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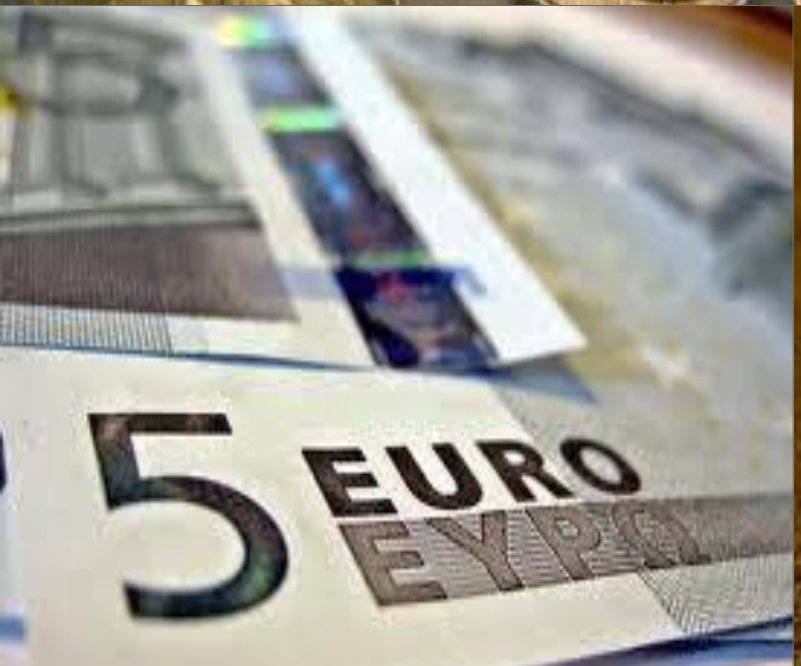
DIRECT TAX REVIEW

AUGUST 2019



Inside this edition

HIGH COURT RULINGS

The Commissioner exercising powers u/s 263 passed revised order against the order of the AO which was neither erroneous nor prejudicial to the interest of the revenue was to be set aside

Facts

The assessee's case was selected for scrutiny and a notice was issued u/s 143(2) to the assessee to which the reply along with documentary evidence was submitted. The AO being satisfied passed assessment order u/s 143(3). The Commissioner while exercising power u/s 263, partially accepted the reply submitted by the assessee as regards the investment in share capital holding that the outstanding unsecured loans of six persons to be adjusted against the share application money account, but as regards the unsecured loans and creditors, it directed the AO to examine, call for requisite details, confirmations and examine them properly and relegated the matter back to him. The Tribunal confirmed the revised order passed by the Commissioner. Aggrieved by which the assessee filed an appeal before the Hon'ble High Court.

Ruling

HC held that The notice passed would not render the same as erroneous and prejudicial to the interest of Revenue, unless the Commissioner exercising power u/s 263 brings on record to show that the order of the AO is erroneous, as the same was passed without application of mind or the AO had made an incorrect assessment of fact or incorrect application of law, but the same not being the case, and the CIT relying upon the reply and the documentary evidence submitted by the assessee granted partial relief, as such the order passed u/s 263 relegating back the matter to the AO as regards unsecured loans and creditors is unsustainable. In view of the same, the impugned revised order passed by the AO u/s 263 is not sustainable in law and is required to be set aside.

Source: HC of Allahbad in Meerut Roller Flour Mills Pvt Ltd vs. CIT No. 223, date of publication August 14, 2019

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Where The Tribunal dismissed assessee's appeal ex-parte on first day of hearing itself, the impugned order of The Tribunal rejecting assessee's application u/s 254(2) was to be set aside

Facts

The assessee challenged the order passed in a miscellaneous petition filed to recall the order passed by the Tribunal. The appeal was filed before the Tribunal challenging the order passed by the CIT-A whereby the appeal filed by the assessee was allowed. The appeal was listed before the Tribunal was stated to be the first date of hearing and a petition for adjournment was filed by the Ld counsel for the assesse as the assessee was not in a position to furnish the appeal records. The Tribunal proceeded on the basis that there was no appearance for the assessee and allowed the appeal filed by the Revenue. To recall the order passed by the Tribunal the assesse filed a miscellaneous petition, however, it was rejected by the Tribunal by the impugned order on the ground that the assessee was not able to point out any mistake in the said order.

Ruling

It was held by HC that the appeal filed before the Tribunal should be heard on merits. The Tribunal, while recording that none appeared for the assessee, had not referred to the petition for adjournment filed by the assessee's counsel and preceded to allow the Revenue's appeal by placing reliance on the decision of the Hon'ble SC in the **IPCA Laboratories Ltd. v. Dy. CIT**. It is also noticed that the issue before the Tribunal was a recurrent issue and that the assesse succeeded for the earlier years. The Tribunal shall take up the miscellaneous petition and consider the case of the assessee so that the order could be recalled and the appeal could be heard on merits. The appeal was thus decided in the favour of the assessee.

