

Reported case laws of Hon'ble Bombay High Court-Direct Tax Bench headed by Hon'ble Justice Mr. Dhiraj Singh Thakur

The Hon'ble Bombay High Court delivered many judgements on Direct taxes from June 2022 to May 2023. For the benefit of the Tax professionals, the reported case laws are summarized section-wise for easy reference by KSA legal research team.

S. 10 (23C) : Educational institution- American Trust Established In India Solely for educational purposes with permission granted by Central Government - American organisation incurring expenses in support of Indian Trust and repatriating amounts to it-Amounts received utilised for purposes of education in India-Entitled to exemption. [S. 10(23C)(vi), 10(22), 11(5), Art. 226]

The petitioners were trustees of a trust, American School of Bombay Education Trust (ASB). The ASB was set-up solely for the purpose of education and not for the purpose of profit. The Trustees held the Trust Fund solely for the purpose of education. ASB had applied for an exemption under section 10(23C)(vi) and had been granted under section 10(22) for assessment years 1998-99 to 2001-02 and 2006-07 to 2026-27. Accordingly the petitioners sought exemption for intermediate years 2002-03 to 2005-06 on ground that institution shall exist solely for the purpose of providing education and not for the purpose of profit. The application was rejected on grounds that part of income was received by SAIESF directly, it was not possible to verify expenses incurred by SAIESF and funds repatriated by SAIESF were not invested in accordance with section 11(5) of the Act. On writ allowing the petition the Court held that SAIESF was set-up in USA, wholly and exclusively for charitable and educational purposes and was formed for sole purpose of assisting and supporting assessee-trust and entire expenses incurred by SAIESF were towards educational purpose of assessee-trust, exemption claimed by assessee

under section 10(23C)(vi) could not have been denied; revenue could not have enquired about receipts and expenses made by SAIESF outside country merely because it was transferring its surplus or even a portion thereof to assessee-trust in India. Petition was allowed. (AY. 2002-03, 2003-04, 2004-05, 2005-06)

Laura Entwistle v. UOI [2023] 454 ITR 345 / 148 taxmann.com 251 / 292 Taxman 429 (Bom)(HC)

S.14A : Disallowance of expenditure - Exempt income - Assessing Officer had not recorded any satisfaction that working of inadmissible expenditure under section 14A by assessee was incorrect, interest expenditure could not be disallowed [R. 8D (2)(ii)]

Dismissing the appeal of the Revenue the Court held that where the assessee earned exempt income and submitted computation of inadmissible expenditure under section 14A, since Assessing Officer had not recorded any satisfaction that working of inadmissible expenditure under section 14A by assessee was incorrect, interest expenditure could not be disallowed. Order of Tribunal is affirmed. (AY. 2011-12)

PCIT v. Godrej & Boyce Mfg. Co. Ltd. [2023] 149 taxmann.com 222 / 292 Taxman 497 (Bom)(HC)

S. 32A : Investment allowance - Additional cost - Foreign exchange fluctuations - The increase or reduction in the liability has to take place only in the year of fluctuation and it does not relate back to the year of acquisition of the asset- Entitled to additional cost in the year of acquisition. [S. 32, 43A]

The question before the High court was "Whether the increase in loan liability of the assessee due to fluctuation in foreign exchange rates in the subsequent years was part of actual cost of the ship by name M/s. M.V. Prabhu Parvati acquired on 1-6-1984 from the foreign country and the assessee was entitled to invest allowance on the additional cost in the year

of acquisition?” Allowing the appeal of the assessee the Court held that assessee acquired ship for which it took loan and subsequently actual cost of ship increased due to foreign exchange fluctuation, said increase in loan liability would be part of actual cost of ship and thus assessee was entitled to investment allowance on additional cost in year of acquisition. The increase or reduction in the liability has to take place only in the year of fluctuation and it does not relate back to the year of acquisition of the asset (AY. 1985-86, 1987-88 to 1990-91 & 1992-93)

Tolani Shipping Co. Ltd. v. DCIT [2023] 149 taxmann.com 293 (Bom)(HC)

S. 36(1)(vii) : Bad debt - Pendency of dispute - Lease rental - Depreciation -Once a business decision has taken to write off a debt as a bad debt in books of account should sufficient to allow the claim as bad debt. [S. 36(2)]

The assessee is a non-Banking Finance Company engaged in the business of inter alia of lease finance. The lessee defaulted in payment of instalments. The Assessee approached the High court seeking winding up of Orson Electronics Ltd and appointment of Official liquidator too safeguard the interest of the creditor. The assessee wrote off the amount due as bad debt in the books of account. The Assessing Officer disallowed the claim of the assessee on the ground that pendency of dispute. The Order of assessing Officer is affirmed by the Tribunal. On appeal allowing the claim the Court held that once a once a business decision has taken to write off a debt as a bad debt in books of account should sufficient to allow the claim as bad debt. (AY. 1991-92)

L.K.P. Merchant Financing Ltd v. Dy.CIT (2022) 447 ITR 507 / 288 Taxman 389 / 329 CTR 909 / 220 CTR 231 Bom) (HC)

S. 37(1) : Business expenditure-Capital or Revenue-Development of new product expenses-Shown as capital work in progress-Project abandoned-Capital work in progress written off as revenue

expenditure - No new asset came into existence which would be of an enduring benefit to assessee- Allowable as revenue expenditure. [S. 145]

Assessee was engaged in business of software development solution and management. It incurred expenditure in connection with development of a new software product and treated expenditure as a part of capital work in progress for assessment years 2004-05 to 2007-08 and new product never came into existence and same was abandoned and assessee then claimed whole capital work in progress as revenue expenditure in assessment years 2006-07 and 2007-08. The Assessing Officer held that expenditure incurred was capital in nature and disallowed same. Commissioner (Appeals) held that expenditure had to be allowed as a revenue expenditure in year in which product was abandoned. Tribunal upheld view expressed by Commissioner (Appeals). On appeal by the Revenue the Court held that the assessee incurred expenditure in connection with development of a new software and treated expenditure as a part of capital work in progress and new product never came into existence and same was abandoned and assessee then claimed whole capital work in progress as revenue expenditure, as no new asset came into existence, expenditure could only be said to be revenue in nature. Order of the Tribunal is affirmed. (AY. 2006-07, 2007-08)

PCIT v. Trigent Software Ltd. [2023] 147 taxmann.com 52 / 330 CTR 312 (Bom)(HC)

S. 40(a)(ia): Amounts not deductible - Deduction at source - Tax deposited before filing of return - No disallowance can be made- Amendment made by the Finance Act, 2010 being curative in nature required to be given retrospective operation i.e., from the date of insertion of the said provision. [S. 139(1)]

The assessee had made payment on account of sub-contracting, expenses, transporters, machine hiring charges etc. Out of the payments to sub-contractors, the Assessing Officer found that tax deducted at source (TDS)

was deposited beyond due dates prescribed under chapter XVII-B but before the due date of furnishing of return of income. The Assessing Officer disallowed on various accounts under section 40(a)(ia) of the Act. On appeal CIT(A) as the amount was deposited within the due date of filing of the return of income no disallowance could be made for delayed deposit of tax. Tribunal affirmed the order of CIT(A). On appeal by revenue, dismissing the appeal the Court held that the disallowance could not have mad under section 40(a)(ia) of the Act in view of the retrospective nature of the proviso to the said section. CIT v. Calcutta Export Company (2018) 404 ITR 654/ 255 Taxman 293 /302 CTR 201 (SC) followed (ITA No. 667 of 2018 dt.29 -7 -2022) (AY. 2005 -06)

PCIT v. Crescent Construction Co (2022)288 Taxman 730/ 328 CTR 230 / 217 DTR 74 (Bom) (HC)

Editorial : Crescent Construction Co. v. ACIT (2017) 82 taxmann.com 468 (Mum.)(Trib.) affirmed.

