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Supreme Court Rulings of the month

SC to decide whether payment by crossed cheque would trigger sec. 40A (3) disallowance



SLP granted against High Court's ruling that when payment exceeding Rs. 20,000 was made by assessee through crossed cheque and not by account payee cheque, it amounted to violation of section 40A(3).

High Court by impugned order held that there is clear distinction between a crossed cheque and an account payee cheque as in account payee cheque banks are directed to credit amount of an account payee cheque only in account of payee and no other person while crossed cheques are endorsed in favour of a person other than drawee making it difficult to trace constituent of money and, thus, crossed cheque is violative of section 40A(3).

Source: SC in Rajmoti Industries vs.ACIT

SLP no. 17529 of 2014, date of publication February 23, 2017

SC admitted SLP to decide whether Sec. 94 is applicable on transaction of sale and purchase of UTI unit

SLP granted against High Court's ruling that section 94(4) was not applicable on transaction of sale and purchase of UTI unit.

High Court by impugned order held that by purchase of units, assessee became entitled to have benefit of deduction under section 80M and, sale on next day would not make transaction of purchase

and resale a colourable one. It was further held that Explanation to section 94, as it stood at material time, defined 'securities' to include stocks and shares alone and not units of Unit Trust of India and, hence, assessment made by Assessing Officer by applying section 94(4) was erroneous in respect of transaction in question.

Source: SC in DCIT Vs Sundaram Finance Ltd.

SLP no. 17454 of 2015, date of publication February 22, 2017

SC to decide applicability of sec. 194LA TDS on compensation for loss of fruit bearing trees

SLP granted against High Court's ruling that where agricultural land of assessee was acquired along with trees, compensation for loss of fruit bearing trees must necessarily be part of compensation for agricultural land and, thus, there would be no applicability of section 194LA for compensation on their acquisition.



Source: SC in CIT(TDS) Vs Special Land Acquisition Officer

SLP no. 1694 of 2017, date of publication February 21, 2017

SLP admitted to decide whether trust incurring exp. in excess of its income would be eligible for sec. 11 relief

SLP granted against High Court's ruling that where assessee, a charitable trust, incurred expenditure in excess of income in previous year relevant to assessment year for charitable purposes, out of

accumulated charity fund, it could not be denied benefit of exemption under section 11(1)(a).

Source: SC in CIT, Bikaner Vs Krishi Upaj Mandi Samiti (Grain)
SLP no. 1607 of 2017, date of publication February 21, 2017

SLP admitted to decide whether loss in mutual fund dealings would be considered as speculation loss



High Court by impugned order held that units in a mutual funds and/or bonds cannot be deemed as shares for purpose of section 73 and, therefore, loss arising on dealing in mutual funds/bonds would not be considered as loss in speculation business. SC

admitted SLP against this High Court Ruling.

Source: SC in CIT Vs Hertz Chemicals Ltd
SLP no. 2010 of 2017, date of publication February 21, 2017

SC to decide whether minor delay in filing Form 27C would make assessee liable for non-collection of TCS

High Court by impugned order held that no time limit is provided in section 206C(1A) to make a declaration in Form 27C collected from buyers and mere minor delay in furnishing Form 27C would not make assessee liable for non-collection of TCS. SC admitted SLP against this High Court Ruling.

Source: SC in CIT (TDS) Vs. Siyaram Metal Udyog (P.) Ltd
SLP no. 1669 of 2017, date of publication February 20, 2017

SC to decide allowability of interest when borrowed funds were advanced to sister concern

SLP granted against High Court's ruling that where assessee-builder advanced borrowed amount to its sister concern for purpose of acquiring a portion of property in project proposed to be developed by its sister concern and said amount was not utilised for said project but it was used for some other project, assessee was not entitled for deduction of interest paid on borrowed amount.

Source: SC in Embassy Development Corporation Vs Assistant Commissioner of Income Tax

SLP no. 515-517 of 2016, date of publication February 16, 2017

No withdrawal of immunity from prosecution



The settlement commission granted immunity to the assessee from prosecution. The assessee has not made payments within the time originally granted by the settlement commission but made all the payments before he approached the Supreme Court

and filed appeal by way of SLP.

Supreme Court has held that from a reading of the provisions of section 245H(1A), it is apparent that in case the payments are not made within the time granted by the Settlement Commission or in case the person fails to comply with any other conditions, subject to which the immunity was granted, the immunity shall stand withdrawn. However, the Settlement Commissioner is free to grant further time for payment under section 245H(1A). In the facts and circumstances of the case, it is not necessary to relegate the assessee to the Settlement Commission for enlargement of time, since the

payments have already been made. Therefore, for all intents and purposes it shall be taken that the assessee has made the payments within the time granted under section 245H(1A).

