

Legal Decisions



Income Tax

LD/68/98, [ITAT Mumbai: ITA No.4934/Mumbai/2018], Welfare Properties Private Ltd Vs. The Deputy Commissioner of Income Tax, 29/11/2019

For AY 2015-16, addition under section 43CA upheld by Mumbai ITAT with respect to difference between sale value and stamp value. The assessee argued that since the said difference in instant case was less than 15% the same was to be ignored. ITAT analysed Section 43CA and observed that prior to incorporation of the 'proviso' to sub-section (1) of Section 43CA, vide the Finance Act, 2018, w.e.f 01.04.2019, there was no tolerance limit [i.e., of 5%] envisaged in Section 43CA. ITAT held that it would be absolutely incorrect to infer that prior to the aforesaid amendment a tolerance limit of 15% was already available and/or inbuilt in the said statutory provision and if that would have been so, then there would have been no requirement for incorporation of the 'proviso' to Section 43CA(1). ITAT thus ruled in favour of the Revenue.

LD/68/99, [ITAT Ahmedabad: ITA No.1438/Ahd/2017], Dharamtar Motor Services Petroleum Product Ltd. Vs. The Income Tax Officer, 21/11/2019

The assessee had transferred opening balances of various loans appearing in the books of accounts to ledger of partner's capital by way of book entries. The AO made an addition of these under section 68 as unexplained cash credit, whereas the CIT(A) treated these loans as trading liabilities which ceased to exist and therefore, made addition under section 41(1). ITAT observed that these loans were taken in earlier years and not in year under scrutiny. Further the same were trading liabilities or general loans was also unclear so as to raise a doubt on applicability of Section 41(1) Further, even if liabilities of firm were transferred to partner's ledger account, that does not mean that the creditors had waived their right over the amount receivable. ITAT thus deleted the addition.

LD/68/100, [ITAT Chennai: ITA No.1664/Chny/2019], The Assistant Commissioner of Income Tax Vs. Dorma India P. Ltd., 20/11/2019

Assessee had entered into a Business Transfer Agreement with two of its business partners to acquire their distribution segment and consideration paid over and the above towards net worth of tangible asset was treated as goodwill and depreciation was claimed thereon. Revenue disallowed the depreciation claim. The AO stated that since assessee had considered book values and not FMV of assets, and if proportionate allocation was done there would not remain any amount for allocation towards goodwill. ITAT noted that since there were no land and buildings acquired, taking assets at book value existing on the date of acquisition has not led to any distortion in presentation of books of accounts. ITAT thus observed that there was no infirmity in the value adopted for business acquisition purposes and ruled in favour of the assessee on claim of depreciation on goodwill claimed by the assessee.

LD/68/101, [ITAT Pune: ITA No.2795/Pun/2016], M/s Vikram Developers and Promoters Vs. Deputy Commissioner of Income Tax, 14/11/2019

AMT provisions under section 115JC introduced w.e.f. 01.04.2013 held to be not applicable on assessee's housing project approved in 2007. Provisions of Section 115JC were applicable to projects which were approved on or after 01.04.2013, and that the said new provisions of the Act were not applicable retrospectively. As per ITAT, If the assessee is aware of the obligations of the Statute for paying AMT in the assessment year 2013-14, the assessee would not have taken up this project at all in the year 2007. ITAT ruled in favour of the assessee.

LD/68/102, [ITAT Chandigarh: ITA No.316/Chd/2019], Luxmi Foodgrains P. Ltd Vs. Income Tax Officer, 07/11/2019

Assessee had issued shares at a premium, and addition was made in this regard by the AO under section 56(2)(viib). The AO concluded that pursuant to invoking Rule 11UA and calculating FMV of shares as per the same, premium charged by the assessee was more than the FMV. AO thus made an addition. ITAT observed that assessee

had received cheques towards shares subscribed at premium, however, the same were not encashed by the assessee. ITAT held that assessee had thus not actually 'received' money/actual consideration on account of share issue and thus provisions of Section 56(2)(viib) could not be invoked.

LD/68/103, [Madras High Court: WP 16249/2018], Venkata Dilip Kumar Karta – HUF Vs. The Commissioner of Income Tax, 05/11/2019

The assessee, land owner, offered capital gains and claimed deduction under section 54 in its return to the extent of part of the consideration that was deposited in the capital gains deposit scheme. Subsequently, the assessee sought revision under section 264 to consider and allow enhanced deduction under section 54 towards additional cost of construction borne by assessee which was rejected citing non-deposit of the said amount in capital gains deposit scheme within prescribed time as per Section 54(2). This additional cost was incurred within 3 years from the date of transfer. High Court held that if the amount for which deduction is sought for under section 54 is utilised either within the time prescribed under section 54(1), the deduction is bound to be granted without reference to Section 54(2) which talks about deposit in capital gain account.