S. 69C: Unexplained expenditure- Cash credit -Bogus purchases- Entire purchases cannot be disallowed - Only profit element embedded on alleged purchases can be added. [S. 37(1), 68, 133(6), 145]

The assessee is in the business of road repairs/construction and it had shown purchases from various entities, even if the assessee failed to produce said parties for verification, Assessing Officer could not have treated entire purchases as bogus purchases; only profit element embedded in such purchases to be considered for addition. (AY. 2009 -10, 2011-12)

PCIT v. Vishwashakti Construction [2023] 454 ITR 448 (Bom.)(HC)

S. 69C: Unexplained expenditure- Bogus purchases- Information was received from Sales Tax Department-Sales was not disputed- Purchases cannot be deleted. [S. 145, 148]

Assessing Officer had not disputed corresponding sales transactions, purchases also could not be bogus and, thus, the addition made on account of bogus purchases to be deleted. (AY 2010 -11, 2011-12)

PCIT v. Nitin Ramdeoji Lohia [2023] 291 Taxman 469 (Bom.)(HC)

S. 69C : Unexplained expenditure -Bogus purchases - Accommodation entries - Civil contract work- Municipal Corporation of greater Mumbai - Information received from the Sales Tax Department through the Director General (Inv) -Purchases through banking channels - Disallowance restricted to profit element - Order of Tribunal affirmed. [S. 143(3), 260A]

The assessee undertook civil contract works mostly for the Municipal Corporation of Greater Mumbai. The assessment was reopened on the basis of information received from the Sales Tax Department through the Director General (Inv) on the ground that the assessee had made purchases for an amount which seemed to be accommodation entries. Order was passed making an addition of the amount as bogus purchase under section 69C of the Act. On appeal the assessee has produced the purchase invoices and ledger statements. Commissioner (Appeals) held that payments made by the assessee were through banking channels, that there was no evidence to prove that the cash had flowed back to the assessee, and that the sale proceeds of the goods having been duly accounted for in the books of account and offered to tax, the entire purchase amount could not have been added and restricted the disallowance at 12.5 per cent. The Tribunal held that without purchasing materials and goods, it would not have been possible on the part of the assessee to execute the contract work with the Municipal Corporation which was a Government authority, that the Assessing Officer did not dispute the turnover of the contract work executed by the assessee and that unless the assessee procured the materials and goods, if not from the declared sources but from some other sources, it would not be possible on the part of the assessee to execute the contract and that the entire purchase made

by the assessee could not be added back as income, but only the profit element embedded therein. On appeal dismissing the appeal the Court held that the Tribunal had taken into account all the relevant facts before passing the order holding that the entire purchase made by the assessee could not be added back as income but only the profit element embedded therein. The order of Tribunal affirmed. Referred N.K. Proteins Ltd v. Dy. CIT (2020) 421 ITR 15 (St) N.K. Industries Ltd v. Dy. CIT (2017) 8 ITR -OL. 336 (Guj)(HC) (AY.2009-10)

PCIT v. S. V. Jiwani (2022)449 ITR 583/ 145 taxmann.com 230/(2023) 290 Taxman 178 (Bom)(HC)

S. 69C : Unexplained expenditure - Contract business - Civil works for the State Government and semi-Government agencies. Failure to produce certain suppliers - Estimated net profit at 12.5 Per cent on alleged bogus purchases -Order of Tribunal affirmed. [S. 37(1), 68, 145]

Dismissing the appeal of the Revenue the Court held that the assessee was involved in execution of civil works and it had shown purchases from twelve parties even if assessee failed to produce said parties for verification, Assessing Officer could not have treated entire purchases as non-genuine purchases but only profit element on such purchases and thus, Appellate Authorities were justified in restricting addition by estimating profit of 12.5 per cent on total purchases. (AY. 2010-11)

PCIT v. Ram Builders 2023] 146 taxmann.com 447 / 454 ITR 444 (Bom)(HC)

S. 69C : Unexplained expenditure-Resale of industrial goods - Payments through account payee cheque - Disallowance of 10 percentage of purchases - Order of Tribunal affirmed [S. 133(6), 260A]

Dismissing the appeal of the Revenue the Court held that the assessee engaged in resale of industrial goods, made payments through banking channels towards certain purchases and furnished evidences in form of delivery challans, purchase bills etc. relating to same, Tribunal was justified in holding that assessee had discharged initial burden or onus of providing details of parties and, thus, case did not fall within ambit of section 69C. (AY. 2011-12)

PCIT v. Jagdish Thakkar [2022] 145 taxmann.com 414 (Bom)(HC)

S. 69C : Unexplained expenditure - Bogus purchases - Business of civil construction - Payment through banking channels - Order of Tribunal deleting the addition was affirmed. [S. 260A]

Dismissing the appeal of the Revenue the Court held that where the assessee, engaged in business of civil construction, made certain purchases in course of its business, since assessee had discharged initial burden of proving genuineness of transactions by providing details of parties, and, further, payments for purchases were made through proper banking channels, no addition under section 69C was to be made on account of such purchases. Followed CIT v. Nikunj Eximp Enterprises (P.) Ltd (2013) 35 taxmann.com 394/ 216 taxman 171 (Mag)/ (2015) 372 ITR 619(Bom.). Distinguished, Pr. CIT v. NRA Iron & Steel (P.) Ltd (2019) 103 taxmann.com 48/ 262 Taxman 74/ 412 ITR 161 (SC). (AY. 2010-11)

PCIT v. Sanjay Dhokad [2023] 150 taxmann.com 362 (Bom)(HC)

S. 80IA : Industrial undertakings - Infrastructure development- Inland container depot and container freight station - Entitled to the deduction. [S. 80IA(4), 260A]

Dismissing the appeal of the Revenue the Court held that assessee, a State Government undertaking, had set up Inland Container Depot (ICD) and Container Freight Station (CFS) in vicinity of Jawaharlal Nehru Port Trust (JNPT), such ICD and CFS being infrastructural facility, assessee was

entitled to deduction in terms of section 80-IA(4). Order of Tribunal affirmed. (AY.2011-12)

PCIT v. Maharashtra State Warehousing Corporation (2023) 451 ITR 178 /149 taxmann.com 372 (Bom)(HC)

S. 80IB(10) : Housing projects- Two flats excess of the prescribed limit of 1500 sq.ft - Pro rata deduction in respect of eligible flats not exceeding prescribed limit is eligible - Interpretation of taxing Statutes - When the language of a statute is unambiguous and admits of only one meaning, no question of construction of a statute then arises. [S. 260A]

The assessee firm engaged in the business of developing residential projects in return. The assessee claimed deduction u/s. 80IB(10) of the Act. The Assessing Officer held that two flats were having an area in excess of the prescribed limit of 1500 sq. ft hence denied the deduction. On appeal the CIT(A) directed to allow the pro rata deduction in respect of eligible flats not exceeding prescribed limit of a covered area of 1500 sq. ft. On appeal by Revenue the Tribunal affirmed the order of the CIT(A). On appeal to High Court by the Revenue, High Court affirmed the order of the Tribunal. Court relying on Nelson Motis v. UOI AIR 1992 SC 1981 held that it is well settled principle of interpretation of statutes that when the language of a statute is unambiguous and admits of only one meaning, no question of construction of a statute then arises. (AY. 2011 -12)

PCIT v. Kumar Builders Consortium (2022) 444 ITR 44 / (2023) 290 Taxman 277 (Bom)(HC)

S. 80IB(10) : Housing projects- Built up area of less than 1000 square feet-Completion certificate was issued by the Competent Authority -Denial of exemption was not valid.

As per the approved plan of the Municipal Authority, all flats of the building were having built up area of less than 1000 square feet, moreover a completion certificate was issued by the competent authority, which could

be issued only if construction was in accordance with sanctioned plans. Hence the benefit of deduction could not be denied. (AY. 2009 -10)

PCIT v. Vardhan Builders [2023] 291 Taxman 450 (Bom)(HC)

S. 80IBA : Profits and gains from housing projects -Writ of Mandamus - Availing deduction from 31-3-2022 to 31-3-2023- Completion of housing projects from five years to seven years- Petition was dismissed. [S. 80IAC, 80IBA(2)(b), 115BAB, Art. 14, 226]

The petitioner filed the writ petition for issuance of a writ of Mandamus to direct the Union of India to extend the date of availing deductions by assesses under section 80IBA of the Income -tax Act, 1961 from 31 -3 2022 to 31 -3 -2023 by taking necessary executive legislative steps as may be required. The petitioner further seeks issuance of a writ of Mandamus to direct the Union of India to extend the time period for completion of construction projects from five years to seven years under section 80IBA(2)(b) of the Act. Dismissing the petition the Court held that the petition is grossly lacking in sufficient pleadings as would be required from making out a case of discrimination as claimed by the petitioner. The Court also held that the petition lacks all material particulars required to be stated in the pleadings to draw some parity or similarity between members of the petitioner and persons stated to be covered by the provisions of section 80IAC of the Act. Accordingly the writ petition was dismissed. Relied on *Morey v. Doud* (1957) 354 US 457, *R.K Garg v. UOI* (Five Judge Bench) (1981) 4SCC 675, 1981 SCC (TAX) 30, *State of Orissa v. Balram Sahu* (2003) 1 SCC 250, *State of UP v. Kamla Palace* (2000) 1 SCC 557, *Supreme Court Employees Welfare v. UOI* (1989) 4 SCC 187, *V. S.Rice and Oil Mills v. State of A.P etc* AIR 1964 (SC) 1781.

