



THE CHAMBER OF TAX CONSULTANTS

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STUDY GROUP MEETING

Friday, 26th April, 2019

Babubhai Chinai Committee Room, 2nd Floor, IMC, Churchgate, Mumbai.

THE RECENT DIRECT TAXES JUDGEMENT

– CA Dinesh Shah

1. OTHERS. (A)

1 Settlement of Cases:

Mohin A. Qureshi V/s CIT (2019) 412 ITR 243 (Delhi) (2)

Application for settlement for failure to disclose undisclosed income fully and truly – Rejection of application justified Sec. 245D

(Here assessee failed to make full and true disclosure of undisclosed income with reference to the London Property and two foreign bank accounts of B and BH Ltd in the BSI Bank Ltd.

Singapore of which the assessee was a beneficial and defected owner.)

2 Condonation of delay – Limitation for filing – divisional Railways Manager Jaipur V/s ACIT (TDS)

(2019) 70 ITR (Tribunal) 590 Jaipur

Appeal to CIT(A) Limitation for filing condonation of delay – deduction of tax at source failure to deduct: Government Organisation - “sufficient cause” assessee not aware whether any order could be passed against it and whether such order applicable – assessee aware of order only when department pressed for payment of outstanding demand correspondence showing assessee tried best to get required details from employees – Reasonable cause for delay, delay condoned.

(i) Cases referred to collector, land acquisition V/s Mst. Katiji
(1987) 167 ITR 471 (SC) applied

(ii) Motilal Padampat Sagar Mills Co Ltd V/s State of GP
(1979) 118 ITR 336 (SC)

(iii) Lahoti Overseas Ltd V/s Dy CIT (ITA No. 3786 / mum / 2012 (ITAT Mumbai Bench)

3 Co-operative Society special deduction u/s 80P (2) (d) of IT Act 1961.

(2019) 70 ITR (Tribunal) (SN) 49 Ahmedabad Uttlar Gujrat Uma Co.op. Credit Society.

Condition that income should be received from investment in other co-operative society – **Co –operative banks of various types essentially co-operative societies-** absences of

principles of mutually in deposits with co-operative banks not relevant. Assessee to demonstrate on facts that investee co-operative bank recognised as Co-operative society interest income derived from investment in private bank not deductible I T 1961 SS 80P(2) (d)

4 Deemed Dividend – Se. 2(22) (e)

AMIT JINDAL V/s Dy CIT (2019) 70 ITR (Tribunal) 545 (Chandigarh) (4)

Company – “ Deemed Dividend”. Advance to share holders interrelated group concerns – Advances given by one concern to another concern to tide over short term financial deficiency to be treated as commercial expediency – amount given not in nature of any loans or advances to assess as deemed dividend.

5. Income of Co. Operative Societies.

Dy IT V/s Bardoli Vibhog Gram Udyog Vikas Co- operative Credit Society Ltd (2019) 175 ITD 471 (5)

Assessee was entitled to deduction under Section 80P (2) (d) in respect of interest earned from Co. Operative Societies and not in respect of interest Income earned from nationalize a banks.

6. Income from House Property: Vacancy allowance:-

Ms. PriyankiSingh Sood V/s Asst CIT
(2019) 176DTR (Del Tribunal) 97 (66)

Scope and applicability of Se 23(1) (c) where a property is held with an intention to let out in the relevant year. Coupled with efforts made for letting it out, it can be said that such a property is a let out property and same would fall within the purview of clause (c) of se 23 (1) if it has remained vacant for the whole or part of the year.

7. Income from House Property vis-a-vis Business Income.

Gopaldas Estate & Housing (P) Ltd. V/s CIT
(2019) 176 DTR (Delhi H C) 193 (69)

Rental Income from Property held as Stock in-trade. Following rule of consistency, rental income of the assessee from the properties forming part of its stock in trade would be income from house property and not business income.
(Cases refer to Vodafone case (2012) (1) TM52 (SC))

8. Deduction under Section 80P(2) Co. operative Society.

Dividend received from Co. operative Society.

ACIT V/s Zila Sahkari Bank Ltd (2019) 166 TR (A) 632.
Del Tribunal 2018 Tax Pab (DT 6144 (Del-Tribunal)

As the assessee had received dividend from IFFCO and UP Cooperative Bank Ltd being the Cooperative Societies dividend received was exempt under section 80P (2) (d)

9. Sale of Agricultural Land:-

Murtuza Shabbir Jamnagarwalla V/s ITO (Pune)
(2019) 175 ITD 494 (6)

Where land sold by assessee was classified in Revenue Record as Agricultural Land and was subjected to land Revenue and further, land was being cultivated on which Jowar Crop was grown, land transferred by assessee was an agricultural land” and Capital gain arising from sale of such land was eligible for exemption u/s 54B.

