

**J.B. NAGAR CPE STUDY CIRCLE**

**STUDY GROUP MEETING – 03.09.2016**

**RECENT IMPORTANT JUDGMENTS IN DIRECT TAX**

**- BY SHRI JITENDRA SINGH, ADVOCATE**

**A. SUPREME COURT DECISIONS:**

- (i) Sec. 148 r.w.s. 22 – Notice issued under section 148 to tax retrospective receipt of enhanced rent - no right to receive rent accrued to assessee in year for which reassessment was sought – notice issued under section 148 invalid.  
P.G. & W. Sawoo (P.) Ltd. vs. ACIT [2016] 385 ITR 60 (SC)
- (ii) Section 158BE - Where revenue searched premises of assessee on different dates on basis of authorization granted for first search but assessee did not challenge validity thereof, limitation period to complete block assessment had to be counted from date of last search when search operation was completed.  
VLS Finance Ltd. vs. CIT [2016] 384 ITR 1 (SC)
- (iii) Sec. 15 r.w.s. 17 & 192 - Tips collected by Hotel from customers and paid to employees did not amount to salary from employer and hence employer was not liable to deduct tax at source on such payments under section 192.  
ITC Limited vs. CIT [2016] 384 ITR 14 (SC)
- (iv) Sec. 28 - Income from letting of house property on rent by an assessee engaged in the business of letting is assessable as

“business profits” under Sec. 28 and not as “Income from house property” under Sec. 22 of the Act.

M/s. Rayala Corporation Pvt. Ltd. vs. ACIT [2016] 72 taxmann.com 149 (SC)

- (v) Sec. 194J r.w.s. 9 - Transaction charges paid by members of BSE for carrying out trading activity at BSE are in the nature of payments made for facilities provided by Stock Exchange - A “facility”, even if termed as a service, which is available to all users, does not come within the ambit of “technical services” in Explanation 2 of s. 9(1)(vii)- no TDS on such payments is required to be deducted under section 194J of the Act.

CIT vs. Kotak Securities Ltd [2016] 383 ITR 1 (SC)

- (vi) Sec. 147 r.w.s. 4 – payment of cane price in excess to SMP could not by ipso facto and/or per se be said to be distribution of profits leading to formation of belief that income had escaped assessment

ACIT vs. Maroli Vibhag Khand Udyog Sahakari Mandi Ltd. [2016] 239 Taxman 393 (SC)

- (vii) Sec. 275 - Penalty proceedings for contravention of Sections 269SS & 269T are not related to the assessment proceeding but are independent of it. Therefore, the completion of appellate proceedings arising out of the assessment proceedings has no relevance. Consequently, the limitation prescribed by Sec. 275(1)(a) does not apply. The limitation period prescribed in Sec. 275(1)(c) applies to such penalty proceedings.

CIT vs. Hissaria Brothers; Civil Appeal No.5254 of 2008 dated 22.08.2016 (SC)

**B. HIGH COURT DECISIONS:**

- (i) Sec. 145A r.w.s. 43B - Sec. 145A(a)(ii) applies only to goods and not services. Service-tax billed on rendering of services is not includible as trading receipts. No disallowance under Sec. 43B can be made for the unpaid service-tax liability which is not claimed as a deduction.  
CIT vs. Knight Frank (India) (P.) Ltd. [2016] 72 taxmann.com 300 (Bom.)
- (ii) Sec. 12AA – Registration of trust – filing of audited accounts alongwith application for registration directory and not mandatory - application not to be treated as defective – registration is to be given from the date of filing application and not from the date on which the defects in application is cured.  
CIT vs. Garment Exporters Association of Rajasthan [2016] 386 ITR 20 (Raj)
- (iii) Sec.147 – Reassessment – notice issued on the ground of rejection of valuation report by another A.O. in the case of co-owner of same property – amounts to change of opinion particularly the issue has been raised during original assessment proceedings.  
Swati Saurin Shah vs. ITO [2016] 386 ITR 256 (Guj)
- (iv) Accrual of Income – lease of factory to Group Company – reduction in lease rent by resolution of Board of Directors on account of financial inability – commercial expediency – reduced rent alone can be taxed.  
CIT vs. Shree Hanuman Sugar And Industries Ltd [386 ITR 218 (Cal)