CREDAI BANM v. UOI (2023) 332 CTR 303 / 224 DTR 374 (Bom)(HC)

S. 80IB(10) : Housing projects- Delay of 365 days in filing of return- Denial of exemption-CBDT rejecting the application for condonation of delay- Order of rejection was set aside- Delay was condoned- Assessing Officer was directed to allow the claim as per law. [S. 119(2)(b), 143(1), Art. 226]

The assessee filed an application for condonation of delay of 365 days in filing return and claimed deduction under section 80IB(10) contending that their tax consultant could not file return on time due to his son's medical urgency, since there was a sufficient cause for said delay and, further, in respect of other assessment years from 2010-11 to 2013-14, authorities had allowed deduction under section 80-IB/(10) of the Act. CBDT rejected the application for condonation of delay. On writ allowing the petition the Court held that the income tax consultant has, stated on oath that his son Master Rishikesh, aged about 15 years having been born handicapped required constant attention and from the first week of October, 2010 his health deteriorated and remained a great concern for him and his other family members. That since there was no satisfactory response he and his wife had quite a bad time in concentrating on his day to day behaviour. That they were laboring under severe mental tension by reason of their sons's deteriorating condition. That being a nuclear family except he and his wife no one is at home. That during the very said period his wife was pregnant and also required due care and attention until she delivered a boy in the month of April, 2011. The consultant has also stated on oath that for more than a year he and his wife had to therefore remain watchful about the deteriorating condition of their son. That it is only around February, 2012 that their son could regain normalcy. The affidavit of the income tax consultant which has neither been disputed nor controverted by the respondents is sufficient cause for condonation of delay in filing the application under section 119 (2)(b) of the Act. It would be substantial injustice to assessee if benefit of deduction for relevant year was not given to assessee. The delay was condoned. The Assessing Officer was directed to allow the claim as per law. (AY. 2011-12)

Bhatewara Associates Manik v. UOI [2023] 147 taxmann.com 297 (Bom)(HC)

S. 124: Jurisdiction of Assessing Officer - Assessing Officer Mumbai cannot continue to exercise jurisdiction in the case of the assessee even if PAN came to be transferred much later than a transfer of jurisdiction. [S. 92CA]

A request made to transfer jurisdiction to Pune was allowed by Commissioner, Mumbai. Since transfer of PAN was consequential to the order of transfer of jurisdiction, Assessing Officer Mumbai cannot continue to exercise jurisdiction in the case of the assessee even if PAN came to be transferred much later than a transfer of jurisdiction. Order of the Tribunal quashing the order was affirmed. (AY. 2010 -11)

PCIT v. Capstone Securities Analysis (P.) Ltd. [2023] 146 taxmann.com 423 / 320 CTR 565 (Bom)(HC)

S. 143(1)(a): Assessment - Intimation - Prima facie adjustment Rectification of mistake - Assessing Officer was to be directed to consider application of assessee for rectification afresh and pass a speaking order - Matter remanded. [S. 154, Art, 226, Form 3CCD]

Allowing the petition against the intimation the Court held that where the assessee in Form 3CD disclosed amount of contingent liability at Rs. 42.94 crores and Assessing Officer while making adjustments under section 143(1)(a) under head 'Amount in Income-tax Returns' reflected figure of '0' instead of Rs. 42.94 crores,. Court directed the Centralized Processing Centre to consider the application of the petitioner for rectification in the light of the above discussion, within a period of three months and pass a speaking order with respect to the amount of Rs. 42,94,12,920/-.

Sodexo India Services (P.) Ltd. v. CPC [2023] 147 taxmann.com 223 (Bom)(HC)

S. 144B: Faceless Assessment -Draft assessment - Depreciation - Goodwill-Assessment order passed without satisfactory compliance with provisions of section 144B(1)(xvi) was quashed. [S. 32, 142, 144B(1)(xvi), Art. 226]

Assessing Officer after passing the draft assessment order raised a query of depreciation on goodwill by issuing a notice under section 142 and passed the final assessment order, since the earlier draft assessment order was silent about said query, final order passed without satisfactory compliance with provisions of section 144B(1)(xvi) was quashed. (AY. 2018-19)

ACME Housing India (P.) Ltd. v NFAC (2023) 291 Taxman 1 (Bom)(HC)

S. 144B : Faceless Assessment -Amalgamation - Non-Existent company - show-cause notices, assessment order, notice of demand, etc., in name of said non-existent company, which was amalgamated with petitioner-company and thereby lost its existence, was without jurisdiction - Order was quashed [S. 143(3), Art. 226]

Allowing the petition, the Court held that when a company was amalgamated with petitioner-company, issuance of show-cause notices, assessment order, notice of demand, etc., in name of said non-existent company, which was amalgamated with petitioner-company and thereby lost its existence, was without jurisdiction. Order was quashed.

New Age Buildtech (P.) Ltd. v.. NFAC [2023] 151 taxmann.com 66 (Bom)(HC)

S. 144B : Faceless Assessment -Natural justice - Opportunity of hearing was not given - Video conference - Order was set aside and remanded. [S. 142, 143(3), Art. 226]

Assessing Officer issued on assessee a notice under section 144B dated 3-2-2022 and called upon to file reply by 10-2-202 and assessee sought extension of time but received no response and thereafter she received assessment order. On writ allowing the petition the Court held that the Assessing Officer having not given to assessee opportunity of hearing, impugned assessment order was to be set aside. Face Less Assessment Centre, Delhi was directed to give an opportunity of personal hearing to the Petitioner through the video conferencing and pass a fresh order after considering her response (AY. 2020-21)

Parul Bharat Shah v. NFAC [2023] 146 taxmann.com 446 / 291 Taxman 294 (Bom)(HC)

S. 147 : Reassessment - After the expiry of four years - Penny Stock -Share transactions and tax paid on added income - No new tangible material - Accommodation entries - Reconsideration of the material available at the time of original assessment proceedings is tantamount to change of opinion - Reassessment notice and order disposing the objection was quashed. [S. 10(38), 45, 69, 148, Art. 226]

Allowing the petition the Court held that since the notice under section 148 had been issued after the expiry of four years from the end of the relevant AY. 2014-15 the Assessing Officer had to show that the jurisdictional requirement of failure on the part of the assessee to truly and fully disclose material facts during the original assessment was satisfied. The reasons recorded were premised on "seen from the assessment records". The Assessing Officer had recorded that the assessee had claimed to have purchased shares of the penny stock scrips for a total of Rs. 33,09,976 and sold them for a consideration of Rs. 1,15,90,280 and that the long-term capital gains would be unexplained investment from other sources to obtain an equivalent amount of bogus profit on sale of shares and not capital gains as claimed by the assessee. There was nothing to indicate any failure by the assessee to disclose any material fact.

According to the original assessment order under section 143(3) the Assessing Officer had considered these very transactions and had made an addition of Rs. 1,07,18,922 to the assessee's income on which he had already paid the tax. There was no substance in the Assessing Officer's reason to believe that income chargeable to tax had escaped assessment under section 147 inasmuch as there was no mention of any tangible material that had led to his conclusion. The reopening of assessment was on a change of opinion which was impermissible. It was evident that bald assertions of the transaction being "an accommodation entry made in collusion and connivance with the entry provider" were used to reopen the assessment. The notice was quashed and set aside. All subsequent proceedings were prohibited. (AY. 2014-15)

Chanchal Bhagwatilal Gokhru v. UOI (2023)454 ITR 451/ 152 taxmann.com 214 (Bom)(HC)

S. 147 : Reassessment - After the expiry of four years - Same material available on record -Change of opinion - Notice and order rejecting objections set aside. [S. 148, Art. 226]

Allowing the petition the Court held that the reopening of assessment under section 147 of the Income-tax Act, 1961 in respect of the sale and purchase of property by the assessee was merely on a change of opinion. The Assessing Officer had relied upon the same information available from the assessment records and there was no new tangible material available with him to conclude that income had escaped assessment. The notice issued under section 148 and the order rejecting the assessee's objections were quashed and set aside. (AY. 2015-16)

A and J Associates v. ACIT (2023) 454 ITR 590 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-Capital gains - Transfer- Development rights-Power of Attorney-Neither any tangible material nor any reason to believe that 'any income chargeable to tax had escaped assessment' - Reassessment notice

was quashed. [S. 2(47)(v), 148, Transfer of Property Act, 1882, S.53A, Art. 226]

Assessing Officer issued a reopening notice on ground that capital gains income had arisen to assessee on transfer of development rights in its land to a developer. On writ the Court held that since the assessee had merely granted licence to permit construction on land to such developer but not given any possession in land as contemplated under section 53A of T.P. Act, 1882, there was no transfer as per section 2(47)(v) giving rise to any capital gain in hands of assessee. Notice of reassessment was quashed. (AY. 2013 -14)

