

J.B. NAGAR CPE STUDY CIRCLE

STUDY CIRCLE MEETING – 13.09.2015

RECENT IMPORTANT CASE LAWS AND JUDGEMENTS UNDER THE INCOME TAX ACT

- BY SHRI. K. GOPAL, ADVOCATE

A. SUPREME COURT DECISIONS:

- (i) By virtue of lien on securities under rule 43 of Bombay Stock Exchange Rules, BSE being secured creditor of defaulting member would have priority over dues of Income-tax department.
Stock Exchange, Bombay vs. V.S. Kandalgaonkar [2014] 49 taxmann.com 501 (SC)
- (ii) Interest under Section 234B forms part of I.T.N.S. 150 which must be treated as part of assessment order. Therefore, levy of interest under Section 234B was not invalid even if assessment order did not contain any direction for payment of interest.
CIT vs. Bhagat Construction Co. (P.) Ltd. [2015] 60 taxmann.com 334 (SC)
- (iii) CBDT's Instruction No. 3/2011 dated 9-2-2011 specifying monetary limit for filing departmental appeal is prospective in nature.
CIT vs. Suman Dhamija [2015] 60 taxmann.com 460 (SC)
- (iv) Restriction on extent of commercial space in housing project imposed by way of amendment to section 80-IB(10) with

effect from 1-4-2005, does not apply to housing project approved before 1-4-2005 even though completed after 1-4-2005.

CIT vs. Sarkar Builders [2015] 375 ITR 392 (SC)

- (v) In order to avail benefit of section 80HHC, there has to be positive income from export business.

CIT vs. Harrison Malayalam Ltd. [2015] 373 ITR 162 (SC)(MAG.)

- (vi) On a cursory reading of Section 260A(7), the said Section does not purport in any manner to curtail or restrict the application of the provisions of the Code of Civil Procedure. Section 260A(7) only states that all the provisions that would apply qua appeals in the Code of Civil Procedure would apply to appeals under Section 260A. That does not in any manner suggest either that the other provisions of the Code of Civil Procedure are necessarily excluded or that the High Court's inherent jurisdiction is in any manner affected. High Courts being Courts of Record under Art. 215 of the Constitution of India, the power of review would in fact inhere in them.

CIT vs. Meghalaya Steels Ltd. [2015] 60 taxmann.com 260 (SC)

- (vii) Where in terms of memorandum of association, main object of assessee-company was to acquire properties and earn income by letting out same, said income was to be brought to tax as business income and not as income from house property.

Chennai Properties & Investments Ltd. vs. CIT [2015] 373 ITR 673 (SC)

(viii) Third and fourth provisos to section 80HHC inserted by Taxation Laws (Second Amendment) Act, 2005 would not operate retrospectively and for period prior to that, cases of exporters having a turnover below Rs. 10 crore and those above Rs. 10 crore would be treated similarly.

Commissioner of Income-tax vs. Avani Exports [2015] 277 CTR 460 (SC)

(ix) Only those application would abate under Section 245HA(1)(iv) which could not be disposed of for any reasons attributable on part of applicant who has filed application under section 245C.

Union of India vs. Star Television News Ltd. [2015] 373 ITR 528 (SC)

(x) Where assessee purchased gas cylinders for business purpose but since manufacturing unit had not started functioning, it leased out said cylinders to other party and income from such leasing was treated as assessee's business income, assessee was entitled to depreciation on those cylinders.

K.M. Sugar Mills Ltd. vs. CIT [2015] 373 ITR 42 (SC)

(xi) Prior to insertion of clause (va) of section 28, compensation amount received towards loss of source of income and non-competition fee could only be treated as capital receipt and was not liable to tax

CIT vs. Sapthagiri Distilleries Ltd. [2015] 229 Taxman 487 (SC)

- (xii) Mere surplus does not mean institution is exiting for making profit. Where a surplus was made by educational institution which was ploughed back for educational purposes, said institution was to be held to be existed solely for educational purpose and not for purpose of profit.
Queen's Educational Society vs. CIT [2015] 372 ITR 699 (SC)
- (xiii) While an amendment to overrule a judgment is not valid, it is permissible to retrospectively alter the character of the levy so as to save it from illegality.
ACIT vs. Netley 'B' Estate [2015] 372 ITR 590 (SC)
- (xiv) Where assessee-company issued debentures for 5 years and as per one of payment options, made one time upfront discounted interest payment instead of making payment of interest periodically, entire amount so paid was to be allowed as deduction in year of payment itself.
Taparia Tools Ltd. vs. JCIT [2015] 372 ITR 605 (SC)
- (xv) CBDT Instruction No. 3/2011 dated 9.2.2011 specifying monetary limits for filing appeals by the department applies only to appeals filed after that date and not to pending appeals.
CIT vs. Suman Dhamija [2015] 60 taxmann.com 460 (SC)

B. HIGH COURT DECISIONS:

- (i) Constitution of Special Bench of ITAT through "private meeting" between Revenue's Special Counsel with the Vice-President of ITAT without notice to the assessee vitiated on the count of breach of principles of natural justice and was lacking in fairness.