10. Interpretation of taxing statutes:-
Principal CIT V/s Aarham Softronics:-
(2019) 412 ITR 623 (SC) (4)
Intention of Legislature to be seen.

2. CHARITABLE TRUST (B)

1. Charitable Trust:- Registration under Section 12A, 2 (15) Proviso
Mahatma Gandhi Charitable Society V/s CIT
(2019) 176 DTR (Kerala H.C) 41 (62)
Assessee engaged in execution of contract awarded by railways for cleaning of train coaches and railway stations is purely commercial and business activity- hence CIT was justified in invoking sub-section (3) of section 12AA and cancelling registration under Section 12A.
2. Charitable Exemption under Section 11.
Genius Education Society V/s Asst CIT (2019) 166 TR(A) 486
Chd A Tribunal) 2018 Tax Pub (DT) 6682 Chd A Tribunal)
(2018) 172 ITD 640 (Chd A Tribunal)
Filing of return and audit report in response to notice under Section 148 was sufficient to claim exemption under Se.11& 12.
3. Charitable Trust Income from property of the trust.
AVM Charities V/s ITO (E) Chennai.
(2019) 175 ITD 654/ 103 Taxmann.com 345 (7)
Property (i.e. Kalyanamandapams) built by assessee. Society from its income, subsequent to its formation, on land, which was of original settlement was to be considered as property under trust and Income therefrom was income from property under trust. Where predominant activity of assessee society was charity it would be eligible for exemption claimed by it under section 11(1).
4. Charitable purposes:- Advancement of an object of general Public utility:-
All India Fine Arts and Crafts Society v/s Asst CIT (Exemption).
Disqualification where activities in nature of trade. Commerce or business- objectives to promote art, craft and culture- Incidental or ancillary activity of hiring out of art gallery or selling paintings. Not trade commerce or business Assessee entitled to benefit of exemption under section 11 & 12 of I.T Act 2 (15) 11, 12 (tax law online ITR (Tribunal) OL.(1) (Volume 71 Part 1)

3. BUSINESS INCOME AND DEDUCTIONS (C)

1. **Business Income – Cessation of liability –**
West Asia Exports and Imports (P) Ltd V/s ACIT (2019) 412 ITR 208 Madras HC (2)
When and whether liability has ceased is question of facts application of common sense principle – unclaimed balances relating to erstwhile business of assessee burden of proof on assessee to show substance of liabilities – No evidence regarding any claim for recovery of creditors – amount assessable under section 41(1)
2. **Industrial Undertaking – Special deductions –**

- ITO V/s Rudra Wood Pack (P) Ltd (2019) 70 ITR (Tribunal) 169 Delhi (2)
Special deduction – Manufacture wooden sleepers and planks made into planks – wooden crates distinct from wooden slippers and planks assessee is manufacturer of wooden crates entitled to deduction IT Act 1961. Sec.801C.
3. **Business expenditure** – Purchase and free distribution of cricket match Tickets EPF process filters and accumulators (Pvt) Ltd V/s Dy CIT (2019) 70 ITR (Tribunal) 586 Hyderabad (5) Sc. 37(1)
Expenditure on purchase of Indian premier league cricket match tickets to distribute among long standing customers to improve its business relations – Akin to Distribution of gifts or articles on special occasions to customer's deductible.
 4. **Depreciation Ownership of Assets** – Gold Finch Jewellery Ltd V/s Dy CIT (2019) 70 ITR (Tribunal) 629 Ahmadabad (5)
Ownership of Assets – vehicles registered in names of directors beneficial ownership vesting with assessee. Assessee entitled to depreciation under section 32 of IT Act 1961. Mysore Minerals Ltd V/s CIT (1999) 239 ITR 775(SC) Applied.
 5. **Block of Assets – and Depreciation**
Bharat Mines and Minerals V/s ACIT (2019) 70 ITR (Tribunal) 684 Bangalore (5)
Depreciation – Block of Assets – conditions to be satisfied for treating individual assets as having gone out of block. AO allowing depreciation on some items in each block of assets no requirement that business use of each of assets of block to be seen and examined and depreciation to be allowed only in respect of assets used depreciation allowable on both blocks in full and not to be reduced.
Swati Synthetics Ltd V/s ITO (2010) 38 SOT 208 (Mumbai Tribunal) Followed
 6. Denial of claim for estimating income under Section 44AD of the I.T Act 1961 on remuneration and interest received from firms (Date of order 30-01-2019)
Mr.A Anandkumar V/s ACIT Circle (2) Salem.
ITA 573/ CHNG/ 2018 A.Y. 2012 – 13.
The Tribunal held that reading circular No 5/ 2010 dated 3/6/2010. CBDT has explained the reason for widening para No 21 reading with above explanatory note for introduction of the new presumptive taxation scheme that the intention was to help small business to comply with the taxation provisions intention was not at all to construe a partner remuneration or Interest Income as business Income *and the assessee was not entitled for benefit of presumptive taxation u/s 44AD of I.T Act 1961.*
 7. Turnover in case of Entry providers- Business- Mukesh Choksi vv/s ACIT (OSD) 2 CR 7 Mumbai. (2019) 175 ITD 394 / 103 taxmann.com 25 (Mumbai – Tribunal) (5)
In case of assessee, engaged in providing accommodation entries to entry seekers on commission **basis gross amount** received had to be taken into consideration for computing monetary limit of Rs.40lakhs as specified and or section 44AB and not commission income earned by him. (Note Commission Earned taken at 0.15% of the turnover)
 8. Depreciation: Allowability: Ownership of Asset not with assessee.
Dy CIT V/s Taurian Iron and Steel Co (P) Ltd V/s (2019) 166 TR (A)