Bharat Jayantilal Patel v. DCIT [2023] 149 taxmann.com 290 / 292 Taxman 276 (Bom.)(HC)

S. 147 : Reassessment - After the expiry of four years -Capital gains - Reassessment notice was issued only on the basis of information received on insight portal - No tangible material-Reassessment notice was quashed. [S. 10(38), 143(3), 148, Art. 226]

Allowing the petition the Court held that where the assessee provided documentary evidence to support his claim for exemption on long-term capital gains from securities transactions, the impugned reopening notice issued by Assessing Officer under section 148 solely based on information received on Insight Portal, without any tangible evidence or independent investigation was arbitrary notice and order disposing the objection was quashed. (AY. 2013 -14)

Anwar Mohammed Shaikh v. ACIT [2023] 148 taxmann.com 288 / 292 Taxman 414 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years-Carry forward and set-off of deficit-Change of opinion-Reassessment notice and order disposing the objection was quashed [S. 11(1)(a), 12, Art, 226]

Assessing Officer issued a reopening notice claiming that assessee-trust was not entitled to claim carry forward and set-off of deficit after claiming exemption under section 11(1) since as per provision of section 11(1)(a) assessee could carry forward deficit of earlier years and set it off against surplus of subsequent years. On writ the Court held that there was no failure on part of assessee to disclose material fact, impugned notice issued under section 148 on mere change of opinion. Notice and order disposing the objection was quashed. (AY. 2008-09)

Framji Dinshaw Petit Parsee Sanatorium v. ITO [2023] 148 taxmann.com 225 / 292 Taxman 251 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years-Reversal of transfer of TDR of a land - Capital or Revenue - No new material-Reassessment notice and order disposing the objection was quashed. [S. 28(i), 148, Art, 226]

Assessing Officer reopened assessment of assessee-company on basis that reversal of transfer of TDR of a land on account of cancellation of MoU entered into by assessee with its subsidiary company was wrongly allowed as a deduction and should be treated as capital in nature. On writ allowing the petition the Court held that since said reason for reopening was based on notes already submitted by assessee during original assessment and there was no new information brought on record, jurisdictional conditions mentioned under section 147 were not satisfied. Accordingly the notice of reassessment and order disposing the objection was quashed. (AY. 2015-16)

Standard Industries Ltd. v. DCIT [2023] 149 taxmann.com 149 / 292 Taxman 502 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years - No failure to disclose material facts-Reassessment notice and order disposing the objection was quashed. [S. 28(i), 143(3), 148, Art. 226]

Assessment order under section 143(3) had been passed after eliciting various information from assessee regarding sale and purchase of shares which was responded by assessee. On writ against the reassessment notice and order disposing the objection the Court held that there was no whisper about any failure on the part of the assessee to disclose material facts hence it must be presumed that Assessing Officer while passing order had considered all issues pertaining to queries raised. Accordingly the reopening of assessment after four years was not valid. (AY. 2014-15)

Vibrant Securities (P.) Ltd. v. ITO [2023] 455 ITR 58 / 150 taxmann.com 56/ 293 Taxman 115 (Bom)(HC)

S. 147 : Reassessment - After the expiry of four years - Sale and lease back -100 percent depreciation - No failure to disclose material facts - Reassessment notice and order disposing the objection was set aside. [S. 32, 148, Art. 226]

Allowing the petition, the Court held that where transactions of sale and lease back of machinery on which depreciation at rate of 100 per cent was claimed was disclosed with enough details and there was no allegation of non-disclosure of primary facts on part of assessee, impugned reopening of assessment after 4 years was unjustified. Reassessment notice and order disposing the objection was quashed. (AY. 1997-98)

Milton Plastics Ltd. v. Mudit Nagpal [2023] 151 taxmann.com 24 (Bom)(HC)

S. 147 : Reassessment - After the expiry of four years - Scientific research expenditure -No failure to disclose material facts - Reassessment notice and order disposing the objection was quashed. [S. 35(2AB), 148, 154, Art. 226]

Allowing the petition, the Court held that there was no failure on part of assessee to disclose fully and truly all material facts as all relevant facts had not only been disclosed, but had also been considered by Assessing Officer while considering claim of deduction under section 35(2AB) in order

of assessment, reopening of assessment being a mere change of opinion was not justified. Re assessment notice issued and order disposing the objection was quashed. (AY. 2015-16)

Survival Technologies (P.) Ltd. v. DCIT [2023] 149 taxmann.com 453 (Bom)(HC)

S. 147 : Reassessment - After the expiry of four years -Settlement amount paid to employees-Penalty-Information from Investigation Wing - No material available on record other than information from Investigation Wing to prove that payment made was penalty,- Reopening was quashed. [S. 37(1), 148, Art. 226]

Allowing the petition the Court held that the assessee claimed settlement amount paid to its employees with respect to civil suits filed against it in US court as expenses and the Assessing Officer during scrutiny assessment accepted said claim, however Assessing Officer later issued reopening notice on receiving information from Investigation Wing that assessee had paid penalty in USA and same was claimed as allowable expense instead of penalty, since as per settlement agreement payment was on account of a pure settlement between parties wherein settlement was arrived at for purposes of avoiding expense, risk and uncertainty, furthermore order passed by US Court approving said agreement did not refer to amount payable as a penalty amount, in view of fact that there was no material available on record other than information from Investigation Wing to prove that payment made was penalty, reopening would not be justified. Reassessment notice and order disposing the objection was quashed. (AY. 2013-14)

Tata Consultancy Services Ltd. v. Dy CIT [2023] 152 taxmann.com 3 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years- Advertisement and sales promotion- Notice should specify material

not disclosed -No failure to disclose material facts - Reassessment notice is bad in law. [S. 148, Art. 226]

Allowing the petition the Court held that during the scrutiny assessment, the Assessing Officer had sought the relevant details with regard to the advertisement and sales promotion expenses which were furnished by the assessee. The Assessing Officer had also disallowed some of the expenses which were shown in the break-up under the head details of advertisement and sales promotion expenses while passing the order of assessment which showed that the Assessing Officer had applied his mind to the assessee's claim while passing the order under section 143(3) read with section 144C(3). The reasons for reopening the assessment did not state what material or fact was not disclosed by the assessee. Therefore, it was clear that there was complete disclosure of all the primary material facts on the part of the assessee and there was no failure on its part to disclose fully and truly all the facts which were material and necessary for the assessment. The notice of reassessment was quashed. (AY.2014-15)

Asian Paints Ltd. V. ACIT (2023) 451 ITR 45 / 221 DTR 457 / 330 CTR 560 / 148 taxmann.com 99 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years-Advertisement and sales promotion -No failure to disclose material facts-Reassessment notice and order disposing the objection was quashed. [S. 37(1), 148, Art. 226]

Allowing the petition the Court held that the assessee-company had filed all requisite details called for by Assessing Officer against its claim of advertisement and sales promotion expenses incurred in a marketing scheme and Assessing Officer during scrutiny assessment had duly applied his mind before allowing same as deduction under section 37(1), it could not be said that there was any failure on part of assessee to disclose fully and truly facts which were material and necessary for assessment. Reassessment notice and order disposing the objection was quashed. (AY. 2013-14)

Asian Paints Ltd. v. ACIT [2023] 149 taxmann.com 183 (Bom.)(HC)

S. 147 : Reassessment - After the expiry of four years - Share dealing -No failure to disclose material facts - Reassessment notice and order disposing the objection was quashed. [S. 45, 148, Art. 226]

Allowing the petition, the Court held that during course of original assessment proceedings assessee produced scrip-wise details of opening stock, purchases and sales as well as closing stock along with documentary evidence in support thereof and Assessing Officer requested the assessee to submit Form No. 10DB duly certified and reconciled with audited account. There was no failure on part of assessee to disclose any material facts fully and truly during regular assessment proceedings and, thus, reassessment proceedings based on change of opinion was not sustainable. Reassessment notice and order disposing the objection was quashed. (AY. 2013-14)

Devkant Synthetics India (P.) Ltd. v. NFAC [2023] 149 taxmann.com 344 / 292 Taxman 218 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years -Sale of shares -Capital gain - Another director has shown the income as salary - Reassessment is not justified. [S. 15, 45 148, Art. 226]

Allowing the petition the Court held that where the assessee, a director in a company, transferred shares of said company and disclosed income under head capital gain and Assessing Officer passed order under section 143(3) accepting disclosed income, merely because another director of said company had disclosed income received from transfer of shares under head Income from salary, it could not be a ground for reopening of assessment of assessee. The reassessment notice and order disposing the objection was quashed. (AY. 2014-15)

