Case Law Discussion

CTC

Mavilayi 431 ITR 1

Facts:-

1) Assessee registered as a Primary Agricultural Credit Co-operative Society. (PACC).
2) Assessee did not have RBI Licence to do banking business.
3) A.O denied deduction u\s 80P(2)(a)(i) on the ground actual activities are not of those of a PACC.

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Decision:

1) Once Registrar of Co-op Societies had issued RC department cannot question it. (Para 22 page 36)

2) Eligibility and attributability are 2 different concepts. If actual activities consist of non-agricultural credit activities, income attributable to it can be apportioned on a reasonable basis and taxed. (Para 33 Page 41).

3) If the State Act permits admission of nominal members, the deduction cannot be denied on the ground that they are not members. (Para 46 Page 48).

Mavilayi 431 ITR 1

- **Observations of Court**:-

1) Observations in Paragraphs 24 to 26 of Citizen Co-op Society 397 ITR 1 are not ratio decidendi. (Para 26 Page 38)
2) S.80P(4) is to be read as a proviso to S80P(2)(a)(i). (Para 45 Page 47)
3) Deduction u\s 80P(2)(d) is permissible on interest and dividend income earned from investments in another Co-operative Society. (Para 35)

Mavilayi 431 ITR 1

Points for discussion:

1) Supreme Court failed to consider the effect of S.2(oaa) of Kerala Act . (Page 21).
2) Proviso to S.2(oaa) states that if PACC does not fulfil its objects it shall lose all characteristics of PACC as specified in the Act, Rules Bye-laws except the existing staff strength.
3) But S.2(oaa) of Kerala Act is contrary to definition of PACC in S.2(cciv) of Banking Regulation Act.
4) Can a State Act go beyond the Central Act? Is there a repugnancy? If yes, would the State Act to be ignored?
5) Court says that S.80P(4) is to be read as a proviso to 80P(2)(a)(i). If so can we say the decision of Karnataka High Court in Totgar Sales Co-op Society 395 ITR 611 is overruled impliedly. High Court held that in view of S.80P(4) the interest received by a co-operative bank is not eligible for deduction u\s 80P(2)(d).
6) Was it necessary for Supreme Court to go into question of nominal members , 80P(2)(d) when the main issue is whether assessee was a PACC or not?

SESA STARLITE 430 ITR 121

Facts:-

1) Assessee claimed 10B deduction in revised return.
2) During the assessment proceedings A.O sought information/details on 10B deduction.
3) Assessee filed the necessary details.
4) A.O allowed the claim. But there was no discussion in the order regarding 10B claim.
5) Commissioner exercised his revisional powers u\s 263 and held that 10B deduction is not allowable possibly on the ground that it has been claimed in a revised return.
6) ITAT dismissed the appeal of assessee.

SESA STARLITE 430 ITR 121

Decision:

1) The revision is valid.
2) A.O has not discussed allowability of 10B in the assessment order and hence there is non-consideration, non-application of mind.
3) There is a difference between merely calling for information and considering such information with due application of mind. (Para 32 Page 128)
4) Because there is no discussion in the order, it can be said that A.O did not even bother to look into or consider information provided by assessee. (Para 35 Page 129 Para 38 Page 130)

SESA STARLITE 430 ITR 121

Points for Discussion: -

1) How can the court say that there is non-consideration and non-application when assessee filed information/details.

2) Court failed to consider the decision of Supreme Court in Marico Industries where in the context of reassessment Court approved the observation of Bombay High Court in 425 ITR 177 that non-rejection of explanation in the order would amount to the A.O accepting the view of assessee, thus forming an opinion.

3) Decision of Supreme Court in ALA Firm 189 ITR 285 not considered. Supreme Court held that it is against probabilities of human conduct that A.O has not looked into materials furnished by assessee. (see observations in Page 299 of 189 ITR).

