Webinar On Landmark Income Tax Rulings (Virtual Mode)

Organised By: The Chamber of Tax Consultants, Mumbai

(www.ctconline.org) on 12th November,2022

Keynote Address: Honourable Justice Shri K. R. Shriram, Bombay High Court

It is very kind on the part of the Chamber of tax Consultants to invite me to deliver the key note address for this seminar on Landmark Judgements under Direct Taxes. My compliments to the organizers for arranging such a seminar that is beneficial to professionals.

I have been asked to share my experience on the Direct Tax Bench through some important decisions that we delivered.

Towards the end of July 2021, I was informed by the Hon'ble the Chief Justice of Bombay that from 1st August 2021, I would be heading the Direct tax bench. It was my first stint of heading a bench on regular basis and first time in the tax roster. It was a quite a challenge and I grabbed the opportunity to learn a new subject. With my commercial and accounting background I did not feel daunted by the task reposed on me. Though I was not a total stranger to the basics of

tax law due to filing my Returns and also of family members etc., tax litigation was absolutely new to me. I was very eager to learn the subject and know the nuances of tax law. I always enjoyed commercial law particularly due to the field of law in which I predominantly practiced, viz., Admiralty Law, Arbitration, International Trade Law etc. Even as a judge sitting singly I was assigned predominantly the original side work in commercial division. And this, ladies and gentlemen, helped me grasp rather briskly various legal issues under the Income Tax Act. I applied my commercial experience to Tax Law and just guided things.

I would say the nine months I spent on the Tax Bench was the finest moments as a judge. I enjoyed it to the hilt, and the credit for that goes to the Tax Bar. They were top class.

SOME IMPORTANT DECISIONS

My taking over the direct tax assignment coincided with two, if I may say so, turning points in Income Tax Litigation. One, the Assessment Orders were passed for the first time by Faceless Assessing Officers under completely new provisions of law. This led to a spate of writ petitions being filed directly challenging the

Assessment Orders which I am told was not the case earlier, i.e., before the faceless regime.

Second, several notices issued u/s 148 after 31/3/2021 under the old regime came to be challenged by way of Writ petitions. Apart from these two several writ petitions challenging order disposing objections under the old reassessment regime came to be filed.

REOPENING OF ASSESSMENT

I. BEYOND FOUR YEARS AND RESPONSIBILITY TO DISCLOSE PRIMARY FACTS

1) When I started dealing with the Writ petitions challenging Notice u/s 148, the opening statements by the Counsels used to be that reopening is beyond four years or within four years. Of-course if reopening was beyond four years the first proviso kicked in which was an additional defence against reopening.

My detailed consideration of law on reopening beyond fours which had formed the basis for my subsequent decisions was in the case of ***Ananta Land Mark Pvt. Ltd v. Dy. CIT (2021) 439 ITR 168/ 323 CTR 138 / 283 Taxman 462/131 taxmann.com 52 / 207 DTR 33 (Bom)(HC)***.This was a case where the assessee was real estate

developer. The assessment was completed u/s 143 (3) of the Act allowing the deduction claimed against interest income u/s 57 of the Act. The Assessment was reopened on the ground that the interest paid on the loans is allowable under section 37 (1) of the Act. Since there was no business income during the year, the entire interest should have been capitalised to the work in progress as against claiming as deduction u/s 57 which is not an allowable deduction. Against the rejection of objection, the assessee filed the writ petition. Allowing the petition, it was held that there was neither an omission nor failure on the part of the assessee to disclose material facts necessary for assessment. Re-assessment notice was held to be bad in law.

1.1) After *Ananta (supra)* in ***Ashraf Alibhai Nathani v. ACIT (2022) 211 DTR 336 (Bom) (HC)****it* was held that oversight cannot be rectified by reopening. The position of law was made categorically clear that once, the primary facts are before the assessing authority, he requires no further assistance by way of disclosure. It is for him to decide what inference of facts can be reasonably drawn and what legal inference ultimately to be drawn. It is not for somebody else to tell the assessing authority the inferences, whether of facts or law, that should be

drawn. Even for a moment, it is accepted that the AO has missed to take note of the law laid down by the Punjab & Haryana Court in ***Sumeet Taneja v. CIT ITA. No. 293 of 2012 dated 22-8-2013*** still that cannot be a reason to take recourse to reopen to remedy the error resulting from this oversight.

The Court held, duty of disclosing of primary facts relevant to the decision of the question before the assessing authority lies on the assessee. The duty, however, does not extend beyond the full and true disclosure of all primary facts. Once, the primary facts are before the assessing authority, he requires no further assistance by way of disclosure. It is for him to decide what inference of facts can be reasonably drawn and what legal inference ultimately to be drawn. It is not for somebody else to tell the assessing authority the inferences whether of facts or law should be drawn. Even for a moment, it is accepted that the AO has missed to take note of the law laid down by the Punjab & Haryana Court, Sumeet Taneja v. CIT ITA. No. 293 of 2012 dt. 22-8-2013 still that cannot be a reason to take recourse to reopen to remedy the error resulting from this oversight. Reassessment notice was quashed. Also relied upon ***Calcutta***

Discount Co. Ltd. v. ITO (1961) 41 ITR 191 (SC) *and* ***Gemini Leather Stores v. ITO (1975) 100 ITR 1 (SC) (2013-14)]***.

II. AUDIT OBJECTIONS.

2) What was found that lot of reopening was done on the basis of different opinion of law suggested by the Audit Department. In fact, Audit objections and recorded reasons were similarly worded. It clearly amounted to change of opinion.

In ***GlaxoSmithKline Pharmaceuticals Ltd. v. ACIT (2022] 286 Taxman 324 (Bom)(HC)*** allowing the petition it was held that where reopening is done beyond four years merely relying on Audit objections, it will amount to change of opinion.

The Court held that basis for reopening assessment was merely audit objections relying on the documents already filed before the Assessing Officer. As there was no failure on the part of assessee to truly and fully disclose facts, it could not be said that Assessing Officer had reasons to believe that income had escaped assessment. Reassessment was quashed. The AO cannot take recourse to reopen to remedy the error resulting from his own oversight. ***Gemini***

Leather Stores v. ITO (1975) 100 ITR 1 (SC)) (AY. 2012 -13) was relied upon.

III BORROWED SATISFACTION

3) There was several reopening done beyond four years simply relying on some information received from Investigation wing without any live link between the information and income escaping Assessment. In ***Reynolds Shirting Ltd. v. ACIT (2022)285 Taxman 554 (Bom) (HC)*** it was held that such reopening cannot be sustained.