Deepak Marda v. ITO [2023] 150 taxmann.com 114 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years-Share premium-Share valuation-DCF Method-Report from Chartered Accountant - Issue was raised in the course of original assessment proceedings-Reassessment notice and order disposing the objection was quashed. [S. 147, 148, Art. 226]

Allowing the petition the Court held that since same issue was raised by Assessing Officer during original assessment proceedings which was specifically responded to by assessee, there was no failure on part of assessee to disclose fully and truly material facts, nor there was any tangible material with Assessing Officer which would justified reopening of assessment. Fair value of shares which were issued at premium was determined as per valuation report obtained from CA wherein DCF method was adopted for valuation and said submission were accepted by Assessing Officer. Reassessment notice and order disposing the objection was quashed. (AY. 2015-16)

Suminter Organic and Fair Trade Cotton Ginning Mill (P.) Ltd. v. Dy. CIT [2023] 150 taxmann.com 232 (Bom)(HC)

S. 147 : Reassessment - After the expiry of four years - Different method of accounting-Capital gains - Computation - No failure to disclose material facts-Reassessment notice and order disposing the objection is not valid. [S. 45, 48, 112(1)(c)(ii), 143(3), 148, Art. 226]

Held that the entire transaction had been considered by the Assessing Officer and had culminated in the order under section 143(3) of the Act. As apparent from the reasons there were no new tangible material in the hands of the Assessing Officer. Once the assessment was concluded, it was deemed to have been concluded with application of mind by the Assessing Officer from all perspectives legal and factual. The reopening of the assessment based on a different method of computation or application of the section was nothing else but a change of opinion, which was

impermissible in law. The reassessment notice and order disposing the objection was quashed (AY. 2014-15, 2015-16)

Lehman Brothers Investments Pte. Ltd. v. ACIT (IT) (2023)454 ITR 331 /148 taxmann.com 236 / 293 Taxman 216 (Bom.)(HC)

S. 147 : Reassessment - After the expiry of four years - Right shares -Valuation-Change of opinion - Reassessment notice and order disposing the objection was quashed. [S. 56(2)(vii)(b), 148, Art. 226]

Allowing the petition, the Court held that assessment in case of assessee-company was reopened on issue of fair market value (FMV) of rights shares issued by assessee, since Assessing Officer had accepted assessee's method of determining FMV during original assessment and recorded his satisfaction in assessment order, impugned reopening notice issued under section 148 after expiry of four years on mere change of opinion was liable to be set aside. Notice and order disposing the objection was quashed. (AY. 2015-2016)

Lakshdeep Investments & Finance (P.) Ltd. v. ACIT [2023] 151 taxmann.com 17 (Bom.)(HC)

S. 147 : Reassessment - After the expiry of four years - Cash credits - Accommodation entries - Statement of third party - Presumption that the assessee was beneficiary - No tangible material -No failure to disclose material facts - Reassessment notice and order disposing the objection was quashed. [S. 68, 132, 153C, 148, Art. 226]

Allowing the petition, the Court held that the assessee has provided bank statement and details of parties in respect of loan and advances during original assessment proceedings, presumption based on statement of third party in course of search was dispelled and, consequently, notice issued under section 148 for reopening was to be quashed and set aside. (AY. 2008-09)

Aditi Constructions v. Dy. CIT (2023) 454 ITR 456 / 151 taxmann.com 513 (Bom)(HC)

S. 147 : Reassessment - After the expiry of four years - Cash deposits -Insights portal that certain high risk transactions had taken place in case of assessee which were needed to be verified- No failure to disclose material facts - Re assessment notice and order disposing the objection was quashed. [S. 68, 143(3), 148, Art. 226]

Allowing the petition, the Court held that reopening notice was issued on ground that an information was received on insights portal that certain high risk transactions had taken place in case of assessee which were needed to be verified, since as per reasons itself transactions were to be verified and, further, there was no live link or nexus between said information received and income escaping assessment, impugned reopening notice issued after four years from end of relevant assessment year was unjustified. Reassessment notice and order disposing the objection was quashed. (A.Y. 2016-17)

Digi1 Electronics (P.) Ltd. v. ACIT [2023] 148 taxmann.com 184 / 292 Taxman 242 (Bom.)(HC)

S. 147 : Reassessment - After the expiry of four years - Cash credits -Redemption of preference shares - Source explained in the original assessment proceedings- Change of opinion - Reassessment notice and order disposing the objection was quashed. [S. 68, 143(3), 148, Art. 226]

Allowing the petition, the Court held that issue with regard to source of Rs.75 lacs was explained as redemption of preference shares and same was considered at the time of scrutiny assessment under section 143(3), reassessment proceedings on said issue would be nothing but a change of opinion, and, therefore, without jurisdiction. Reassessment notice and order disposing the objection was quashed. (AY. 2012-13)

**Kandoi Fabrics (P.) Ltd. v. ACIT [2023] 149 taxmann.com 457 / 293
Taxman 202 (Bom)(HC)**

**S. 147 : Reassessment - After the expiry of four years - Cash credits
-Alternative remedy-Failure to furnish recorded reasons-
Alternative remedy is not a bar-Assessment order was quashed. [S.
68, 143(1), 143(2), 144B, 148, 156, Art. 226]**

The Assessing Officer issued a notice to reopen the assessment under sections 148 and 147 on the ground that income had escaped assessment on account of receipt of Rs. 85 lakhs in cash by the assessee. The assessee did not file any response to the notice. Further notice under section 142(1) was issued which required the assessee to furnish further information. According to the assessee without furnishing any material or information sought by him regarding the alleged loan the National Faceless Assessment Centre passed the order under section 147 read with section 144B and the penalty notice issued under section 271D. On writ allowing the petition the Court held that that the issuance of notice under section 148 in the absence of any new tangible material was nothing but an attempt to review the earlier order of assessment passed by the Assessing Officer. The assessee need not be relegated to the alternate remedy as provided under the Act for the reason that not only had the Assessing Officer failed to satisfy the jurisdictional conditions for invoking his power under sections 147 and 148 but had also failed to comply with the directions of the Supreme Court decision GKN Driveshafts (India) Ltd. v. ITO (2002) 125 Taxman 963/ (2003) 259 ITR 19 (SC). Therefore, the notice issued under section 148, the order under section 147 read with section 144B and the consequent notice of demand under section 156 and penalty notice under section 271D were set aside. Referred CIT v. Chhabil Dass Agarwal(2013) 357 ITR 357 (SC). (AY. 2015-16)

**Ajay Ajit Tanna v. UOI [2023] 151 taxmann.com 324 / 454 ITR 754
(Bom)(HC)**

S. 147 : Reassessment-After the expiry of four years -Purchase and sale of shares - Reopening of assessment to make further additions on account of purchase cost of said shares being based on change of opinion on part of Assessing Officer was not justified- Reassessment notice and order was quashed. [S. 69, 148, Art. 226]

Allowing the petition, the Court held that from the reasons recorded, it does not appear that there was any fresh tangible material which has come to the notice of the AO between the date of the passing of the order under section 143(3) of the Act and the date of issuance of notice under section 148 of the Act. The AO has only tried to re-visit and reconsider the decision rendered in the earlier regular assessment proceedings on the ground that the addition ought not to have been limited only to Rs. 27,27,657/- and ought to have been extended to Rs. 3,60,135/-. The Court held that the view of the Assessing Officer is nothing but a change of opinion on the part of the AO, and therefore, impermissible in law. As the jurisdictional conditions with regard to section 147 of the Act have not been satisfied, order of assessment, dated 22nd March 2022, notice of demand dated 22nd March 2022, and penalty notice dated 22nd March 2022 shall also stand quashed. (AY. 2014-15)

Pushpa Nahata v. ITO (2023) 150 taxmann.com 84 / 292 Taxman 45 (Bom)(HC)

S. 147 : Reassessment -With in four years- Depreciation - Change of opinion - No new tangible material - Reassessment notice and order disposing the objection was quashed. [S. 132, 143(3), 148, Art. 226]

Allowing the petition, the Court held that the Assessing Officer while passing assessment order under section 143(3) had gone into assessee's claim of depreciation on written down value of assets by making all necessary enquiries and he did not make any disallowance as regards said claim, in absence of any new tangible material, said assessment could not be reopened under section 147. (AY. 2010-11)

Solvay Specialities India (P.) Ltd. v. DCIT [2023] 149 taxmann.com 228 / 292 Taxman 537 (Bom)(HC)

S. 147 : Reassessment - After the expiry of four years - Loans and advances to sister concern - Allegation of colourable device - No failure to disclose material facts - Notice of reassessment and order disposing objection was quashed. [S. 69, 148, Art. 226]

