

Hon'ble Justice Mr. Ujjal Bhuyan, Judge Supreme Court of India

Tax Judge elevated to Supreme Court – We wish the lordship all the best.



Hon'ble Justice Mr. Ujjal Bhuyan sworn in as a Judge of the Hon'ble Supreme Court on July 14, 2023. (In picture from left to right : Hon'ble Chief Justice of India Mr. D.Y. Chandrachud and Hon'ble Justice Mr. Ujjal Bhuyan) (Image source : PTI)

Hon'ble Justice Mr. Ujjal Bhuyan, before his elevation to the Bench used to appear regularly before the Hon'ble Gauhati High Court on Direct and Indirect tax matters. His Lordship was a designated Senior Advocate of the Hon'ble Gauhati High Court. His Lordship was also a standing Senior Counsel for the Revenue. During his practice his Lordship was an active Member of the All India Federation of Tax Practitioners.

His Lordship has passed several land mark judgments as a Judge of the Hon'ble Gauhati High Court, Hon'ble Bombay High Court and Hon'ble Telangana High Court. His Lordship severed as the Chief Justice of the Telangana High Court before his lordship's elevation as a Judge of the Hon'ble Supreme Court.



Hon'ble Justice Mr. Ujjal Bhuyan, releasing the book on General Anti-Avoidance Rules (GAAR) published by the All India Federation of Tax Practitioners.



Hon'ble Justice Mr. Ujjal Bhuyan addressing the 22nd National Convention of the All India Federation of Tax Practitioners in Mumbai in December 2019.



Hon'ble Justice Mr. Ujjal Bhuyan inaugurating the 22nd National Convention of the All India Federation of Tax Practitioners in Mumbai in December 2019.

We wish his lordship all the best as Judge of the Hon'ble Supreme Court.

Editorial Board.

A few important Land mark judgments of His Lordship are:

1. S.10(23C) : Charitable/religious institutions - basic object of trust was to provide and maintain educational institutions in country, approval u/s. 10(23C)(vi) could not be denied.

Sree Kanya Pathsala Trust v. Union of India [2014] 360 ITR 60 (Gauhati)(HC)

2. S. 12AA r.w.s.2(15) - Charitable or religious trust - Registration procedure (Cancellation of registration) - Registration granted to a Trust or Institution could not have been cancelled, unless competent authority u/s. 12AA(3) was satisfied that activities of Trust were not genuine or that activities were not being carried out in accordance with objects of Trust or Institution.

CIT vs. Mumbai Metropolitan Region Development Authority [2020] 115 taxmann.com 71 (Bom)(HC)

3. **S. 28(i) in the preceding year declared interest on NPAs as income on an accrual basis, in subsequent year assessee could not reverse such interest amount and deduct it from taxable income on the basis that interest on NPAs was not recognizable as income in accordance with guidelines of RBI (r.w.s. 36(1)(vii) and 43D)**

State Bank of Hyderabad vs. Jt. CIT [2023] 292 Taxman 526 (Telangana)(HC)

4. S. 41(1) will not apply to waiver of loan as waiver of loan does not amount to cessation of trading liability.

Pr. CIT v. SICOM Ltd. [2020] 116 taxmann.com 410 (Bom)(HC)

5. S. 68 : Bogus Purchases - only reasonable profit at rate of 5 per cent on purchases should be added back to income of assessee.

Pr.CIT v. Rishabhdev Technocable Ltd. (2020) 115 taxmann.com 333 (Bom)(HC)

6. S.68 Cash credit (Share application money) - Assessee discharged identity of creditors, genuineness of transactions and credit worthiness of creditors, revenue had not been able to show any perversity, no addition could be made u/s. 68

Pr. CIT v. Ami Industries (India) (P.) Ltd. [2020] 116 taxmann.com 34 (Bom)(HC)

7. S.68: Bogus Cash Credits - Entire deposits cannot be assessed as unexplained cash credits. Only the commission (0.15%) earned in providing the accommodation entries can be assessed as income. (Distinguished PCIT vs. NRA Iron and Steel (2019) 103 Taxmann.com 48 (SC))

PCIT vs. Alag Securities Pvt. Ltd. (Bom)(HC) itatonline.org

8. S. 68 : Not proved the genuineness of the purchases and sales, yet if the AO has accepted the sales, the entire purchases cannot be disallowed. Only the profit element embedded in purchases would be subjected to tax and not the entire amount.

PCIT vs. Rishabhdev Tachnocable Ltd. (Bom.)(HC) www.itatonline.org

9. S. 68 Cash Credits: Assessee is only required to explain the source of the credit, no requirement to explain the source of the source. The source of the source is suspect and

the creditor had no regular source of income to justify the advancement of the credit to the assessee does not mean that an addition can be made in the hands of the assessee.

Gaurav Triyugi Singh vs. ITO (Bom.)(HC) www.itatonline.org

10. S.69 : Bogus Purchases - Mere reliance by the AO on information obtained from the Sales Tax Department or the statements of two persons made before the Sales Tax Department would not be sufficient to treat the purchases as bogus and thereafter to make addition u/s. 69C.

Pr. CIT vs. Vaman International Pvt. Ltd. ITA No.1940 of 2017 dtd. Jan 29, 2020

11. **S. 119: Central Board of Direct Taxes - Instructions to subordinate authorities (Condonation of delay in filing Form No. 10B)**

Form No. 10B was filed by the assessee after the lapse of more than 365 days of the due date of filing of return of income, application for condonation of delay was to be rejected, however, having regard to the mandate of s. 119(2)(b), the assessee may approach CBDT, seeking a special order to Commissioner (Exemptions), to condone delay in filing Form No. 10B and thereafter to deal with the said claim on merits in accordance with law.

