Legal Decisions

Income Tax

LD/68/66, [ITAT Delhi: ITA No.7262/Del/2017], India Convention and Culture Centre Pvt. Ltd.Vs. Income Tax Officer, Delhi, 27/09/2019

Assessee had considered the circle rate of land (asset) while arriving at such Fair Market Value (FMV) of shares whereas Revenue had computed the FMV of the shares on the basis of the book value, by ignoring the FMV of the land. CIT(A) had affirmed addition under section 56(2)(viib) in respect of shares issued at a premium by the assessee company, by resorting to valuation Rule 11UA of Income Tax Rules. ITAT held that the valuation of the shares should be made on the basis of various factors and not merely on the basis of financials. Further substantiation of the fair market value on the basis of the valuation done by the assessee cannot be rejected where the assessee has demonstrated with evidence that the fair market value of the asset is much more than the value shown in the balance sheet.

LD/68/67, [Allahabad High Court: Income Tax Appeal No. - 37 of 2017], Commissioner of Income Tax (Exemption) Vs. Reham Foundation, 26/09/2019

Before the High Court, Revenue submitted that unless a satisfaction on the genuineness of Trust's activities as envisaged under section 12AA is recorded by the CIT, a direction for its registration cannot be given by the Tribunal, and Tribunal can only remand the matter back to CIT. Referring to Section 254 related to powers of ITAT, High Court observed that the expression 'as it thinks fit' is of the widest amplitude and ITAT may take an entirely different view on the same set of facts. High Court held that in relation to Section 12AA, powers of ITAT are co-extensive with that of CIT. High Court held that ITAT can itself pass an order directing grant of registration under section 12AA on the basis of material already on record, where ITAT disagrees with the satisfaction of the Commissioner while denying registration under section 12AA. High Court clarified that remand to CIT by the ITAT was necessary where registration application is rejected by CIT on technical grounds without recording his satisfaction as contemplated under section 12AA.

LD/68/68, [ITAT Ahmedabad: ITA No.2266/Ahd/2017], Income Tax Officer Vs. Shri Rang Infrastructure (P) Ltd., 04/09/2019

By an amendment in Section 201(3) in Finance Act, 2014, limitation period for passing an order under section 201(1)/(1A) for TDS default was extended to 7 years, which previously was 6 years. There was an alleged TDS default by the assessee in AY 2010-11 against which order under section 201 was passed against the assessee by Revenue within extended period of limitation of 7 years. ITAT noted that the law of limitation has been held to be procedural law always having retrospective effect unless the amended statue provides otherwise. ITAT held that extended period of limitation was retrospectively applicable in assessee's case since on the amendment date, valid cause of action was continuing and subsisting and limitation was not concluded, and it was not a case where concerned proceedings were itself initiated after original period of 6 years. ITAT thus ruled in favour of the Revenue.

LD/68/69, [Gujarat High Court: Civil Application No. 6632 of 2019], Tehmul Burjor Sethna Vs. Assistant Commissioner of Income Tax, Central Circle, 31/09/2019

Special audit under section 142(2A) was initiated against the assessee who was earning income from remuneration from a partnership firm and was not maintaining books of accounts. As per the assessee, since he was under no statutory obligation to maintain books of accounts, the question of complexity and volume of accounts would not arise and no special audit could thus be initiated. High Court noted that 142(2A) has used the words "accounts" and not "books of accounts" and that the expression "accounts" has a wider meaning. High Court noted AO's opinion that assessee was involved in the business of providing accommodation entries and money laundering. High Court remarked that though the activity of assessee could not be termed as a legal one, still it was a specialised business activity and when an AO finds that having regard to the specialised nature of business activities of the assessee, the accounts are required to be audited under a special audit under section 142(2A), the AO was permitted to do so.

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Legal Update

LD/68/70, [Karnataka High Court: ITA No.100056/2014], The Commissioner of Income Tax Vs. Shri S. M. Anand 23rd August 2019

For AY 2005-06, the assessee had made payments to sub-contractors without deducting tax at source, though the deductees had offered the same to tax. Karnataka High Court allowed retrospective benefit of second proviso to Section 40(a)(ia) inserted vide Finance Act, 2012 whereby no disallowance under section 40(a)(ia) is to be made if payee/deductee has paid tax. Second proviso of Section 40(a)(ia), being 'declaratory and curative' in nature, should be given retrospective effect. Kerala High Court had taken contrary view in case of *Thomas George Muthoot vs. CIT [LAWS (ker) 2015 7 25],* it did not however, have benefit of Apex Court ruling in *Vatika Township Pvt. Ltd [(2014) 367 ITR 466].*

LD/68/71, [ITAT Bangalore: ITA No.618/Bang/2019], Edulink Private Limited Vs.The Income Tax Officer, 17/07/2019

During financial year 2014-15, assessee had received share application money in excess of its authorised share capital, which the AO sought to add as 'income from other sources' under section 56(2)(viib). This share application money had been received from non-residents. Bangalore ITAT observed that provisions of Section 56(2)(viib) were applicable only when the shares are issued over and above the face value of such shares and in present case, shares were subscribed on face value only. ITAT further held that provisions of Section 56(2)(viib) are applicable only for receipt of consideration for issue of shares from a resident and not in the case of a non-resident. Separately ITAT noted that Revenue had not made any case for invocation of provisions of Section 68.