Assessee-company had filed its return of income which was accepted and an assessment was completed. The notice was issued for reopening of assessment. In the reasons recorded for reopening, it was merely indicated information received from Director (Investigation) about certain entity entering into suspicious transactions and material was not further linked by any reason to come to conclusion that assessee had indulged in any activity which could give rise to reason to believe on part of Assessing Officer that income of assessee chargeable to tax had escaped assessment. The court held that this was a case of fishing enquiry and not a reasonable

belief that income chargeable to tax had escaped assessment. Re assessment notice was quashed.

BORROWED SATISFACTION AND VIOLATION OF PRINCIPLES OF NATURAL JUSTICE.

3.1) In ***Patel Engineering Ltd v. Dy. CIT (2022) 210 CTR 185 (Bom)(HC)*** it was held that documents of report relied upon must be furnished along with recorded reasons. It was also held that Principle of natural justice was violated as Judgements were relied upon without bringing them to notice of the assessee and giving the assessee an opportunity to distinguish or deal with those judgements. It was observed that the information received from Investigation wing was not supplied to the Assessee.

Here was a case where reassessment notice was issued after expiry of four years from the relevant assessment year on the basis of information received from DDIT. Relying on the information from DDIT is borrowed satisfaction. Allowing the petition, the Court held that there was no failure to disclose material facts. Re-assessment notice was quashed. Relied on ***First Source Solutions Ltd v. ACIT (2021) 438 ITR 139 (Bom)(HC), Sabh Infrastructure Ltd v. ACIT (2017) 398 ITR 198 (Delhi)(HC)***

IV RECORDING OF FAILURE TO DISCLOSE.

4) Though law is well settled that reopening beyond four years require department to show failure on the part of Assessee to fully and truly disclose material facts. The recorded reasons, I would say, never make out that case specifically. In many cases there is no recording of such failure also.

In ***Vodafone Idea Ltd. v. ACIT (2022)211 DTR 99/ 325 CTR 241 / 285 Taxman 381 (Bom) (HC)*** there was not even a whisper of what was not disclosed. It was held to be bad in law.

Allowing the petition, the Court held that to meet a possible contention that when some account books or other evidence has been produced there is no duty on the assessee to disclose further facts, which on due diligence, the ITO might have discovered, the legislature has put in Explanation to S. 147. The duty, however, does not extend beyond the full and truthful disclosure of all primary facts. Once all the primary facts are before the assessing authority, he requires no further assistance by way of disclosure. It is for him to decide what inferences of facts can be reasonably drawn and what legal inferences have ultimately to be drawn. It is not for somebody else-far less the

assessee to tell the assessing authority what inferences, whether of facts or law, should be drawn. The Explanation 1 to S. 147 cannot enlarge the scope of the section by casting a duty on the assessee to disclose inferences, to draw the proper inferences being the duty imposed on the ITO.

Therefore, it can be concluded that while the duty of the assessee is to disclose fully and truly all primary relevant facts, it does not extend beyond this. The entire basis for proposing to reopen, as could be seen from the reasons, was on the documents and submissions which were available before the AO, before passing of the original assessment order. In the reasons for reopening, there was not even a whisper as to what was not disclosed. Reassessment notice was quashed.

V. TAX AUDIT REPORT.

5) We had to take a call on an interesting issue as to whether consideration of tax audit report during original Asst proceedings would prevent reopening beyond four years.

In ***Acron Developers (P) Ltd v. Dy. CIT (2020) 285 Taxman 411 (Bom)(HC).*** The Assessing Officer issued the notice u/s 148 of the Act relying upon facts and figures available in audited account and tax

audit report which were already filed along with return during original assessment. It was held that where reopening is based on facts and figures in Accounts and tax audit report was on record there was no new tangible material and reopening is bad in law.

5.1) In ***E-Land Apparel Ltd v. ACIT (Bom) (HC)*** disclosure in tax audit report was considered relevant.

In the Form No. 3CD of tax audit report the assessee had mentioned that the deduction on account of interest and tax liability was claimed u/s 43B of the Act, based on the case law in ***CIT v. Diaz Electricals (1996) 222 ITR 156 (Ker) (HC)***. The assessment was completed us. 143(3) of the Act. There was no discussion in the assessment order.

The Reassessment notice was issued after the expiry of four years on the ground that the claim was incorrect which was discovered subsequent to the original assessment hence there is no change of opinion.

Allowing the petition, the Court held that the assessee has disclosed in the form 3CD, which is mandatory obligation to furnish with its return of income, the report of Auditor which was fulfilled by the assessee. The reassessment notice was quashed. Relied on ***3i***

Infotech Ltd v. ACIT (2010) 329 ITR 257/ 192 Taxman 137 (Bom)(HC), Ranbaxy Laboratories Ltd v. Dy CIT (2013) 351 ITR 23 / 30 taxmann.com 410 (Delhi)(HC)

VI. ORDER DISPOSING OBJECTIONS/NO DISCUSSION IN ASSESSMENT ORDER

6) Suddenly in many cases what was observed is that order disposing objections ran into more than 50 pages and more than 50 cases, irrespective of whether they apply to the facts of the case or not, was relied upon by the department. Also, in most cases a standard defence of the department was that the Assessment Order does not have any discussion.

In ***Hitech Corporation Ltd (Formerly Known as Hitesh Plast Ltd) v. ACIT (Bom)(HC)*** it was held that it is not necessary that the assessment order should contain reference or discussion in the assessment order. It was observed that the order of disposal of objections ran into 21 pages and referring 68 case laws without referring the issue under consideration – Faceless Assessing Officer has only wasted his time in writing unsustainable order on objections.

The assessment of petitioner was completed under section 143(3) of the Act. In the course of assessment proceedings, specific question was raised as regards taxability of the subsidy and provision for expenses. After considering the reply the Assessing Officer had accepted the contention of petitioner and partly disallowed the provision for expenses. Against the order of the Assessing Officer petitioner had preferred an appeal before the CIT (A) which was pending for disposal. After the expiry of four years the Assessing Officer issued the notice for reassessment and in the recorded reasons the Assessing Officer proposed to make addition as regards the subsidy and provision for expenses. Petitioner filed detailed reply objecting to proposed reassessment. The Assessing Officer rejected the objection without discussing any of the contention of petitioner. In the rejection order the Assessing Officer quoted 68 case laws. Allowing the petition, the Court held that, it is not necessary that the assessment order should contain reference or discussion in the assessment order. Court also observed that the order of disposal of objections ran into 21 pages and referring 68 case laws without referring the issue under consideration. The Faceless Assessing Officer has only wasted his time in writing unsustainable order on

objections. The order was quashed. (**Writ Petition(L) No 6861 of 2022 dated 9-3-2022**)

6.1) In ***Nitinkumar v. JCIT. (2022)443 ITR 411(Bom) (HC)*** it was held that objections must be disposed by passing a speaking order.