REDINGTON (INDIA) LTD 430 ITR 298

Facts:

1) Redington (India) Ltd (RI) is engaged in the business of computer hardware and software.
2) It set up a subsidiary called Redington Gulf (RG) in Dubai.
3) RG was set up in Free Zone where the transfer of shares to a third party is not permitted.
4) But it is possible for a company to be set up in a manner in which the shares could be transferred.
5) In order to extend business of RG in middle east, Africa, RI needed funds.
6) RI negotiated with a private equity called IVC.

REDINGTON (INDIA) LTD 430 ITR 298

Facts:

7. As per the understanding with IVC, RI should set up a step- down subsidiary in Cayman Islands and the shares of RG held by RI should be transferred to Cayman Island Company.
8. For this purpose RI set up a wholly owned subsidiary in Mauritius which in turn set up another wholly owned company in Cayman Island called Redington (Holdings) International (RC).
9. RI gifted the shares held by it in RG to RC.
10. IVC invested in RC.

REDINGTON (INDIA) LTD 430 ITR 298

Facts:

11. One of the conditions of investment by IVC in RC was that RC should become a listed company within the stipulated time.
12. RC could not fulfil this condition.
13. Therefore, RI through RM invested the necessary funds in RC and the PE investment was repaid.
14. Based on these facts RI claimed that it has transferred the shares to RC due to business consideration and it is a gift.
15. Therefore it is not transfer. S.47(iii) deems gift not as transfers.

REDINGTON (INDIA) LTD 430 ITR 298

Facts:

16. AO referred the matter to TPO.
17. TPO held that the transaction is a not a gift and S.47(iii) of the Act will not apply.
18. He held that the transfer of shares is for a consideration.
19. He applied CUP method to determine the ALP.
20. He valued the shares of RG which were gifted to RC and held that is the consideration received by RI and therefore, liable for capital gains.

REDINGTON (INDIA) LTD 430 ITR 298

Decision:

1. The transfer of shares of RG held by RI to RC is not a gift.
2. S.122 of Transfer of Property Act states that the transaction has to be voluntary in order to be a gift.
3. The RI has not transferred the shares voluntarily because it was a condition of the investment by the PE.
4. The Board resolution authorising the transfer of shares stated that it can be with or without consideration. Therefore, it was not transferred voluntarily.
5. The consideration was received by RC in terms of PE investment.

REDINGTON (INDIA) LTD 430 ITR 298

Decisions:

6. It is a transfer attracting capital gains.
7. TPO is right in adopting CUP method
8. TPO is also right in adopting the market value of RG shares as the ALP.
9. The High court also held that :

i) A Company can gift its shares to the third party.

ii) The transaction is a circular transaction which is a measure adopted to avoid tax . (Paragraph 55, Page 341)

REDINGTON (INDIA) LTD 430 ITR 298

Points for Discussion:

1. Whether the transaction of RI is not voluntary ?
2. Voluntariness has to be seen in the context and it is in contra-distinction to compulsion.
3. If a person enters into a transaction voluntarily wherein he agrees to do certain things as demanded by the other party to the contract, does it mean that entire transaction is not voluntary?
4. The court failed to consider the decision of the Hon'ble Supreme Court in Sonia Bhatia Vs State of Uttar Pradesh (1981) 2 SCC 585 cited by the assessee. (See par 42 page 332)

REDINGTON (INDIA) LTD 430 ITR 298

Points for Discussion:

5. The Supreme Court held that the concept of gift as contemplated by TP Act and the "consideration" means a reasonable equivalent or other valuable benefit passed on by the promisor to the promisee or by the transferor to the transferee.
6. The court dismissed the arguments of the assessee that RI has not received any consideration from anybody and if at all a consideration was received it was received by RC and not RI.
7. Even otherwise what RC received is investment which was required to be repaid

REDINGTON (INDIA) LTD 430 ITR 298

Points for Discussion:

8. Therefore, it cannot be said that RI has received any consideration.
9. Even assuming that the transaction is not a gift do the provisions of S.92 apply?
10. Could it have been argued that the entire transaction is for the purpose of business and the unrelated parties also could have entered into such transaction?
11. Hence, S.92 is not applicable.
12. Could the TPO ignore the fact that it is a business transaction and no consideration was received ?