Source: HC of Madras in Universal Cold Storage Ltd vs. DCIT, Chennai

No. 1021/2009, date of publication August 13, 2019

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Additions in case of failure to satisfactorily explain the source of investment.

Facts

The AO found that assessee had invested certain amount in purchase of property for which loan was taken. The AO taking a view that assessee failed to prove identity and creditworthiness of creditor, added the amount so invested to his taxable income as unexplained investment. Though the stated transaction of alleged loan was through bank, the assessee was not able to explain or substantiate the source; creditworthiness of the creditor and the genuineness of the transactions before the AO, CIT-A and ITAT. Aggrieved by which the assessee filed an appeal before the the Hon'ble High Court.

Ruling

Held that if a receipt is sought to be taxed as income, the burden lies on the Department to prove that it is within the taxing provisions and if a receipt is in the nature of income, the burden of prove that it is not taxable because it falls within exemption provided by the Act lies upon the assessee. The law is well settled that the onus of proving the source of a sum of money found to have been received by the assessee is on him and if he disputes the liability for tax, it is for him to show that the receipt is not income or it is exempted from tax. In the absence of such proof, the revenue is entitled to treat it as taxable income. No illegality or perversity could be pointed out by Ld. counsel for the assessee in the findings recorded by the Tribunal which may warrant interference by this Court and, therefore, no question of law much less any substantial question of law arises for consideration in this appeal. Therefore the appeal filed by the assesse is dismissed.

Source: HC of Allahabad in Sajid Khan vs. PCIT

No. 10 to 16/2019, date of publication August 13, 2019

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Cash found during the search is less than cash in hand in books of accounts cannot be the ground for addition

Facts

The respondent assessee is a partnership firm engaged in cold storage business. The AO framed assessment u/s 153A making certain additions. The first addition was for Rs. 37.31 lacs being the lesser

cash in hand as per the seized paper as compared with the books of account. The other major addition was of Rs. 23.31 crore on the ground that the assessee was engaged in the business of potatoes. On appeal, the CIT-A accepted the addition so made by the AO. On second appeal by the assessee, the Tribunal deleted the additions. However, the revenue is in appeal before the HC against the order passed by ITAT..

Ruling

Issue I: Cash in Hand

As to the addition made of Rs. 37.31 lacs which is lesser cash in hand as compared with the books of account in which the assessee has shown more cash in hand, the Tribunal held that it is neither a case u/s 68 nor section 69A. The Tribunal further went on to hold that it was not a case where money is not recorded in the books of account of assessee, and in the present case cash in hand in the books of account was found to be more than the actual cash found during the course of search. At the most, authorities could have presumed that assessee has spent the difference of amount in question somewhere as per cash in hand, as per books of account and lesser cash as per seized documents, but that would also not suffice to make addition under any of the propositions.

Issue II: Undisclosed investment in potato business

Once it is established that the assessee had not violated the terms of license, so granted by the licensing authority, merely on the basis of presumption and assumption from any document or papers seized during search and survey cannot be the basis for the addition of such an amount. Having considered the facts and the circumstances of the case and going through the records of the case, it is to be held that the revenue has failed to establish that the order of the Tribunal is manifestly illegal and suffers from error apparent on face of the record. As the Tribunal being the last fact finding Court has categorically recorded finding that the authorities below had wrongly made the additions without any material on record on the basis of mere presumption and assumption, the said finding is to be upheld. Therefore, the appeal of the revenue is dismissed.

Source: HC of Allahabad, CIT, Kanpur vs. Kesarwani Sheetalaya Alld No. 58/2013, date of publication August 20, 2019

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ITAT RULINGS

Damages received from tenant for unauthorized occupation of let out property is in the nature of 'mesne profit' a capital receipt, not liable to tax

Facts

The appellant owned a property which was given on Sub lease to Punjab State Industrial Development Corporation (PSIDC). However, PSIDC did not vacate the premises after determination of sublease. The matter was referred to an arbitrator who passed an arbitration order as per which the assessee received damages for the unauthorized occupation of the property for the period. The assessee therefore received a sum of Rs. 20.89 lacs as damages and Rs.35.93 lacs as interest during the FY. Instead of crediting the total of bot the receipts in P&L account, the assessee chose to credit the same directly to reserve and surplus account. Thereby, not paying the tax on the income earned by him. The A.O. held that the damages is nothing but unrealized rent and should be taxed as income from

house property in the year of realization which is current AY by virtue of the provision of section 25AA of the Income Tax Act and the interest receipt is but a revenue receipt and should be taxed under the head income from other sources.