The Income-tax Officer rejected the objections filed by the assessee. Allowing the petition, the Court held that the order rejecting the objections raised by the assessee against reopening of the assessment under section 147 was in violation of the principles laid down by the court in the case of ***Tata Capital Financial Services Ltd. v. ACIT*** *(2022)443 ITR 127* ***(Bom) (HC)*** The Assessing Officer has to consider each and every objection raised by the assessee against reopening of the assessment under section 147 of the Income-tax Act, 1961 and record reasons for his conclusion. The various objections raised by the assessee are required to be answered by sufficient and cogent reasons.

VII. STRICTURES/SUGGESTIONS.

7) In ***Nirmal Bang Securities Pvt Ltd v. ACIT (Bom) (HC)*** Courts' displeasure was recorded with regard to the manner in which reasons were recorded and approvals were granted. It was observed that that the Assessing Officers will record better reasons for reopening and the Authority granting approval will also apply their mind sincerely before granting approval.

The assessment was completed under section 143(3) of the Act, asking for various details. Thereafter the assessment was reopened on the ground that a large cash transaction was received. Upon consideration of submissions no addition was made. The assessment once again was reopened after the expiry of four years. In the reasons supplied it was stated that it was on the basis of search information with regard to accommodation entry, STR, etc. in which assessee is the beneficiary. A detailed objection was filed by the assessee denying most of the alleged transactions. The order disposing of the objections was passed by the Assessing Officer. Against the disposal of objection, a writ was filed. Allowing the petition, the court held that the recorded reasons does not indicate what address was searched, from whom such information was received, what was the information etc. The

court observed that reasons recorded not indicated anywhere or by any stretch of imagination can it be held the income has escaped assessment. There was non-application of mind by the sanctioning authority. Court further observed that the Assessing Officers could record better reasons for reopening and the Authority granting the approval will also apply their mind sincerely before granting approval. Re assessment proceeding was quashed.**(WP. No. 671 of 2022 dated February 08, 2022)**

7.1) In ***Tata Capital Financial Services Limited v. ACIT (2022) 443 ITR 127 / 212 DTR 55 / 325 CTR 57 (Bom) (HC)*** we directed CBDT to issue guidelines to its officers based on the Order with clear instructions which are to be strictly followed.

The Court, *inter alia,* directed the revenue to adhere to certain guidelines to be followed for reassessment proceedings, and they are: -

(a) While communicating the reasons for re-opening the assessment, a copy of the standard form/request sent by the Assessing Officer for obtaining approval of the Superior Officer should itself be provided to the assessee. This would contain comment or endorsement of the Superior Officer with his name, designation and date. The Assessing

Officer shall not merely state the reasons in the letter addressed to the assessee.

(b) If the reasons refer to any other document or a letter or a report, such document or letter or report should be enclosed to the reasons. Such a portion as it does not bear reference to the assessee concerned could be redacted.

(c) The order disposing of the objections should deal with each objection and give proper reasons for the conclusion.

(d) A personal hearing shall be given and minimum seven working days advance notice of such personal hearing shall be granted.

(e) If the Assessing Officer is going to rely on any judgment/order of any Tribunal or Court reference/ citation of these judgments/orders shall be provided along with notice for personal hearing so that the assessee will be able to deal with/distinguish these judgments/ orders.

A copy of the Order was directed to be placed before the CBDT to issue guidelines to all its officers based on these directions with clear instructions that they shall be strictly followed.

I am informed that even under new reassessment regime this decision is relied upon. The directions it seems are not implemented

till date. The Chamber of Tax consultants may make a representation to CBDT to implement this decision.

7.2) In ***Sharvah Multitrade Company Pvt. Ltd. v. ITO (2022) 285 Taxman 397 / 209 DTR 369/324 CTR 366 (Bom (HC)*** recorded reasons stated that assessee gave accommodation entry to itself. We had directed CBDT to formulate a Scheme to train officers for recording reasons.

Allowing the writ petition the Court held that where the recorded reasons suggested that the assessee received bogus accommodation entries from itself, it was a clear case of non-application of mind in forming the recorded reasons for reopening. The High Court has suggested that the CBDT could formulate a scheme to train officers for applying their mind in recording the reasons. Further, the CBDT to advise the concerned Commissioners to not grant approval under section 151 of the Income-tax Act, 1961 in a mechanical manner. Reassessment proceeding was quashed.

7.3) In the ***Great Eastern Shipping Company Ltd v. K.C Naredi, Addl. CIT (2021) 208 DTR 273 / 440 ITR 58 (Bom)(HC)*** it was held "where the jurisdictional issue is involved the same must be strictly complied with by the authority concerned and no question of

knowledge being attributed on the basis of implication can arise. We also did not appreciate the stand of the Revenue, that the respondent-assessee had asked the reasons recorded only once and therefore, seeking to justify non -furnishing of reasons. We expect the State to act more reasonably".

VIII. AGAINST THE ASSESSEE.

8) It is very important for the professionals to advise their clients based on facts and merits involved whether a Writ petition should be filed. Many times, facts may be tilted against the assessee and any order passed or observation made by the court while rejecting the petition may affect cases when they are taken up in Appeal.

In ***Shrikant Phulchand Bhakkad (HUF) v. JCIT (2022)446 ITR 250/ 213 DTR 361/ 328 CTR 64 / 287 Taxman 440 (Bom) (HC)*** it was held that reopening was valid and the transactions entered into by the assessee were non-genuine and were carried out with a view to avoid paying tax.

Held that the issue under consideration had not been examined by the Assessing Officer while passing the assessment order. The transactions entered into by the assessee were non-genuine and were

carried out with a view to avoid paying tax. The assessee had set off the loss incurred from futures and options trading against profits booked from normal business activity. This was a text book case of tax avoidance. The notice of reassessment was valid.

8.1) In ***Farmacia Molio v. ITO (2022) 444 ITR 65/287 Taxman 11 / 216 DTR 219/ 327 CTR 71 (Bom) (HC)*** where there were cash deposits and Assessee had not filed return of income, reopening was held to be valid.

