange, thereby generating bogus capital gains and bogus business loss entries for various beneficiaries. From the material gathered during said search and seizure, it was assumed that assessee has traded some shares and receipt there from had escaped assessment.

On writ, Bombay HC held that it was evident from the material on record that assessee had

disclosed the information to AO in the course of assessment proceedings. All related information sought by AO were furnished by assessee. Several hearings took place in this regard where after the AO had concluded the assessment proceedings by passing assessment order under section 143(3). Thus, it would appear that assessee had disclosed the primary facts at its disposal to AO for the purpose of assessment. He had also explained whatever queries were put by the Assessing Officer with regard to the primary facts during the hearings.

In such circumstances, it couldn't be said that assessee did not disclose fully and truly all material facts necessary for the assessment. Consequently, the department could not have arrived at the satisfaction that he had reasons to believe that income chargeable to tax had escaped assessment. In the absence of the same, it could not have assumed jurisdiction and issued the notice under section 148 for income escaping assessment.

42. REASSESSMENT In favour of: Assessee

Where the impugned transaction which is subject matter of 148 notice was duly reflected and offered to tax in the original return so filed by the assessee, there is no escapement of income in respect of impugned transaction.

SHAILESH KUMAR CHATURVEDI VS INCOME TAX OFFICER : (2020) 59 CCH 0183 Jaipur Trib

43. PENALTY In favour of: Assessee

Merely because there is a provision for the imposition of penalty, the officer must not exercise his jurisdiction and impose penalty in every case

SONU ENTERPRISE VS INCOME TAX OFFICER : (2020) 59 CCH 0182 Rajkot Tri

44. CAPITAL GAINS In favour of: Assessee

Even if two flats are sold in two different years, and capital gain of both flats is invested in one residential house, exemption u/s 54

will be available in case of sale of each flat provided time limit of construction or purchase of new residential house is fulfilled in case of each flat sold. **VIJAY KUMAR WANCHOO VS INCOME TAX OFFICER : (2020) 59 CCH 0186 DelTrib**

45. **SECTION 37(1) OF THE INCOME-TAX ACT, 1961 - BUSINESS EXPENDITURE - ALLOW ABILITY OF Education cess on income tax : Deduction of education cess on income tax paid by assessee company was allowable expenditure in computing its total income - Reckitt Benckiser (I) Pvt. Ltd. v. Deputy Commissioner of Income-tax - [2020] 117 taxmann.com 519 (Kolkata - Trib.)**

46. **SECTION 92C OF THE INCOME-TAX ACT, 1961 - TRANSFER PRICING - COMPUTATION OF ARM'S LENGTH PRICE - ADJUSTMENTS**

Interest : No addition of notional interest could be made to assessee's ALP in respect of amount paid to AE for allotment of shares and said transaction was not found bogus or sham on basis of material on record - **Voltas Limited v. Assistant Commissioner of Income-tax - [2020] 117 taxmann.com 547 (Mumbai - Trib.)**

47. **SECTION 254 OF THE INCOME-TAX ACT, 1961 - APPELLATE TRIBUNAL - POWERS OF Grant of stay : Regarding effect of amendment made in first proviso to section 254(2A) on powers of Tribunal under section 254(1) to grant stay, two very important issues of far reaching consequence arose for consideration; application was to be referred to Larger Bench - Tata Education and Development Trust v. Assistant Commissioner of Income Tax - [2020] 117 taxmann.com 500 (Mumbai - Trib.)**

48. **INCOME FROM OTHER SOURCES In favour of: Assessee**

Revenue authorities cannot force assessee to adopt particular method for valuing fair market value of share especially when Rule 11UA(1)(c)(b) provides that it is option of

assessee to chose any method either discounted or book value method for estimating fair market value of shares issued by it during relevant financial period. **ALISHAN PALACE RESORTS PVT. LTD. VS INCOME TAX OFFICER : (2020) 59 CCH 0144 CuttackTrib**

49. **TDSIn favour of: Revenue**

Though intimation issued U/s 200A is an appealable order, however, said order can be challenged only on ground that adjustment made by A.O. or intimation issued U/s 200A is not in accordance with provisions of Section 234E or Section 200A. **GOVERNMENT SECONDARY SCHOOL PRINCIPAL OFFICER VS ASSISTANT COMMISSIONER OF INCOME TAX : (2020) 59 CCH 0145 Jaipur Trib**