LD/68/104, [ITAT Cochin: ITA No.439/Coch/2019], Sahyadri Agencies Ltd. Vs. The Income Tax Officer, 05/11/ 2019

The CIT had issued notice under section 263 on the ground that the matter of issue price of Optionally Convertible Cumulative Preference Shares of face value of ₹ 3 crores along with premium of ₹ 57 crores issued to a director of the company, was not examined for applicability of Section 56(2)(viib) / 68 by the AO. ITAT held that even in case of limited scrutiny assessment, the AO is duty bound to make a prima facie inquiry as to whether there are any other items which requires examination and in the event, the potential escapement of income would have exceeded ₹ 10 lakh, he ought to seek the permission of the CIT / DIT to convert a 'limited scrutiny assessment' to a complete scrutiny assessment. ITAT held that the assessment order was erroneous and prejudicial to the interest of the Revenue and affirmed invocation of Section 263.

Transfer Pricing

LD/68/105, [Madras High Court: W.P No.32699/2019], Pfizer Healthcare India Pvt Ltd. Vs. Transfer Pricing Officer, 21/11/ 2019

Transfer pricing order passed by TPO on 01st November 2019 held to be barred by limitation under section 92CA(3A) since it was not passed till 60 days prior to the date on which the period of limitation referred to in Section 153 expires i.e., 31st December 2019. Since assessment proceedings are to be completed by 31st December 2019, the High Court ordered that the same may be carried on by the Assessing Officer, however, without giving effect to such orders until further orders from this Court. Assessing Officer directed to follow his course of action towards completing assessment proceedings of AY 2016-17 by 31st December.

LD/68/106, [ITAT Mumbai: ITA No.6821/Mumbai/2017], Gurgaon Investment Ltd. Vs. Deputy Director of Income Tax, 15/11/2019

Assessee had waived interest on Compulsorily Convertible Debentures from Indian Associated enterprise. Transfer pricing addition deleted by ITAT noting that there is no 'actual receipt' of interest and thus the same is not taxable under article 11(1) of India-Mauritius treaty. Fulfilment of twin conditions of accrual as well as actual receipt are necessary. ITAT stated that though Chapter X aims at preventing avoidance/evasion of tax, there will be no occasion for any tax avoidance/evasion when the income itself is not chargeable to tax by virtue of the Tax Treaty. If a particular item of income does not come within the purview of the charging provision as contained under section 4, the machinery provisions as contained under Chapter X would not be applicable.

LD/68/107, [Kerala High Court: W.P.No.11952/2019], FCI OEN Connectors Limited Vs. Deputy Commissioner of Income Tax], 13/11/2019

DRP rejected assessee's objections to draft assessment order on the ground that objections were filed by the assessee after 30 days from electronic receipt of draft assessment order. High Court quashed the DRP order noting that assessee had filed objections within 30 days from manual receipt of draft assessment order and that

the assessee had not opted for the e-proceedings facility. The High Court, therefore, held that the receipt of the draft assessment order in the manual mode had to be considered as the date of service of the draft assessment order. Till such time as the electronic facility is made mandatory for assessees, the wishes of the assessee have to be respected. The High Court remarked that assessee is not prejudiced on account of service of an order, through a mode that he did not opt for.

GST



LD/68/108, [2019-TIOL-454-AAR-GST (AAR- Karnataka)], M/s MARRQ Services Pvt. Ltd., 30/09/2019

When the applicant entered into a joint development agreement with the land owners for development of residential land and consideration was agreed on revenue sharing basis, applicant's share being 25% of consideration charged to customers for sale of developed plot, AAR held that since applicant has no right in title of land, they cannot be considered as sellers of plot and thus, under Rule 31 of CGST Rules, 2017, 25% of consideration charged will be the value of supply of service supplied by the applicant without any deduction towards the land.

LD/68/109, [2019-TIOL-448-AAR-GST (AAR- Madhya Pradesh)] World Researchers Association, 25/09/2019

AAR held that activities of promotion of research in the field of life sciences, physical sciences, environmental sciences, etc. and publishing of online research journal on one or more of above mentioned fields are not charitable activities contemplated in the exemption entry no.1 of *Notification No. 12/2017-CTR* since they do not fall under 'care or counselling'; or 'spreading public awareness'; or 'advancement of religion, spirituality or yoga'; or 'advancement of educational programmes or skill development'.