REDINGTON (INDIA) LTD 430 ITR 298

Points for Discussion:

13. Whether the CUP method has been correctly applied?
14. Whether the value of shares of RG can taken to be ALP of the transaction of gift by RI?
15. Rule 10B(1)(a) dealing with the procedure for determination of ALP under CUP method requires as a starting point the determination of price paid in a Comparable Uncontrolled Transaction or transactions.
16. TPO did not even take the first step required under Rule 10B(1)(a) which is the determination of price paid in Comparable Uncontrolled Transaction

REDINGTON (INDIA) LTD 430 ITR 298

Points for Discussion:

17. The court held that since there were other methods available to RI by which it could have formed a company in Dubai and avoided the restrictive conditions regarding transfer of shares.
18. Is the court correct in saying so?
19. The commercial decision of the assessee cannot be questioned by the department. See S.A. Builders 288 ITR 1 (SC)
20. Is the court correct in stating that it is a circular transaction?
21. If it is a circular transaction, then, money should have come back to RI.

REDINGTON (INDIA) LTD 430 ITR 298

Points for Discussion:

22. It is seen that actually there is an outflow later from RI so that the PE investor could be paid back.
23. The finding regarding the transaction being a circular transaction is not in accordance with the facts.

SHRIRAM OWNERSHIP TRUST 430 ITR 356

Facts :

1. Shriram Ownership Trust was created by the companies in Shriram group.
2. It was created for the benefit of the family members and senior executives of the group and also a portion of income/assets has to be spent on charitable purposes.
3. The trust was formed as a discretionary trust.
4. The individual shares of beneficiary were not known.
5. The authors of the trust transferred Rs. 25 crore to the trust.

SHRIRAM OWNERSHIP TRUST 430 ITR 356

Facts :

6. The trust filed the return manually because it could not file electronically due to certain technical problems in the website of the income tax department.

7. The trust filed the return in the status of AOP.

8. The AO held that the trust is to be assessed as individual as it is created for the benefit of individuals and a sum of Rs. 25 crore is taxable u/s 56(2)(vii).

SHRIRAM OWNERSHIP TRUST 430 ITR 356

Decision:

1. The High Court held that the expression "individual" in S. 56(2)(vii) has to be interpreted in a wide manner.
2. The word "individual" is not confined to living human beings.
3. It will include a trust where beneficiaries are individuals.
4. For the above proposition the court relied on S.161 of the Act.
5. The court also held that the assessee having not filed an appeal on the issues of jurisdiction and procedural aspects cannot stated to be an aggreived person . (See para 47 page 279)

SHRIRAM OWNERSHIP TRUST 430 ITR 356

Points for discussion:

1. Is the court correct in stating that provisions of S.161 would apply to a discretionary trust and therefore, the status of the trust have to be taken as that of the beneficiaries.
2. The court has not dealt with a pertinent fact that not only individuals but also charitable trust are beneficiaries.
3. Can the AO change status declared in the return?
4. Should the assessing officer issued a notice either u/s 142(1) or u/s 148 to the correct person in whose hand the income is assessable.

SHRIRAM OWNERSHIP TRUST 430 ITR 356

Points for discussion:

1. Is the court correct in stating that provisions of S.161 would apply to a discretionary trust and therefore, the status of the trust have to be taken as that of the beneficiaries.
2. The court has not dealt with a pertinent fact that not only for this but certain charitable trusts are also beneficiaries.
3. Can the AO change the status in which a return has been filed?
4. Should not the assessing officer has issued a notice either u/s 142(1) or u/s 148 to the correct person in whose hand the income is assessable.