The assessee did not file a return of income. The reassessment notice was issued based on the information that the cash was deposited in the bank account of the assessee. The assessee filed a writ petition. Dismissing the petition, the Court held that the objections raised by the assessee were considered by the Assessing Officer and the Principal Commissioner for determining whether any prima facie case was made out to reopen the assessment and not for the final assessment. The court also relied upon ***New Delhi Television Ltd. v. Dy. CIT (2020) 424 ITR 607 (SC)***; ***Phool Chand Bajrang Lal v. ITO (1993) 203 ITR 456 (SC); and Central Provinces Manganese Ore Co. Ltd. v. ITO (1991) 191 ITR 662 (SC)***.

8.2) In ***Yogini Bipin Soneta v. ITO (Bom) (HC)*** **.** Reassessment notice was issued for verifying the exemption claimed in respect of penny stock on the basis of information received. The objection of the assessee was rejected by the Assessing Officer. Dismissing the writ petition, the Court held that the assessee has not offered the short-term capital gains hence the reassessment notice was held to be valid. (**W.P. No. 2817 of 2019 dated 3-1-2022**)

IX. ***Tata Communications Transformation Services v. ACIT (2022)443 ITR 49/ 212 DTR 241/ 325 CTR 49 (Bom) (HC)***and ***Rajebahadur Madhusudan Trimbak v ITO (2022)443 ITR 49/ 212 DTR 241/ 325 CTR 49 (Bom)(HC)***

The Hon'ble Bombay High Court agreeing with the views taken by the Allahabad High Court, Rajasthan High Court, Delhi High Court and Madras High Court further held that there is no savings clause for applicability of erstwhile Sections 147 to 151 of the Act, and the explanations under the impugned notifications does not cover section 147 of the Act, therefore the procedure under section 148A of the Act should be followed, and the Relaxation Act (TOLA) does not operate for AY. 2015-16 and subsequent years. Notice issued under section

148 of the Act was quashed. **(WP NO.1334 OF 2021 (Bom)(HC) dated February 24, 2022)**

Followed High Court of Allahabad (Division Bench) in ***Ashok Kumar Agarwal v. UOI (2021) 131 t****axmann.com* ***22 (Allahabad)*** , High Court of Delhi (Division Bench) in ***Mon Mohan Kohli v. ACIT & Anr. (2021) 133*** *taxmann.com* ***166 (Delhi)***, High Court of Rajasthan (Single Judge) in ***Bpip Infra (P.) Ltd. v. ITO (2021) 133*** *taxmann.com* ***48 (Rajasthan)***, and High Court of Calcutta in ***Bagaria Properties and Investment Pvt. Ltd. and Anr. V. UOI and Ors. W.P.O. No.244 of 2021 dated January 17, 2022***and Division Bench of Rajasthan High Court in ***Sudesh Taneja v. ITO*** ***D.B. Civil Writ Petition No.969 of 2022 pronounced on January 27, 2022***and High Court of Madras(Division Bench) in ***Vellore Institute of Technology V/s. Central Board of Direct Taxes and Anr. Writ Petition No.15019 of 2021 dated February 04, 2022***.

Dissented from the Chhattisgarh High Court in ***Palak Khatuja v. UOI 2021 (438) ITR 622 (Chatt) (HC)***

SANCTION - 151

1) In ***JM Financial and Investment Consultancy Services Pvt. Ltd. v. ACIT (Bom)(HC)*** it was held that for AY 2015-2016 if Notice u/s 148 is issued beyond four years then sanction of Principal CIT is to be obtained and TOLA will not be applicable. On this point, I am told, our decision was the first in India. I am told that in some cases for AY 15-16 sanction of Addl/JCIT is taken and in some cases sanction of Pr. CIT is taken.

The assessee was in the business of investment and financing activities. For the Assessment year 2015-16 the assessment under section 143(3) of the Act was completed on 12-12-2017. The notice dt. 31-3- 2021u/s 148 of the Act was received by the assessee. Various objections raised by the assessee were all rejected. The assessee challenged the order disposing the objections on various grounds in a writ petition before the High Court. One of the grounds of challenge was the assessment of the assessee was reopened after expiry of four years from the relevant assessment year after obtaining the approval from the Additional Commissioner instead of Principal Commissioner. The revenue contended that in view of the Taxation and other Laws (Relaxation of certain Provisions Act, 2020 (Relaxation Act) or TOLA as many refer, limitation, inter alia, under provisions of section 151

(1) and section 151 (2) which were originally expiring on 31st March 2020 stood extended to 31st March 2021. According to the Income tax officer the assessment year 2015-16 which falls under the category within four years as on 31st March 2020, the statutory approval for issuance of notice under section 148 of the Act for the Assessment year 2015 -16 may be given by the Range Head as per the said provisions. Allowing the petition, the Court held that since four years had expired from the end of the relevant assessment year, as provided under section 151(1) of the Act, it is only the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner who could have accorded the approval and not the additional Commissioner of Income tax. Accordingly, the notice issued under section 148 of the Act with the approval of Additional Commissioner was quashed **(WP No. 10050 of 2022 dated 4-4-2022).**

2) In many cases we found that recorded reasons had factual errors which could be detected from the records. What surprised us was that the Sanctioning Authority was also giving sanctions without noticing the factual errors which went to the root of the matter.

In ***Sagar Bullion Pvt Ltd v. UOI (2022) 324 ITR 146/ 209 DTR 281 (Bom) (HC)***reopening was quashed as Approval was granted even though recorded reasons had factual errors.

Here the assessment was completed u/s 143(3) of the Act. The reassessment notice was issued after expiry of four years. In the recorded reasons it was stated that the assessment was completed u/s 143(1), whereas the assessment was u/s 143(3). Assessee is in the business of jewellery whereas in the recorded reason it was stated failure to disclose salary. The reassessment notice was quashed on the ground that sanction was given mechanically without application of mind.

DIRECT TAX VIVAD SE VISHWAS SCHEME (DTVSV)

RELIANCE INDUSTRIES Vs. CHIEF COMMISSIONER OF INCOME TAX (2021) 133 taxmann.com 302 (Bombay)

Petitioner was desirous of availing the benefit of DTVSV Act with respect to certain pending income tax litigations and filed an application under the DTVSV Act.

The application was rejected in view of the provisions of section 9(c) as prosecution was instituted against petitioner under the Prevention of Corruption Act, 1988 (PC Act).