The original assessment was completed under section 143(3) of the Act. the reassessment notice was issued on 30 -3 -2021, on the ground that the advance payment of Rs. 17, 76,08, 505 remained unexplained. The assessee filed the objection for reassessment notice and recorded reasons stating that there was no failure to disclose material facts. The AO passed the order rejecting the objections of the assessee. The assessee filed writ before the High Court. Allowing the petition the Court held that the Assessing Officer has not established that there was a failure on the part of the assessee to disclose all material facts. The Assessing Officer has no power to review. On the facts there is neither a new information received nor has reference been made to any new material on record. Accordingly the notice under section 148 of the Act and all connected proceedings are quashed. Followed, CIT v. Kelvinator of India Ltd (2010) 320 ITR 561 (SC), Jindal Photo Films v. Dy. CIT (1998) 234 ITR 170 (Delhi)(HC). (AY. 2015 -16)

Konark Life Spaces v. ACIT [2023] 149 taxmann.com 489 / 455 ITR 103 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years-Shell company -No failure to disclose material facts-Non application of mind- Reassessment notice and order disposing the objection was quashed. [S. 69, 148, Art. 226]

Allowing the petition, the Court held that the Assessing Officer sought to reopen assessment of assessee after period of four years on ground that assessee had transferred the funds with certain company which had been

conclusively proven to be a shell company, since Assessing Officer had reopened assessment solely on basis of 'reason to believe' and not on grounds of failure to disclose material facts fully and truly, and moreover, Assessing Officer failed to highlight in reasons recorded as to what was that material fact, which was not disclosed by assessee in its return, impugned reopening notice and consequent order was quashed. (AY. 2015-16)

Punia Capital (P.) Ltd. v. ACIT [2023] 149 taxmann.com 53 / 292 Taxman 380 (Bom)(HC)

S. 147 : Reassessment - After the expiry of four years - Commission payment - No failure to disclose material facts - No new tangible material to justify reopening, reassessment proceedings were nothing but a case of change of opinion,- Reassessment notice and order disposing the objection was quashed. [S. 148, Art. 226]]

Allowing the petition the Court held that the assessment was sought to be reopened in case of assessee on ground that assessee was charging lower commission rates to its sister concern/related party, thereby resulting in lesser revenues and leading to lower tax liability and eventually resulting into escapement of income, however, issue with regard to transactions with all parties had been gone into by Assessing Officer in original assessment and there was no new tangible material to justify reopening, reassessment proceedings being a case of change of opinion were not justified. Reassessment notice and order disposing the objection was quashed. (AY. 2013-14 to 2017-18)

Jetair (P.) Ltd. v. DCIT [2023] 148 taxmann.com 185 (Bom)(HC)

S. 147 : Reassessment - After the expiry of four years - Set-off of long term capital loss against long term capital gain - No failure to disclose material facts - No power of review - Reassessment notice and order disposing the objection was quashed. [S. 74, 143(3), 148, Art. 226]

Allowing the petition the Court held that issue regarding set-off of long term capital loss against long term capital gain of current year, was considered and deliberated in course of original assessment proceedings by Assessing Officer and no new tangible material was available with Assessing Officer that could justify reopening of assessment, it could be said that reopening was on account of mere change of opinion and was to be quashed. Reassessment notice and order disposing the objection was quashed. Referred ITO v. Lakhmani Mewal Das (1976) 103 ITR 437 (SC)) (Ananta Landmark (P.) Ltd. v. Dy. CIT(2021) 131 taxmann.com 52/ 283 Taxman 462/ 439 ITR 168 Bom)(HC) CIT v. Kelvinator of India Ltd (2002) 123 Taman 433/ 256 ITR 1 (FB) (Delhi)(HC), Tata Sons Ltd. v. Dy. CIT (2022) 137 taxmann.com 414/286 Taxman 587(Bom)(HC) Jt. CIT v. Cognizant Technology Solutions India (P.) Ltd (2023) 146 taxmann.com 197 /291 Taxman 526/ 452 ITR 224 (SC). (AY. 2015-16)

Noshir Darabshaw Talati v. ACIT [2023] 150 taxmann.com 16 (Bom)(HC)

S. 147 : Reassessment - After the expiry of four years - Interest on funds collected-Issue pending before the Commissioner (Appeals)- Reassessment notice and order disposing the objection was quashed. [S. 80IA, 148, 250, Art. 226]

Allowing the petition the Court held that entire issue with regard to interest income on funds collected as R & D and R & M funds was decided against assessee and was pending decision before Commissioner (Appeals), reopening of assessment was mere change of opinion of Assessing Officer about manner of computation of deduction under section 80AI, hence, not justified. (AY. 2015-16)

Nuclear Power Corporation of India Ltd. v. DCIT [2023] 151 taxmann.com 537 (Bom)(HC)

S. 147 : Reassessment - After the expiry of four years - Infrastructure Development -Audit objection -No failure to disclose

material facts - Notice of reassessment based on Audit objection - Reassessment notice and order disposing of the objection was quashed. [S. 80IA(4), 115JB, 148, Art. 226]

Allowing the petition, the Court held that the reasons recorded by the Assessing Officer did not elucidate what material was not disclosed fully and truly by the assessee, failure to disclose which had led to the income escaping assessment. The basis for the reassessment proceedings was the audit objection and the entertaining of the special leave petition of the Department by the Supreme Court against the judgment in CIT v. Continental Warehousing Corporation (Nhava Sheva) Ltd. [2015] 374 ITR 645 (Bom) (HC). Even that objection lost its substratum since the appeal preferred by the Department in CIT v. Container Corporation of India Ltd. [2018] 404 ITR 397 (SC) had since been dismissed. Accordingly, the notice under section 148 and the order rejecting the assessee's objections were unsustainable and accordingly quashed. (AY.2015-16)

Saurashtra Infra and Power Pvt. Ltd. v. Dy. CIT (2023) 451 ITR 51 / 149 taxmann.com 388 (Bom)(HC)

S. 147 : Reassessment - After the expiry of four years - Co-operative societies - Reopening of assessment being a mere change of opinion was not justified - Reassessment notice and order disposing the objection was quashed. [S. 80P, 148, Art. 226]

Allowing the petition the Court held that the assessment order was passed in case of assessee whereby claim of deduction under section 80P was allowed, reopening of assessment by issue of notice under section 148 without any new information received by Assessing Officer, only with a view to accord a fresh consideration on issue of deduction under section 80P on same set of records being a mere change of opinion was not justified. Reassessment notice and order disposing the objection was quashed. (AY. 2013-14)

Tahnee Heights CHS Ltd. v. ITO [2023] 147 taxmann.com 335 / 292 Taxman 315 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years- Co-operative Society- Deduction allowed- Change of opinion - Reassessment notice and order disposing the objection was quashed. [S. 80P(2)(1), 80P(2)(d), 148, 226]

Allowing the petition the Court held that issue with regard to claim of deduction under section 80P had been specifically gone into by Assessing Officer leading to passing of assessment order under section 143(3) and consequent thereto, there had been neither any change in law nor any new material had been shown to have come to knowledge of Assessing Officer, reopening of assessment on ground that claim of deduction under section 80P(2)(d) was not in conformity with provisions of said section being a mere change of opinion was not justified.(AY. 2014-15)

Mumbai Postal Employees Co-operative Credit Society Ltd. v. ITO [2023] 149 taxmann.com 94 / 292 Taxman 492 (Bom)(HC)

S. 147 : Reassessment-With in four years- Depreciation - Change of opinion -Depreciation - License fee - No new information - Reassessment notice and order disposing the objection was quashed. [S. 32, 35AAB, 148, Art. 226]

Allowing the petition, the Court held that the reassessment was initiated on ground that as per section 35ABB, assessee was eligible for deduction on license fee but it had capitalized said fee as intangible asset and claimed 25 per cent depreciation which had resulted in allowance of excess depreciation, since said issue was examined by Assessing Officer in assessment proceeding, and neither was there any new information received nor was a reference made to any new material on record, in absence of any tangible material, present case was nothing but a case of change of opinion and, thus, did not satisfy jurisdictional foundation of section 147. Reassessment notice and order disposing the objection was quashed. (AY. 2016-17)

Clear Media (India) (P.) Ltd. v. DCIT [2023] 150 taxmann.com 52 / 293 Taxman 108 (Bom)(HC)

S. 147 : Reassessment - With in four years - No tangible material - Business expenditure -Compensation- Provision for compensation - Pending for settlement - Reassessment is held to be bad in law. [S. 37(1), 145, 148, Art. 226]

Provision for payment of compensation with respect to defected machines sold against which complaints were filed and were pending settlement, compensation claimed as the expense was based on the actual occurrence of financial incidence purely related to business activities same was examined during original scrutiny assessment, reassessment order was to be quashed. (AY. 2008-09)