Jagati Publications Ltd. vs. President, Income tax Appellate Tribunal [2015] 60 taxmann.com 145 (Bombay)

- (ii) Second proviso to section 40(a)(ia) which states that TDS shall be deemed to be deducted and paid by a deductor if resident recipient has disclosed the amount in his return of income and paid tax thereon, is retrospective in nature.
CIT v. Ansal Land Mark Township (P.) Ltd. [2015] 61 taxmann.com 45 (Delhi)

- (iii) Where the assessee was granted deduction under section 10A of the Act by the Appellate Tribunal in A.Y. 2005-06, the Appellate Tribunal is not justified in denying the claim in subsequent Assessment Year 2009-10, when there is no change in facts and circumstances of the case.
Hinduja Global Solutions Ltd. vs. Union of India [2015] 59 taxmann.com 456 (Bombay)

- (iv) Where a stay is granted under section 220(6) in view of pending appeal before Commissioner (Appeals), then such an assessee would not be treated in default till such time its appeal is decided and till then no interest can be charged under section 220(2).
Hindustan Unilever Ltd. vs. DCIT [2015] 60 taxmann.com 326

- (v) Income tax returns constitute personal information which is exempted from disclosure under section 8(1)(j) of the Right to Information Act, 2005 unless larger public interest justifies disclosure of such information.

Shailesh Gandhi vs. Central Information Commission, New Delhi [2015] 58 taxmann.com 147 (Bombay)

- (vi) Third proviso to section 254(2A) and, particularly, amendment introduced therein by virtue of Finance Act, 2008, with effect from 1-8-2008, which added words 'even if delay in disposing of appeal is not attributable to assessee' has to be struck down being violative of article 14 of Constitution of India.

Pepsi Foods (P.) Ltd. vs. ACIT [2015] 376 ITR 87 (Delhi)

- (vii) Interest paid on amount borrowed to subscribe rights issue of another company E in order to retain control on it has to be allowed under section 36(1)(iii).

Eicher Goodearth Ltd. vs. CIT [2015] 60 taxmann.com 268 (Delhi)

- (viii) No comparison can be made between guarantees issued by commercial banks as against a corporate guarantee issued by holding company for benefit of its AE, a subsidiary company, for computing ALP of guarantee commission.

CIT vs. Everest Kento Cylinders Ltd. [2015] 277 CTR 511 (Bombay)

- (ix) Where assessee acquired property by provisional booking, he is eligible for section 54, deduction for cost of improvement along with cost of investment.

CIT vs. Ram Gopal [2015] 372 ITR 498 (Delhi)

- (x) Where Assessing Officer passed assessment order within period of four weeks from date of rejection of assessee's

objections to reopening of assessment, order so passed being invalid, deserved to be set aside.

Bharat Jayantilal Patel vs. Union of India

- (xi) Disallowance under section 14A cannot exceed exempt dividend income.

Joint Investments (P.) Ltd. vs. CIT [2015] 372 ITR 694
(Delhi)

C. TRIBUNAL DECISIONS:

- (i) Where assessee had substantial rights over property which was almost identical to ownership of property, exemption under section 54F was to be allowed.

Archana Parasrampuria vs. ITO [2015] 68 SOT 550
(Mumbai)

- (ii) Gift of house to spouse cannot be disregarded for the purpose of assessee's eligibility for deduction under section 54F of the Act.

Smt. Maya A. Ajwani vs. ITO [2015] 68 SOT 543 (Mumbai)

- (iii) Where full value of consideration received as a result of transfer of a 'capital asset' is less than stamp value, then, such stamp value is to be substituted with full value of consideration.

ITO vs. Prem Chand Mittal [2015] 56 taxmann.com 52
(Delhi)

- (iv) Even when no business is carried on by the assessee and no business receipt are earned, expenditure incurred on

salaries of software professional was allowable under section 37(1).

S.P.P.S. Systems (P.) Ltd. vs. DCIT [2015] 154 ITD 465 (Hyderabad - Trib.)

- (v) Where A.O. could not find any deficiency in assessee's Books of Account and could not prove that the assessee's computation of section 14A disallowance for earning exempt income is incorrect, assessee's claim is to be allowed.

[2015] 68 SOT 332 (Delhi)

- (vi) Offering interest on maturity on Bonds as "long-term capital gains" instead of as "income from other sources" is a mere change in the head of income and a case of bona fide mistake which does not attract penalty.

Simran Singh Gambhir vs. DDIT I.T.A. No.1423/Del/ 2013, A. Y.: 2008-09 order dated 21.07.2015

- (vii) Giving advance to builder constitutes "purchase" of new house. Even if construction is not completed and title to the property has not passed within the prescribed period, the assessee is entitled to claim exemption under section 54 of the Act.

Shri Hasmukh N. Gala vs. ITO, I.T.A. No. 7512/Mum/2013, A.Y.: 2010-11, order date 19.08.2015

- (viii) If books are rejected and Gross Profit rate is estimated, separate disallowance of expenses cannot be made.

CIT vs. M/s Hind Agro Industries, ITA No. 418/Chd/2015, A.Y.: 2010-11, order date 12.08.2015

- (ix) The revenue audit cannot perform functions of judicial supervision and a reopening based on the interpretation of the audit cannot be sustained.

Rollatainers Ltd vs. ACIT ITA No.3134/Del/2010, A.Y.: 2003-04, order dated 06.08.2015

- (x) Reliance on statement of supplier who confesses to providing accommodation entries without giving assessee right of cross-examination violates principles of natural justice and the addition has to be deleted in toto.

ACIT vs. Tristar Jewellery Exports Pvt. Ltd, I.T.A. No. 7593/Mum/2011, A.Y.: 2006-07, order dated 31.07.2015