Petitioner challenged the rejection on the ground that out of the two criminal cases pending against petitioner, in the first proceeding the prosecution had not been instituted as yet since only FIR had been registered and the matter had not proceeded further and in the second proceeding where chargesheet was filed and cognisance was taken, even if, convicted, petitioner would be convicted for offences under the Indian Penal Code, 1860 and not for offences punishable under the Prevention of Corruption Act, 1988.

IT WAS HELD THAT :

The purpose and object of DTVSV Act is that the DTVSV Act has been formulated for resolution of disputed tax and for matters connected therewith or incidental thereto. The DTVSV Act allows the eligible assessees to settle pending disputes on payment of the specified amount based on the percentage of the disputed tax that would otherwise be spent on long-drawn and vexatious litigation process.

The court held that benefits granted by the DTVSV Act are by legislative policy not available to certain persons like those identified in section 9(c) of the DTVSV Act. A perusal of section 9(c) shows that Legislature, in its wisdom, has with a definite purpose, specifically carved out and provided the list of persons to whom the DTVSV Act shall not apply and cases in which the benefits of the DTVSV Act would not be available. The purpose and intent behind the said provision is clear and unambiguous that the DTVSV Act would only apply to monies acquired by legal means and not to monies generated from socio-economic offences. The purpose and intent of section 9(c) of the DTVSV Act is to ensure that the DTVSV Act which is a piece of beneficial legislation, is not utilised for regularising or seeking benefits qua tainted monies or monies which fall under the shadow of a socio-economic offence. There is a shadow of illegality on the money sought to be offered to tax. Thus, petitioner was held not eligible under the DTVSV Act.

The said judgment was affirmed by the Hon'ble Apex Court on 1st April 2022 as reported in ***[2022] 138 taxmann.com 198 (SC)***.

AUTHORITY OF ADVANCE RULING (AAR)

Abu Dhabi Investment Authority vs. Authority for Advance Ruling, (Income Tax) [2021] 132 taxmann.com 18 (Bombay)

The assessee was a public institution owned by and subject to the supervision of the Emirate of Abu Dhabi. It was a resident of UAE for the purposes of article 4(2)(d) of the India-UAE DTAA and, accordingly, entitled to invoke the beneficial provisions of the India-UAE DTAA for the purpose of determining its tax liability in India.

The Deed of Settlement of Green Maiden A 2013 Trust formed by ADIA provided that the capital contributions made or proposed to be made by ADIA to the Trust would be a revocable transfer. Pursuant to the Deed of Settlement, assessee made a capital commitment of USD 200 million in the trust in its capacity as settlor. According to assessee, the income derived from making investment and debt securities in India was not assessable to tax in India having regard to the provisions article 24 of the India-UAE DTAA read with sections 61 and 161.

AAR denied assessee the benefit of India-UAE DTAA read with relevant provisions of the Act in respect of the income accruing on the

investments made or proposed to be made by Green Maiden A 2013 Trust.

IT WAS HELD THAT :

Section 61 provides that any income arising to any person by virtue of revocable transfer shall be chargeable to tax as the income of the transferor. The Deed of Settlement shows that there is a revocable transfer by settlor, i.e., assessee to trustee ETL and as such any income arising to the trustee should be chargeable in the hands of assessee. Section 61 is plain and simple inasmuch as, it provides for income arising to any person by virtue of a revocable transfer of assets shall be chargeable to income tax as the income of the transferor and shall be included in his total income. Further section 61 is not dependent on section 63.

A transfer can be revocable transfer on its own merits without reference to section 63. Clause (a) of section 63 merely extends the provisions of section 61 to cases which might not otherwise be covered by section 61 by extending the meaning of word revocable. Clause (b) in section 63 extends the meaning of the word transfer in section 61 to cases which might not otherwise amount to transfer.

The Deed of Settlement whereby the trust was set up, contained specific clauses which established the revocable nature of the trust. As the assessee has settled the trust on the terms mentioned in the Deed of Settlement, the contribution made by it to the trust would be a transfer as defined in section 63. As section 63 does not anywhere specify that a trust covered by it must necessarily be a trust falling under the Indian Trust Act, 1882 and as per section 63(b), any settlement or trust is included within the meaning of 'transfer' and section 63(b) does not provide that the trust described therein needs to be an Indian Trust, the provisions of sections 61 to 63 of the Act are applicable to the case at hand.

As the term 'trust' is not defined either in section 63 or section 2, 'trust' would clearly be a trust as one understands the term in its common parlance. Even if one has to have recourse to the definition of the term 'trust' in section 3 of the Indian Trust Act, 1882, i.e., an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owners, or declared and accepted by him, for the benefit of another, or of another and the owner, there is nothing in the language of section 61 or 63 that restricts its applicability only to trusts settled in India and accordingly,

AAR was not justified in concluding that a Foreign Trust will not be covered under the said provisions. A Foreign Trust can be treated as a trust under the Act also appears from the income tax return forms prescribed under the Act wherein Schedule FA, Para F, in form ITR-5, require the disclosure of 'details of trusts' created under the laws of a country outside India, in which one is trustee, beneficiary or settlor. There are similar requirements in Forms ITR-2, ITR-6 and ITR-7. Therefore, the Act presupposes that a Foreign Trust is a trust for the purposes of the Act.

Even if, the trust is based out of Jersey and the trust is settled in Jersey, ADIA being the settlor and sole beneficiary of the trust and resident of UAE as per article 24 of the India-UAE DTAA, the income which arises to it by virtue of investment in Indian Portfolio companies will be governed by the beneficial provisions of the India-UAE DTAA. To take it further, even if the trust structure were to be discarded, then it must necessarily follow that the investment must be regarded as having been made by assessee and hence the income would arise in the hands of assessee which income would not be taxable in India by virtue of provisions of India-UAE DTAA.

Court also noted that there was no attempt whatsoever to reduce the tax liability by using the trust structure. When the provisions of the Trust Deed provided that assessee has right to reassume power over the entire income arising on the investments made by the trust in the portfolio companies, the entire income arising there from has to be in terms of section 61 to be assessed in the hands of assessee. This would mean the exemption under article 24 of India-UAE DTAA would be attracted.

Even if for a moment it is said that for any reason the provisions of section 61 are not applicable, then also the trustee can only be assessed in a representative capacity and, accordingly the provisions of section 160(i)(iv) will be applicable. Therefore, even if the income is taxed in the hands of the trustee in terms of section 161(1), it will be taxed in the 'like manner and to the same extent' as the beneficiary. Once again, assessee is the sole beneficiary of the trust, the income assessed in the hands of the trustee will take colour of that of assessee's income and thereby, the benefit of India-UAE DTAA must be granted.

