

Legal Decisions



Income Tax

LD/68/131, [ITAT Mumbai: ITA No.6703/Mum/2018], The Asst. Commissioner of Income Tax Vs. Marks & Spencer Reliance India P. Ltd, 22/01/2020

Assessee had claimed further business loss by revising his return of income for AY 2012-13 which the AO had disallowed by restricting to loss claimed in original return filed under section 139(1) and by invoking Section 80. Mumbai ITAT held that such further loss claimed in revised return was allowable since, the assessee had filed original return within the due date prescribed under section 139(1), the revised return filed subsequently within the due date prescribed under section 139(5) partakes the nature of original return filed under section 139(1). Thus the conditions are fulfilled by assessee and accordingly, loss claimed shall be allowed to be carried forward, as per ITAT.

LD/68/132, [Bombay High Court: ITA No.1824 of 2018], Sanjay L. Sonavane Vs. The Assistant Commissioner of Income Tax, 17/01/2020

54F benefit denied to assessee since the new residential house was constructed on the land owned by the mother of assessee, and also the commencement and completion certificate issued by the Municipal Corporation was also in the name of the mother of the assessee. Assessee's reliance on Delhi High Court judgement in the case of Ravinder Arora [(2012) 342 ITR 38 (Delhi)] distinguished by Bombay High Court.

LD/68/133, [ITAT Mumbai: ITA No.6202/Mum/2017], The Income Tax Officer Vs. Narshi Nenshi & Sons, 10/01/2020

Carried forward loss of unabsorbed depreciation of a proprietorship concern allowed to be set-off against profits of successor partnership firm. After the demise of the sole proprietor, his legal heirs continued the same business as a partnership firm and claimed set-off of unabsorbed depreciation (pertaining to earlier AYs) of the erstwhile proprietary concern against the income of the partnership firm. Succession by legal heirs held to be an inheritance of business and set-off held to be permissible under section 78(2).

LD/68/134, [ITAT Mumbai: ITA No.6602/Mum/2011], Ajay Indrajit Thakore Vs. The Asst. Commissioner of Income Tax, 08/01/2020

Assessee had sold a property in September 2008 and claimed that cost of acquisition of his tenancy rights as on 01.04.1981 be calculated by application of 'reverse indexation'. AO had considered cost of acquisition as Nil. However, the CIT(A) had considered FMV as on 1.4.1981 for indexation purposes. ITAT observed that reverse indexation method applied by the assessee was contrary to the statutory provisions and so cannot be accepted. ITAT noted that assessee himself furnished a valuation report of a registered valuer determining the FMV as on 1st April, 1981 and there was no reason to discard it and adopt the cost of acquisition as per reverse indexation method.

LD/68/135, [Karnataka High Court: W.P. No.18419/2018], Vaudev Adigas Fast Foods P. Ltd. Vs. The Central Board of Direct Taxes, 06/01/2020

CBDT's rejection order of condonation of delay in filing return by assessee for AY 2014-15, quashed by the High Court. While deciding the application for condonation of delay, CBDT had examined the return on merits and had held that since there was a reluctance of tax auditor to verify the veracity and correctness of the claim of the assessee the delay could not be condoned as per para 5(i) of Circular 9/2015. High Court held that while dealing with an application for condonation of delay, CBDT must satisfy itself with regard to the genuineness of the claim rather than examining the merits of the claim closely which can prejudice the case. Expression 'genuine hardship' should receive liberal consideration from Authority, as per High Court.

LD/68/136, [ITAT Ahmedabad: ITA No.964/Ahd//2017], Rakesh Bhikabhai Shah Vs. The Principal Commissioner of Income Tax, 31/12/2019

Order under section 263 wherein the sale of shares by a shareholder of a closely held company to another fellow-promoter of same company was held to be undervalued, quashed by ITAT. Principal Commissioner had held that undervaluation had resulted in under-assessment of long term capital gains. Assessee had sold shares to fellow-promoter at face value whereas on same day the assessee had sold some shares to a Mauritian company at over ₹87,000 per share. Assessee stated that the same

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fellow promoter had liasoned the deal of sale of shares to Mauritian company and so out of gratitude some part of assessee's shares were sold to him at face value. ITAT accepted assessee's stand.

