THE CHAMBER OF TAX CONSULTANTS

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STUDY GROUP MEETING

Tuesday, 10th September, 2019

Babubhai Chinai Hall, 2nd Floor, IMC, Churchgate, Mumbai.

Mr. K.Gopal, Advocate

Sr No	Particulars	Observations given and ratio laid down by the Judicial forums.
	SUPREME COURT	
1.	**CIT vs. Laxman Das Khandelwal** [2019] 108 taxmann.com 183 (SC) **Sec 143(2)**	According to Section 292BB of the Act, if the assessee had participated in the proceedings, by way of legal fiction, notice would be deemed to be valid even if there be infractions as detailed in said Section. The scope of the provision is to make service of notice having certain infirmities to be proper and valid if there was requisite participation on part of the assessee. It is, however, to be noted that the Section does not save complete absence of notice. For Section 292BB to apply, the notice must have emanated from the department. It is only the infirmities in the manner of service of notice that the Section seeks to cure. The Section is not intended to cure complete absence of notice itself.
2.	**PCIT vs. S.G. Asia Holdings (India) (P.) Ltd.** [2019] 108 taxmann.com 213 (SC) **Sec 92CA**	In view of the guidelines issued by the CBDT in Instruction No.3/2003 the Tribunal was right in observing that by not making reference to the TPO, the Assessing Officer had breached the mandatory instructions issued by the CBDT. We do not find the conclusion so arrived at by the Tribunal to be incorrect. However, the Tribunal ought to have accepted the submission made by the Departmental Representative as quoted in para 16.2 of its order and the matter ought to have been restored to the file of the Assessing Officer so that appropriate reference

		could be made to the TPO. It would therefore be upto the authorities and the Commissioner concerned to consider the matter in terms of Sub-Section (1) of Section 92CA of the Act. We, therefore, allow this Appeal to the aforesaid extent and direct that it would now be upto the Assessing Officer to take appropriate steps in terms of Instruction No.3/2003.
HIGH COURT		
3.	**CIT vs Chettinad Lignite Transport Services (P.) Ltd.** [2019] 107 taxmann.com 362 (Madras) **Sec 80IA(4)**	These are, obviously, big infrastructure facilities for which the enterprise in question should enter into a contract with the Central Government or State Government or Local Authority. However, the Proviso intends to extend the benefit of the said deduction under section 80IA even to a transferee or a contractor who is approved and recognised by the concerned authority and undertakes the work of the said development of infrastructure facility or only operating or maintaining the same. The Tribunal, has rightly held that the Proviso does not require that there should be a direct agreement between the transferee enterprise and the specified authority for availing the benefit under section 80IA of the Act. There is no dispute that the assessee was duly recognised as transferee or assignee of the principal contractor 'S' Limited and was duly so recognised by the railways to operate and maintain the said railway sidings. The findings of fact with regard to the said position recorded by the Tribunal are, therefore, unassailable and that clearly attracted the first Proviso to section 80IA(4) of the Act.
4.	**Harjeet Surajprakash Girotra vs. UOI** WP: 513 OF 2019 **Bombay High Court** **Sec 148**	It is consistent view of the Courts that not mere issuance of notice of reopening of assessment but its service on the assessee, that too, within the time frame envisaged under section 149 of the Act is necessary for a valid reopening of assessment. Since the delivery of the notice could not be made at the address of the assessee available in PAN database, by virtue of the further proviso to sub-rule (2) of Rule 127, the communication had to be delivered at the address as available with the banking company. It is undisputed that the Department had access to the petitioner’s bank account. It is precisely from the activities in such bank account that the department had gathered the material prima facie believing that the income chargeable to tax had escaped assessment. In terms of Rule 127 and in particular,