- (v) Sec. 147 – Notice issued and order passed in respect of non-existing dissolved entity – without jurisdiction – proceedings restrained.  
Jitendra Chandralal Navlani and anr. vs. UOI [2016] 386 ITR 288 (Bom.)
- (vi) Sec. 2(29A) & 2(42A) – computation of capital gains – short or long term – agreement to purchase land entered on 01.04.1995 and substantial amount as advance has been paid – sale deed was executed on 05.12.2002 due to dispute between the parties – land sold on 20.05.2005 – gains are taxable as long term capital gains.  
CIT vs. Goldstar Jewellery Design (P) Ltd [2016] 138 DTR (Bom) 313
- (vii) Sec. 4 & 48 – income – capital or revenue receipt – receipt from sale of property received from husband on account of alimony is capital in nature and not chargeable to tax.  
Shrimati Roma Sengupta vs. CIT [2016] 139 DTR (Cal) 26
- (viii) Sec. 80IA(2A) – Industrial undertaking - As the words “derived from” are absent, there is no requirement to prove “first degree nexus” of the receipts with the eligible business. All receipts of the undertaking are eligible for 100% deduction.  
Pr. CIT vs. Bharat Sanchar Nigam Ltd; ITA 476 of 2016 dated 01.08.2016 (Delhi)
- (ix) Sec. 220(2) - Action of assessee of filing Writ Petition to seek early hearing of appeal before CIT(A) while simultaneously seeking adjournment before the CIT(A) on frivolous grounds is a “delaying tactic” and an “abuse of the legal process”.

Petition dismissed and assessee directed to pay costs to the department

Tulsidas Trading Pvt. Ltd vs. TRO; WP No. 911 OF 2016 dated 20.07.2016 (Bom.)

- (x) Sec. 14A r.w. Rule 8D - The AO must examine the accounts closely and determine if at all any expenditure could be ascribed to the tax exempt dividend/interest earned by the assessee. If the tax exempted income was earned without the interference of any employee the question of attributing any expenditure cannot arise at all.

Pradeep Khanna vs. ACIT; ITA No. 953 of 2015 dated 11.08.2016 (Delhi)

- (xi) An appeal wrongly filed before the AO and not CIT(A) is an unintentional lapse of the assessee. The AO ought to have returned the appeal to enable the assessee to take corrective steps. The likelihood of error is inherent in human nature. The power of condonation is in view of human fallibility and must be exercised in cases of bona fide lapses.

Prashanth Projects Ltd vs. DCIT; ITXA No. 192 OF 2014 dated 19.07.2016 (Bom.)

**C. TRIBUNAL DECEISIONS:**

- (i) Sec.69 – investment made in land from advance received from brother – brother filed his return showing substantial income and also confirmed the said advance through affidavit – burden to discharge primary onus of identity, creditworthiness and genuineness of transactions stands discharged – no addition can be made.

Pritam Singh vs. ITO [2016] 139 DTR (Chd)(Trib) 28

- (ii) Sec. 263 – revision by CIT – order passed by CIT without stating that order is prejudicial to the interest of revenue is unsustainable.  
Nitco Logistics (P) Ltd vs. Pr. CIT [2016] 139 DTR (Asr)(Trib) 39
- (iii) Sec.36(1)(viii) – no claim made in the e-return filed – CIT(A) is empowered to entertain said claim even when no revised return was filed.  
Citizen credit Co-operative Bank Ltd vs. DCIT [2016] 72 taxmann.com 80 (Mum-Trib)
- (iv) Sec.201 – Time limit to pass order under Sec.201(1) and 201(1A) is two years from the end of financial year in which statement referred to in section 200 was filed.  
Sify Technologies Ltd vs. ITO [2016] 71 taxmann.com 66 (Chennai-Trib)
- (v) Sec. 254(1) – application for admission of additional evidence by revenue – tribunal cannot consider new material or information which comes to the possession of the A.O. after passing the assessment order.  
H.K. Pujara Builders vs. ACIT [ITA No. 2034/Mum/2014 dated 09/05/2016]
- (vi) Sec. 45 & 48 – long term capital gains arising from transfer of penny stocks cannot be treated as bogus merely because SEBI has initiated an enquiry with regard to the company and the broker if the shares are purchased from the Exchange, payment is by cheque and the delivery of shares are taken and given.

ITO vs. Indravadan Jain [ITA 4861/Mum/2014 dated 27/05/2016]

- (vii) Sec. 14A r.w. Rule 8D – Strategic investment is not to be taken into account while computing disallowance as per rule 8D.

J.M. Financial & Investment Consultants Pvt. Ltd vs. DCIT [ITA No. 92/Mum/2012 dated 11/05/2016]

- (viii) Sec. 56(2)(v) – gift received by karta from HUF – HUF is nothing but group of relative – gift not taxable.

ACIT vs. Rakesh Kumar Garodia [ITA No.4528/Mum/2013 dated 20/07/2016]

- (ix) Sec. 263 – revision order passed by CIT without assigning any reasons is unsustainable in law.

Achiles Knitwear Pvt. Ltd. vs. CIT [ITA No.2242/Mum/2012 dated 27/07/2016]

- (x) Sec. 54 – year of taxation of capital gains - agreement to sell entered on 07.01.2011 having clause of handing over the possession in next 10/30 days – actual possession granted on 14.05.2011 with mutual consent between the parties – capital gains liable to be taxed in the year 2012-13 and deduction under section 54 is allowable in the year 2012-13 and not in A.Y. 2011-12.

Javed K. Khan vs. ITO [ITA No. 98/Mum/2015 order dated 22.07.2016]