PCIT v. NESCO Ltd. [2023] 291 Taxman 286 (Bom)(HC)

S. 147 : Reassessment -With in four years- Accommodation entries - Shell company - Deposit demonetized cash- Sales Borrowed satisfaction - Not independently applied the mind- Reassessment notice and order disposing the objection was quashed. [S. 69A, 143(1), 148, Art. 226]

Allowing the petition, the Court held that the reasons do not furnish any explanation as to on what basis and material the assessing officer came to a conclusion that M/s Magnum Tradex Pvt. Ltd., was indeed a shell entity. The verification of the VAT returns referred to in the reasons recorded suggest only transaction between the Petitioner and M/s Magnum Tradex Pvt. Ltd., in regard to goods sold amounting to Rs. 2,08,76,068/-. There was, thus, no material or basis for the assessing officer to hold the transaction between the Petitioner and M/s Magnum Tradex Pvt. Ltd., as not a genuine transaction of sale or for that reason to hold that M/s Magnum Tradex Pvt. Ltd. was a shell entity. The reasons recorded do not suggest at all whether pursuant to receipt of information, the assessing officer had independently applied its mind to the information received or conducted its own inquiry into the matter for the purpose of coming to a conclusion that indeed income assessable to tax had escaped assessment or that the

transaction in question with the alleged shell entity was only a paper transaction. Accordingly the reassessment notice and order disposing the objection. was quashed, Followed ITO v. Lakhmani Mewal Das (1976) 103 ITR 437 (SC) First Source Solutions Ltd. v. Asstt. CIT (2021)) 132 taxmann.com 121 /438 ITR 139 (Bom)(HC) (HC)).(AY. 2016-17)

B.U. Bhandari Autolines (P.) Ltd. v. ACIT [2023] 149 taxmann.com 219/ 292 Taxman 195/ 331 CTR 240 (Bom)(HC)

S. 147 : Reassessment -With in four years- Advance - Change of opinion - Notice and order disposing the objection was quashed. [S. 69A 148, Art. 226]

Allowing the petition, the Court held that the issue relating to advance made by assessee to a co-operative society had been specifically gone into by Assessing Office in scrutiny assessment proceedings for assessment year 2017-18 by raising queries which was replied by assessee, reassessment proceedings initiated by Assessing Officer on same subject matter would be treated as a change of opinion which would not satisfy jurisdictional condition for reopening assessment. Reassessment notice and order disposing the objection was quashed. (AY. 2017-18)

D.K. Realty India (P.) Ltd. v. ACIT [2023] 148 taxmann.com 468 / 292 Taxman 328 (Bom)(HC)

S. 148 : Reassessment - Service of notice - Primary email id - Notice issued on the secondary notice - Failure to participate in the proceedings - Service of the notice is not valid - Reassessment was quashed. [S. 144, 144B, 147, 282, Rule 127, Art. 226]

Assessing Officer issued a notice u/s. 148 on the secondary email address of the assessee, when there was a primary email address available, there was nothing wrong with the assessee's refusal to participate in the proceeding vitiated by valid service of notice. r.w.s. 148, and rule 127 of the Income-tax Rules, 1962. Proceedings including the show cause notice

for proposed variation dated 25th March 2022 and assessment order u/s 144B r.w s.144 of the Act was quashed. (AY. 2015-16, 2016-17, 2017 -18)
Lok Developers Registered Partnership Firm v. Dy. CIT [2023] 149 taxmann.com 93 (Bom)(HC)

S. 148 : Reassessment -Notice - Un explained investment -Wrongly stating that return was filed in terms of section 119(2)(b)- Exparte order making addition as income from undisclosed sources - Order was set aside - Directed to treat the return filed in terms of section 148 of the Act. [S. 69, 119(2)(b), 144, 147, 292B, Art. 226]

The Assessing Officer passed assessment order under section 147 read with section 144 and added certain amount to his income as unexplained investments in immovable property by invoking provisions of section 69 on the ground that the assessee has not filed the return in pursuance of notice under section 148 of the Act. On writ the assessee contended that the in response to notice issued under section 148 filed return but by mistake reflected that return was filed in terms of section 119(2)(b) and Assessing Officer passed assessment order holding that assessee had not filed any return. Allowing the petition the Court held that the matter required to be reconsidered by Assessing Officer by treating return as a return filed in terms of notice under section 148. Assessment order and demand notice was set aside. (AY. 2015 -16)

Shahana Nayak v. ITO [2023] 151 taxmann.com 482 (Bom)(HC)

S. 148 : Reassessment -Notice - Dead person- Issuing a notice to a correct person is not merely a procedural requirement but a condition precedent for a notice to be valid in law - Order null and void. [S. 148A(b) 148A(d)), Art, 226]

Allowing the petition, the Court held that notice issued on a dead person or reopening of assessment of a dead person is null and void in law. Accordingly the notice under section 148, order under section 148A(d) and notice under section 148A(b) were quashed and set aside. (AY. 2020-21)

Dhirendra Bhupendra Sanghvi v. ACIT [2023] 151 taxmann.com 541 (Bom.) (HC)

S. 148 : Reassessment -Notice - Amalgamation- Company ceased to exist- Estoppel against law- Reassessment notice and order was quashed. [S. 148(A))(b), 148A(d), Art. 226]

Allowing the petition, the Court held that, participation in the proceedings would not operate as an estoppel against law, based upon the settled legal principle that the amalgamating entity had ceased to exist upon the scheme of amalgamation being approved. Accordingly, when a company was amalgamated with petitioner company by an approved scheme of amalgamation, and such factum was communicated to concerned income-tax authorities, order passed under section 148A(d) and subsequent issue of notice under section 148 against such amalgamating company which ceased to exist. Order was quashed. Referred *Saraswati Industrial Syndicate Ltd. v. CIT* [1990] 53 Taxman 92/186 ITR 278 (SC), *Spice Entertainment Ltd. v. CST* 2012 (280) ELT 43 (Delhi) (HC)) and *Pr. CIT v. Maruti Suzuki India Ltd*(2019) 107 taxmann.com 375/ 265 Taxman 515/ 416 ITR 613(SC) (AY. 2013-14)

Pico Capital (P.) Ltd. v. DCIT [2023] 150 taxmann.com 488 (Bom)(HC)

S. 148 : Reassessment -Notice - Amalgamation- Company ceased to exist- Succession to business otherwise than on death -Non existing company - Amalgamation - PAN in name of non -Existent company remained active - Notice issued was quashed. [S. 148, 170, Art. 226]

Allowing the petition the Court held that a company was amalgamated with petitioner-company, name of non-existing company could not be mentioned in reopening notice merely because PAN in name of non-existent company had remained active and, thus, impugned reopening notice and reassessment order passed upon petitioner-company while having name of

non-existing company were to be set aside. Accordingly, the reassessment notice and order disposing the objection was quashed. (AY. 2017-18)

CLSA India (P.) Ltd. v. DCIT [2023] 149 taxmann.com 380 (Bom)(HC)

S. 148 : Reassessment -Notice - Search and Seizure - Third party premises-Satisfaction note- Failure to furnish documents - Assessment order quashed and set aside - Matter was remanded back for adjudication afresh. [S. 131, 132, 147, 151, Art. 14, 226]

Assessee is a co-operative Bank providing financial and banking services. Assessing Officer on basis of search conducted against third person, issued notice under section 148 to assessee, claiming that it had reason to believe that assessee's income chargeable to tax for relevant assessment year had escaped assessment. The Assessee requested for satisfaction note and also copy of statement recorded of the parties. The Assessing Officer passed the order without providing the satisfaction note and copy of the statement. On writ allowing the petition the Court held that the Assessing Officer was duty bound to issue, along with notice under section 148, reasons which formed basis for reopening of assessment, satisfaction note and order of Principal Commissioner, who granted approval to issuance of said notice along with note of Assessing Officer in support of his request for approval, appraisal report from DDIT (Inv) Bhavnagar, and statements of person recorded under section 131 which were referred to in notice. However, none of these documents, were sent to assessee in compliance with general directions issued by Court. It was also borne from record that despite several requests from assessee, specifically demanding a copy of all these documents, Assessing Officer had refused to furnish copies of same to assessee - Thereafter, Assessing Officer rejected request of assessee for furnishing all these documents without assigning any reasons for such rejection, nor dealing with specific objections and request made by assessee in its order. Accordingly the order was set aside and Whether therefore, matter was remanded back for adjudication afresh. Followed Tata Capital Financial

Services Ltd. v. Asstt. CIT(2022) 137 taxmann.com 315/ 287 Taxman 1/ 443 ITR 127 (Bom)(HC), Sabh Infrastructure Ltd. v. Asstt. CIT (2018) 99 taxmann.com 409/ (2017) 398 ITR 198 (Delhi)(HC) (AY. 2013-14)

