

## Legal Decisions



### Income Tax

**LD/68/50, [Income Tax Appeal No. - 159 of 2016], Allahabad High Court, S.D Traders Vs. The Commissioner of Income Tax & Anr., 03/09/2019**

The CIT(A) had enhanced the assessment made by the AO by making addition on the aspects of labour charges and sundry creditors. ITAT had confirmed such enhancements. Assessee had challenged such enhancement relying on certain judicial pronouncements stating that they have been made in relation to a new source of income. High Court noted that the enhancement was based on profit and loss account, and balance-sheet filed by the assessee along with his return and all the materials looked upon by the Appellate Authority was before the assessing authorities. High Court noted that power of CIT(A) is coterminous with that of the AO. As per High Court, power exercisable by CIT (Appeal) under section 251 cannot be restricted only to the issues raised by the appellant in any appeal before him, but the Commissioner can exercise his discretion in accordance with the law.

**LD/68/51 [ITA No. 769/JP/2018], ITAT Jaipur. Safeflex International Limited Vs. The Income Tax Officer, Jaipur 22/08/2019**

Assessee was operating unit in SEZ area and profits were eligible for benefit under section 10AA. Jaipur ITAT held that though income tax was not chargeable under section 10AA, assessee was liable to pay MAT under section 115JB for AY 2012-13. ITAT noted that the AO had not invoked taxation under section 115JB while passing order under section 143(3) and therefore, Section 154 could be invoked to rectify this mistake apparent from record. Regarding applicability of MAT, ITAT observed that a sunset clause was introduced in the Finance Act, 2011 after which a SEZ developer or an entrepreneur carrying on business in an SEZ unit (being a company) would be liable to pay MAT on the profits arising from the development of SEZ or the business carried on in an SEZ unit with AY 2012-13 and onwards. ITAT held that

the provisions of sub-section (5) are subject to provisions of sub-section (6) of Section 115JB and reading both the provisions harmoniously, it is clear that the income of the assessee company shall be subject to the provisions of MAT.

**LD/68/52, ITA. No. 544/ Chny/ 2019], ITAT Chennai, Shri Sarrangan Ashok Vs. The Income Tax Officer, Chennai 19/08/2019**

Assessee, a partner in a firm, had transferred his land, being a capital asset, into his firm as his capital contribution. AO made an addition under section 50C in respect of transfer of such land to his firm, which was challenged by the assessee. ITAT noted that said transaction was covered under section 45 (3) and observed that the subject transaction is squarely covered under section 45 (3), rules that the provision of Section 45 (3) of the Act are exhaustive and does not confer any power on the AO to adopt consideration different from what is recorded in the books of accounts of the firm. ITAT held that the provisions of Section 50C cannot be applied to the case of deeming the value of consideration like cases covered by the provisions of Section 45 (3). ITAT, therefore, ruled in favour of the assessee.

**LD/68/53, [ITA. No. 3316/ Del/ 2017], ITAT Delhi, Ideal Hitech Engineering Equipment P. Ltd Vs. The Income Tax Officer, New Delhi 13/08/2019**

The registered office of the assessee-company was lying vacant during FY 11-12 and therefore, the AO made an addition on account of notional rent under section 23 on such property. As per the Revenue no business activity was carried therefrom. ITAT noted that the registered office was the only property owned by the assessee-company and the premises was used by the assessee for all regulatory compliances. As per ITAT, the property was thus used by the assessee for the purpose of its business and cannot be considered to be a vacant property under section 23. Assessee had let-out some small portion of its office for hanging boards of corporate office of other group companies, on rent and therefore, also submitted that merely on the basis that the office was large, the same cannot be said to be vacant property so as to attract provisions of Section 23 of the Act. ITAT ruled in favour of the assessee.

Contributed by CA. Sahil Garud, CA. Mandar Telang, GST & Indirect Taxes Committee, Disciplinary Directorate and ICAI's Editorial Board Secretariat. For details please visit Editorial Board webpage at <https://resource.cdn.icai.org/56794eboard46084.pdf>  
Readers are invited to send their comments on the selection of cases and their utility at [eboard@icai.in](mailto:eboard@icai.in). For full judgement write to [eboard@icai.in](mailto:eboard@icai.in).

***LD/68/54, [ITA. No. 739/Del/ 201]9, ITAT Delhi: R.S. Triveni Foods P. Ltd. Vs. The Addl. Commissioner of Income Tax, 05/08/2019***

During AY 2015-16, the assessee had forfeited the application money on fully convertible debentures [FCDs] floated by it, call-amounts of which were received in prior years. CIT(A) had taxed the same under deeming fiction of Section 56(2)(ix) on the ground that forfeiture of advance was related to capital asset i.e.; securities. ITAT observed that as per Section 56(2)(ix), which came w.e.f. 01.04.2015 the deeming provision is applicable in a situation where the person [who owns a capital asset] has entered into a negotiation for transfer of his capital asset with other person and thereupon receives certain advance, which is forfeited on account of failure of negotiation. As per ITAT, debenture cannot be treated as a capital asset of the issuer company and it is a capital asset for the subscriber/allottee of the debenture.