50. **REASSESSMENT In favour of: Assessee Delhi Tribunal**

GULSHAN HARBANS DHINGRA VS INCOME TAX OFFICER : (2020) 59 CCH 0192 DelTri It is well settled Law that if the A.O. records incorrect facts in the reasons, reopening of the assessment would not be valid. It is also well settled Law that for examining the validity of the re- assessment proceedings, the reasons alone shall have to be considered. When the A.O. records wrong facts in the reasons, the proceedings under [section 148](#) could not be justified. Since the ITO/A.O. was the same who has recorded the above order sheet entries prior to reopening of the assessment, therefore, he was bound by his facts recorded in the order sheet on dated 08.03.2016 (supra). When A.O. was satisfied that the cash deposit in the bank account pertain to sale proceeds of shoes by the assessee, the cash deposit per se in the bank account would not disclose escapement of any income from tax/assessment. Thus, the A.O. was not justified in reopening of the assessment in the matter. The reopening of the assessment ITA.No.2795/Del./2019 Shri

Gulsan Harbans Dhingra, Gaoyr, is wholly unjustified and bad in Law and is liable to be quashed. In view of the above discussion, I set aside the Orders of the authorities below and quash the reopening of the assessment under [section 147/](#) of the I.T. Act. Resultantly, the addition on merit stand deleted.

51. INCOME FROM OTHER SOURCES In favour of: Matter remanded

AO can scrutinize the valuation report and he can determine a fresh valuation either by himself or by calling a final determination from an independent valuer to confront the assessee, but the basis has to be DCF method and he cannot change the method of valuation which has been opted by the assessee.

SGNURE TECHNOLOGIES PVT. LTD. VS ASSISTANT COMMISSIONER OF INCOME TAX : (2020) 59 CCH 0172 BangTrib

52. Gateway Leasing Pvt. Ltd vs. ACIT (Bombay High Court)

S. 147 Reopening for bogus capital gains from penny stocks: The Dept's argument that though the assessee disclosed details of the transactions pertaining to purchase and sale of shares, it did not disclose the real colour / true character of the transactions and, therefore, did not make a full and true disclosure of all material facts which was also overlooked by the AO, is not correct. The assessee disclosed the primary facts to the AO & also explained the queries put by the AO. It cannot be said that the assessee did not disclose fully and truly all material facts necessary for the assessment

In para 3.4 of the affidavit in reply it is stated that though the Petitioner had furnished details relating to purchase and sale of shares of Mittal Securities Ltd., (now Scan Steels Ltd.), but that did not amount to full and true disclosure of all material facts unless true and real facts are disclosed before the Assessing Officer. Assessing Officer had not discussed in the assessment order about the genuineness or camouflage nature of the transactions of purchase and sale of shares of Mittal Securities Ltd. by the Petitioner

53. Revisiting The Rules Of Interpretation Of A Beneficial Provision – Ramnath & Co. Vs. CIT (Supreme Court)

In Ramnath & Co. vs. CIT, the Supreme Court has taken the view that a beneficial provision has to be interpreted 'strictly' and the benefit of an ambiguity in its interpretation should go to the Revenue. Advocates Harsh M. Kapadia and Ravi Sawana have argued that this view is erroneous and runs counter to the law laid down by the Supreme Court itself in several earlier judgements. The Id. authors have backed up their submission with a detailed discussion and given persuasive reasoning

54. SECTION 92C OF THE INCOME-TAX ACT, 1961 - TRANSFER PRICING - COMPUTATION OF ARM'S LENGTH PRICE - ADJUSTMENTS

Interest : Where assessee gave certain amount as share application money to AE, since nothing had been brought on record to suggest that transaction in question was sham, TPO could not treat such transaction as a loan and charge interest thereon on notional basis - **Astral Poly Technik (P.) Ltd. v. Deputy Commissioner of Income-tax - [2020] 117 taxmann.com 468 (Ahmedabad - Trib.)**

55. SECTION 127 OF THE INCOME-TAX ACT, 1961 - INCOME-TAX AUTHORITIES - POWER TO TRANSFER CASES

Intra-Court Appeal in writ : Where after search was conducted, cases of related assessee were transferred, repeated adjournment in intra-Court appeal against transfer denied as dispute required no further hearing - **V.V. Minerals v. Principal Commissioner of Income Tax - [2020] 117 taxmann.com 525 (Madras)**

56. SECTION 251 OF THE INCOME-TAX ACT, 1961 - COMMISSIONER (APPEALS) - POWERS OF

Plenary powers : Where assessee inadvertently omitted to make claim for deduction under section 10B in respect of two 100 per cent Export Oriented Undertakings, however, all necessary facts for claiming deduction under section 10B were already on record, Commissioner (Appeals) in exercise of his plenary/co-terminus powers, as well as Tribunal, ought to have entertained claim - **Sesa Goa Ltd. v. Additional Commissioner of Income-tax** - [2020] 117 taxmann.com 548 (Bombay)