493 (Mum Tribunal) 2018 Tax Pub (DT) 2757 (ITAT- Mumbai)

Where assessee was in possession of an asset and was using for its business, ownership of such assets, it should be presumed that title deeds were not necessary as long as assessee had dominion over the assets that de facto ownership was to be looked into and not de jure ownership the depreciation on motor car was allowable.

- 9.. Business Expenditure: Allowability: Alleged Bogus purchases.
Skylark Build V/s Asst CIT(2019) 166 TR (H) 497 (Mum H Tribunal) 2018 Tax Pub (DT)6560 (Mumbai H. Tribunal).
No addition for alleged hawala purchases could be made where neither sellers were examined nor copy of statement affidavit filed by parties before sales tax Department was provided and assessment order of sales tax department was taken into consideration and nothing was revealed regarding alleged hawala transaction of purchases. Thus addition made was to be deleted.
10. Business Expenditure: Disallowance under Section 40 (a) (i) KGL Network(P) Ltd V/s Asst.CIT.
(2019) 176 DTR (Delhi Tribunal) 102 (66)
Payment of freight charges to non-resident agents of foreign shipping and airlines companies- Payments of freight charges made by the assessee as a clearing and forwarding agent on behalf of its clients/ customers to non resident agents of foreign airlines/ Shipping companies is not taxable in India either under the domestic law or under the respective DTAAS and therefore, assessee was not liable to deduct tax and consequently the impugned payments cannot be disallowed under Section 40 (a) (i).
11. Business Expenditure: Disallowance under Section 14A.
Dy CIT V/s Piramal Realty (P) Ltd
(2019) 176 DTR (Mumbai Tribunal) Page 242(71)
Absence of exempt Income:- No exempt Income having been earned by assessee in the relevant previous year, no disallowance could be made under Se 14A read with rule 8D.
12. Depreciation on Goodwill:-
Dy CIT V/s Landmark Cars (East) (P) Ltd.
(2019) 71 ITR (Tribunal) Page 19 (Ahd Tribunal) (2)
Assessee acquiring business as going concern. Extra / consideration paid over value of tangible assets representing cost of goodwill-entitled to depreciation under IT Act 1961 Sec.32.
13. Business deduction under section 36(1) (va). Employee's contribution to employee's state Insurance Corp. beyond due date.
PCIT V/s Star flex Sealing India (P) Ltd.
166 TR (A) 619 (Bombay H C) 2018 Tax Pub (DT) 5280 (Bombay H.C)
Since both employees and employers contributions towards provident fund, ESI and pension fund were covered under the amendment to section 43B. Tribunal was right in holding that the disallowance on account of delay in payment of employee's contribution towards pension fund and ESIC was not sustainable.
14. Business Expenditure fees paid to Municipal Corp. Not in nature of penalty (?) Whether allowable (?)
Acme Housing India (P) Ltd V/s Dy. CIT
(2019) 166 TR (A) 620 (Mumbai Tribunal) 2018 Tax Pub (DT) 34793 (ITAT- Mumbai)

Where compounding fees paid by assessee to Mumbai Corporation was not in the nature of offence or prohibition of any law, the same was allowable under Section 37 (1)

15. Business Expenditure:- Deduction on actual payment.
CIT V/s Gujarat Cypromet Ltd (2019) 412 ITR 397 (S.C) (3)
Interest payable to Banks. Change of law- Explanation 3C to Section 43B. Inserted with retrospective effect from 1-4-1989. Effect Conversion of unpaid interest into founded interest Loan – Not to be treated as payment of Interest- Interest not allowable Sec. 43B - Explanation 3C.

4. CAPITALGAINS

1. Investment of capital gains in purchases of Residential Property –

ITO V/s Mahal Govind Dalamal (2019) 70 ITR (Tribunal) 599 (Mumbai Tribunal) (5)
Capital gain exemption investment of capital gains in purchase of residential property – long term capital gains – law applicable – No condition that investment to be made in India during years 2014 – 15 assessee entitled to exemption IT Act 1961. Sec. 54.