Source: SC in Sandeep Singh Vs. Union Bank of India

Civil Appeal no. 418 of 2017, date of publication February 15, 2017

High Court Rulings of the month

Power under section 153C could not be invoked when there was no incriminating document and evidence discovered during the search of third party

The assessee-individual was engaged in the business of plying/hiring carriages. During the course of assessment, notice was issued with regard to a gift of Rs. 45 lakh shown in her returns. The assessee explained receipt of gift from HMTE of Dubai and the donor had also accepted that cheques were issued in the name of the assessee.

Later on, search was conducted in the premises of one BP, who was related to the assessee. However, no evidence that could be used against the assessee was discovered during the search. The AO reopened the assessment stating that the gift was not genuine and added the same to the income of the assessee. On appeal, CIT(A) affirmed the order of the AO. However, Tribunal dismissed the order of CIT(A).

On further appeal, High Court has held that in the absence of any incriminating evidence, the Assessing Officer was not justified in invoking his power under section 153C.

Source: High Court of Karnataka in PCIT vs. Smt. Sunita Bai, Co. Karnataka

Appeal No. 100058 of 2015, date of publication January 27, 2017

Tribals not liable to collect TCS on forest produce sold to Tribal Development Corporation



The assessee-corporation purchased forest produce and goods from tribal individuals and auctioned it to the third parties and collected 5% TCS from the buyer at auction. The Assessing Officer ordered that the assessee was liable to pay interest and penalty on account of short collection of tax at source on ground that the assessee had to deduct tax at the rate of 15 per cent as prescribed in section 206C. Assessee contended that the tribal individual was first seller and assessee corporation was the second seller, therefore not liable to collect TCS.

CIT(A) held that tribals were engaged only as labourers to collect forest produce that was purchased by the assessee-corporation and therefore, tribals could not be included within meaning of term 'seller'. Therefore, assessee corporation are the first seller and not the second seller. Assessee on further writ before the High Court.

High Court held that there is no illegality in the action on the part of the Assistant Commissioner in directing the assessee-corporation to pay the interest and penalty on the short fall in the collection of tax at source.

Source: High Court of Bombay in Maharashtra state Co-operative Tribal Development Corporation Ltd vs. CIT, Nagpur

Writ Petition no. 1576 of 2001, date of publication February 24, 2017

No reassessment to disallow sec. 54B relief when such issue was scrutinized during original assessment

The assessee sold the land after obtaining appropriate permission from the collector to sell the said land as agricultural land. He was granted exemption under section 54B against capital gain arising out of sale of aforesaid land. AO after verifying all facts in details confirmed the exemption.

High Court held that unless and until, it is found that there was any failure on the part of the assessee in not disclosing the true and correct facts which has resulted into escapement of tax from assessment, reopening is not permissible. The condition precedent to assume the jurisdiction under section 147 to reopen the assessment beyond the period of four years, as per the proviso to section 147 are not satisfied and also on the ground that earlier while framing the reassessment under section 143(3) the aforesaid issue was specifically gone into by the Assessing Officer and exemption under section 54B was not disturbed, the impugned reassessment proceedings cannot be sustained and same deserves to be quashed and set aside.

Source: High Court of Gujarat in Parimal Sureshbhai Patel vs. DCIT, Circle 5(2)

Special Civil Application no. 15867 of 2016, date of publication February 18, 2017

Stay on demand to be granted after adjusting 15% of demand from refund of previous 3 years

The petitioner filed a return for the assessment Year 2012-13, declaring loss of Rs.10,23,16,807. It appears that the case of the petitioner was selected for scrutiny and as per the final assessment order dated 6.5.2016, the petitioner was served with a notice of demand for Rs.16,90,79,380. Undisputedly, the petitioner has challenged the said assessment in an appeal, which was pending before the Commissioner (Appeals).The petitioner applied for a stay of demand, which was rejected by the respondent.

High Court held that a case where outstanding demand is disputed before the CIT (Appeals), the AO shall grant stay of demand, till the disposal of the first appeal on payment of 15 per cent of the disputed demand. Considering the overall circumstances it was held that impugned order can be stayed, subject to an amount of Rs. 2,53,61,907 (15 per cent of the total demand of Rs. 16,90,79,380) being adjusted out of the refund, which is due for the assessment years 2006-07 and 2007-08. Thus, the petition is partly allowed and the impugned communication/order, rejecting the application for stay, is set aside.

