

Full Court farewell function at Bengaluru ITAT in honour of Honourable Vice-President Shri N.V. Vasudevan on 28th April, 2023 on the occasion of his superannuation.

Honourable Vice-President Shri N.V. Vasudevan is one of the finest member of the ITAT will be attaining his superannuation on 28th April, 2023. We wish him all the Best.

Some of the important case laws delivered by Honourable Vice-President Shri N.V. Vasudevan are as follows :

S 2(14)(iii): Capital asset-Agricultural land-Tree standing on an agricultural land is transferred along with land as its integral part in one transaction, said land would be regarded as 'agricultural land' and not a separate capital asset. Entitled to exemption.

ITO v. G.S. Lekha (Smt.) (2019) 177 ITD 1 / 200 TTJ 785/ 180 DTR 249 (TM) (Cochin) (Trib.)

S. 28(va) : Business income - Cash or kind - Capital or revenue receipt - Non-compete fee - Relinquishment of right to manufacture - Capital receipt - Law before April 1, 2003 - A.Y. prior to 2003-04 .

ACIT v. B. V. Raju (Dr.) (2012) 135 ITD 1 / 67 DTR 361 / 14 ITR 387 / 144 TTJ 537 (SB)(Hyd.)(Trib.)

S.37(1) : Business expenditure – Commencement – Setting up of business – Since one of the purposes of setting up Nigam was to supply water through a canal and assessee had supplied water through its main canal, in peculiar facts of the case it could be said that business of assessee had been set up during previous year relevant to the assessment year under consideration. All revenue expenditure after that date had to be allowed as a deduction

Sardar Sarovar Narmada Nigam Ltd v. ACIT (2012) 138 ITD 203 (SB)(Ahd)(Trib)

Affirmed by High Court, **CIT v. Sardar Sarovar Narmada Nigam Ltd. (2013) 218 Taxman 248 / (2014) 364 ITR 477 (Guj.)(HC)**

S. 40(a)(ia): Amounts not deductible - Deduction at source - The assessee an individual engaged in the production of cinematographic films is not liable to deduct tax at source under section 194C on payment made to directors of the films prior to 1st April, 2007, hence no disallowance can be made

Nitin M. Panchamiya v. Addl. CIT [2012] 148 TTJ 96 (Mum)(Trib.)

S.43B: Deductions on actual payment - The service provider is never allowed a deduction on account of service tax which is collected by it on behalf of the Government and is paid to the Government account, hence 43B is not applicable to Service Tax.

Pharma Search v. ACIT [2012] 53 SOT 1 (Mum)(Trib.)

S.54F: Capital gains- Investment in a residential house - The assessee invested the amount of capital gain on the sale of shares in the purchase of the flat before the expiry of the statutory period, the benefit of deduction under section 54F could not be denied to the assessee on the ground that the building was under construction stage and the assessee had chosen to pay entire advance.

ACIT v. Sudhakar Ram [2012] 49 SOT 90 (Mum)(Trib.)

S. 70: Set off of loss - One source against income from another source - Same head of income- Lower authorities were not justified in setting-off off a long-term capital loss against long-term capital gain, which was exempted under section 10(38). The long-term capital loss suffered prior to 1st October, 2004 cannot be set off against capital gain exemption under section 10(38) but has to be allowed to be carried forward.

G.K. Ramamurthy v. Jt. CIT (2010) 129 TTJ 361/ 37 SOT 345 36 DTR 257 / 2 ITR 139 (Mum)(Trib.)

S. 90: Double taxation relief - Deduction of tax at source - Commission — Payment to non-resident agents of artists in foreign countries in connection with Indian tours. No material to infer that payment is actually part of fees paid to performers. The agent is not an artiste or entertainer. The payment is not covered by Article 18 of the Indo -UK DTAA. The payment is covered by Article 7, it is not taxable in India as the payee agent has no Permanent Establishment in India and it rendered services outside India. The assessee was not liable to deduct tax at source.