SHRIRAM OWNERSHIP TRUST 430 ITR 356

Points for discussion:

5. For the above proposition reliance can be placed on the decision of the Calcutta High Court in Vijaya Mallya Vs ACIT 266 ITR 329 and Madhya Pradesh High Court in CIT Vs Sobhagnal Mishrilal Semlapada 223 ITR 554.
6. What is the status of a discretionary trust?
7. Has the court ignored the fact that the trustees have come together not only to receive the corpus of Rs. 25 crore but also earn income by investing the corpus and therefore, the stratus is that of AOP on the basis of principles laid down by Supreme court in Indira Balakrishna.

SHRIRAM OWNERSHIP TRUST 430 ITR 356

Points for discussion:

8. Is the court correct in understanding the import of the Explanation below S.2(31) which sates that an AOP or BOI etc shall deemed to be a person whether or not such person was formed with the object of deriving income or profits.

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It is a full Bench decision of the Bombay High court on the validity of Notice issued u/s 274 for levy of penalty u/s 271(1)(c).

Facts:

1. The AO issued a Notice u/s 274 asking the assessee to show cause as to why penalty u/s 271(1)(c) should not be levied.
2. The notice did not strike off the phrase "concealed the income or declared inaccurate particulars of income".
3. The issue before the full Bench was whether the non striking of the applicable portion would make the notice void and the subsequent order imposing penalty non-existent.

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Facts:

4. The referral Bench noted that there is a conflict of decisions between the series of decisions holding that such a non-striking is fatal and the decision of CIT Vs Kaushalya 216 ITR 660 which held otherwise.

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Decision:

1. The full Bench held that non-striking of the relevant portion makes the Notice void ab-initio.
2. An order of penalty passed in pursuance of an invalid notice is also void.
3. The full Bench approve the decision of Karnataka High court in CIT Vs Manjunatha Cotton and Ginning Factory 359 ITR 565
4. The principles laid down in Manjunatha Cotton were completely agreed to by the full Bench in Farhala Sheikh.

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Decision:

5. Some of the principles are noted below:

- Penalty u/s 271(1)(c) is a civil liability.
- Mens rea is not an essential element for imposing penalty.
- Imposition of penalty is not automatic.
- The Notice u/s 274(1)(c) should clearly state whether it is for concealment of income or for furnishing inaccurate particulars of income.

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Decision:

6. The full bench held that the prejudice is writ large on the face of mechanical methods the revenue adopts in sending a statutory notice (Para 173).
7. Even if the assessment order contains the prima facie opinion of the assessing officer that there is either concealment of income or furnishing of inaccurate particulars of income, such a prima face opinion is not sufficient.

Decision:

8. The Notice u/s 274 should also precisely state what is the offence with which the assessee is charged. It cannot be vague. (Para 179)
9. The department's reliance on the decision of the Supreme Court in State of Patiala Vs. S.K Sharma (1996) 3 SCC 364 was not accepted.
10. In S.K. Sharma the Supreme Court said that procedural provisions are generally made to give a reasonable opportunity and the violation of procedural aspects would vitiate the order only if it causes prejudice to the person.

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Decision:

11. But the court also noted that there may be certain procedural provisions of fundamental character whose violation is by itself proof of prejudice.

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12. The Full Bench has exhaustively dealt with the theory of binding precedents.
13. After referring to a host of decisions it says that only ratio decidendi is binding.
14. An obiter dicta is not binding but often the ratio decidendi or obiter dicta blur into one another.

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Decision:

15. The three basic ingredients of any decision are as follows:

- Finding of material fact direct and inferential
- Statement of the principles of the law applicable to the facts
- Judgement based on combined effect of both the above.