***LD/68/55, Tax Case Appeal No.415 of 2019, [Madras High Court], Kumar Rajaram Vs. The Income Tax Officer, Chennai 05/08/2019***

In the 'will' executed by the assessee's father, there was a direction to the executor of the will to pay certain demarcated sum to charitable institutions upon sale of the property and the balance amount was to be paid to the assessee. Assessee sought to exclude such amount from sale consideration while calculating capital gains that was rejected by the AO. High Court remarked that the will has to be read in its entirety and not in bits and pieces as done by the Revenue. The testator bequeathed a part of sale consideration to the assessee and the assessee was never entitled to receive the entire sale consideration. High Court ruled in favour of the assessee and allowed exclusion of amount to charities from sale consideration as per the 'will' while computing capital gains.

***LD/68/56, ITA No. 3255/Bang/2018, ITAT Bangalore, Anuradha Rajendra Gupta Vs. The Income Tax Officer, Bangalore, 25/07/2019***

The assessee had sold land for ₹ 90 lakhs and had purchased two flats of ₹ 30 lakhs and ₹ 55 lakhs respectively, and claimed deduction under section 54F as deduction of investment amount of both in AY 2015-16. Revenue denied the claim

of Section 54F for both the properties. ITAT noted that provisions of the Income Tax Act as on the first day of the relevant assessment year are applicable for that assessment year and therefore, the provisions of Section 54F amended w.e.f. 01.04.2015 are applicable in the present case. Section 54F was amended, whereby in place of the words "constructed, a residential house", the following words were inserted i.e.; "constructed, one residential house in India". Additionally, ITAT rejected assessee's claim of granting Section 54F to at least one of the new flats, noting that anyway the proviso to Section 54F(1) would operate, as per which purchasing any residential house, other than the new asset, within a period of one year after the date of transfer of the original asset was restricted. ITAT thus ruled against the assessee.

## Transfer Pricing

***LD/68/57, [ITA No.6435/DEL/2012], ITAT Delhi Capsugel Healthcare Vs. Asst. Commissioner of Income Tax, 26/08/2019***

Foreign Associated Enterprise (AE) to be considered as tested party for benchmarking transaction of purchase of fixed assets. Asset purchased were proprietary design items of the AE and therefore, invoices from unrelated parties cannot be available for ALP (arm's length price) calculation; and hence AE has to be treated as the tested party. Matter was restored to the TPO. Assessee was also involved in manufacturing and marketing of empty head gelatin capsules and such sales to AE were benchmarked by the assessee by using CUP method. Assessee had used average rates for sale to unrelated parties that were rejected by the ITAT noting that not only contractual terms should be same but the date of the transaction should also be the same. TNMM method adopted by the TPO was accepted by ITAT, however, matter was remanded back to the TPO since no opportunity was given to the assessee by the TPO while calling for financial data under section 133(6) of the Act.

***LD/68/58, [ITA No.1470/PUN/2010], ITAT Pune, Atlas Copco (India) Limited Vs. Deputy Commissioner of Income Tax, 21<sup>st</sup> August, 2019***

Assessment order under section 143(3) r.w.s. 144C held as valid though demand notice under section 156 was not issued along with draft assessment

order and the draft assessment order was accompanied by the notice under section 274 r.w.s. 271(1) (c). ITAT distinguished the rulings relied upon by the assessee and held that character of the assessment order was that of the draft assessment order and there was no violation of Section 144C. In case of royalty payment to AE, TP addition was deleted by ITAT relying on the coordinate ruling for past year in assessee's case only. Regarding international transaction of receipt of indenting commission for selling goods on AE's behalf, matter was remitted to the TPO for lack of due calculations.



## GST

**LD/68/59, [2019-TIOL-260-AAR-GST] Siemens Ltd., 19/08/2019**

Where the applicant had received mobilisation advance from recipient of service in pre-GST period and such advance was adjusted against the invoices raised in period after 01.07.2017, AAR held that in respect of portion of unadjusted advance as on 01.07.2017 (to the extent unadjusted against invoices raised in pre-GST period), the applicant becomes liable to discharge GST liability from 01.07.2017 and subsequently, when such advance will be adjusted against GST invoices to be raised in future, GST shall be paid on net amount (i.e.; invoice value less advance adjusted).