2. Long term capital gains – Bogus claim (5)

Smt. Retikia Sarogi V/s ITO (2019) 70 ITR (Tribunal) (SN) 54 Kolkata
Capital gains – Long term capital gains – Bogus claim purchases and sale transaction evidenced by bills, contract Notes, dematerialised Account, Statements and Bank statement, transaction of purchases of share accepted in earlier years – Not Bogus simply on basis of some reports of investigation wing (ITA No. 1206 / Kolkata / 2018) A.Y. 2014 – 15.

3. Capital Gains – Se. 54F

Sameer Vithalrao Ghanwat V/s ITO (2019) 70 ITR (Tribunal) 341 (Pune) (3)
Capital Gains – Exemption - Assessee not depositing unutilised amount of capital gains in Capital Gain Scheme – Account by date of filing of return not entitled to exemption (Cases referred Humayan Suleman Merchant V/s Chief CIT (2016) 387 ITR 421 (Bombay) followed.

4. Cash Credits – Long term capital gains Se. 68

Smt. Sangita Jhunjhunwala V/s ITO (2019) 70 ITR (T) 247 (Kolkata)
Long Term Capital Gains effect of section 68 – Assessee placing sufficient materials on record establishing long – term capital gains derived from sale of shares – No addition can be made U/s 68 & Sec. 10(38)

5. Section 54F relief allowable on deposits of amount in saving Bank A/c opened for Capital gain Exemption.

Goverdhan Singh Shekhawat V/s ITO Ward 6 (1) Jaipur.
(2019) 175 ITD 272 (3)

Where assessee had opened bank account specifically for purpose of depositing compensation received on acquisition of his land and amount deposited in said account had been utilized only for purchase of plot of land and partial construction thereon, assessee's claim for deduction under Section 54F could not have been denied on ground that compensation was not deposited in Capital Gains Account Scheme.

6. Long term Capital Asset. Immovable Property
Richa Bagrodia V/s Dy CIT 12 (3) Mumbai.
(2019) 175 ITD 552/ 103 Taxmann.com 73 (Mumbai Tribunal)
Se.2 (29A) of I.T Act 1961. Capital gains, Long term Capital asset (Immovable Property)
A.Y.2008-09.

Whether in case of sale of flat, it is the date of allotment of flat and not date of giving possession of flat which has to be considered as date for computing holding period of 36 months. Held YES. Whether, therefore, where assessee sold her flat after expiry of 36 months from date of allotment of flat, capital gain arising there from was taxable as long term Capital gain even though possession of flat was given to assessee at subsequent date held 'YES'.

5. UNEXPLAINED EXPENSES. INVESTMENT ETC. SE.68 & 69 (E)

1.1 Cash Credits: (Share Application Money, Share Premium Money) Principal CIT V/s NRA Iron & Steel (P) Ltd.

(2019) 412 ITR Page No. 161 to 182 (Volume 2)

- (a) Any Sum found credited in the books includes investment made by introduction of share capital or share premium Se. 68
- (b) Burden of Proof:- Higher onus on assessee in case of private placement of shares since information in its knowledge general principles – Assessing Officer duty bound to investigate credit worthiness of creditor or subscriber verify identity of subscribers and ascertain whether transaction genuine or entries are bogus.
- (c) Share Capital – Shares of face value Rs. 10 purchased with premium of Rs. 190 – equity revealing no material to suggest share application money received from independent legal entities - some investor companies non – existent and some filing returns for negligible taxable income. Financial Capacity to invest between Rs. 90 Lakhs to Rs. 95 Lakhs for purchase of share doubtful no explanation for payment of high premium – investor companies not establishing source of their funds – mention of income tax file number alone not sufficient – onus to establish identities and credit worthiness of investor companies not discharged transaction bogus and lacking credibility – sums to be treated as income of assessee.

2. (Note read also Cornerstone Property Investments (P) Ltd V/s ITO

(2019) 70 ITR Tribunal 693 Bangalore (5)

Sum of money credited as share premium – AO empowered to examine genuineness of transactions characterised as share premium

3. Cash Credit : Unexplained cash credit share premium –

Dy CIT V/s HSM Steels (P) Ltd (2019) 70 ITR (T) (SN) 47 Hyderabad

Share premium finding that share Applicants provided their credit worthiness and sources of funds for investing in assessee Department not rebutting finding fact not unexplained share application money Se. 68 of IT Act 1961.

4. Cash Credits – Share Capital Burden of proof

Dy CIT V/s Rockwood Hotels and Resorts Ltd.

(2018) 68 ITR (Tribunal) Mumbai 402 (4)

Share Capital – Burden of Proof assessee furnishing copies of share applications terms board resolution and confirmation of account and ledger accounts to prove genuineness of

transaction failure by AO to bring material to disprove genuineness of transaction – Failure by AO to bring material to disprove transaction and not finding any fault in documents furnished by assessee.