57. SECTION 292B OF THE INCOME-TAX ACT, 1961 - RETURN OF INCOME, ETC., NOT TO BE INVALID ON CERTAIN GROUNDS

Reassessment notice : Where Assessing Officer issued notice under section 148 to non-existing company, it was a substantive illegality and not procedural violation of nature adverted to in section 292-B, hence, not curable - **eMudhra Ltd. v. Assistant Commissioner of Income tax** - [2020] 117 taxmann.com 550 (Karnataka)

58. SECTION 9 OF THE INCOME-TAX ACT, 1961 - INCOME - DEEMED TO ACCRUE OR ARISE IN INDIA - ROYALTIES/FEEES FOR TECHNICAL SERVICES

Computer software : Amount received by assessee from its distributors for sale of specialized software as well as for maintenance and support services (including upgrades) is not royalty - **Trimble Solutions Corporation v. Deputy Commissioner of Income Tax** - [2020] 117 taxmann.com 544 (Mumbai - Trib.)

59. SECTION 45 OF THE INCOME-TAX ACT, 1961 - CAPITAL GAIN

Chargeable as : Income from relinquishing rights under an agreement should be assessed under the head income from capital gains - **Chandrashekar Naganagouda Patil v. Deputy Commissioner of Income Tax** - [2020] 117 taxmann.com 520 (Bangalore - Trib.)

60. SECTION 54 OF THE INCOME-TAX

ACT, 1961 - CAPITAL GAINS - PROFIT ON SALE OF PROPERTY USED FOR RESIDENCE

Income escaping assessment : Where claim of assessee for long term capital gains had been allowed in assessment order based on true and full disclosure of all material by assessee, Assessing Officer could not have had a re-look into said issue pursuant to notice issued under section 148 - **B. Kasi Viswanathan v. Income Tax officer** - [2020] 117 taxmann.com 565 (Madras)

61. SECTION 92C OF THE INCOME-TAX ACT, 1961 - TRANSFER PRICING - COMPUTATION OF ARM'S LENGTH PRICE - ADJUSTMENTS

Corporate guarantee fees : Where there was no cost incurred to provide corporate guarantee, ALP in respect of old guarantees was to be determined at 3 per cent and in respect of fresh guarantees issued during year, ALP should be determined at 1 per cent - **Mahindra & Mahindra Ltd. v. Deputy Commissioner of Income Tax** - [2020] 117 taxmann.com 518 (Mumbai - Trib.)

62. If REASSESSMENT In favour of: Assessee

assessing officer acts as a reasonable and prudent man on the basis of information gathered there is a good case for reopening of the assessment. **SURESH KUMAR AGARWAL VS ASSISTANT COMMISSIONER OF INCOME TAX :** (2020) 59 CCH 0173 DelTrib

63. COMPANY In favour of: Revenue

If the tax payable Under the normal computation is higher than the minimum alternate tax payable by the assessee, and if the assessee has MAT credit available, same shall be granted as a credit to the assessee against the tax liability. **FISERV INDIA PRIVATE LIMITED VS ASSISTANT COMMISSIONER OF INCOME TAX :** (2020) 59 CCH 0171 DelTrib

64. INCOME FROM OTHER SOURCES In

favour of: Matter remanded

In order to invoke the provisions of section 56(2)(viib), it is essential that the excess amount is received by the company from a resident and therefore, this should be first examined as to whether the person from whom any money is received by the company on issue of its shares is resident in India or not in the relevant year. **ANTARIKSH SOFTTECH PVT. LTD. VS INCOME TAX OFFICER: (2020) 59 CCH 0189 BangTrib**

65. CHARITABLE TRUSTS In favour of: Assessee

Mere adoption of 'business principles' does not transform a charitable institution into a business entity. **ASSISTANT COMMISSIONER OF INCOME TAX VS KARNATAKA INDUSTRIAL AREAS DEVELOPMENTS BOARD : (2020) 59 CCH 0169 BangTrib**

66. SECTION 14A OF THE INCOME-TAX ACT, 1961 - EXPENDITURE INCURRED IN RELATION TO INCOME NOT INCLUDIBLE IN TOTAL INCOME

Where both interest-free and interest bearing funds were available with assessee, it is to be presumed that investments were made out of interest-free fund - **Principal Commissioner of Income-tax v. Shapoorji Pallonji & Co. Ltd. - [2020] 117 taxmann.com 625 (Bombay)**

67. SECTION 36(1)(III) OF THE INCOME-TAX ACT, 1961 - INTEREST ON BORROWED CAPITAL Condition precedent : Where assessee had not utilized interest bearing borrowed funds for making interest-free advances as assessee had its own interest-free fund far in excess of interest-free advance, interest on borrowed capital could not be disallowed - Principal Commissioner of Income-tax v. Shapoorji Pallonji & Co. Ltd. - [2020] 117 taxmann.com 625 (Bombay)