Source: High Court of Bombay in Andrew Telecommunications India (P.) Ltd vs. PCIT, Goa

Writ petition no. 1021 of 2016, date of publication February 7, 2017

ITAT Rulings of the month

Section 54F relief will not be granted if newly acquired residential house was instantly demolished



The assessee claimed exemption u/s 54F on purchase of a residential house. The AO disallowed claim of the assessee on the ground that the new asset purchased was instantly demolished by the assessee and, further, he had proceeded to construct a shopping complex. CIT(A) affirmed the order of the AO. High Court held that the Parliament in its wisdom had enacted section 54F in the Finance Act, 1982 with a view to encourage housing construction. Thus, the intention of the legislation was not for destruction of residential building but for promoting the construction of the residential housing units. If the benefit of section 54 is extended where the new residential building is demolished without constructing another residential building within the time limit prescribed under the Act, then the purpose of the Act is defeated. The construction must be a real one. It should not be a symbolic construction. Mere construction by way of extension of the old existing house would not mean constructing a residential house as contemplated under section 54F."

Source: ITAT Chennai in K.V Vijayaraghanan Vs DCIT, Circle(1), Chennai

IT Appeal no. 455 & 456 of 2014, date of publication February 22, 2017

Money paid to ex-employees to avoid litigation can't be held as 'profit in lieu of salary'

During survey proceedings, the AO noticed that the assessee had paid certain amount without deducting any tax to five of its employees. The Assessing Officer took a view that said payment was to be treated as profit in lieu of salary under section 17(3)(iii) and, thus, assessee was required to deduct tax at source under section 192. He thus treated the assessee to be assessee-in-default under sections 201(1) and 201(1A). The Commissioner (Appeals) opined that payment was made to ex-employees by way of settlement in order to bring litigation to an end and same was in the nature of capital compensation and therefore not taxable in the hands of recipients and accordingly provisions u/s 201(1) and 201(1A) were not applicable.

ITAT held that the essential fact was missing i.e. there was no employer- employee relationship between the assessee and ex-employees. Secondly the ex-employees had paid the due taxes on the disputed amount. The assessee had claimed that it was under the bona fide belief that the amount received by the ex-employees was capital receipt. It is said that under clause (i) of section 17(3) in order to characterise a particular payment received from the employer, on termination of the employment, as "profits in lieu of salary", it has necessarily to be shown that this amount is due or received as "compensation". The word "compensation" is not defined under the Act. Therefore, one has to take into consideration the ordinary connotation of this expression in common parlance. It has to be in the nature of something awarded to compensate for loss, suffering or injury. When translated in the context of employment, it would imply a monetary and non-monetary amount to be given to the employee

in return for some services rendered by him. Inherent in this would be the obligation of the employer to pay some amount to the employee to "compensate" him. It would also mean that the employee gets a vested right to get such an amount.

In the case under consideration the ex-employee did not get vested right to receive the amounts in question. A settlement was arrived at to avoid litigation and there was no obligation on part of the employer to pay some amount to the employees to compensate them. Therefore the appeal of the revenue is dismissed.

Source: ITAT in ITO(TDS), Mumbai Vs Kuwait Airways Corporation IT Appeal no. 3303(MUM) of 2012 of 2016 C.O no. 209(MUM) of 2015, date of publication February 17, 2017

Circulars of the month

Clarification for determination of Place of Effective Management (POEM) of a company, other than an Indian company-reg.



The concept of POEM for deciding the residential status of a company, other than an Indian company, was introduced by the Finance Act, 2015. CBDT vide 08/2017 has further clarified that POEM guidelines shall not apply to a company having turnover or gross receipts of Rs. 50 crores or less in a financial year.

Source: Circular No. 08 of 2017 dated February 23, 2017

Notification/Instructions of the month

M/s Jawaharlal Institute of Postgraduate Medical Education and Research approved for section 35

M/s Jawaharlal Institute of Postgraduate Medical Education and Research (JIPMER), Puducherry (PAN:- AAAJJ0846M) has been approved by the Central Government for the purpose of clause (ii) of sub-section (I) of section 35 of the Income-tax Act, 1961 (said Act), from Assessment year 2016-2017 onwards in the category of University, College or other Institution, subject to certain conditions specified therein.

Source: Notifications No. 11 of 2017, F.No.203/06/2016/ITA-II, dated February 17, 2017

Assam Electricity Regulatory Commission covered u/s clause(46) of section 10

Central Government has notified Assam Electricity Regulatory Commission for the purpose of section 10 (clause 46) of the ITA, 1961, in respect of the following specified income arising to that commission, namely:

- a) Amount received in the form of government grants.
- b) Amount received as license fees, petition fees and fines; and
- c) Interest earned on government grants, license fees, petition fees and fines kept as deposits or fixed deposits with banks.

It shall be effective subject to certain condition specified therein.

This notification shall be applicable for the financial year 2016-17 to 2020-21.

*Source: Notifications No. 14/2017/F.No.196/30/2016-ITA-I, dated
February 23, 2017*

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