Assessee reasonably discharging its onus to prove identify credit worthiness and genuineness of transaction no addition under section 68 warranted IT Act 1961.

5. Cash Credit – Share Capital – Share Premium – burden of proof

Dy CIT V/s Piramal Realty (P) Ltd

(2018) 174 ITD 633/100 Taxmann.com 294 (Mumbai Tribunal)

Where assessee company had received share premium and filed sufficient evidence such as share allotment details, annual return details including name, address, and PAN of share holder who had subscribed to its shares and same was not negated by Assessing Officer merely because, Assessing Officer felt that share premium received by assessee was high genuineness of transaction could not be doubted for purpose of section 68

6. Unexplained Investment - Business Income – Unclaimed balances CIT V/s Amritha Cyber Park (P) Ltd (2019) 412 ITR 199 Kerala HC (2)

Unclaimed balances – expiry of limitation for claim – advance of rent received for premises – premises neither occupied nor advance claimed by payer unclaimed balance cannot be treated as unexplained investment or unexplained cash credit amount assessable as income of relevant previous year (i.e. A.Y. 2003 – 04)

7. Money Kept in Locker (Section 69A 132)

Dinesh Goswami V/s Dy CIT (2019) 70 ITR (Tribunal) 580 (Indore) (5) unexplained money – Assessee keeping money in locker and explaining that it was out of savings to perform his daughter's marriage. Returns of assessee and his wife accepted assessee to decide whether to keep money in locker or deposit in Bank that money could have been kept in bank to earn interest not reason to reject explanation – money in locker not taxable.

8. Company Receiving Share Premium – i.e. receiving share capital in excess of face value whether income from other sources A.Y. 2014 – 15 section 56(2) (vii b)

Vanni Estate (Pvt) Ltd V/s Income tax Officer 70 ITR (T) 643 Chennai (5)

Income from other sources – company receiving share capital in excess of face value – Assessee – company having two share holders mother and daughter – mother providing funds for purchases of earned by assessee against allotment of equity shares at premium – benefit of share premium passed on to only her daughter – No addition could be made in hands of assessee (i.e. company)

9. Bogus Share Premium – No reason to interfere PCIT V/s Chain House International (P) Ltd Supreme Court Judgement dated 07/08/2018 in ITA NO. 111/2018 passed by the High Court of M.P. at Indore.

Special leave petition Civil Diary No. 1992/2019 SLP dismissed High Court held that there is no limitation on the account of premium that can be charged. The AO cannot question the transaction merely because he thinks the investor could have managed by paying a lesser amount as share premium it is the prerogative of the board of Director to decide the premium and it is the wisdom of the share holder whether they want to subscribe to shares at such a premium or not se. 68 does not apply as to the funds were received through banking channels and the identity, creditworthiness and genuineness of the investor was established.

10. **Share Application Money:-**
 Flourish Builders and Developers (P) Ltd V/s Dy CIT 11 (1) New Delhi.
 (2019) 103 taxmann.com 72 Delhi Tribunal (5)
 Where assessee- Company had provided balance sheet of investor companies along with their profiles and sub scriber companies themselves had provided bank Statements and their respective PAN details no Section 68 addition was called for on account of increase in share application money.
11. **Unexplained Expenditure:** Bogus Purchases:-
 Manoj Sharma V/s ITO Ward 39 (5) New Delhi
 (2019) 103 taxmann.com 105 (Delhi Tribunal)
 Where entries in assessee's trading account including quantitative tally of purchases opening stock, sales and closing Stock were found to correct, no addition on account of unexplained purchases could be made.
12. **Income Cash Credit Genuineness of share transactions:-**
 Udit Kalra V/s ITO (2019) 176 DTR Delhi SMC Bench. 257 issue No.72
 In view of the fact that the assessee purchased the shares of a company by way of off Market transaction in physical form by paying cash and then converted the same into electronic mode and there was specific information with the investigation wing that the assessee had indulged in non genuine and bogus transactions of purchase and sale of shares of the said company, the impugned transaction cannot be accepted as genuine and therefore; the amount shown as sale proceeds of said shares has been rightly treated as taxable Income under section 68 and consequently, the claim of exemption under section 10(38) is not allowable.
13. **Income from undisclosed Sources:-** Unexplained cash.
 Kotu Sarat Kumar V/s Dy CIT (2019) 71 ITR (T) 147 (Visakha)
 Assessee filing cash flow Statement- for relevant financial years showing huge cash balance, cash flow Statement accepted in Wealth tax assessment not to be discarded cash balance available as on date of search treated as explained.
14. **Loose Sheet:** Undisclosed Investment.
 Kotu Sarat Kumar V/s Dy CIT (2019) 71 ITR (T) 147.
 (Visakhapatnam) (2)
 Loose sheet found during search not in handwriting of assessee or if any of family members. No Statement recorded from author of loose sheet regarding contents and no enquiries conducted with buyer of flat. Assessee not agreeing or accepting that he received sale consideration over and above amount recorded in registered document Addition unsustainable.
15. **Income from undisclosed Sources Addition under Se 68.**
 Unexplained share Application Money:
 ITOV/s Luxury Vyapar (P) Ltd (2019) 166 TR (A) 629 (Kol) Tribunal 2018 Tax Pab (DT) 4709 (Kol- Tribunal)
 Where assessee failed to prove the genuineness and credit worthiness of share premium, received AO was justified in making addition of unexplained share application money under Section 68.
 (Cases refer to Vodafone case (2012) (1) TM52 (SC)