As there is no bar to the settlor and beneficiary being the same person and in view of the judgment in Bhavna Nalinkant Nanavati v.

CGT [2002] 255 ITR 529 (Guj.) where the court has interpreted section 3 of the Indian Trust Act, 1882 as creating a fiduciary relationship between the trustee and the beneficiary, where the ownership of the trust property has to be for the benefit of another person which can include the settlor himself, if one reads sections 61 and 63, it is quite clear that section 61 is independent of section 63 and a transfer can be a revocable transfer on its own merits and is not restricted only to trusts. A 'settlement' or a 'trust' are instances of what amount to transfer. So long as the settlor has a right to reassume power over the assets settled, the same would amount to revocable transfer.

In the facts of that case assessee could reassume the power and hence the contribution to the trust was a revocable transfer thereby making the income arising to the trust taxable in the hands of assessee which was exempt under article 24 of India-UAE DTAA.

In the circumstances, the ruling of AAR was quashed. The income that accused to the trust would not be chargeable to tax in India either by virtue of application of section 61 read with section 63 or on an application of section 161 conjointly with the provisions of article 24 of the India- UAE DTAA. Since the Ruling of the AAR, was

quashed, steps taken in furtherance of the Ruling order passed were also quashed and set aside.

FACELESS ASSESSMENT

With the number of Writ Petitions challenging Faceless Assessment Orders increasing at certain point of time, I will be candid, it was felt, Was the department deliberately trying to scuttle the faceless system? Hence, we were constrained to pass some tough orders.

REPLY NOT CONSIDERED.

1) In ***Mantra Industries Ltd v. NFAC (2021) 283 Taxman 459/ 323 CTR 249/ 207 DTR 161 (Bom.) (HC)*** Petitioner challenged assessment order passed under section 144 of the Act along with notice of demand issued under section 156 and penalty proceedings initiated under section 270A of the Act. Allowing the petition, the Court held that the assessment order passed by revenue was an exact reproduction of draft assessment order without considering replies filed by petitioner and petitioner's request for personal hearing. We set aside the assessment order. The Court held that the assessment order was passed without application of mind and was not in accordance with procedure laid down under section 144B (9) of the

Act. The Court also observed that, if such orders are continued to be passed, substantial costs will be imposed on concerned Assessing Officer which would be recovered from his/her salary and also department will be directed to place such judicial orders in career records of such Assessing Officer.

I believe Notice is issued in SLP filed by ***Revenue, NFAC v. Mantra Ind. Ltd. (2022) 287 Taxman 219/114 CCH 252 (SC)]***

NO PERSONAL HEARING

2) In ***Milestone Brandcom Pvt. Ltd. v NFAC (2022)441 ITR 470 (Bom)(HC)*** we imposed cost of Rs 10,000 on the AO to be paid to P.M. Care fund for not granting personal hearing. We also ensured that during the set-aside proceedings the AO should be different as we suspected that same AO would again pass the same order and he would not take a dispassionate view.

The Court held that there had been total non-application of mind and gross abuse of process by respondents. No personal hearing had been granted and the reply dated May 12, 2021 had also not been considered. The assessment order and consequential notices issued

under sections 156 and 270A of the Act were quashed and set aside. The matter was remanded for *de novo* consideration.

AFFIDAVITS OF DEPARTMENT NOT TRUTHFUL.

3) We also noted in ***Zeus Housing Company v. UOI (2022) 441 ITR 666(Bom)(HC)*** the fact that the reply filed by the Department was not factually correct. The assessment order was passed on the ground that the assessee did not respond to notice and draft assessment order whereas the fact was that Assessee had filed replies. A print-out of the e-proceedings response acknowledgment from the Department was annexed which confirmed that the reply to the notice had been submitted on April 27, 2021. Therefore, it was obvious that respondent No.3 had not considered the reply filed by the assessee before passing the assessment order. The assessment order and the consequent demand notice issued under section 156 were quashed and set aside. Court also observed that Officers are not truthful in filing their affidavit and Directed to circulate copy of this order to Commissioner of income -tax (Judicial) Mumbai and also to all Commissioner (Judicial) in the Country and observed that the Department to be truthful and accept their mistakes instead of filing false affidavit.

SCN FOR PERJURY-ASSESSMENT ORDER PASSED BEFORE EXPIRY OF TIME LIMIT.

4) Another issue which we came across in several Petitions was that the FAO was not granting sufficient time to respond. It could be one day or even less than that. If it is three days then there would be weekends. In some cases, Assessment order was passed even before the expiry of time given to respond. In ***Mateen Pyarali Dholakia v. UOI (2021) The Chamber's Journal – October – P. 105 (Bom)*** **(HC)** Assessment order was passed even before the time given to respond. We were constrained to issue show cause notice for perjury as the affidavit did not reflect the true facts and had been prepared in a very lackadaisical manner without even confirming the veracity of the statement made on oath. Further cost of Rs 10,000/- was imposed.

The assessment order was passed without considering the reply of the assessee. In the affidavit in reply the revenue stated that no reply was received before completion of the assessment proceedings. Court observed that the time allotted in the show cause notice was up to 23.59 Hr. on April, 12 2021 whereas the assessee filed the response on that date at 0820 Hr. The Assessment order was signed at 02:53 Hr., but the affidavit by the official mentioned the time as 0317 Hr. The

court observed that the affidavit did not reflect the true facts and had been prepared in a very lackadaisical manner without confirming the veracity of the statement though made on oath. The Court observed that the assessment order was passed even before the response time had expired and without checking whether any reply has been filed. The Court quashed and set aside the order and further ordered payment of Cost of Rs 10,000 to be paid to the PM Cares fund. Notice was issued to show cause as to why perjury proceedings should not be initiated for making incorrect statements on oath, particularly without verifying the documents of the Department annexed to the petition. ***(WP No. 1286 of 2021 dt. 17-9-2021)***

5) In ***Uday Desai HUF v. NFAC (2021) 283 Taxman 570 (Bom.) (HC)*** the time limit given to respond to show cause notice was only one day. The Assessment Order was set-aside.

The Assessing Officer issued a notice-cum-draft assessment order proposing certain additions and only one day was granted to respond to same. Assessee sought adjournment on same day on ground that time granted was too short to file a response to said notice. The Assessing Officer passed a final assessment order in terms

of draft assessment order even before time of adjournment expired. The Court held that time granted of only one day in show-cause notice certainly could not be accepted as sufficient time given to assessee to respond. Assessment order passed by Assessing Officer without providing assessee due opportunity to file his submissions to notice-cum-draft assessment order was in violation of principles of natural justice and, same was to be set aside. The matter was remanded to the Assessing Officer for *de novo* consideration.