**LD/68/60, [2019-TIOL-265-AAR-GST] M/S Chennai Port Trust, 26.07.2019**

AAR held that interest/late fees/penalty etc. charged for delayed payment of pre-GST invoices is separate supply of service in terms of Section 7(1)(a) of CGST Act, 2017 and hence chargeable to GST.

**LD/68/61, [2019-TIOL-255-AAR-GST], M/S Spacelance Office Solutions Pvt Ltd., 15.07.2019**

AAR held that separate GST registration can be allowed to multiple companies functioning in a 'co-working space' as there is no prohibition under GST law for obtaining GST registration to a shared office space or virtual office.

## Service Tax

**LD/68/62, 2019-TIOL-2365-CESTAT-DEL Gurubani Security Pvt. Ltd. vs. Principal Additional Director General, 1/08/2019**

In case of services of manpower supply or security services, while computing 'gross amount charged' under section 67 of Finance Act, 1994 for providing services, various statutory payments made towards

wages, salaries and employer's contribution towards PF, EPF, ESI etc. shall not to be included in computation.

**LD/68/63, [2019-TIOL-2306-CESTAT]-All Commissioner of Central Excise vs. M/s Lion Security Guards Services, 10.01.2019**

Where the respondent-assessee was engaged for execution of cleaning work and employed individuals on his own account, tribunal held that the respondent-assessee cannot be said to have provided manpower recruitment or supply agency services.

## Customs Act

**LD/68/64, Bombay High Court, [Writ Petition No.14417 of 2018], Union of India Vs. The Commissioner of Customs (Import -I) 09/08/2019**

Writ petition filed by the assessee was dismissed by the Bombay High Court and levy of interest under section 28AA of the Customs Act was upheld. Assessee had not paid interest on customs duty within 3 months from order assessing the duty payable. Assessee contended that Section 28AA was not applicable since it was effective from 26/05/1995 whereas the assessee's goods were imported before that period. High Court held that the order in original, determining such duty, was passed after the introduction of Section 28AA. Coordinate bench ruling in another case distinguished where it was held that interest provision in Section 11AB of Central Excise Act would apply only to those cases where clearances were effected after the date of insertion of Section 11AB. High Court noted that Section 28AA of the Customs Act was similar to Section 11AA of the Central Excise Act and not similar to Section 11AB of the said Act.

## Sales Tax Act

**LD/68/60, [W.P.No.15233 of 2019], Madras High Court, Shri Varalakshmi Company Vs. The State of Tamil Nadu and Ors, 04/06/2019**

Post GST implementation, the department's site was blocked and denied access from downloading 'C' forms, due to which the assessee was unable to obtain the same for purchase of High Speed Diesel oil from other States at concessional tax rate of 2%. Coordinate bench ruling in *Ramco Cements [W.P.Nos.19458/2018 to 19460/2018]* was relied upon where the coordinate bench had directed the Revenue to permit the petitioners to download 'C' forms. High Court noted that it was incumbent upon all Assessing Authorities within the State of Tamil Nadu to apply the principle laid down in *Ramco Cements* with regard to pending assessments till such time the order of *Ramco Cements* is either stayed or reversed.

## Disciplinary Case



***Issuance of Projection statements by Respondent-Chartered Accountant to a group of persons on the basis of which Bank extended Loan of ₹ 330.40 lakhs. No explanation offered for issuing two/ three certificates for same individual(s) for taking loan(s) from different branches certifying different figures. Respondent cannot be absolved from liability by stating that he had issued only the projection statement and not the financial statements.***

### **Held:**

The Committee noted certain flaws in the projection statements issued by the Respondent i.e.; non-disclosure of the basis of such statements, undated statement, non-disclosure of the exact financial year, issuance of two or three projection statements for one

individual. The Committee noted the Respondent's failure in issuing 97 projection statements for a group of individuals without verifying the basic documents. It is observed that the Respondent failed to exercise due diligence while issuing the same. The Committee was satisfied that there was a modus operandi going on in five/six branches of the Bank wherein the Branch Officials use to open the loan accounts on the basis of manipulated documents in which the Respondent also played a part. The Committee found the Respondent being unable to offer any explanations for the same. Further, as per the Guidance Note on Accountant's Report on Profit Forecast and/or Financial Forecasts, a Chartered Accountant can participate in the preparation of profit or financial forecasts and can review them, provided he indicates clearly in his reports the source of information, the basis of forecasts and long as he does not vouch for the accuracy of the forecasts. However, in the present case the Respondent failed to carry out the due diligence which he was required to do while issuing 97 certificates on the same lines. Accordingly, the Committee holds the Respondent guilty of professional misconduct falling within the meaning of Clauses (3), (7) & (8) of Part I of the Second to Chartered Accountants Act, 1949.

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