		sub-rule (2) therefore, having regard to the further proviso therein, the Department had to deliver the notice of reassessment at the petitioner's address given by her to the bank where her account was maitnained. No such steps were taken. Service of notice, therefore, was not complete. In absence of service of notice before the last date envisaged under section 149 of the Act for such purpose, the Assessing Officer could not have proceeded further with the reassessment proceedings. His consequential steps of attempting to serve the notices of scrutiny assessment were of no consequence. Reopening of assessment was invalid.
5.	**Rupesh Rashmikant Shah vs. UOI** [2019] 108 taxmann.com 181 (Bombay) **Interest awarded in the motor accident claim case- Taxability?**	We, therefore, hold that the interest awarded in the motor accident claim cases from the date of the Claim Petition till the passing of the award or in case of Appeal, till the judgment of the High Court in such Appeal, would not be exigible to tax, not being an income. This position would not change on account of clause (b) of section 145A of the Act as it stood at the relevant time amended by Finance Act, 2009 which provision now finds place in sub-section (1) of section 145B of the Act. Neither clause (b) of section 145A, as it stood at the relevant time, nor clause (viii) of sub-section (2) of section 56 of the Act make the interest chargeable to tax whether such interest is income of the recipient or not. Section 194A of the Act is only a provision for deduction of tax at source. Any provision for deduction of tax at source in the said section would not govern the taxability of the receipt. The question of deduction of tax at source would arise only if the payment is in the nature of income of the payee. So far as the plain meaning of section 194A(1) read with erstwhile clause (ix) and substituted clauses (ix) and (ixa) of sub-section (3) is concerned, there can be no doubt or dispute. However, the fundamental question is does section 194A make the interest income chargeable to tax if it otherwise is not. The answer has to be in the negative. The provision for deduction of tax at source is not a charging provision. It only makes deduction of tax at source on payment of same, which, in the hands of payee, is income. If the payee has no liability to pay such income, the liability to deduct tax at source in the hands of payer cannot be fastened. In other words, the provision of deducting tax at source cannot govern the taxability of the amount which is being paid.

6.	**Tushin T.Mehta** **Vs. CCIT** [2019] 108 taxmann.com 257 (Madras) **Waiver of interest u/s 234A/B&C**	The expression "unavoidable circumstance" occurring in clause 2(e) of the circular dated 23.05.1996 cannot obviously encompass outcomes of judicial and quasi-judicial proceedings. This is all the more so because, clause 2(d) deals with arising of liability on account of a subsequent decision of the Hon'ble Supreme Court. If adverse judicial or quasi-judicial decisions are to furnish a cause for seeking waiver of interest, it would have been expressly stated in clause 2(e) as in clause 2(d). When a person embarks on the journey of litigation, one should always be prepared for an adverse verdict. Therefore, there is nothing unforeseeable about the outcome of judicial or quasi-judicial proceeding.
ITAT		
7.	**Shree Laxmi Estate (P.) Ltd vs** **ITO** [2019] 108 taxmann.com 195 (Mumbai - Trib.) **Sec 43CA**	The provisions of section 43CA are applicable only when there is transfer of land or building or both. In the instant case, neither of those had happened pursuant to registration of agreement with the stamp duty valuation authorities. In respect of allotment of offices made prior to 31-3-2013, it is found from the documents enclosed in the paper book that the assessee and the prospective buyer of flats had specifically agreed that till such time the agreement of sale is executed and registered, no right is being created in favour of the flat buyer and that the allotment letter is just a confirmation of booking subject to the execution of the agreement which is to be drafted at a later point of time. The said allotment letter also specifies that the relevant office has been allotted to the flat buyer with rights reserved to assessee to amend the building plan as it may deem fit.
8.	**DCIT** **Vs.** **Smt. Mamta Bhandari** [2019] 108 taxmann.com 207 (Delhi - Trib.) **Sec 56(2)(vii)(c)**	The Commissioner (Appeals) deleted the addition following the relevant provisions of Law in the light of Order of Tribunal, Mumbai Bench in the case of Sudhir Menon (HUF) v. Asstt. CIT [2014] 45 taxmann.com 176/148 ITD 260, in which it was held that provisions of section 56(2)(vii)(c), would not apply to bonus shares. The Tribunal, Delhi Bench in the case of Meenu Satija v. Pr. CIT (Central) [IT Appeal No. 3215 (Delhi) of 2016, dated 27-1-2017], on identical facts quashed the proceedings under section 263. Therefore, ratio of the decision of the Tribunal in the case of Meenu Satija (supra), squarely apply to the facts and circumstances of the case. The principle of law have been clearly decided in favour of the assessee on the identical facts. The Tribunal has also relied upon the decision of Mumbai Bench in the case of Sudhir Menon (HUF) (supra), which is relied upon by the Commissioner (Appeals) as well. No infirmity have been pointed out in the Order of the Commissioner (Appeals). The issue is, therefore, covered by the Order of Tribunal, Delhi