68. SECTION 45 OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS - CHARGEABLE AS

Conversion of asset : Where assessee, engaged in real estate business, received certain land as stock in trade in partition of joint family property and, thus, there was no conversion of capital asset into stock in trade, provisions of section 45(2) did not apply to assessee's case - **Commissioner of Income Tax v. C. Ramaiah Reddy - [2020] 117 taxmann.com 540 (Karnataka)**

69. SECTION 69C OF THE INCOME-TAX ACT, 1961 - UNEXPLAINED EXPENDITURE

Bogus purchase : Merely on suspicion based on information received from sales tax authority, Assessing officer could not make additions on account of bogus purchases without carrying out independent enquiry and affording opportunity to assessee to controvert statements made by seller - **Principal Commissioner of Income-tax v. Shapoorji Pallonji & Co. Ltd. - [2020] 117 taxmann.com 625 (Bombay)**

70. SECTION 115JB OF THE INCOME-TAX ACT, 1961 - MINIMUM ALTERNATE TAX - PAYMENT OF TAX

Computation book profit : Where disallowance under substantive provision have been deleted, question of consequential adjustments in book profit under section 115JB does not arise - **Principal Commissioner of Income-tax v. Shapoorji Pallonji & Co. Ltd. - [2020] 117 taxmann.com 625 (Bombay)**

71. SECTION 220 OF THE INCOME-TAX ACT, 1961 - COLLECTION AND RECOVERY OF TAX:

Where Assessing Officer disposed off application for stay of demand filed by assessee by way of passing a cryptic non-speaking order holding that assessee must immediately pay 20 per cent of tax demand, since impugned order did not deal with aspects of prima facie case, financial stringency and balance of convenience, same

was to be set aside - **Ganapathy Haridaass v. Income-tax Officer** - [2020] 117 taxmann.com 626 (Madras)

72. SECTION 4 OF THE INCOME-TAX ACT, 1961 - INCOME - CHARGEABLE AS

Subsidy : If interest subsidy received by assessee under Technology Upgradation Fund Scheme had been utilised by assessee for purpose of meeting interest liability on loans and advances taken by it to set up its plant and machinery, subsidy incentive could be considered as a capital receipt not chargeable to tax - **Deputy Commissioner of Income Tax v. BSL Ltd.** - [2020] 117 taxmann.com 661 (Kolkata - Trib.)

73. SECTION 92C OF THE INCOME-TAX ACT, 1961 - TRANSFER PRICING - COMPUTATION OF ARM'S LENGTH PRICE - ADJUSTMENTS

Others : Pendency of assessee's appeal before Tribunal against transfer pricing adjustment could not deprive right of Assessing Officer to pass a rectification order under section 154 in order to withdraw MAT credit wrongly allowed in course of assessment - **Fiserv India (P.) Ltd. v. Assistant Commissioner of Income-tax** - [2020] 117 taxmann.com 585 (Delhi - Trib.)

74. SECTION 143 OF THE INCOME-TAX ACT, 1961 - ASSESSMENT - GENERAL

Amalgamated company : Where after merger with company T, company S became non-existent, assessment done subsequently in hands of company S was to be quashed - **Satyam Computer Services Ltd. v. Deputy Commissioner of Income-tax** - [2020] 117 taxmann.com 593 (Mumbai - Trib.)

75. SECTION 241A OF THE INCOME-TAX ACT, 1961 - REFUND

Power to withhold, in certain case : Section 241A granting power to Assessing Officer to withhold refund applies for assessment years after 1-4-2017 and not for earlier assessment years - **Vodafone Idea Limited v. Assistant Commissioner of Income Tax** - [2020] 117 taxmann.com 597 (Bombay)

76. SECTION 245 OF THE INCOME-TAX ACT, 1961 - REFUNDS - SETTING OFF AGAINST TAX DUE

Future demand : Admitted refund amount cannot be retained on ground that department may have a future demand against assessee arising out of pending assessment orders - **Vodafone Idea Limited v. Assistant Commissioner of Income Tax** - [2020] 117 taxmann.com 597 (Bombay)

77. AO cannot change valuation method adopted by assessee while determining fresh valuation of shares

Flutura Business Solutions (P.) Ltd. v. ITO - [2020] 117 taxmann.com 567 (Bangalore - Trib.) Assessee issued equity shares at premium. Assessing Officer (AO) concluded the assessment taxing the premium as income of the company by invoking the provisions of section 56(2)(viib). Assessee contended that since the valuation was supported by a valuation report as provided under rule 11UA(2), there was no case for AO to invoke provisions of section 56(2)(viib) regarding this allotment. Assessee submitted that valuation of shares at premium was based on a valuation report issued by a Chartered Accountant who valued the shares adopting Discounted Cash Flow (DCF) method.