16. **Share Application Money:**
Pr. CIT V/s Aditya Birla Telecom Ltd.
ITR No 1502 of 2016 order dated 26/3/2019 Bombay High Court.
Cash Credit Section 68 of the I.T Act 1961. Assessee furnished the relevant details and discharged the primary onus cast upon it. Addition under Section 68 of the Act is unjustified. (A.Y. 2009 – 10).

6. ASSESSMENT, REASSESSMENT, APPEAL, STAY PETITION REVISION (F & G)

1. **Revision under section 263:** The scope of power of commissioner of IT u/s 263 of IT Act. 1961.

Principle CIT V/s Venus Woollen Mills (2019) 412 ITR 188 (P & H) (2) Scope of Powers of Commissioner – wide – commissioner can set aside erroneous order and enhance assessment – Income tax survey and admission of undisclosed income Assessment order without enquires – order erroneous and prejudicial to Revenue Commissioner justified in setting aside orders and enhancing assessment.

2. **Search and Seizure: Assessment of third person U/s 153C.**

Dy CIT V/s Sutej Agro Products Ltd.

(2019) 70 ITR (T) Delhi Tribunal Page 33 (3)

Assessment of third person - undisclosed income No evidence that assessee made unaccounted investment in purchase of property no addition on account of undisclosed income V/s 153C of IT Act 1961 (Ref: ITA Nos. 294 and 295 / Delhi / 2015 (A.Y. 2011 – 12 & 2012 – 13)

3. **Search and Seizure: Assessment of third person u/s 153C.**

ACIT V/s Anush Fin lease and Construction (P) Ltd

(2019) 70 ITR (Tribunal) 336 Delhi Tribunal (Part 3)

Material on basis of which assessment initiated must relate to assessment year for which assessment sought to be re – opened audited balance sheet and financial statement seized relating to A.Y. 2009 – 10 while assessment re – opened for A.Y. 2010 – 11 initiation of proceedings not valid whether audited balance sheet and financial statements incriminating material not explained by department - Assessment not valid IT Act 1961 Se. 153C.

4. CIT V/s Sinhgad Technical Education Society.

(2017) 397 ITR 344 (Sc) Settle the issue and hold this to be an essential requirement the decisions of this court in CIT V/s RRJ Securities (2016) 380 ITR 612 Delhi and ARN Infrastructure India Ltd V/s Asst. CIT (2017) 394 ITR 569 (Delhi) also hold that in order to justify the assumption of jurisdiction u/s 153C of the Act the documents seized must be incriminating and must relate to each of the assessment years whose assessments are sought to be re-opened since the satisfaction note forms the basis for initiating the proceedings u/s 153C of the Act. It is futile for Mr. Manchanda to contend that this requirement need not be met for initiation of the proceedings but only during the subsequent assessment.

5. **Search and Seizures – Assessment in case of search cases –**

Dhruv Madan V/s Dy CIT (2019) 70 ITR (T) (S.N.) 52 Delhi Tribunal Issue No. 57

Undisclosed income – seized papers containing different sale consideration – Receipt not signed either by seller or by purchaser – No reliance could be placed on Seized Papers AO required to make through investigation into matter IT Act 1961 section 132 of IT Act 1961.