16. It was held that every precedence should be tested on the above touch stone to find out whether it is binding or not

Decision:

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17. The Full Bench explains "ex-post adjudication" and "ex-ante adjudication". In Ex-post adjudication the court looks back and tries to remedy a situation. In ex-ante adjudication the court looks forward and decides on the basis of what effects it will have in future. (Para 174)

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Points for discussion:

1. Whether the Full Bench properly dealt with the principles laid down in S.K. Sharma.
2. Is it that the non-striking of the relevant portion is of such a fundamental character which by itself would prove prejudice.
3. What happens if the assessee has replied to the notice that he is not liable for penalty as he has neither concealed income nor furnished inaccurate particulars of income.
4. Can still the assessee contend that the notice is vague and charges are not clear and hence, has caused prejudice to him.
5. Non-striking of the relevant portion – is it not a case of supervening illegality which can be cured from the stage where the illegality occurred.

ALLU ARVIND BABU VS ACIT 430 ITR 172

Facts:

1. The assessee was the Managing Director of a company.
2. The company took a Keyman Insurance Policy in his name.
3. After paying some premium the company assigned the policy to the Managing Director free of cost.
4. The surrender value of the policy on the date of assignment was taxed as perquisite in the hands of the Managing Director in the AY 2006-07 as the assignment took place in the previous year ending 31st March 2006.

ALLU ARVIND BABU VS ACIT 430 ITR 172

Facts:

5. In the previous year ended 31st March 2007 the MD surrendered the policy and received more than the perquisite value which was taxed in his hands.
6. MD did not pay any further premium after the assignment.
7. In A.Y 2007-08,the AO taxed the difference between the amount received and the amount taxed as perquisite earlier.
8. It is not clear from the facts whether on assignment, the policy was actually converted into an ordinary endowment policy by the insurance company.

ALLU ARVIND BABU VS ACIT 430 ITR 172

Decision:

1. The action of AO is correct.
2. The court held that policy continues to be a Keyman Insurance Policy even after assigning.
3. Therefore, S.10(10D) which excludes the sums received under Keyman Insurance Policy from its purview is not applicable.
4. The Explanation 1 introduced by the Finance At 2013 w.e.f 1.4.2014 is clarificatory in nature and hence retrospective.

ALLU ARVIND BABU VS ACIT 430 ITR 172

Decision:

5. The decision of the Delhi High Court in CIT Vs Rajan Nanda 349 ITR 8 wherein it was held that the Keyman Policy changes its character to endowment policy and therefor, the exclusion u/s 10(10D) is not applicable is legislatively over-ruled by introduction of Explanation 1 below S.10(10D).
6. Explanation 1 is retrospective and clarificatory.

ALLU ARVIND BABU VS ACIT 430 ITR 172

Points for discussion:

1. There is no clear finding that the policy after assignment continued to be a Keyman Insurance Policy.
2. In the absence of such a finding the decision of the court may not be correct.
3. With respect it is submitted that the decision of the court that the Explanation 1 is clarificatory and hence retrospective is contrary to well settled principles of interpretation.
4. The court failed to notice that Circular No. 3 of 2014 dated 24.1.2014 explaining the changes made by the Finance Act 2013 states clearly that the Explanation 1 will be applicable from AY 2014-15.

ALLU ARVIND BABU VS ACIT 430 ITR 172

Points for discussion:

5. The Supreme Court in Snowtex Investments Ltd Vs PCIT 414 ITR 227 held that when the legislature introduces a section w.e.f a particular date it is normally prospective and it cannot be held to be retrospective.
6. The same principle was laid down by the Andhra Pradesh High Court in 356 ITR 625.
7. The contra decisions of the Calcutta High Court in 201 ITR 48 and Madras High Court in 272 ITR 290 are impliedly overruled in 414 ITR 227.

CIT(TDS) VS TTK HEALTH CARE TPA PVT LTD 430 ITR 464

Facts :

1. A Third Party Administrator (TPA) settled the bills raised by the hospitals on patients who were covered by cashless scheme of the insurance company.
2. The TPA did not deduct tax at source on the payments made to hospital.
3. The TDS officer held that such payments are liable u/s 194J of the Act and tax is required to be deducted.
4. The AO treated TPA as an assessee in default and recovered the amount u/s 201(1) and also levied interest u/s 201(1A).