JUDICIAL DISCIPLINE – ITAT

1) In ***Omega Investments and Properties Ltd v. CIT (Bom)(HC)*** we held that Tribunal cannot differ from earlier order of Tribunal in assessee's own case and follow the order of Tribunal in the case of another assessee. The matter has to be referred to larger Bench in case the Tribunaldesires to differ from earlier order of the Tribunal.

Hence, the original assessment of appellant was completed u/s 143(3) of the Act wherein the deduction u/s 80 IB (10) was allowed. For the Assessment year 2009-10 the Assessing Officer disallowed the claim on the ground that the approval was granted on 7-10-2002 hence the Assessee was not eligible for deduction u/s 80IB (10) of the Act. CIT(A) allowed the claim which was affirmed by the Tribunal and

appeal of the revenue was dismissed by the High Court. While deciding the appeal for the Assessment year 2007 -08 the CIT (A)) following the order for the Assessment year 2009 -10 decided the issue on merit as well as on reopening of assessment in favour of the assessee. Revenue filed an appeal before the Tribunal. Tribunal without following the order of the Tribunal for the Assessment year 2009-10 followed the order of the Tribunal in the case of ***Bhavya Construction v. ACIT (2017 77 taxmann.com 66 (Mum) (Trib)*** and allowed the appeal of the revenue. The Assessee filed Miscellaneous petition which was dismissed. The assessee filed an appeal as well as writ before the High Court. Allowing the petition, the Court held that the Tribunal cannot differ from earlier order of Tribunal in assessee's own case and follow order of Tribunal in another assessee. In case the Tribunal desires to differ from earlier order the matter has to be referred to a larger Bench. The Court also held that the Tribunal should have considered the Order of the High court which was placed on record through rectification application. The order of the Tribunal was quashed and set aside with the direction that the Tribunal should decide the appeal afresh on its own merits in the light of observations

made in the order. ***(ITA No. 127 of 2021, WP No. 1217 of 2020 dated 7-6-2022)***

PRINCIPAL COMMISSIONER OF INCOME TAX.

2) It is seen that the Appellate authorities and quasi-judicial officers do not follow decision of higher Appellate authorities on the ground that those orders are challenged in further Appeal.

In ***Karanja Terminal and Logistic Pvt. Ltd. v. PCIT (2022) 442 ITR 400/ 211 DTR 161/ 325 CTR 392/ 287 Taxman 410(Bom) (HC)***the Commissioner u/s 264 rejected the petition on the grounds that though the Tribunal had deleted the addition made by the Assessing Officer on account of interest earned from fixed deposit by the assessee for the assessment years 2012-13 to 2015-16 the Department had not accepted the decision of the Tribunal and had filed an appeal before the High Court and that various courts had held that interest earned under similar circumstances and facts to be of revenue in nature and liable to tax. The Court held that unless there was a stay by a competent court of the operation of the order of the Tribunal, the Principal Commissioner should give effect to the order and pass an order in accordance with law. The order of the Tribunal or the operation of the order had not been suspended by any court. The

Principal Commissioner should grant a personal hearing to the assessee and provide an opportunity to rely on or distinguish any judgments or order passed by any court or Tribunal and consider the assessee's submissions in the assessment order. The order rejecting the assessee's petition under section 264 read with section 260 was set aside and the matter was remanded for *de novo* consideration. The court relied upon ***UOI v. Kamalakshi Finance Corporation Ltd. [1992] Supp (1) SCC 443*** (AY.2012-13 to 2015-16)

REFUNDS

We were aghast considering the plight of Assessee whether big or small in obtaining legitimate refunds from the Department. They are made to run from pillar to post and also do rigorous follow up. Hence, we had decided to be render complete justice and expedite the legitimate refunds due to the Assessee. We felt the inaction on the part of Revenue not giving admitted refunds was totally wrong and illegal.

DEMANDS QUASHED.

In ***Vodafone Idea Ltd v. Dy. CIT (2021) 126 taxmann.com 184 (Bom) (HC)*** it was held that no part of the refund can be withheld in relation to the income -tax demands which are ether quashed by appellate authority or Tribunal or stayed.

Notice of motion was taken by the department seeking modification or recall of order dated 4-9 -2019 passed by the Honourable Court in respect of non -releasing of refund of Rs 43.25 crores. Dismissing the notice of motion, the Court held that no part of the refund can be withheld in relation to the income tax demands which are ether quashed by appellate authority or Tribunal or stayed.

SLP of revenue, I believe, is dismissed on the ground of delay. ***Dy.CIT v. Vodafone Idea Ltd (2021) 279 Taxman 446 (SC).***

In ***Tata Communications Ltd v. UOI (2021) 201 DTR 185/320 CTR 683 (Bom.) (HC)***Petitioner filed the return of income claiming the refund of tax deducted at source. Petitioner did not receive any intimation under section 143(1) of the Act or refund from respondents. It was compelled to file writ petition seeking the reliefs for refund of tax deducted at source as per return of income. The court directed the revenue to complete the processing of the refund claim of the petitioner and thereafter, release the due refund amount

to the petitioner along with applicable interest in accordance with law within a period of two weeks from the date of receipt of a copy of this order.

ADJUSTMENT AGAINST REFUND.

In ***Jet Privilege (P.) Ltd v. Dy.CIT (2021) 205 DTR 145/ 322 CTR 684 / 131 taxmann.com 119 (Bom) (HC)*** it was held as per section 245, Assessing Officer may in lieu of payment of refund, set off amount to be refunded or any part of that amount against sum, if any, remaining payable under Act by assessee to whom refund is due only after giving an intimation in writing to assessee of action that he proposes to take under this section. Though the provision is clear, unfortunately in several cases Assessee were made to approach the High court.

Allowing the petition, the Court held that adjustment of refund against demands for assessment years 2015-16 and 2016-17 without following the mandatory prior requirement of intimation under section 245 before making adjustment and fact that there was stay for recovery of outstanding demand for said assessment years 2015-16 and 2016-17, impugned adjustment of refund was unjustified.

Followed ***Suresh B. Jain v. A.N. Shaikh, ITO (1987) 165 ITR 151 (Bom) (HC).***

In ***Bharat Petroleum Corporation Ltd. v. ADIT (2022) 284 Taxman 647 (Bom.) (HC)*** where wrongful adjustment was made, Department was directed to grant refund with interest.