Aggrieved by the order of AO, assessee preferred an appeal before CIT(A). CIT(A) held that AO was well within his powers to disturb the valuation of the Chartered Accountant furnished by assessee substantiating the Fair Market Value.

On further appeal, ITAT held that the law provides that the Fair Market Value may be determined with such method as may be prescribed or the fair market value can be determined to the satisfaction of AO. The provision provides an assessee two choices of adopting either NAV method or DCF method. If assessee determines fair market value as per a prescribe method, AO does not

have a choice to dispute the jurisdiction.

It was further held that the AO can scrutinize the valuation report and can determine a fresh valuation either by himself or by calling a determination from an independent valuer to confront the assessee but the basis has to be DCF method. He couldn't change the method of valuation which was opted by the Assessee. Thus, the order passed by CIT(A) was set aside for deciding the issue afresh.

**78. TRANSFER PRICING ADJUSTMENTS
In favour of: Matter remanded**

Insisting on daily balances of working capital requirements to compute working capital adjustment is not proper as it will be impossible to carry out such exercise and that working capital adjustment has to be based on opening and closing working capital deployed.
Bangalore Tribunal

**NAGRAVISION INDIA PVT. LTD. VS
ASSISTANT COMMISSIONER OF
INCOME TAX : (2020) 59 CCH 0195
BangTrib**

**79. DEDUCTIONS In favour of: Matter
remanded**

A.O. has to examine details of each loan disbursement and determine purpose for which loans were disbursed, i.e., whether it is for agricultural purposes or non-agricultural purposes.
**THE KALLADIKODE SERVICE
CO-OPERATIVE BANK LIMITED VS
INCOME TAX OFFICER : (2020) 59 CCH
0199 CochinTrib**

80. INCOME In favour of: Assessee

In the absence of any exempt income reported by the assessee, no disallowance u/s 14A can be made.
**ASSISTANT COMMISSIONER OF
INCOME TAX VS CHADHA PAPERS
LTD. : (2020) 59 CCH 0196 DelTrib**

81. PENALTY In favour of: Assessee

Order of penalty stating that penalty is levied for both concealment of income as well as furnishing of inaccurate particulars of income, clearly shows the complete confused state of mind of the AO and non-application of mind

by the AO by not clearly mentioning the specific offence committed by the assessee as to whether the assessee has concealed the particulars of his income or has furnished inaccurate particulars of his income.

**JAYANT B PATEL HUF VS DEPUTY
COMMISSIONER OF INCOME TAX :
(2020) 59 CCH 0197 MumTrib**

**82. Amount spent on expensive gifts to Public
Sector Employees is not a disallowable
expense: ITAT, Delhi**

Rajeev Verma Vs. ACIT, Delhi A perusal of the records would show that there is no denying that the gross turnover of the assessee has been increasing. The only failure on the part of the assessee has been that he could not establish the business nexus of the impugned expenditure to the satisfaction of the lower authorities.

Held that It is an accepted business practice in India that customary gifts are usually handed out during festive occasions. Although, handing out gold items or semi-precious items may be frowned upon by the revenue authorities, all the same it cannot be a reason for disallowing the expenditure, especially when it is settled law that the revenue cannot step into the shoes of a businessman and direct how the business should be conducted.

**83. No disallowance of Puja Expenses incurred
for smooth running of transportation
business: ITAT, Kolkata**

**M/s. Capital Tours (India) Pvt. Ltd. Vs.
ITO, Kolkata**

The AO disallowed the puja expenses on the basis that there was no temple in the premise of the assessee, thus expenses incurred anywhere else has no direct nexus with the business of the assessee. However, ITAT held that the assessee is into the business of truck plying in the North-East States and it is common knowledge that the drivers and cleaners before they start their journey on their trucks conduct puja of the God they

believe and they incur expenses for buying garlands, blog, etc. for the safe and smooth running of the vehicle while they go to the pre-destined locations. The expenses thus it is noted are incurred by the assessee for puja is for the smooth functioning of the business of transport which cannot be disallowed

84. TDS In favour of: Assessee

Intimation under section 200A, raising a demand or directing a refund to the tax deductor, can only be passed within one year from the end of the financial year within which the related TDS statement is filed. **MARSHALL BREEDERS PVT. LTD. VS ASSISTANT COMMISSIONER OF INCOME TAX : (2020) 59 CCH 0208 Pune**