ADIT (I) v Wizcraft International Entertainment (P.) Ltd. [2011] 135 TTJ 647/ 43 SOT 470/ 50 DTR 1 / 8 ITR 334 (Mum)(Trib.)

S. 92: Transfer pricing - Arm's length price - The transaction of granting an interest-free loan by the assessee to its non-resident AE comes within the ambit of international transaction.

Tata Autocomp Systems Ltd. v. ACIT [2012] 149 TTJ 233 (Mum)(Trib.)

S. 143 (3) Assessment -The assessment order should be signed by an Assessing Officer and in absence of such signature order of assessment would be treated as invalid.

Vijay Corporation v. ITO [2012] 50 SOT 33 (URO) (Mum) (Trib)

S. 143(2): Assessment – Notice – Proviso – Non-service of notice – Reassessment- Proviso to section 143(2) is applicable in case of a return filed in response to notice under section 148 also and in such a case, no assessment can be made if notice under section 143(2) is not served within time prescribed by proviso to section 143(2). Order is bad in law

Raj Kumar Chawla v. ITO (2005) 94 ITD 1 / 92 TTJ 1245 / 1 SOT 934 (SB)(Delhi)(Trib.)

S.143(3) : Assessment – Method of accounting – Chargeability of income – Interpretation – Taxation principles are enshrined in the Legislature. The power to legislate lies with Parliament. Accounting Standards or Guidance Notes or Guidelines, by whatever name called, issued by any autonomous or even statutory bodies including the Institute of Chartered Accountants of India, or for that matter, the SEBI are meant only to prescribe the way in which the transactions should be recorded in books or reflected in the annual accounts. These guidelines do not have the force of an Act of Parliament.

Biocon Ltd. v. DCIT (LTU) (2013) 25 ITR 602 / 144 ITD 21 / 155 TTJ 649 / 90 DTR 289 (SB)(Bang.)(Trib.)

Affirmed in **CIT v. Biocon Ltd (2021)430 ITR 151/ 276 Taxman 1 / 121 taxmann.com 351 (Karn)(HC)**

S. 144C: Reference to dispute resolution panel -Assessment - One month from the end of the month in which directions of dispute resolution panel received by the assessing officer. The order passed beyond that date — non est in law.

Kontoor Brands India P. Ltd. (formerly known as VF Brands India P. Ltd.) v. ACIT [2022] 100 ITR (SN) 73 (Bang)(Trib.)

S. 145: Method of accounting – Notional premium - Capital gains - Preference shares of ECP which were redeemable at a premium at end of 20 years - Assessee claimed that premium on said shares would be offered to tax as a capital gain at the time of redemption. The Assessing Officer was of the view that dividend payments to the preference shareholder were fixed from the beginning and since the assessee maintained its books of account on a mercantile basis, the taxability of the dividend did not depend upon receipt of premium or otherwise. Further, as a fixed rate ensured dividends due to investors during the year, its payment might be uncertain, however, income needs to be taxed on a due basis. AO accordingly treated cumulative preference shares as akin to debt instruments and dividends as equal to interest Held that It was only when the assessee had a right to receive periodic payments it could be said that income accrued to the assessee under a mercantile system of accounting, however, in case of preference shares such

an inference could not be drawn and repayment of the face value of preference shares, as well as premium on redemption, was uncertain, therefore, the additions made by Assessing Officer on account of notional premium receivable on preference shares as income of assessee during the year could not be sustained.

Enzen Global Solutions (P.) Ltd. v. ITO (2022) 144 Taxmann.com 2 (Bang)(Trib)

S. 163 : Representative assesseees – Agent - At the stage of treating a person in India as an agent of non-resident, liability to tax of non-resident need not be established, and only any of the parameters laid down in s. 163(1)(a) to (d) is to be satisfied.

ADIT (IT) v. Jet Airways (India) (P.) Ltd. (2012) 148 TTJ 298 (Mum)(Trib.)