		Bench in the case of Meenu Satija (supra). The departmental appeal has no merit and the same is accordingly dismissed.
9.	**Hirsh Bracelet India Pvt. Ltd vs ACIT** ITA No.3392/Bang/2018 **Sec 37**	We have considered the rival submissions. It is an undisputed fact that though business of assessee came to a halt in the year 2010, yet the assessee was liquidating its assets. A look at the various expenses which were claimed as deduction would show that they were, rather, of the registered office, professional charges, audit fees and property maintenance charges. All these expenses had to be incurred since the assessee was a company and it was required to maintain its legal status till the assets of the company are liquidated. It is therefore clear that all these expenses had to be incurred for proper liquidation of assets of the company. In identical circumstances, the Hon'ble High Court of Karnataka in the case of Lawrence D'Souza (supra) took the view that expenditure in question had to be allowed in AY 1996-97, though business came to a halt in the year 1994. Following the aforesaid decision of Hon'ble High Court of Karnataka, we are of the view that the expenses in question have to be allowed as a deduction.
10.	**Vijay Vikram Dande Kurnool vs. ACIT** [2019] 107 taxmann.com 452 (Hyderabad - Trib.) **Sec 127**	It is found that sub-section (3) of section 127 provided that provisions of sub-sections (1) or (2) are not applicable and no opportunity is to be given to assessee, where the transfer is from any Assessing Officer, to any other Assessing Officer where the Officers of such officers are situated in the same city, locality or place. It is found that the Assessing Officer at Kurnool had transferred the file to the Assessing Officer at Hyderabad and therefore, even if they are both under the jurisdiction of the same Pr. Commissioner at Hyderabad, the notice under section 127(1) had to be given to the assessee and it were only the Pr. Director General or the Pr. Commissioner who could transfer the case under section 127 of the Act. No such procedure has been followed by the Deptt. Therefore, the issuance under section 143(2) by the Deputy Commissioner (IT)-1, Hyderabad is without any authority and also beyond the period of six months from the date of filing of returns and therefore, is barred by limitation and hence, not sustainable and the consequent assessment order passed by the Assistant Commissioner (IT) Hyderabad is void ab initio.
11	**M/s. Emdee Digitronics Pvt. Ltd** **Vs. PCIT**	We note that there is no estopple against the law. What is not otherwise taxable cannot become taxable because of admission of assessee. Nor can there be any waiver of the right otherwise admissible to the assessee in law. The chargeability is not dependent on the admission of or waiver by the assessee. The

	ITA No. 361/Kol/2019 **Sec 263**	chargeability is dependent on the charging section, which needs to be strictly construed.[Sail DSP VR Employees Association, 262 ITR 638 (Cal-H.C)]. We note that assessee has himself confessed and accepted that the (interest on VAT, service tax, TDS etc.) expenses are not allowable expenditure under section 37(1) of the Act, being penal in nature, does not mean that these expenses should be disallowed. If these expenses (interest on late deposit of VAT, service tax, TDS etc expense) are allowable under the Act then these cannot be disallowed merely because assessee has admitted. Right expenditure ought to be allowed and right income ought to be taxed. Therefore, the assessing officer, while making the assessment U/s 143(3) took a possible view that these expenses are allowable under section 37(1) of the Act, hence he did not disallow them. Hence, Assessing Officer has adopted one of the courses permissible in law therefore, order made by AO under section 143(3) of the Act, is neither erroneous nor prejudicial to the interest of the Revenue.
12	**Shri Harish Narinder salve vs ACIT** ITA No. 2285/Del/2016 **Sec 37**	Undoubtedly, assessee is a noted international lawyer who has set up a scholarship for creating his visibility in international arena and his social standing. The assessee has specifically submitted that it has increased lot of value of the CV of the assessee and the government of Singapore has appointed him on certain committees of repute. Even otherwise, it is not open to the revenue to adopt a subjective standard of reasonable as and decide whether the type of the expenditure of the assessee should incur and in what circumstances. The opinion of the learned assessing officer that attending the conferences et cetera would have added more weightage to the professional profile of the assessee is devoid of any merit. It is not the AO but the assessee is carrying on the profession. He knows better that what kind of expenditure he should incur for furtherance of his business. To judge allowability of an expenditure, the learned assessing officer should put himself into the shoes of the assessee and then decide that whether the expenditure incurred by the assessee is necessary or not for the business of the assessee. Thus, allowability of expenditure should always be judged from the mindset of the assessee. The AO cannot put his thinking to say that the expenditure incurred by the assessee is not wholly and exclusively incurred for his profession, unless, he brings his level of thinking to the level of the professional, like assessee. The requirement of incurring the expenditure by a professional/businessman changes by the changes in the dynamics of the business, its complexities and its uniqueness. The level at which the assessee is carrying on the profession, perhaps, he might not have thought it proper to increases