85. REVISION In favour of: Assessee

PCIT cannot pass order u/s 263 on ground that further/thorough enquiry should have been made by AO. **PADAM KUMAR JAIN VS COMMISSIONER OF INCOME TAX : (2020) 59 CCH 0209 Ranchi Trib**

86. INCOME In favour of: Matter remanded

If credits appearing in books of account pertain to earlier year, addition could not be made in assessment year under appeal. **VIRENDRA VERMA VS INCOME TAX OFFICER : (2020) 59 CCH 0210 Del Trib**

87. Development Right' is business asset; no capital gain arises on sum received on its transfer: ITAT

ITO v. Abdul Kayum Ahmed Mohd. Tamboli - [2020] 117 taxmann.com 637 (Mumbai - Trib.) Assessee was engaged as a civil contractor. Assessee's case was reopened under section 147 on receipt of certain information from Additional Director of Income-tax. Reasons for reopening the case were duly supplied to the assessee. Reasons for reopening the case revealed that it came to the notice that assessee had transferred certain development rights. It was observed that since assessee transferred the development rights and handed over the possession of property, such transfer was to be treated as transfer under section 53A of the Transfer Property Act,

1882. Accordingly, resultant gains would be chargeable to tax as business profits.

Aggrieved by the order of AO, assessee preferred an appeal before CIT(A). CIT(A) held that the AO's contention about part performance u/s 53A of transfer of Property Act, 1882 would not apply since Section 2(47)(v) relate to transfer of a capital asset whereas, the assessee had offered the income under the head Income from business.

On revenue's appeal, ITAT held that assessee was engaged as a civil contractor and income earned from stated project was assessed as business income. Therefore, the term transfer as defined under section 2(47)(v) would not be applicable as the same is applicable in case of capital assets held by the assessee. Since the development rights were held as business assets, no default could be found in estimating income at the rate of 10% of gross receipts.

88. Resale of scrap purchased from railway not usable due to its breakage or wear & tear is subject to TCS: ITAT

Pramod Kumar Jain v. ITO - [2020] 117 taxmann.com 649 (Jaipur - Trib.)

Assessee was dealing in scraped material and purchased railway scrap in auction which was subjected to TCS under section 206C(1) of the Income-tax Act, 1961. The Railway while receiving the payment from the assessee had also collected tax at source (TCS). The assessee sold the scrap to various buyers without collecting tax at source as required u/s 206C.

AO initiated the proceedings for holding the assessee as default in respect of non-collection of tax. Assessee challenged the action of the AO and contended that the provisions of Section 206C are not applicable as the material purchased from the railways in auction which was subsequently sold to various parties does not fall in the ambit of definition of scrap as provided in clause (b) of

Explanation to Section 206C.

The Tribunal held that the scrap sold by the railway was certainly not usable due to its breakage or wear and tear and it was also subjected to TCS for which the assessee has not raised any objection. Once the assessee has accepted the goods purchased from the railway as scrap and allowed the TCS then the resale of the same goods by the assessee will not part take a different character.

Therefore, because of the undisputed fact that what was purchased by the assessee was scarp subjected to TCS then the resale of the same material was also be treated as scrap and there was no scope of re-classification of these goods at the time of sale

89. SECTION 43B OF THE INCOME-TAX ACT, 1961 - BUSINESS DISALLOWANCE - CERTAIN DEDUCTIONS TO BE ALLOWED ONLY ON ACTUAL PAYMENT

Rectification : Where assessee-company omitted to claim deduction under section 43B on account of interest paid on loan, since allow ability of deduction under section 43B on account of interest payment was a debatable issue and it required further investigation, said omission to claim deduction in original return was not a mistake coming within purview of section and in case of such omission only remedy available was under section 139(5) - **Nagaraj & Co. (P.) Ltd. v. Assistant Commissioner of Income-tax** - [2020] 117 taxmann.com 618 (Madras)

90. SECTION 80-IB OF THE INCOME-TAX ACT, 1961 - DEDUCTIONS - PROFITS AND GAINS FROM INDUSTRIAL UNDERTAKINGS OTHER THAN INFRASTRUCTURE DEVELOPMENT UNDERTAKINGS

Manufacture : Process of converting raw urad into urad dhal is a manufacturing activity undertaken by assessee and therefore, assessee would be entitled to deduction under section 80-IA - **Commissioner of Income-tax v. Smt. S. Mahalakshmi** - [2020] 117 taxmann.com

621 (Madras)

91. SECTION 154 OF THE INCOME-TAX ACT, 1961 - RECTIFICATION OF MISTAKES - APPARENT FROM RECORDS

Disposal of application : Where assessee's rectification application was dismissed in a mechanical manner without even affording an opportunity of hearing to assessee, in such a situation, assessee was not to be relegated to avail alternative remedy of filing appeal rather, impugned order was to be set aside and matter was to be remanded back to respondent no. 1 for disposal afresh in accordance with law - **Ernakulam District Posts Telecom and Bsnl Employees Co-operative Society Ltd. v. Income Tax Officer** - [2020] 117 taxmann.com 623 (Kerala)