The assessee had paid the demand of 20% of tax in dispute. The Assessing Officer adjusted the refund without giving mandatory intimation under section 245 of the Act. Allowing the writ petition the Court held that the Assessing Officer shall grant stay of demand where outstanding demand is disputed on petitioner paying 20% of disputed demand. Hence petitioner cannot be treated as deemed to be an assessee-in-default for recovery provisions. Court also held that where petitioner was entitled to refund from revenue and revenue sought to adjust this refund amount against demand that it had against petitioner, however, no intimation under section 245 of the Act was given before making adjustment, impugned adjustment of refund was unjustified. Hence, petitioner would be entitled to refund of entire amount together with accumulated interest, if any, in accordance with law.

100% Stay.

In ***Dilip Kumar P. Chheda v. ITO (2021) 435 ITR 101/ 202 DTR 33/ 278 Taxman 106 (Bom) (HC)*** where Assessment Order was passed without providing cross examination of third party, the court granted 100% stay as Assessment order was passed in violation of principles of natural justice.During pendency of said appeal, assessee filed an application under section 220(6) for stay of demand before ITO who granted stay subject to payment of 20% of outstanding demand. The assessee filed writ petition and contended that total demand was to be kept in abeyance till disposal of appeal by Commissioner (Appeals) as the Assessing Officer made the addition on the basis of third party and he failed to appear for cross examination and also due to financial hardship. Allowing the petition, the Court held that on facts, entire demand was to be kept in abeyance till disposal of appeal on merits by Commissioner (Appeals).

TAX AUDIT

In ***Perizad Zorabian Irani v. PCIT (2022) 287 Taxman 406 /113 CCH 339 (Bom)(HC)*** Court was faced with the issue whether remuneration and interest from partnership firm will be gross receipt or turnover for purposes of Tax Audit. There was no direct precedent.

Petitioner, an actress, had shown her professional income and also remuneration from two partnership firms in her return of income. The professional income being less than prescribed limit petitioner had not obtained the tax Audit report. The Assessing Officer held that though the professional income was less than the prescribed limit for the Tax audit, the remuneration received from two partnership firms being more than the prescribed limit of gross receipts of Rs. 1 crore, petitioner ought to have obtained tax audit report. As the tax audit report was not obtained the return was treated as invalid. Petitioner filed revision application before the Commissioner u/s 264 of the Act. Commissioner also affirmed the order of the Assessing Officer. Petitioner filed writ petition before the High Court challenging the treating the return as invalid. Hon'ble Court referred to the decision of the Hon'ble Madras High Court in the case of ***Anandkumar v. ACIT(2021) 430 ITR 391 (Mad) (HC)*** where the Assessing Officer held that the assessee did not have any turnover and receipts on account of remuneration and interest from the firms cannot be construed as gross receipts mentioned in Section 44AD of the Act. The case was decided in favour of the Revenue. We at Bombay High Court held that the remuneration and interest from the partnership firm

cannot be treated as gross receipt of the assessee. The order of Commissioner affirming the order of the Assessing Officer treating the return as invalid was quashed and set aside.It was held that the remuneration and interest from the partnership firm cannot be treated as gross receipt of the assessee.

CONCLUSIONS

On account of my experience on the tax bench, i.e., both Direct Tax and Indirect tax, I truly appreciate the support which the bench receives from the representatives of Assessee side as well as department side in resolving complex issues of law. However, based on my experience, to reduce litigation and pendency and consequently saving costs and for generation of revenue at the same time, I would like to give some suggestions for the Income Tax Department as well as the Assessee.

As far as Income Tax Department is concerned I have following suggestions:

(i) Not to postpone the case till the end of the limitation period. What is observed is that after initial notice is issued and replies are received, the show cause notice for making addition is issued after a gap of few months usually towards the end of the limitation period.

Thus, AO in most cases is unable to give sufficient period to comply with the show cause notice. This results in gross violation of principles of natural justice. A very large number of writ petitions are filed in the High Court due to this reason which can be avoided.

(ii) Large number of writ petitions arise, since in the faceless regime, there are occasions when no personal hearing takes place due to technical issues and other reasons also. It would help reduce litigation on this point if the FAO sends an email for personal hearing even where a request is not made. Ultimately personal hearing enables even the FAO to understand the issue better.

Many times, there are several show cause notices and it is possible that Assessee has opted for personal hearing against one show cause notice and omitted, due to oversight, to make the same request for another show cause notice. It is better the department takes a pro-active approach in granting personal hearing.

(iii) It is seen that the Department Counsels are not given proper instructions on facts, worse still on a timely manner. There is a general apathy. There is lot of delay in receiving comments from the AO for preparation of replies to the Writ Petition. This results into multiple hearing in a case and rise in litigation cost. Department should create

a robust system working on real time basis for tax litigation particularly with references to cases in the High court.

(iv) Training of Income tax officers with a view to have human and judicious approach whereby principles of natural justice are duly complied with will go a long way in mitigation of litigation.

(v) There should be better communication between JAO and FAO. In many cases it is seen that Applications are taken out due to delay or non-communication of High court orders by JAO to FAO. When I was on the bench we started ensuring that two or three department officers who used to sit the Court Room were made responsible for same. However, the department must create its own system.

(vi) When we were on the bench, many matters remained unattended as the AOR was no longer on the Panel. These matters would keep on getting adjourned again and again. No substitute is appointed promptly. There must be a robust system in place where there are law officers who monitor cases daily, a list of cases assigned to each advocate is maintained, status of each case is noted at the end of each hearing and when the panel changes, there is a smooth transition.

In ***PCIT v. Emarsso Exports Private Limited (Bom)(HC)*** we directed the Department to take a review of all such matters and make alternative arrangements in advance. Further, CIT (Judicial) was directed to take necessary steps and complete the exercise within two weeks starting June 15, 2022.

However, we are told that this issue is still unresolved.

As regards representation from Assessee side is concerned some of my suggestions are as under:

(i) Junior lawyers must be given some training by their seniors in court craft and advocacy. They should be given some training on how to address the court etc. This Association can have some workshop in this regard.

(ii) Junior lawyers must be given more opportunity to appear in court.

(iii) Advocates must explain to the clients the scope of Article 226 before their clients decide to file Writ petitions particularly as alternate remedy exists in most cases under Income tax act.

Thank you.

Source and Acknowledgements:

The Chamber of Tax Consultants, Mumbai.