CIT(TDS) VS TTK HEALTH CARE TPA PVT LTD 430 ITR 464

Decision:

1. The TPA’s argument was that the payment made by it to the hospitals are composite in nature which includes payment for certain services which are not coming under the definition of professional services u/s 194J of the Act.
2. Hence, the payment made for room charges, canteen, nursing charges etc are not liable for TDS.
3. The court rejected these arguments.
4. It relied on the decision of the Delhi High Court in Vipul Matca TPA Pvt Ltd 17 Taxmann.com 260

CIT(TDS) VS TTK HEALTH CARE TPA PVT LTD 430 ITR 464

Decision:

5. It was held by the Delhi High Court that the ambit of professional services mentioned in Explanation (a) below S. 194J would cover not only the professional services of the doctors but also all incidental services rendered in the course of medical profession.
6. Since this was the case relating to AY2007-08 the court held that the amendment made under S.201(1A) w.e.f 1.7.2012 that the interest be paid from the due date of payment of TDS till the date of filing the return by the payee is not applicable.
7. Prior to 1.7.2012 the interest can be levied only up to to the date of payment of tax by the payee.

CIT(TDS) VS TTK HEALTH CARE TPA PVT LTD 430 ITR 464

Points for discussion:

1. Whether the expression "in the course of carrying on legal………." in clause (a) of Explanation below S. 194J would include incidental services.
2. No arguments have been placed before the court that the TPA has paid the amount as agent of the insurance company and not as agent of the patient.
3. Is it necessary that the person responsible for paying to a resident any sum by way of fees for professional services should be the recipient of such services.

CIT(TDS) VS TTK HEALTH CARE TPA PVT LTD 430 ITR 464

Points for discussion:

4. If the answer is yes could it be said that TPA has received the professional services?
5. If the interest is to be calculated up to the date of payment of tax by the payee, how to determine such date?
6. There are serious practical problems in determining the date.
7. There could be a situation where the advanced tax paid by the payee is more than the TDS amount, can it be said that the assessee has paid the TDS amount when the advance tax was paid.
8. What happens if due to loss no tax is paid by the payee.

LOKNATH GOENKAR VS CIT 417 ITR 521

This is a full Bench decision of Patna High Court on the applicability of the amendments to Income Tax Act to a particular assessment year.

Facts:

1. The assessee admitted his minor son to the benefits of partnership during the FY 1975-76.
2. S. 64(1)(iii) of the Act was introduced which stated that the income arising to a minor from the admission of a minor to the benefits of a partnership firm in which parent is a partner, shall be taxed in the hands of the parent.

LOKNATH GOENKAR VS CIT 417 ITR 521

Facts:

3. This amendment was made w.e.f 1.4.1976.
4. The AO added the share of profits of the minor in the hands of the assessee while making assessment for AY 1976-77.
5. The assessee contended that the amendment w.e.f 1.4.1976 will not apply to the AY 1976-77.

LOKNATH GOENKAR VS CIT 417 ITR 521

Decision:

1. Purporting to rely on the decision of the Supreme Court in Karimtharuvi Tea Estates Ltd Vs State of Kerala 60 ITR 262, the Full Bench held that the amendment made w.e.f 1.4.1976 cannot apply to a financial year commencing on or before 1.4.1976.
2. In other words, it is stated that the amendment will apply only for a FY commencing on or after 1.7.1976. Therefore, it will apply only for Ay 1977-78 and on onwards.

LOKNATH GOENKAR VS CIT 417 ITR 521

Points for discussion:

1. Whether the reliance of the Hon'ble Full Bench in para 8 of Karimtharuvi (Page 264 of 60 ITR) is correct.
2. Karimtharuvi was a case where surcharge was levied from the middle of the year i.e from September 1957.
3. There was no reference to any particular assessment year to which the surcharge will be levied.
4. Reiterating the well known principle that the law as on the 1st day of the assessment year shall be applicable the Supreme Court held that surcharge cannot be levied for AY 1957-58.