92. SECTION 2(15) OF THE INCOME-TAX ACT, 1961 - CHARITABLE PURPOSE

Proviso : Where clearing functions of RBI were divested to assessee and its primary objective was to administer payment settlement system for larger benefit of general public and not to run clearing system in a commercial manner or on a commercial basis, assessee's activities were charitable - **National Payments Corporation of India v. Deputy Commissioner of Income-tax** - [2020] 117 taxmann.com 645 (Mumbai - Trib.)

93. SECTION 2(47) OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS - TRANSFER

Development rights : Where, assessee, a civil contractor, transferred development rights of a property to a builder and received part payment for same, provisions of section 2(47)(v) would not apply to said transaction as same were applicable only in case of capital assets held by assessee - **Income Tax Officer v. Abdul Kayum Ahmed Mohd. Tamboli** - [2020] 117 taxmann.com 637 (Mumbai - Trib.)

94. Sandeep Bhargava ("HUF") v. DCIT - [2020] 117 taxmann.com 677 (Chandigarh - Trib.)

Assessee filed return of income claiming exemption under section 54B. During the assessment proceedings Assessing Officer (AO) accepted deduction claimed by assessee. Later on, AO passed a rectification order under section 154 and rejected the assessee's claim for exemption under section 54B on account of reinvestment made in purchase of agricultural land as the same was not available to an HUF in assessment year 2012-13.

AO held that the Finance Act, 2012 had also added HUF as eligible for claiming deduction under section 54B with effect from assessment year 2013-14. Until AY 2012-13, only an individual was eligible to claim deduction. Assessee contended that amendment carried out to section 54B making the deduction available to HUF was clarificatory and curative in nature and same was to be applied retrospectively.

On appeal, ITAT held that the Finance Act, 2012 specifically mentioned that the "assessee being an individual or his parent or a HUF". No such words as "assessee being an individual" finds mentioned in section 54B prior to such amendment. The wording prior to amendment was "assessee or a parent of his". As per the provisions of the Income-tax Act, the assessee inter alia can be an individual or an 'HUF' also.

It is a settled law that powers of AO to rectify an order under section 154 are very limited. It can be exercised only in case where AO finds that a mistake apparent from record had occurred. However, in case of a debatable issue or where lengthy arguments are needed to decide the issue, powers under section 154 cannot be exercised to amend an order which has already been passed.

95. CAPITAL GAINS In favour of: Assessee

An asset newly acquired after sale of original asset can also be buildings or lands appurtenant thereto, which also should be residential house, therefore, letter 'a' in context it is used in section 54 should not be

construed as meaning singular, but expression should be read in consonance with other words viz., buildings and lands. **ARUN K THIAGARAJAN VS COMMISSIONER OF INCOME TAX : (2020) 108 CCH 0045 KarHC**

96. BUSINESS INCOME VIS-VIS SALARY In favour of: Assessee

Amount paid to the employees under the non compete agreement is covered by the expression 'salary / profits in lieu of salary', which is not taxable in India in view of Article 16 of DTAA. **High Court Of Karnataka DIRECTOR OF INCOME TAX (INTERNATIONAL TAXATION) VS SASKEN COMMUNICATION TECHNOLOGY LTD. : (2020) 108 CCH 0047 KarHC**

97. BUSINESS EXPENDITURE In favour of: Matter remanded

After 01.04.1989 it is not necessary for the assessee to establish the fact that the debt in fact had become irrecoverable and it is sufficient if the bad debt is written off as irrecoverable in the books of accounts of the assessee. **High Court Of Karnataka**

HAJEE A.P. BAVA AND COMPANY CONSTRUCTIONS PVT. LTD. VS ASSISTANT COMMISSIONER OF INCOME TAX : (2020) 108 CCH 0048 KarHC

98. LIABILITY IN SPECIAL CASES In favour of: Assessee

Legal heirs are under no statutory obligation to intimate the death of the assessee to the revenue. **High Court Of Delhi**

SAVITA KAPILA LEGAL HEIR OF LATE SHRI MOHINDER PAUL KAPILA VS ASSISTANT COMMISSIONER OF INCOME TAX : (2020) 108 CCH 0049 DelHC