Ruling

The term **'mesne profits' relates to the damages or compensation recoverable from a person who' has been in wrongful possession of immovable property.** The assesse has received the impugned mesne profits not in the nature of rent but damages assessable to tax neither as income "from house property" regarding principal amount or income from other sources in relation to consequential interest awarded thereon. Therefore, both the lower authorities have erred in treating the assessee's damages amount as chargeable to tax. The assessee therefore succeeds in its former substantive ground.

Source: Kolkata Tribunal in Talwar Bro. Pvt Ltd vs. ITO, Kolkata No. 2260/2014, date of publication August 9, 2019

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Claim for deduction u/s 54F to be allowed even in a case where entire sale proceeds in acquisition of new residential house have been invested prior to filing of return u/s 139(4).

Facts

The assessee sold a piece of land and the amount received on sale of land was invested in purchase of four flats and accordingly deduction u/s 54F was claimed by the assessee. In the course of reassessment proceedings the assessee was asked to justify her claim of deduction in view of the fact that assessee had not file the return of income within the stipulated period u/s 139(1) and, had not invested the amount in Capital Gain Account Scheme as mandated u/s 54F(4) of the Act. Assessee had filed return of income u/s. 139(4) of the Act and till that date, since the payment for purchase of flats was made, assessee had claimed deduction u/s. 54F of the Act.

Ruling

The issue of not depositing the unutilized portion of amount subject to capital gains in capital gain account scheme and the fact that assessee had filed the ROI within the time limit prescribed u/s 139(4) which was up to March 31, 2013 in the given case. It is assessee's case that prior to filing of return, assessee had utilized the entire sale proceeds in acquisition of the new residential house. The aforesaid contention of the assessee has not been controverted by revenue and has held that the benefit of section 54 is allowable when the assessee has acquired the new asset before filing of return of income under the provisions of the Act.

Source: Pune Tribunal in Mrs Kamal Murlidhar Mokashi vs. ITO, Pune & Delhi Tribunal in Smt. Vatsala Asthana vs. ITO, Delhi No. 939/2016, date of publication August 19, 2019 & 5635/2016, date of publication August 6, 2016

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Cash payment exceeding prescribed limit made to farmers for purchase of agricultural produce and entered in books of account cannot be disallowed u/s 40A(3) for failure of assessee to produce farmers/list of farmers

Facts

The assessee was trading in maize purchased the same from cultivators for which payments were made in cash in excess of Rs. 20,000. The assessee pleaded that since the payment in question was

made for purchase of agricultural produce to the cultivator of the produce, no disallowance could be made u/s 40A(3) read with rule 6DD(e) of the Income Tax Rules. The AO however, was of the view that the assessee had not produced details viz. addresses and identity of the persons to whom cash payments were made except producing bills and their names and the name of their village to which they belonged and such declaration was not enough to prove the case of the assessee. He, therefore, made addition by invoking section 40A(3) and the Commissioner (Appeals) also confirmed the action of the AO.

Ruling

It was held that when considering rule 6DD(e)(i) of the Income Tax Rules, 1962, and when the payment was made by cash exceeding Rs. 20,000, it was permissible if the same was paid for purchase of agricultural produces. If there are entries in the books of account and payment is shown to have been made to farmers and when receipts were also produced but the assessee could not produce the farmers/list of farmers for which a reasonable explanation was also given, no addition could be made u/s 40A(3). Following the aforesaid decision, it is to be held that the disallowance made u/s 40A(3) deserves to be deleted.

Source: Bangalore Tribunal in Krishnasa Bhute vs. ITO, Davanger No. 2444 & 2445/2018, date of publication August 28, 2019

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CIRCULARS & NOTIFICATIONS

Instructions to Subordinate Authorities for processing of returns with refund claims u/s 143(1) of the Income Tax Act, 1961 beyond the prescribed time limits in Non-Scrutiny Cases

To solve the grievances of the taxpayers, CBDT has issued instructions to mitigate genuine hardship being faced by the taxpayers by virtue of its powers u/s 119 of the Act relaxing the time frame prescribed in second proviso to sub-section (1) of section 143 and directs that all validly filed returns up to AY 2017-18 with refund claims, which could not be processed u/s 143(1) of the Act and have become time-barred, subject to the exceptions can be processed with prior administrative approval of Pr.CCIT /CCIT concerned and intimation of such processing u/s 143(1) of the Act can be sent to the assessee concerned by December **31, 2019.**

However, the above mentioned relaxation shall not be available to the following:

- Returns filed for any AY prior to AY 2017-18, which were under scrutiny and were not processed in view of provisions of section 143(1D) of the Act;
- Returns remain unprocessed, where either demand is shown as payable in the return or is likely to arise after processing it;
- Returns remaining unprocessed for any reason attributable to the assessee.

