

Legal Decisions



Income Tax

LD/68/116, [Kerala High Court: W.P No.7795/2019], Chirayinkeezhu Service Co-Operative Bank Limited Vs. The Central Board of Direct Taxes, 30/12/2019

Assessee a primary agricultural credit society held to be not entitled to TDS exemption under section 194A(3)(iii)(a) on interest earned on the deposits made with the State Treasuries. Benefit of exemption under section 194A(3)(v) would be available on deposits made with the Cooperative Banks. High Court held that deposit receipts from own members could not be construed as 'business of banking' for Section 194A(3)(iii)(a) purposes. High Court rejects assessee's stand that primary agricultural credit society assessee is a co-operative society engaged in carrying on the 'business of banking' and therefore, entitled to receive the interest without TDS. The High Court thus ruled in favour of the Revenue.

LD/68/117, [ITAT Bangalore: 1784/Bang/2018], Acciona Wind Energy Private Limite Vs. The Deputy Commissioner of Income Tax, 20/12/2019

Capital gains exemption arising on buy-back of shares by Indian assessee-company of its Spanish parent company, under section 47(iv) denied. Parent company was holding 99.99% of share capital of assessee company and 0.01% shares were held by another Spanish company which was not also the nominee of the parent company. Exemption condition under section 47(iv) was not met as for all practical purposes. ITAT upheld invoking Section 46A which deems consideration received by shareholder on purchase of its own shares as 'capital gains'. As per ITAT there is no requirement of transfer of shares as capital asset, but there is only requirement that a shareholder receives a consideration from a company for purchase of its own shares.

LD/68/118; [ITAT Ahmedabad: 675/Ahd/2016], Shreno Limited Vs. The Assistant Commissioner of Income Tax, 18/12/2019

Section 50CA held to be prospective in nature applicable w.e.f. AY 2018-19 and thus not applicable to share sale by assessee during AY 2012-13. Prior

to insertion of this section, there is no power with the revenue authorities to replace full sale consideration with fair market value of the shares. Full value of consideration could be replaced by way of deeming provision contained in Section 50C which is related to being land or building, but no such provision with regard to the sale of shares. ITAT, therefore, allowed set-off of capital loss from the sale of shares.

LD/68/119, [ITAT Bangalore: 145/Bang/2019], Moody's Analytics Knowledge Services (India) Pvt. Ltd. Vs. The Income Tax Officer, TDS, 13/12/2019

Interest levied under section 201(1A) was deleted by Bangalore ITAT noting that though the TDS chalan was reflected on Online Tax Accounting System (OLTAS), a TDS chalan website, on 8 or 9th of the month, the assessee had remitted the same online on 7th of that month. ITAT held that Central Government Account (Receipts and Payments) Rules, 1983 were not applicable to online payments and those applicable only to payments by cheque. Further, as per CBDT Circular 261 of 1979 was binding on the Revenue over the Central Government Account (Receipts and Payments) Rules. CBDT Circular stated that date of payment is to be regarded as the date on which the cheque is handed over to the government bankers if the cheque is ultimately honoured. ITAT thus ruled in favour of the assessee to delete interest levied under section 201(1A).

LD/68/120, [ITAT Chennai: 3067/Chny/2018], Shri Narayan Agarwal Vs. The Assistant Commissioner of Income Tax, 12/12/2019

The assessee had booked a flat by paying certain amount, which flat could not be completed by the developer and so mitigate the risk, assessee sold the rights in the flat to a third party buyer and invested the sale amount in a new flat thereby claiming benefit of Section 54. AO rejected the claim of assessee on the ground that since that the builder had not given possession of actual flat, the income was assessable as income from other sources and not capital gains. ITAT held that since the assessee had transferred his rights and received consideration, the gains were assessable as long term capital gains and benefit of Section 54 was available.

Transfer Pricing

LD/68/121, [Madras High Court: W.P. 1729/2011], Vedaneta Limited Vs. The Assistant Commissioner of Income Tax, 22/10/2019

Section 144C held to be applicable prospectively w.e.f. AY 2010-11. Clarificatory Circular of CBDT issued in 2013 stating that earlier CBDT circular was inadvertently incorrect and stating that Section 144C was retrospectively applicable for orders which proposes to make variation in income or loss returned by an eligible assessee, on or after 1.10.2009 irrespective of the assessment year to which it pertains, held to be non-jurisdictional. High Court held that such change sought by CBDT cannot be considered as a mere 'shift in procedure' and was a substantive amendment and has to be made applicable prospectively. High Court held that right has been enured to the parties in 2009 and it cannot be modified by a Clarification issued by the Board, three years thereafter in 2013.

GST



LD/68/122, [Ker HC], Abbott Healthcare Pvt. Ltd. Vs. Commissioner of SGST and Ors, 07/01/2020

The concept of a composite supply would not be attracted in cases where there was more than one supplier. The concept of the enhancement of utility of one supply through others may be relevant only for the purposes of valuation of the supply of instruments and cannot be imported into the concept of composite supply under the GST Act. The business model followed by the petitioner for a considerable period of time would be indicative of whether or not the supplies are bundled in the 'ordinary course of business'.