99. SECTION 28(ii) OF THE INCOME-TAX ACT, 1961 - BUSINESS INCOME -

COMPENSATION: Writ : Where assessee filed a writ petition against an order of Income Tax Officer bringing an amount received by assessee on account of family arrangement/re-arrangement under section 28(ii)(a), since Income Tax Officer had not acted without jurisdiction, writ court should not interfere with impugned order, thus, impugned writ petition could not be entertained - **Abul Kalam v. Assistant Commissioner of Income-tax** - [2020] 117 taxmann.com 717 (Calcutta)

100. SECTION 237 OF THE INCOME-TAX ACT, 1961 - REFUND - GENERAL

Rectification of TDS amounts : Where assessee submitted a rectification application stating that if amounts involved in TDS were rectified, he would be legally entitled to a refund of Rs. 3.34 crores and in view of financial hardship being faced by assessee, Assessing Authority was to pass order on rectification application within 3-4 weeks time - **Unitac Energy Solutions (India) (P.) Ltd. v. Principal Chief Commissioner of Income-tax** - [2020] 117 taxmann.com 713 (Kerala)

101 BUSINESS INCOME In favour of: Matter remanded

Company dealing in real estate can be said to carry on business which develops a market-place, and lease out shops, sales plots. Ranchi Tribunal

AJAY KUMAR VS INCOME TAX OFFICER : (2020) 59 CCH 0211 Ranchi Trib

102. INCOME In favour of: Matter remanded

Where interest free funds are more than enough to cover the investments, no disallowance can be made under rule 8D(2)(ii). Delhi Tribunal

ANAMICA PORTFOLIO PVT. LTD. & ANR. VS DEPUTY COMMISSIONER OF INCOME TAX & ANR. : (2020) 59 CCH 0212 Del Trib

103. BUSINESS INCOME In favour of: Assessee

Receipt of consideration of income, which has

been already offered for taxation in earlier years, received in this year, naturally cannot suffer tax once again. Delhi Tribunal

SUPREME BUILD CAP PRIVATE LIMITED VS ASSISTANT COMMISSIONER OF INCOME TAX : (2020) 59 CCH 0214 Del Trib

104. BUSINESS EXPENDITURE In favour of: Assessee (partly)

Securities held by assessee bank as Held till Maturity' will not be treated as investment.

Pune Tribunal

VISHWAS CO-OPERATIVE BANK LTD. VS DEPUTY COMMISSIONER OF INCOME TAX : (2020) 59 CCH 0215 Pune Trib

105. S. 68: Cash credits -The expression "any previous year" does not mean all previous years

but the previous year in relation to the assessment year concerned- If the cash credits are credited in the FY 2006-07, it cannot be brought to tax in a later AY.2009-10[S.3]

Ivan Singh v. ACIT (Bom)(HC)

The question before the High Court was "On the facts and in the circumstances of the case and in law, whether the Tribunal was right in sustaining the additions made of old outstanding sundry credit balances". Allowing the appeal of the assessee the Court held that, the expression "any previous year" does not mean all previous years but the previous year in relation to the assessment year concerned. If the cash credits are credited in the FY 2006-07, it cannot be brought to tax in a later AY.2009-10.

Followed CIT v. Bhaichand H. Gandhi (1983), 141 ITR 67 (Bom)(HC), CIT v. Lakshman Swaroop Gupta & Brothers (1975), 100 ITR 222 (Raj)(HC), Bhor Industries Ltd. v. CIT AIR 1961 SC 1100 (T A N o . 2 9 o f 2 0 1 3 , dt.14.02.2020)(AY.2009-10)

106. Shiv Raj Gupta vs. CIT (Supreme Court)

S. 28(v-a): There is a dichotomy between receipt of compensation by an assessee for the loss of agency and receipt of compensation attributable to the negative/restrictive covenant. The compensation received for the loss of agency is a revenue receipt whereas the compensation attributable to a negative/restrictive covenant is a capital receipt. Payment received as non-competition fee under a negative covenant was always treated as a capital receipt till AY 2003-2004. It is only w.e.f. 1-4-2003 that the said capital receipt is now made taxable u/s 28(v-a). It is well settled that a liability cannot be created retrospectively.

The revenue has no business to second guess commercial or business expediency of what parties at arms-length decide for each other. For example, stating that there was no rationale behind the payment of INR 6.6 crores and that the assessee was not a probable

or perceptible threat or competitor to the SWC group is the perception of the Assessing Officer, which cannot take the place of business reality from the point of view of the assessee, as has been pointed out by us here in above. The fact that M/s Maltings Ltd. had incurred a loss in the previous year is again neither here nor there. It may in future be a direct threat to the SWC group and may turn around and make profits in future years. Besides, M/s Maltings Ltd. is only one concern of the assessee – it is the assessee's expertise in this field on all counts that was the threat perception of the SWC group which cannot be second guessed by the revenue.

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