6. **Search and seizure assessment in search cases** – section 153C of IT Act 1961. Wisdom Realtors (P) Ltd U/s ACIT (2019) 70 ITR (Tribunal) 181 Delhi (Part 2) Assessment in case of search case : only incriminating document relating to assessee was balance sheet and profit and loss account not relating to instant assessment years – No further incriminating material was found during the course of search so as to proceed against the assessee under section 153C it was a general satisfaction recorded and the Assessing Officer was not justified in proceeding against the assessee under section 153C.
7. **Search and Seizure:** Assessment of third person – Shyaniraj Singh V/s Dy CIT (2019) 411 ITR 709 (Karnataka HC)
Assessment of Third person condition precedent note not giving reasons for satisfaction that undisclosed assets disclosed during search proceedings belonged to third proceedings under section 153C not valid (A.Y. 2008 -09) (Ref: CIT V/s Calcutta Knitwears (2014) 362 ITR 673 (SC))
8. **Assessment in search cases –**
Dy CIT V/s Gupta and CO (Pvt) Ltd (2019) 70 ITR (Tribunal) 608 Delhi (5)
Assessment in search cases – unaccounted sale's whether seized documents belonged to assessee or its sister concern issue of ownership of documents seized pending adjudicating before Supreme Court discretions to Assessing Officer to review status of income arising out of seized documents after ownership of documents decided by Supreme Court IT Act 1961. Se 153A
9. **Additional Ground of Appeal -** Ms. SIMRAN K. SAYYED V/s ITO (2019) 70 ITR(Tribunal) 472 Bangalore (4)
Appeal to appellate Tribunal – Additional Grounds of Appeal – material already on record additional ground admitted Se. 254 case reference National Thermal Power Co Ltd V/s CIT 229 ITR 383 (Sc.)
10. **Search and seizure – Assessment in search cases**
Hex Engineering Ltd V/s Dy CIT (2019) 70 ITR (Tribunal) 417 Delhi (3)
Assessment in search cases validity – Assessment completed on date of search no incriminating material found during search – additions made on basis of presumption without any direct concrete evidence found at time of search preceding – No jurisdiction to frame assessment under section 153A IT 1961 153A – 254
11. **Revision:** Under Section 264: Maintainability vis-a-vis appeal withdrawn by assessee.
Pallavarajha V/s Principal CIT (2019) 176 DTR (Madras H.C) 115 (65)
Assessee filed appeal and also revision petition u/s 264 and before any adverse order was passed having withdrawn appeal, revision under S.264 was maintainable- Further Revenue having neither opposed withdrawal of appeal nor challenged order in revision, could not challenge maintainability of revision in writ petition filed by assessee.

12. Assessment under Se 153C:- **Computation of undisclosed Income:-**
 CIT V/s Cordial Company.
 (2019) 176 DTR (Kerala H C) 185 (68)
 Addition made under Section 69 in the names of assessee firms on the basis of document Seized in Search of third party was invalid in the absence of any corroborative evidence.
13. **Search and Seizure: Block Assessment**
 Computation of undisclosed Income:-
 R. Bhoopathy v/s CIT (2019) 176 DTR (Madras H C) 239 (71)
 Assessee having declared undisclosed Income of Rs.23,65,700/- no separate addition of Rs.5,60,000/- was called for on the basis of Statement of assessee under Section 132 (4) admitting that he had paid a sum of Rs. 5lakhs as capitation fee and Rs.60,000/- as annual fee for admission of his son in an Engineering College; in the absence of any corroborative evidence.
14. **Search and Seizure:- Assessment under Se153A- requirement.**
 ACIT V/s Versatile Poly tech (P) Ltd (2019) 71 ITR (Tribunal)(SN 4) Delhi()Part I)
 Assessment in Search cases: Absence of incriminating material found during course of search Addition unsustainable Se.153A.

7. TAX DEDUCTION AT SOURCES- TAX COLLECTION + SEC.195 (H)

- 1.. TDS Credit for TDS. Non- deposit of TDS by deductor:-
 Pushkar Prabhat Chandra Jain V/s Union of India.
 (2019) 176 DTR (Bombay H.C) 99 (64)
 TDS Credit for TDS – Non- deposits of TDS by deductor- Assessee cannot be asked to pay the same again. It is always open for the Department and in fact the Act contains sufficient provisions to make coercive recovery of such unpaid tax from the payer whose primary responsibility is to deposit. The same with the Government revenue scrupulously and promptly- Notice under Se. 226 (3) is qualified and department directed to refund amount recovered from the assessee.
- 2 Tax deduction at source under section 194C.
 DancansTea Ltd V/s Dy CIT (2019) 166 TR (A) 637. (Kol-Tribunal) 2018 Tax Pab (DT) 5667 (Kol Tribunal) .
 As apparent from freight bills and Ledger account of warehousing collection charges assessee had merely reimbursed warehouse collection charges and pick-up charges to various transporters and reimbursement of expenses could not be subjected to TDS. Under Section 194C as the term contract was absent.
3. Deduction of Tax at Source- Se.194C – Hospital.
 Principal CIT (TDS) v/s National Health and Education Society.
 (2019) 412 ITR 404 (Bombay H C) (3).
 Assessee running Hospital- consultant doctors not employees of assessee- Tax not deductible on payments to them under section 192- Services in nature of work contract- Tax deductible at source from such payments. Under Section 194C – Payments for drugs. Tax deductible at source under section 194C Services of Managers of another organisation utilised reimbursement of expenses- tax not deductible at source u/s 194J.