LOKNATH GOENKAR VS CIT 417 ITR 521

Points for discussion:

5. The court relied on its earlier judgment in IT Commissioner Vs I.S (Lines) wherein it was held that the law as existed on the first day of the assessment year must be applied.
6. The Full Bench in Loknath Goenka did not consider S. 1 of the relevant Finance Act.
7. Normally S.1 would state that various sections in the Finance Act will come into force from the 1st day of April of a particular year.

LOKNATH GOENKAR VS CIT 417 ITR 521

Points for discussion:

8. The year referred to in S. 1 of the Finance Act is normally the assessment year.
9. Therefor, when the Finance Act says that the amendment shall come into effect from 1.4.1976, it is applicable to AY 1976-77 onwards.
10. With respect it is submitted that the decision of the Full Bench is not right in law.

MARUTI BABU JADAV VS DCIT 430 ITR 504

Facts:

1. An addition was made for AY 2017-18 u/s 69A. The Income tax officer invoked the provision of s. 115 BBE as amended by the Taxation Laws (2nd amendment) Act 2016 and levied tax @ 60% and a surcharge @ 25% of the tax
2. The assessee filed a writ petition challenging the levy of tax at enhanced rate.
3. The contention of the assessee was that S. 115BBE became effective only after the presidential assent was received sometime in December 2016.

MARUTI BABU JADAV VS DCIT 430 ITR 504

Facts:

4. Therefore, the amended S. 115 BBE of the Act was not applicable for the additions made in respect of the unexplained investment made up to that date.

5. It was further contended that as the amendment was brought into force from w.e.f 1.4.2017 it will apply only to transactions entered into after 1.4.2017.

MARUTI BABU JADAV VS DCIT 430 ITR 504

Facts:

6. It was also contended that the assessee admitted to unexplained investment and agreed for addition before the amendment came into effect.
7. Had he known that the tax rate will be increased he would not have admitted the same.

MARUTI BABU JADAV VS DCIT 430 ITR 504

Decision:

1. Relying on the decision of the Supreme Court in Karimtharuvi Tea Estates Ltd Vs State of Kerala60 ITR 262 the High Court held that the section having come into force from 1.4.2017 is applicable for the AY 2017-18.
2. Relying on the amendment made to the Finance Act by the 2nd Amendment Act, the court held that the increased rate will apply to AY 2017-18.
3. It noted that proviso was added to Finance Act which provided for the advance tax computed in respect of any income chargeable to tax u/s 115BBE(1)(i) to be increased by surcharge at 25%.

MARUTI BABU JADAV VS DCIT 430 ITR 504

Decision:

4. Hence, the enhanced rate is not a new rate and it is not a new levy.
5. It also rejected the contention of the assessee that he would not have accepted the addition u/s 69A had he known that the tax rate will be increased.
6. It was held that there is no right accrued to the assessee to commit an offence on the expectation of lesser penalty.

MARUTI BABU JADAV VS DCIT 430 ITS 504

Points for discussion:

The decision is correct.

BRIJABASI EDUCATION AND WELFARE SOCIETY VS PCIT 431 ITR 126

Facts:

1. For the AYs 2006-07 and 2007-08 an original assessment u/s 143(3) was made.
2. This assessment was carried in appeal.
3. One of the issues in the appeal was regarding the genuineness of the donations.
4. The Tribunal held that the donation is genuine.
5. Later, CBI conducted certain enquiries.
6. During the enquiry it was found out that the various donations alleged to have been given by donors are bogus.

BRIJABASI EDUCATION AND WELFARE SOCIETY VS PCIT 431 ITR 126

Facts:

7. The CBI recorded the statement of donors who stated that they received cash from some person which was deposited in their bank account and a cheque was issued to the assessee-trust as donation.
8. On appeal to Tribunal the validity of reassessment was upheld.
9. The additions were also upheld.
10. On appeal to High Court the assessee’s contention was that no enquiry has been conducted by the AO before issuing the notice u/s 148.