Source: Order F.No. 225/194/2019 dated August 5, 2019

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CBDT further enhances Monetary Limits for filing of appeals by the Income Tax Department

To effectively reduce taxpayer grievances/litigation and help the Department focus on litigation involving complex legal issues and high tax effect, the monetary limits for filing of appeals by the Department were last revised on July 11, 2018 vide CBDT Circular No.3 of 2018.

Further, the monetary limits for filing Departmental appeals before various appellate including ITAT, High Court & Supreme Court have been revised as under:

Appellate Forum	Existing Monetary Limit (Rs)	Revised Monetary Limit (Rs)
Before ITAT	20,00,000	50,00,000
Before HC	50,00,000	1,00,00,000
Before SC	1,00,00,000	2,00,00,000

This shall further reduce time, effort and resources presently deployed in litigation to focus on issues involving litigation of substantial value.

Source: CBDT Press Release/Circular No. 17/2019 dated August 8, 2019

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CBDT has issued FAQs for giving clarification in respect of filing up of the Income Tax Returns for AY 2019-20

The ITR forms for the AY 2019-20 were notified vide notification bearing G.S.R. 279(E) Dated the April 1, 2019. Subsequently, the instructions for filing ITR forms were issued and the software utility for e-filing of all the ITR forms was also released. After notification of the ITR forms various queries have been raised by the stakeholders in respect of filling-up of the ITR forms. In order to address such queries, following clarifications have been issued.

Source: Circular No 18 of 2019, dated August 8, 2019

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CBDT Withdraws Enhanced Surcharge on Tax Payable on Transfer of Certain Assets

In order to encourage investment in the capital market, CBDT has decided to withdraw the enhanced surcharge levied by Finance Act, 2019 on tax payable at special rate on income arising from the transfer of equity share/unit referred to in section 111A and section 112A of the Income-tax Act,1961 from the current FY 2019-20.

The following capital assets are mentioned u/s 111A & section 112A of the Act:

- Equity Shares in a Company
- Unit of an equity Oriented fund, and
- Unit of Business Trust

Further it is pertinent to note that **the enhanced surcharge shall be withdrawn on tax payable at special rate by both domestic as well as foreign investors on long-term & short-term capital gains arising from the transfer of equity share in a company or unit of an equity oriented fund/business trust** which are liable for securities transaction tax and also on tax payable at special rate u/s 115AD by the FPI on the capital gains arising from the transfer of derivatives. However, the tax payable at normal rate on the business income arising from the transfer of derivatives to a person other than FPI shall be liable for the enhanced surcharge.

Source: CBDT Press Release dated August 24, 2019

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Clarification on applicability of Tax Deduction at Source on Cash Withdrawals

In order to discourage cash transactions and move towards less cash economy, the Finance Act, 2019 has inserted a new section 194N in the Income Tax Act, 1961 with effect from September 1, 2019, to provide for **levy of TDS @2% on cash payments in excess of one crore rupees in aggregate made during the year**, by a banking company or cooperative bank or post office, to any person from one or more accounts maintained with it by the recipient. Further, CBDT hereby clarifies that any cash withdrawal prior to September 1, 2019 will not be subjected to the TDS under the said section.

However, since the threshold of Rs. 1 crore is with respect to the PY, **calculation of amount of cash withdrawal for triggering deduction u/s 194N of the Act shall be counted from April 1, 2019.** Hence, if a person has already withdrawn Rs. 1 crore or more in cash upto August 31, 2019 from one or more accounts maintained with a banking company or a cooperative bank or a post office, the two per cent TDS shall apply on all subsequent cash withdrawals.

Source: CBDT Press Release dated August 30, 2019

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Income Tax (Fifth Amendment) Rules, 2019-Amendment in Rule 114

The CBDT makes amendment to the Income Tax Rules, 1962 in Rule 114 which shall come into force from September 1, 2019.

The following sub rules shall be inserted:

- Any person, who has not been allotted a PAN but possesses the Aadhaar number and has furnished or intimated or quoted his Aadhaar number in lieu of the PAN in accordance with sub-section (5E) of section 139A, shall be deemed to have applied for allotment of PAN and he shall not be required to apply or submit any documents under this rule.
- Any person, who has not been allotted a PAN but possesses the Aadhaar number may apply for allotment of the PAN under sub-section (1) or subsection (1A) or sub-section (3) of section 139A to the authorities mentioned in sub-rule (2) by intimating his Aadhaar number and he shall not be required to apply or submit any documents under this rule.
- The PDGIT/DGIT(Systems) shall on receipt of such information under sub-rule (1A) or sub-rule (1B), as the case may be, authenticate the Aadhaar number for the same

Source: Notification No. 59/2019 dated August 30, 2019

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