8. PENALTY AND PROSPECTION.

1. Penalty under section 269 T & 271E Limitation

Karnal Singh V/s Union of India (2019) 412 ITR 306 (Patna) (2)

Penalty – Limitation repayment of deposits or loans in violation of provisions of section 269T. Issuance of notice on 27/11/2014 and passing of final order on 21/09/2016 order barred by limitation even recalculating from date of rectification order dated 26/11/2015.

2. Penalty u/s 269T and 271D/271E etc.

Nitin Agarwal V/s Joint CIT

(2019) 412 ITR 309 (MP) (2)

Penalty – receipt or repayment of loans or deposits otherwise than by crossed cheques exceeding specified limit. Limitation – limitation of six months to be calculated from date of initiation of penalty proceedings.

3. Penalty – Acceptance of deposits or loans

CIT V/s Lodha Proprieties Development (P) Ltd.

(2019) 412 ITR 316 Bombay HC (2)

Penalty – Acceptance of deposits or loans otherwise than by crossed cheques etc. exceeding specified limit reasonable cause for not complying with section 269SS loans taken by way of Journal entries following decisions of Tribunal – Tribunal decision subsequently reversed by court Tribunal Justified in cancelling Penalty i.e. order of the appellate Tribunal in Lodha Builders (P) Ltd.

V/s Asst. CIT (2014) 34 ITR (Tribunal) 157 (Mumbai) affirmed.

Appeal to High Court – Competency of Appeal – Substantial Question of Law – inference from facts is a finding of fact – no substantial question of law arises from IT Act 1961 S. 260 A.

The Supreme Court has dismissed special leave petition filed by the department against this judgement see (2018) 409 ITR (ST) 14

4. Deduction of Tax at Source Late fee 234E

Uttam Chand Agarwal V/s ACIT (CPC) (TDS) (Issue No.2)

(2019) 70 ITR (Tribunal) 188 Jaipur.

Return of tax deducted at source Late fee where return filed after 01/06/2015 AO can levy late fee levy of fees justified for period 01/06/2015 to date of actual filing of TDS (Return) statement and balance fee levied deleted.

5. Fine and Penalties – Se. 37

Pri. CIT V/s Sushil Gupta (2019) 411 ITR 678 (Bombay HC) (5)

Business Expenditure Fines and Penalties – fine paid for redemption of goods confiscated for breach of import regulation not deductible.

A fine or penalty for redemption of goods ordered to be confiscated for breach of import conditions is not an allowable deduction.

6. Penalty - Acceptance of loan in cash in excess of specified limit P.R. Associates V/s ACIT

(2019) 70 ITR (Tribunal) 469 (Pune) (4) Assessee's business inoperative for past years. Assessee borrowing from bank and private money lenders for past years. Assessee

borrowing money from unorganised financial sector in cash for repaying financial liabilities. Assessee declaring loss in return reasonable cause imposition of penalty not warranted IT Act 1961. Sections 269SS, 271D, 273B.

7. Penalty in search cases –

Sanjay D. Kakuck V/s ACIT (2019) 70 ITR (Tribunal) 519 Pune (4)

Penalty – Concealment of Income – Penalty in search cases

Immunity from penalty conditions to be satisfied cumulatively failure by assessee to surrender undisclosed income and to specify manner in which such income derived failure by assessee to pay taxes with interest in respect of undisclosed income alongwith return denial of immunity from payment of penalty justified Sec. 132, 132(4) Sec. 271AAA(2) for A.Y. 2009-10.

8. Penalty delay in filing audit report – Johns Biwheelers V/s ACIT (2019) 70 ITR (Tribunal) 325 (Cochin) (3)

Penalty – Delay in filing audit report – Audit Report available before Assessing Officer before completion of Assessment – No loss to revenue – Technical breach of law – Penalty not liveable IT Act 1961. Se. 271B.

9. Surrounding Income to avoid litigation won't save Section 271AAA.

Penalty unless its earning manner is disclosed.

Narsi Iron and Steel (P) Ltd V/s Dy CIT CC5 New Delhi
(2019) 175 ITD 213 (Delhi Tribunal)

Where in pursuance to notice issued under Section 153A, assessee failed to specify and substantiate manner in which undisclosed Income was derived rather embarked upon mercy plea that he was making surrender to buy peace of mind and avoid litigation, he was not entitled for benefit of section 271AAA(2) and, thus impugned penalty order was to be confirmed.

10. Penalty under Se 271E: Contravention of Se 269T.

Payment of Interest:-

Golla Narayana Rao V/s Asst CIT (Visakha Tribunal)
(2019) 176 DTR PageNo201 (70)

Impugned amount paid in cash by the assessee to the lender being interest and not the repayment of principal amount of loan. Provisions of Se 269T are not applicable and, therefore penalty under Section 271E is not leviable.