Transfer Pricing

LD/68/72, [ITAT Pune: ITA No.251/PUN/2017], Capstone Securities Analysis Pvt.Ltd Vs. Deputy Commissioner of Income Tax, 04/09/2019

Transfer Pricing Officer (TPO) had characterised the assessee to be a Business Process Outsourcing (BPO), whereas as per Dispute Resolution Panel (DRP), the assessee was a Knowledge Process Outsoucing (KPO), therefore, DRP directed the TPO to carry out fresh search for comparables. Pursuant thereto, a fresh order was passed by the AO/TPO, without first passing a draft assessment order. Analysing provision of Section 144C(8), ITAT Pune held that the DRP transgressed its power given under sub-section (8) by restoring the matter to the AO/TPO for carrying out a fresh benchmarking. ITAT held that DRP can confirm, reduce or enhance the variations but in no case set-aside the issue for a fresh redo. Thus ITAT ruled in favour of the assessee by setting-aside the assessment order passed by AO since DRP exceeded its jurisdiction in restoring the matter to AO/TPO for undertaking a fresh benchmarking and also the AO had erred in passing final assessment order sans draft order in remand proceedings.

LD/68/73, [ITAT Pune: ITA No.506/PUN/2017], Deputy Commissioner of Income Tax Vs. Husco Hydraulics Pvt. Ltd, 03/09/2019

Assessee had filed a loss-return for AY 08-09 without attaching Form 3CEB. Regular assessment proceedings were also done by the AO; wherein penalty was levied under section 271BA for non-filing of report under section 92E. Revenue prayed that CIT(A) was not justified in allowing carry forward of loss since the original return filed by the assessee was not a valid return for absence of Form No. 3CEB alongwith it. ITAT noted that procedure as per provisions of Section 139(9) was not followed by the AO whereby no intimation of defect in return was given to the assessee which the assessee could have cured within 15 days. ITAT, therefore, dismissed Revenue's claim of return, it being invalid. Further, ITAT also rejected reopening of assessment on the ground of non-filing of form 3CEB under section 148 holding that no new incriminating material had come to the knowledge of the AO and it was a clear case of change of opinion since the fact that assessee had not filed Form No. 3CEB was in the knowledge of AO even at the time of making original assessment.

GST

LD/68/74, [2019-TIOL-312-AAR-GST] M/s Jotun India Private Limited, 04/10/2019

When applicant provided parental insurance scheme for parents of its employees and recovered 50% premium from employees, AAR held that such recovery of the premium will not attract GST as it does not amount to 'supply'.

LD/68/75, [2019-TIOL-312-AAR-GST] Metro Dairy Limited, 23/09/2019

When the commercial production of taxable goods commenced and production of exempted goods commenced subsequently, as regards availability of common credit on capital goods till production of exempted goods, AAR held that in terms of proviso to Rule 43(1)(d), (e), (f) and (g) of the GST Rules, the applicant is required to compute the admissible amount of common ITC capital goods, in the tax periods over the useful life of such capital goods,

calculated from the date of invoice and balance ITC shall be reversed that has already been credited to its electronic credit ledger.

As regards common credit on input services, AAR held that as commercial production of exempted goods did not begin, the entire ITC on input services will be admissible subject to Rule 42(2) of CGST Rules, 2017.

LD/68/76, [2019-TIOL-283-AAR-GST] M/s Directorate of Skill Development Global Skill Development Park, 18/07/2019

AAR held that import of services by a government department from the supplier of service located in non-taxable territory, for business/commerce purposes are chargeable to GST under reverse charge mechanism in terms of *Notification No. 10/2017-IT (R).*

Service Tax

LD/68/77, [2019-TIOL-449-SC-LB] (i) State of West Bengal and Ors vs. Calcutta Club Ltd & (ii) Chief Commissioner of Central Excise and Service and Ors Vs. M/s Ranchi Club Ltd., 03/10/2019

Supreme Court affirmed the decisions of various High Courts that even after 46th amendment to Article 366(29A) of the constitution of India, the doctrine of mutuality continues to hold good and thus, a supply of goods/services by incorporated clubs to its members would not attract levy of sales tax/service tax.