		visibility by attending the conferences, seminars et cetera. He has different vision of carrying himself in the professional field to increases visibility and social status. He thought fit to set up a scholarship to Indian students in Oxford University. Thus, in the present case definitely there is a nexus between the expenditure incurred by the assessee and the professional services rendered by the assessee.
13	**AbherajBaldota Foundation** **Vs. DCIT** ITA Nos.947 & 948/Bang/2017 **Sec 11(3) and Sec 11(2)**	We notice that the assessee is exercising the option of accumulation granted u/s 11(2) of the Act every year. Accordingly the assessee has put a plea before the AO that the income so assessed u/s 11(3)(c) of the Act should also be allowed to be accumulated u/s 11(2) of the Act. We noticed that the Mumbai Bench of the Tribunal has considered an identical issue in the case of The Trustees, the B.N. Gamadia Parsi Hunnarshala (Supra) and has taken the view that the benefit of accumulation shall not be available to income assessed u/s 11(3) of the Act. We notice that the Mumbai Bench of ITAT has drawn a distinction between the expression 'income derived from property' and 'income of such person' as used in sec. 11(1) and 11(3) of the Act respectively. It has also brought out that the provisions of sec.11(2) allows accumulation of income derived from property only. Admittedly the income assessed during the year under consideration does not falls under the category of 'income derived from property'. Under the deeming provisions of sec. 11(3) of the Act, it falls under the category of "income of such person".
14.	**Kanakara Rajendra Prasad Reddy** **Vs. JCIT** ITA No.1962/Bang/2017 **Sec 271E and Sec 275**	Considering that the subject matter of the quantum proceedings was the non-compliance with Section 269 T of the Act, there was no need for the appeal against the said order in the quantum proceedings to be disposed of before the penalty proceedings could be initiated. In other words, the initiation of penalty proceedings did not hinge on the completion of the appellate quantum proceedings. The Hon'ble Rajasthan High Court in the case of Commissioner of Income- Tax v. Hissaria Bros. (2007) 291 ITR 244(Raj) took the view that default in not having transactions through the bank as required under sections 269SS and 269T are not related to the assessment proceeding but are independent of it, therefore, the completion of appellate proceedings arising out of the assessment proceedings or the other proceedings during which the penalty proceedings under sections 271D and 271E may have been initiated has no relevance. It was also held that if that were not so, clause (c) of s.

		275(1) would be redundant because otherwise, as a matter of fact, every penalty proceeding is usually initiated when during some proceedings such default is noticed, though the final fact finding in this proceeding may not have any bearing on the issues relating to establishing default e.g. penalty for not deducting tax at source while making payment to employees, or contractor, or for that matter not making payment through cheque or demand draft where it is so required to be made. Therefore, even going by the first part of Sec.275(1)(c) of the Act, the starting point of will be 24.3.2016. As far as the second part of Sec.275(1)(c) of the Act is concerned, the same relates to "expiry of six months from the month in which the penalty proceedings were initiated". We do not agree with the conclusion of the CIT(A) that that in the assessment order dated 24.3.2016, the AO has not initiated penalty proceedings u/s.271-E of the Act and has merely made an observation that there is a default attracting penalty u/s.271E of the Act. In this regard, we find that the Hon'ble Delhi High Court in the case of JKD Capital and Finlease Ltd. (supra) observed that the AO when he notices default u/s.269-T of the Act in the order of assessment has to be conscious of the time limit laid down in Sec.275(1)(c) of the Act and the revenue cannot be heard to say that the date of initiation of proceedings u/s.271-E of the Act is the date on which the proposal to levy penalty is conveyed by the AO to the officer who is competent to impose penalty u/s.271-E of the Act.
15	**Mr. Trilok Chand Chaudhary Vs. ACIT** ITA No.5870/Del/2017 **Sec 153A and Sec 153C**	In our opinion, the finding of the Ld. CIT(A) is not based on correct appreciation of law. The reasoning of the Ld. CIT(A) is that there cannot be two simultaneous assessment under section 153A and other under section 153C of the Act. This reasoning is faulty. The assessment under section 153C could have been made after completion of the assessment under section 153A of the Act. The Act has provided separate provisions for making assessment in case of material found in the course of the search from the premises of the assessee as well as the material found in the course of search at the premises of the third party. The Assessing Officer is required to follow the procedure laid down in the Act for making the assessment and he cannot devise his own procedure for shortcut methods. In our considered opinion, when the case of the assessee is covered under the provision of section 153 of the Act and if reliance is placed on the incriminating material found during the course of search of third-party, then provision of section 153C of the Act would be applicable and

		have to be adhered to. Thus, in the instant case, the Assessing Officer was required to first complete the proceedings under section 153A in hand, which were initiated by way of notice dated 30/06/2014 and thereafter, he was at liberty to take action under section 153C of the Act for bringing the material found from the premise of Sh. Ashok Chaudhri to tax in the hands of the assessee.