Little Angels Education Society vs. Union of India [2021] 434 ITR 423 (Bombay)(HC)

12. S.142(2) : Special audit (Pre-decisional hearing) - Opportunity of hearing is required to be given to assessee by AO before making order proposing conduct of special audit u/s. 142(2A) and even if Commissioner approves said proposal after giving opportunity to assessee.

Pr. CIT v. Vilson Particle Board Industries Ltd. [2020] 116 taxmann.com 12 (Bom.)(HC)

13. S. 153Ar.w.s. 132 - Search and seizure - original return filed u/s. 139 and assessment u/s.143 was pending, again in response to notice u/s. 153A filed another return making a new claim for treating gain on pre-payment of deferred VAT/sales tax on Net Present Value (NPV) basis as capital receipt, since assessment got abated, it was open for assessee to lodge a new claim in a proceeding under section 153A(1) which was not claimed in his regular return of income.

Pr. CIT v. JSW Steel Ltd. (2020) 115 taxmann.com 165 (Bom.)(HC)

14. S.170: Succession to business otherwise than on death (Revised return after amalgamation) -

The Transferor company merged with the petitioner-transferee company as per the approved scheme of amalgamation by NCLT and the revised return could not be filed before the due date by the petitioner as circumstances were beyond the control of the petitioner, Department was to be directed to take into account revised return of income filed for the assessment year in question. (R.W.S. 139(5))

TSI Business Parks Hyderabad (P.) Ltd. vs. Dy. CIT W.P. NO. 6892 of 2023, dt. 11/04/2023(Telangana)(HC)

15. S. 254(1) : Order of the Appellate Tribunal - manner of disposing appeals by the Tribunal is not expected and Tribunal cannot refer to decisions on its own without giving the litigant an opportunity to distinguish it. It also cannot omit to deal with the decisions relied upon by the litigant. Not dealing with the cited decisions leads to the order being bad as an order without reasons. This results in a breach of the principles of natural justice.

Bhavya Construction Co. vs. ACIT (Bom.)(HC) www.itatonline.org

16. S. 254(2): Appellate Tribunal-Rectification of mistake apparent from the record Rehearing of appeal is not permissible in law-Writ against the rectification is held to be not bonafide.

Cavalier Trading Pvt. Ltd. v. Dy.CIT (Bom.)(HC) www.itatonline.org

17. S.254 read with Rule 24 - Appellate Tribunal - Order of (Period of limitation) - Assessee or AO should bring mistake to notice of Tribunal within the limitation period and, thus, if for one reason or another, Tribunal is unable to pass order u/s. 254 (2), neither assessee nor revenue should suffer on that account as time period can be extended beyond period of six months in such a case.

Pr.CIT v. Income-tax Appellate Tribunal [2020] 116 taxmann.com 451 (Bom)(HC)

18. S. 271(1) : Penalty cannot be imposed for alleged breach of one limb of S.271(1)(c) of the Act while penalty proceedings were initiated for breach of the other limb of S. 271(1)(c). **Ventura Textiles Ltd vs. CIT (Bom)(HC) itatonline.org**

General Laws:

19. Compensation on account of the death of a husband who was a manual scavenger and died while performing their duties. Violation of the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013.

Direction is given by the Honourable Bombay High Court to the State of Maharashtra by referring to the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 was enacted by the Parliament to provide for the prohibition of employment as manual scavengers, rehabilitation of manual scavengers and their families, and formatters connected therewith or incidental thereto. As well as following the judicial decision *Safai Karamchari Andolan Vs. Union of India* reported in (2014) 11 SCC 224, held that pay the compensation to each of the Petitioners within a period of four weeks from the date of receipt of an order, the State of Maharashtra in the Social Justice and Special Assistance Department shall inform the Court on the next date whether a survey of manual scavenging in urban areas in terms of sections 11 and 12 of the 2013 Act and similar exercise by Panchayats in rural areas under sections 14 and 15 of the said 2013 Act have been carried out or not. State of Maharashtra in the Social Justice and Special Assistance Department shall also apprise the Court about the rehabilitation measures taken for persons identified as manual scavengers in terms of section 13 of the 2013 Act. Identification of families of all persons who died in sewerage work (manholes, septic tanks) since 1993 has been carried out as to whether compensation has been awarded to the dependent family members in terms of paragraph 23.3 of *Safai Karamchari Andolan*.

Vimla Govind Chorotiya & Ors vs. State of Maharashtra, WP (L) No.15651 of 2021, dt. 17/09/2021 (Bom)(HC)

20. Struck down the Telangana Eunuchs Act, 1329 Fasli, as unconstitutional and ultra vires the Constitution of India, observing that the legislation violative of the human rights of the third gender community. Observing that the statute is “an intrusion into the private sphere of transgender persons as well as an assault on their dignity”. “It is thus offensive of both the right to privacy and the right to dignity of transgender persons. It is not only violative of Article 14 but is also clearly violative of Article 21 of the Constitutional of India. Such an enactment can no longer continue to find a place in our statute book.”

V. Vasanta Mogli vs. State of Telangana & Ors. [W.P PIL No. 44 & 355 of 2018 dated 06/07/2023 (Telangana)(HC)]