LD/68/137, [ITAT Indore: ITA No.397/Ind//2018], Smt. Ushadevi Mansinghka Vs. The Income Tax Officer, 26/12/2019

AO had made addition on account of bogus long term capital gains of assessee in AY 2014-15. AO had rejected assessee's contention that declaration filed under Income Declaration Scheme 2016 for AY 2013-14 declaring certain undisclosed income on which all taxes were paid, was actually the source of such capital gains offered in AY 2014-15. ITAT held that income declared in earlier assessment year can be taken into account to explain the transactions of subsequent year provided there is a nexus between the income declared and the transaction of the subsequent assessment year. ITAT deleted the bogus capital gains addition of AY 2014-15 and ruled in favour of assessee.

Transfer Pricing

LD/68/138, [ITAT Pune: ITA No.1960/Pun/2019], P.N. Gadgil Jewellers Private Ltd. Vs. The Assistant Commissioner of Income Tax 15/01/2020

When reference was made to TPO on the only issue of benchmarking Specified Domestic Transaction of Directors Remuneration, TPO cannot exceed the jurisdiction to benchmark other international transaction. Benchmarking of director's remuneration was unsustainable when aggregated results were accepted. When an entity level benchmarking is done, there is no need for any further adjustment as all the adjustments made by Revenue would get automatically subsumed.

LD/68/139, [ITAT Mumbai: ITA No.6201/Mum/2018], Hathway Cable and Datacom Ltd. Vs. The Deputy Commissioner of Income Tax, 10/01/2020

Ad-hoc addition made by DRP at 10% of income distributed by assessee with domestic related parties deleted by ITAT Mumbai. Accepts assessee's distribution which was made based on actual subscribers being commanded by the related parties, DRP was not justified in upholding 10% of the addition, in so far as the assessee has distributed income on the basis of actual subscribers being commanded by the related parties. ITAT observed that DRP made TP-addition without following any of the prescribed methods under section 92C (1) nor

had any benchmarking had been adopted in ALP-determination. Ad-hoc determination of ALP de-hors Section 92C, was held unsustainable in law and thus quashed.



GST

LD/68/140, UOI Vs. Tax Bar Association & Ors [Supreme Court], 10/02/2020

In a SLP filed against the Rajasthan High Court's decision extending the due date of filing upto 12-02-2020 without late fees, the Hon'ble Supreme Court stayed the extension on the basis of statement made for and on behalf of UOI, that late fee is only ₹200 per day which will be refunded subject to outcome of the Petition. The Ld. Solicitor's General also assured that the authorities, both under the Central as well as State Acts, will not invoke any penal powers in this behalf.

LD/68/141, Tax Bar Association Vs. UOI [Rajasthan HC], 05/02/2020

The Hon'ble High Court passed an interim order that no late fee be charged on the returns GSTR-9 uploaded on the GSTN portal up to 12-02-2020. It further requested the UOI to direct service providers of the said portal to enhance its capacity to accept returns/forms, as it is well-settled that where the last date of submission has been prescribed by law, it would be incumbent on the part of the revenue to provide for adequate facility for accepting such declarations or returns or forms within the period stipulated.

LD/68/142, M/s Refex Industries Ltd Vs. ACGST & CE and ors., [Mad HC], 06/01/2020

The High Court [Single Member] held that proviso to Section 50(1) inserted on 01.08.2019 is retrospective in nature and hence the interest under section 50(1) can be levied only on the net demand i.e., a belated cash payment, but not on ITC available all the while with the Department to the credit of the assessee.

LD/68/143, ACGST & CE and ors. Vs. M/s Daejung Moparts Pvt. Ltd. [Madras HC], 19/12/2019

Though the liability fastened on the assessee to pay interest under section 50(1) of the CGST Act is an automatic liability, quantification of such liability certainly needs an arithmetic exercise after considering the objections if any, raised by the assessee.