As regards organisation of Seminars, Symposiums and Conventions of the nature organised by the applicant, AAR declined to give the ruling on stating that, the applicability of exemption depends upon facts of each case, i.e., whether

such events are organised for spreading of Public Awareness of preventive health, family planning or prevention of HIV infection, etc. as covered in the definition of 'charitable activities' or for other purposes.

LD/68/110, [2019-TIOL-480-AAR-GST (AAR- Andhra Pradesh)] PKR Projects and Engineers, 16/07/2019

The applicant was granted road metal quarry for extraction of road metal by Department of Mines and Geology, State Government. The Applicant submitted that, the royalty/dead rent paid to the Government is nothing but amount paid for granting right to use minerals and hence rate of tax applicable shall be the same rate as applicable for supply of like goods involving transfer of title in goods i.e., 5% in this case. AAR held that applicant received leasing/licensing services from Government and thus, liable to discharge GST liability at 18% under reverse charge mechanism.

LD/68/111, 2019-TIOL-464-AAR-GST (AAR- Andhra Pradesh)] R Gangaiah and Company, 03/04/2019

AAR held that when a composite supply of works contract services supplied to the Government Entity involves construction of building for office purpose of such government entity to conduct their activities, since such works contract services are not other than for commerce, industry or any other business or profession, the concessional rate of 12% GST will not be available to applicant in terms of *Notification No. 24/2017-CT(R)*, consequently such supply will attract 18% GST.

LD/68/112, 2019-TIOL-479-AAR-GST (AAR- Andhra Pradesh) Rashytriya Ispat Nigam Ltd., 11/01/2019

AAR held that time of supply for payment of GST on liquidated damages and other penalties for delay in supply of goods/services, is not the time when such delay is occurring. The time of supply shall arise at the time, when the payment of liquidated damages is determined after the delay in execution of work on part of contractor is established.

Service Tax

LD/68/113, [2019-TIOL-2663-MAD-ST (Mad-HC)], BGR Energy Systems Ltd. Vs. Additional Commissioner of GST and Central Excise, 22/11/2019

When petitioner approached its Indian bank to provide bank guarantee to petitioner's foreign supplier, located outside India and Indian Bank provided such guarantee through foreign bank, the High Court held that the petitioner is a recipient of services of furnishing bank guarantee and place of provision of such service is India. Hence, the petitioner would be liable to pay service tax on bank guarantee commission and the realisation charges, charged by the foreign bank.

Customs

LD/68/114, [Madras High Court: W.P.No.29193/2019], Boston Leather Exports Vs. Assistant Commissioner of Custom, 18/11/2019

High Court directed Revenue to remove the alert against the assessee in Customs EDI system on receipt of personal bond. Assessee had paid all the relevant amount confirmed vide order-in-

original however the alert continued to exist since interest was not paid by the assessee. Since revision against orders was pending before the authority, High Court directed to remove the alert against the assessee in Customs EDI system on receipt of personal bond of ₹ 4.06 lakhs towards the interest liability.

Sales Tax Act

LD/68/115, [Allahabad High Court: Sales Tax Revision No. 520 of 2007], Northern Tannery Vs. Commissioner Trade Tax, 08/08/2019

Assessee erred in submitting the computation of the purchases and sought to rectify the same in appeal. The Tribunal had denied maintainability of assessee's appeal on the ground of pre-deposit. High Court held that Tribunal 'got swayed' by the provision of pre-deposit for maintainability of appeal and 'misread' the same to curb assessee's right of appeal. High Court held that the assessee's right of appeal to disputed part of the liability could not have been restricted by the Tribunal. Matter remitted back to Authority and order of Tribunal was set-aside.

Disciplinary Case



Forgery and fabrication of property documents by Respondent for submission before Banks as collateral securities to enable the clients to avail credit facilities – Respondent, who is habitually indulged in such activities brought disrepute under Clause (2) of Part IV of Second Schedule to the Chartered Accountants Act, 1949.

In the instant case, the Respondent forged various property documents and submitted the same as collateral securities to the Bank against credit facilities granted to various parties. The Government Examiner of the Questioned Documents opined that the signatures had been forged by the Respondent which in itself a positive evidence to establish the active involvement of the Respondent in forging of certain documents. Further, evidence on record as brought by the Complainant validated the Respondent's involvement in the forgery and manipulation of property documents. Thus, the Board of Discipline, on overall consideration is of the view that the misconduct on the part of the Respondent is of serious nature and does qualify for a maximum punishment. Accordingly, the Board ordered for removal of the name of the Respondent from the Register of Members for a period of three months and also imposed fine of ₹ 25,000/-.