LD/68/78, [Delhi High Court: W.P.(C) 9264/2019 Solvina India Pvt. Ltd. Vs. Union of India & Ors., 27/08/2019

Service tax audit proceedings were initiated against the assessee after onset of GST, i.e., after 01st July 2017. As per assessee, Rule 5A of Service Tax Rules does not survive after GST introduction in the absence of any saving provision for the same, and that any proceedings under Rule 5A is *non est,* illegal and without authority of law. Assessee submitted that savings clause under CGST or Section 6 of the General Clauses Act, 1897 does not apply to repeal/omission of a Rule and that it applies to the repeal of the Central Acts and Regulations. Since Chapter V of the Finance Act, 1994 has been omitted (and not repealed) by Section 173 of the CGST Act, Section 6(1) & (2) of General Clauses Act has no application. High Court ruled in favour of the assessee and directed stay on service tax audit proceedings.

Customs Act

LD/68/79, [Supreme Court of India: Civil Appeal Nos. 293294 of 2009 ITC Limited] Vs. The Commissioner of Central Excise, Kolkata, 18/09/2019

After assessment order was passed by Revenue, assessee had submitted to Revenue that it was not aware of the *Notification No.10/96CE* or the circular dated March 01, 2001 and that refund was eligible to the assessee in respect of the duty paid on the said waste paper/broke. Supreme Court held that refund application against the assessed duty cannot be entertained directly under section 27 of Customs Act, 1962 unless the order of assessment or self-assessment is modified by taking recourse to the appropriate proceedings. Assessee's contention that in the case of self-assessment, the duty paid under a mistake can be claimed without filing an appeal, was rejected by the Supreme Court. Supreme Court held that the refund authorities cannot take over the role of Assessing Officer and while processing a refund application, reassessment is not permitted nor conditions of exemption can be adjudicated. Supreme Court remarked that as per Section 128 of Customs Act, a person aggrieved by any order including self-assessment, has to get the order modified under section 128 first.

Sales Tax Act

LD/68/80, [Allahabad High Court: Writ Tax No. 354 of 2017], Assotech Realty Pvt. Ltd. Vs. Additional Commissioner Grade-1 Commercial Tax, 27/08/2019

Assessee is a builder who purchased the land from the Development Authorities and developed the same in course of his business. Assessment order was passed by the Revenue holding that there was no transfer of any material in execution of works contract and assessee was not liable to payment of any tax. Subsequently, in the case of *L & T vs. State of Karnataka*, the Supreme Court held that assessee was liable for payment of tax on the transfer of material used in execution of works contract. Relying on this judgement, re-assessment notice was sent by the Revenue to the assessee. Allahabad High Court held that a subsequent judgement of the Apex Court cannot be used to reopen the assessment or disturb past assessment which have been concluded. High Court observed that if an order, which has been passed and has been confirmed by this Court under the provision of the Act, then in absence of any new material being brought on record, the completed assessment should not have been reopened. High Court thus ruled in favour of the assessee.

Legal Update

Disciplinary Case

Acceptance of audit of six entities by Respondent without first communicating in writing to the previous auditor -- Respondent's failure to ensure payment of undisputed audit fee to previous auditor -- Held, Respondent guilty of Professional misconduct under clause (8) of Part I of First Schedule and Clause (1) of Part II of Second Schedule to the Chartered Accountants Act, 1949.

Held:

The requirement of Clause (8) of Part I of First Schedule is considered to have been complied if:

(i) There is evidence that a communication to the previous auditor had been made by R.P.A.D.

or;

(ii) There exists positive evidence about delivery of the communication to the previous auditor.

In the instant matter, the Respondent failed to comply with any of the aforesaid conditions in respect of all the six entities and did not communicate with previous auditor in the prescribed manner. As regards the non-payment of undisputed audit fees of the previous auditor, it is noted that the fees remained unpaid for a period which pertains to the duration when *Notification No. 1/CA(7)/46/99 dated 28th October, 1999* was in place which was henceforth repealed with the issuance of the *Guidelines No.1-CA/(7)/12/2008 dated 28th August, 2008.* As per the said Guidelines, the Respondent was required to ensure that the undisputed audit fees of the previous auditor have to be paid before his acceptance of the appointment as the auditor. Further, the Respondent also admitted during the hearing that the undisputed audit fee of the previous auditor was not paid before acceptance of audits by him. Thus, the Committee held the Respondent Guilty. Upon the Respondent's failure and on overall consideration, the committee is of the view that, although, the professional misconduct on the part of the Respondent does not qualify for a maximum sentence and a lighter punishment is awarded to the Respondent. Accordingly, the Committee ordered that the Respondent be reprimanded.