LD/68/144, M/S Megha Engineering and Infrastructures Ltd. Vs. CCE and Ors. [Telangana HC], 18/04/2019

The High Court (single member) held that until a return is filed as self-assessed, no entitlement to credit and no actual entry of credit in the electronic credit ledger takes place. As a consequence, no payment can be made from out of such a credit entry. It further held that since ownership of such money (lying in electronic cash ledger and electronic credit ledger) is with the dealer till the time of actual payment, the Government becomes entitled to interest upto the date of their entitlement to appropriate it. Accordingly, when there is a delay in filing of the GST return, the interest will be applicable on the gross liability.

CUSTOMS

LD/68/145, [Madras High Court: C.M.A No.1699/2017], The Commissioner of Customs Vs. Medreich Sterilab Limited, 06/01/2020

The assessee had applied for registration under Rule 3 of Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules subsequent to import effected under Bill of Entry, Revenue had therefore, denied the exemption to assessee. CESTAT held that Rules 3 and 4 of these Rules are only procedural or directory in nature and thus allowed the exemption. High Court ruled in favour of Revenue by observing that the very initiation of procedure of registration and application was not undertaken and hence, there was no question of substantial compliance by the assessee. As per

High Court, to avail the exemption of duty under any Notification, the Rules, Regulations and conditions prescribed shall be strictly adhered by any assessee.

LD/68/146, [Gujarat High Court: Civil Application 5190/2019], Petronet LNG Limited Vs. Assistant Commissioner of Customs, 26/12/2019

Assessee's claim of refund filed within one year from date of favourable CESTAT order, held to be well-within period by Gujarat High Court. Revenue had preferred appeal against order of appellate order of Commissioner who had ruled in assessee's favour. High Court held that till CESTAT rendered its judgement and the order was received by assessee, it can be said that refund claim was not finally decided by the Court or Tribunal so as entitle the assessee to raise the refund claim. High Court noted that as per Section 27(1B)(b) of Customs Act limitation would start from date of receipt of the order. High Court thus ruled in favour of assessee.

Service Tax

GE T AND D INDIA LTD Vs. Deputy Commissioner of Central Excise. [Mad HC], 07/11/2019

The Court held that the notice pay, in lieu of sudden termination does not give rise to the rendition of service either by the employer or the employee and the same would not be covered by the provisions of Section 66E(e) of the Finance Act, 1994.

Disciplinary Case



Issuance of capital expenditure certificates by the Respondent without verifying the genuineness of the invoices through which

the machinery/materials were procured by the Company – Plea of Respondent that physical verification of assets and original bills are not his job – Issuance of certificates without mentioning such limitations, resulted in misleading the Bank while releasing the loan amounts – Held, Respondent Guilty of professional misconduct under Clauses (7) and (8) of the Part I of Second Schedule to the Chartered Accountants Act, 1949.

Held:

In the instant case, the Respondent had issued 12 expenditure certificates based on the false and fabricated invoices produced by the Company. Based

on the expenditure certificates, the Bank released the loan amounts which were diverted by the Company and the same lead to default in the re-payment of the loan to the tune of ₹ 26 crores. The Committee noted that as per the Guidance Note on Audit Report and Certificates for Special Purpose, "a certificate is a written confirmation of accuracy of the facts stated therein and does not involve any estimate or opinion". It is further noted that the Respondent is required to disclose his limitations/assumptions in his certificates, so as not to mislead the users of the said certificate(s) but he failed to do so. On overall consideration of the same, the Committee was of the view that the Respondent while issuing the certificates ought to have exercised due diligence. Hence, in the opinion of the Committee, the Respondent was grossly negligent in conduct of his professional duties and has thus violated the requirements of Clause (7) and (8) of Part I of the Second Schedule to the Chartered Accountants (Amendment) Act, 2006.