BRIJABASI EDUCATION AND WELFARE SOCIETY VS PCIT 431 ITR 126

Facts:

11. The AO simply relied on the report of CBI.

12. It is seen from the reported decision that the reasons recorded by the AO have not been reproduced.

BRIJABASI EDUCATION AND WELFARE SOCIETY VS PCIT 431 ITR 126

Decision:

1. The High Court reproduced the finding of the Tribunal.
2. It held that the assessing officer had a specific information about the donations being bogus.
3. There was tangible material for reopening the assessment. Hence, the reassessment is valid.
4. On addition, it was held that it is a question of fact and High Court will not interfere.

BRIJABASI EDUCATION AND WELFARE SOCIETY VS PCIT 431 ITR 126

Points for discussion:

1. The High Court failed to deal with the assessee's contention that there was no independent enquiry conducted by the AO.
2. In the absence of the recorded reasons being reproduced, it is not possible to say whether the AO has merely referred to CBI's report and formed an opinion,
3. Or he has reproduced the contents of the CBI report, recorded the result of any enquiry conduced by him and then formed an opinion.

BRIJABASI EDUCATION AND WELFARE SOCIETY VS PCIT 431 ITR 126

Points for discussion:

4. The Karnataka High Court in 155 ITR 748 held that the reasons themselves should fully disclose all the facts which enabled the AO to form the opinion that income has escaped assessment.

5. It was further held that merely referring to a note which was placed on record is not sufficient.

6. Applying the ratio of the above decision it can be contended that if the reasons merely referred to CBI report, that will not be sufficient.

BRIJABASI EDUCATION AND WELFARE SOCIETY VS PCIT 431 ITR 126

Points for discussion:

7. The court did not deal with the contention whether an enquiry has been conducted by the assessing officer after the receipt of the CBI report.

8. The enquiry is needed especially in view of the fact that earlier the Tribunal has held that the donations are genuine.

9. The decisions of the Delhi High court itself in 384 ITR 147 and 395 ITR 677 have not been referred to.

BRIJABASI EDUCATION AND WELFARE SOCIETY VS PCIT 431 ITR 126

Points for discussion:

10. In the above decisions High Court held that merely on the basis of a report received from Investigation Wing an assessment cannot be reopened.
11. The AO has to make enquiries which would lead to a conclusion that the facts stated in the investigation report are correct and the income has escaped assessment.

PCIT VS RANJAN PAI 431 ITR 250

Facts:

1. The assessee received bonus shares from a company in which he was a shareholder. The AO applied S. 56(2)(vii) of the Act as it stood at the relevant time.
2. He held that the assessee has received the shares without consideration.
3. Therefore, S. 56(2)(vii) of the Act is attracted and the shares were valued as per Rule 11UA.
4. The value so determined was added to the assessee’s income.

PCIT VS RANJAN PAI 431 ITR 250

Facts:

5. The assessee contended that S. 56(2) is an anti abuse provision and has to be interpreted bearing that object in mind.
6. The shares did not exist as an asset in the books of the company.
7. It came into existence only on allotment to the shareholder.
8. The receipt of bonus shares by the shareholders is not by way of transfer of an existing asset.

PCIT VS RANJAN PAI 431 ITR 250

Decision:

1. The value of bonus shares received by an assessee cannot be taxed u/s 56(2)(vii).
2. There is no inflow of fresh funds or increase in the capital employed because of receipt of bonus shares.
3. Any profit derived by the assessee on account of receipt of bonus shares is adjusted by depreciation in the value of equity shares held by him

PCIT VS RANJAN PAI 431 ITR 250

Points for discussion:

1. The court did not consider the important argument made by the assessee that there is no "receipt" in the case of bonus shares.
2. Whether the reasoning of the court that the profit derived by an assessee on receipt of bonus shares is nullified by a fall in value of shares is true always?
3. It is well known that the fall in value of shares is not proportionate to the bonus shares issued.

THANK YOU