LD/68/123, [Delhi High Court], TMA International Pvt Ltd. & Ors Vs. UOI & Ors, 26/11/2019

The refund of IGST not to be denied merely because the applicant inadvertently claimed higher duty drawback during transitional period due to lack of clarity on the procedural matters. The department is however, free to verify the claim.

LD/68/124, [Mad HC], M/s Precot Meridian Ltd. Vs. Commissioner of Customs and Ors, 19/11/2019

Claiming Higher duty draw back which is repaid subsequently along with interest, would not disentitle the Applicant of IGST refund under the

IGST Act. The *Circular No.37/2018 – Customs* issued for the purposes of explaining the provisions of the drawback schemes has nothing to do with IGST refund claimed under section 16 of the IGST Act, read with Section 54 of the CSGT Act and Rule 96 of the CGST Rules.

Service Tax

LD/68/125, [MUM-CESTAT], Mankeshwar Enterprises Vs. CCEX., 07/10/2019

Hon'ble Tribunal relied upon the agreement between the parties to decide the nature of services and held that the services provided under the agreement are not manpower supply services but cleaning services.

LD/68/126, [Kar HC], Abdul Samad S/O Late P Mohammed Age 50 Years Chartered Accountant Vs. Commissioner of Central Excise and Service Tax, 5/3/2019

High Court held that, once there was no compulsion or duty cast to pay the service tax, the amount paid by petitioner under mistaken notion, would not be a duty or 'service tax' payable in law. Once it is not payable in law there is no authority for the department to retain such amount which would otherwise be outside the purview of Section 11B of the Act. Time limitations mentioned in Section 11B is therefore, not applicable in such cases.

Customs

LD/68/127, [Madras High Court: W.P. 29526 of 2012], J. Sheikh Parith Vs. The Commissioner of Customs, 13/12/2019

High Court held that it cannot entertain the writ petition of assessee seeking to quash hearing notice issued to the assessee. Assessee submitted that it was not supplied with relevant material for preparing their reply to the show cause notice by the Revenue. The Directorate of Revenue Intelligence had seized certain documents of the assessee which were not returned to the assessee after completing its investigation. High Court directed the Revenue to return the seized documents and also directed the assessee to file reply to the hearing notice [show cause notice] in time bound manner, noting that adjudication of the show cause proceeding had been considerably delayed by about seven years due to pendency of the present writ petition.

LD/68/128, [Kerala High Court: W.P. 25339 of 2019], Anu Cashews Vs. The Commissioner of Customs, 13/11/2019

High Court ruled that Revenue should not have denied export benefit to the assessee for an inadvertent mistake by the assessee where he failed to check the box on form filled on web portal which was consequently recorded as 'No' at filing the form online. High Court held that lapse held to be a mere technical lapse and the Revenue could not have denied the benefit in a mechanical manner especially when there was sufficient indication from the other details entered in the form that pointed to the assessee's intention to claim the benefit.

Excise

LD/68/129, [Patna High Court: W.P. 22415 of 2019], Bihar State Beverages Corporation Limited Vs. The Union of India, 03/12/2019

Writ Petition of assessee against levy of service tax charged under Reverse Charge Mechanism

on License fees and privilege fee charged by State Government for granting exclusive wholesale business in liquor disposed by the High Court. Appeal before Tribunal held to be an equally efficacious alternative remedy available to the assessee. The High Court thus held the writ petition to be not maintainable and disposed the writ.

Sales Tax Act

LD/68/130, [Madras High Court: W.P. 14193 of 2001], Advance Paints Private Limited Vs. The Commercial Tax Officer, 09/12/2019

Sale of goods by agent immediately after receiving of goods from the Principal is not a ground to treat the branch transfer as an inter-state sale. The assessing authority did not find any pre-concluded contract with the buyer and the assessee had demonstrated movement of goods from Tamil Nadu to Kerala with supporting documents like Form F. Revenue was incorrect to levy CST merely based on assumptions.

Disciplinary Case



Respondent actively engaged in business and managing the affairs of the Partnership Firm without obtaining prior permission from the Council - Held, Guilty under Clause 11 of the Part I of First Schedule to The Chartered Accountants Act, 1949.

In the instant case, Respondent was the working partner and was having substantial interest in the partnership firm. It is an admitted fact that

the Respondent before becoming partner had not taken permission of the Council. The Board noted that as per Clause 11 of the partnership deed dated 01st May, 2006, the Respondent was the working partner and was having substantial interest in the partnership firm. Respondent was actively involved in business as partner without the permission of the Council. As per the partnership deed, the Respondent was entitled to salary of ₹ 5,000/- per month and bonus @12% of the salary. Further as per the clause 8 of the same partnership deed, the Respondent along with one more partner was jointly operating the bank account of the firm. Moreover, the onus lied on the Respondent to show that he was not actively engaged in the business of the firm which he could not substantiate before the Board.

On overall consideration of the same, the Board was of the view that there is clear cut ignorance of law by the Respondent and it cannot be taken as a excuse. Hence, in the opinion of the Board, the Respondent has violated the requirements of Clause (11) of Part I of First Schedule to the Chartered Accountants (Amendment) Act, 2006.