Sahebrao Deshmukh Co-op. Bank Ltd. v. ACIT [2023] 149 taxmann.com 248 / 292 Taxman 258 / 455 ITR 92 (Bom)(HC)

S. 148 : Reassessment -Notice - Recorded reason was not provided - Order of assessment is bad in law - Faceless Assessment Scheme who shall proceed in the matter after providing to the Petitioner the reasons recorded for reopening. The proceedings be completed preferably within a period of three months from today. [S. 144B, 147, Art. 226]

Allowing the petition the Court held that where a reopening notice was issued upon assessee and, further, an order of assessment under section 147 read with section 144B was passed, since assessee had consistently requested Assessing Officer to furnish reasons for reopening which admittedly were never provided to assessee, impugned reopening of assessment and further order passed were unsustainable in law. The Court also held that the matter is remanded to the concerned officer under the Faceless Assessment Scheme who shall proceed in the matter after providing to the Petitioner the reasons recorded for reopening. The proceedings be completed preferably within a period of three months from today. (AY. 2014-15)

Rajesh Poddar v. ITO (2023) 152 taxmann.com 98 (Bom)(HC)

S. 148 : Reassessment - Notice - Two Permanent Account Numbers -Earlier Permanent Account Number was amended - Notices issued in earlier Permanent Account Number not responded. [S. 144, 147, 148, 156, 271B, 271F, 274, Art. 226]

Held that in view of the peculiar facts, the petitioner-firm, having two PANs issued in its name (one in status as a company), filed its audited returns and paid taxes on correct PAN but since they had not taken any steps to

cancel or surrender wrong PAN nor respondent had fulfilled its duties diligently by indicating in their reply to petition whether or not petitioner had filed any return of income on wrong PAN since issued, impugned notice under section 148 was quashed and respondent was to be directed to cancel wrong PAN in accordance with law and reassess petitioner, if required. (AY. 2015-16, 2016-17)

Bhavna Steel v. ITO [2023] 152 taxmann.com 218 / 454 ITR 670 (Bom)(HC)

S. 148A : Reassessment - Conducting inquiry, providing opportunity before issue of notice - Assessee must be furnished material on the basis of which initial notice was issued- Notice was quashed. [S. 69C, 148, 148A(b), 148A(d), Art. 226]

Assessing Officer issued a reopening notice on ground that assessee had failed to explain source of huge amount of cash paid for purchase of a warehouse. On writ the Court held that since the Assessing Officer failed to provide requisite material relied upon by it which ought to be supplied along with information in terms of section 148A(b) to assessee initiation of reassessment proceedings was unsustainable on ground of violation of procedure prescribed under said section. Notice was quashed. Court also observed that it would be open to the revenue to proceed in the matter from the stage of the notice under section 148A(b) of the Act by supplying the relevant material, if it is otherwise permissible keeping in view the issue of limitation. (AY. 2018-19)

Anurag Gupta v. ITO [2023] 150 taxmann.com 99 / 454 ITR 326 / 332 CTR 811 (Bom)(HC)

S. 148A : Reassessment - Conducting inquiry, providing opportunity before issue of notice - Notice issued in name of deceased assessee- Notice and order quashed and set aside. [S. 147, 148, 148A(b), 148A(d), Art. 226]

On a writ petition allowing the petition the Court held that the notice dated June 30, 2021 issued under section 148, the communication dated May 20, 2022 purporting to be a notice under section 148A(b) and the order dated June 30, 2022 under section 148A(d) was set aside. Notwithstanding the objection having been taken by the legal heir of the deceased assessee, an order under section 148A(d) was passed on June 30, 2022. The initial notice issued under section 148 and the subsequent communication dated May 20, 2022 purporting to be a notice under section 148A(b) were in the name of the deceased assessee. The notice issued under section 148 against a dead person would be invalid unless the legal representatives submit to the jurisdiction of the Assessing Officer without raising any objection.

Prakash Tatoba Toraskar v. ITO (2023) 452 ITR 59 / 151 taxmann.com 366 (Bom)(HC)

S. 148A : Reassessment - Conducting inquiry, providing opportunity before issue of notice - After three years from the end of relevant assessment year - Service of notice without the signature of Assessing Officer digitally or manually - Notice invalid - Order and notice was quashed and set aside. [S. 147, 148, 148A(b), 148A(d), Art. 14, 226]

Allowing the petition, the Court held that the notice issued under section 148 of the Income-tax Act, 1961 has no signature of the Assessing Officer affixed on it, digitally or manually, was invalid, and would not vest the Assessing Officer with any further jurisdiction to proceed with the reassessment under section 147. Consequently, the Assessing Officer could not assume jurisdiction to proceed with the reassessment proceedings. The notice having been sought to be issued after three years from the end of the relevant assessment year 2015-16 any steps taken by the Assessing Officer the notice issued under section 148A(b) and the order passed under section 148A(d) were without jurisdiction and therefore, arbitrary and

contrary to article 14 of the Constitution of India and consequently set aside. (AY.2015-16)

Prakash Krishnavtar Bhardwaj v. ITO (2023) 451 ITR 27 / 331 CTR 64 / 150 taxmann.com 60 / 293 Taxman 132 (Bom)(HC)

S. 148A : Reassessment - Conducting inquiry, providing opportunity before issue of notice - Jurisdiction - Part of cause of action had accrued within territorial jurisdiction of Bombay High Court - Bombay High Court has the jurisdiction to entertain the Writ petition- Interim relief was granted. [S. 148, 148A(b), 148A(d), Art. 226]

On writ against the notice under section 148 of the Act the Court held that where a part of cause of action had accrued to assessee within territorial jurisdiction of Bombay High Court, inasmuch as initial notice under section 148A(b) was issued by Assessing Officer in Mumbai, Bombay High Court would have jurisdiction to entertain present writ petition, more so when Bombay High Court had proceeded to exercise jurisdiction in case of assessee while entertaining a challenge to initial notice under section 148, issued under unamended provisions of section 148 as it existed before 1-4-2021. Ad -interim relief was granted and the Respondents were directed to file the reply, within six weeks. The matter is kept for hearing on 13-1-2023.

HSTN Acquisition (FII) Ltd. v. DCIT [2023] 147 taxmann.com 226 / 330 CTR 453 (Bom)(HC)

S. 151 : Reassessment-Sanction for issue of notice - After the expiry of four years - Satisfaction recorded by Joint Commissioner - Notice and order disposing the objection was quashed. [S. 147, 148, Art. 226]

Allowing the petition, the Court held that the Assessing Officer issued notice under section 148 beyond period of four years from end of assessment year and satisfaction under section 151 had been issued by Joint Commissioner,

as satisfaction should have been of either Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner in accordance with section 151(1) of the Act. Notice issued under section 148 and order disposing the objection was quashed. Followed J. M. Financial and Investment Consultancy Services (P.) Ltd. v. Asstt. CIT (2022) 215 DTR 98/ 327 CTR 458 /(2023) 451 ITR 205 (Bom)(HC) (AY. 2015-16)

Thirdware Solution Ltd. v. DCIT [2023] 146 taxmann.com 364 (Bom)(HC)

S. 151 : Reassessment-Service of notice-Return submitted giving new address - Notice sent to old address - No proper service of notice - Notice and reassessment proceedings not valid - Sanction for issue of notice - After expiry of three years - Approval of Principal Commissioner (PCIT) is not valid - Approval is required from Principal Chief Commissioner (PCCIT) - Order was quashed. [S. 147, 148, 148A(b), 148A(d), 149(1)(a), 151(iii), Art. 226]

Allowing the petition, the Court held that the sanction under section 151(ii) ought to have been obtained from the Principal Chief Commissioner when the notice under section 148A(b) had been issued beyond the period of three years. Though the Department had the new address of the assessee in the return of income filed, the notice was sent to the assessee's old address. There was no proof of the service of notice under section 148A(b) dated March 20, 2022. Before issuing the notice under section 148A(b) it was imperative for the Assessing Officer to have checked if there was a change in address of the assessee. The effect of non-service was that the assessee did not get an opportunity to respond to the notice. Consequently, the notice under section 148A(b) and the proceedings thereafter were void. The notice under section 148A(b), the order under section 148A(d) were set aside on account of jurisdictional error, i. e., for want of service and consequently, for non-compliance with the provisions of the Act. The notice under section 148 was quashed and set aside. The Assessing Officer was given liberty to proceed with the

reassessment after issuance of notice and providing the assessee a hearing after a response was filed. Relied on CIT v. Eshaan Holding (P.) Ltd (2012)) 25 taxmann.com 99/344 ITR 541 (Delhi)(HC), CIT v. Avtar Singh (2008) 304 ITR 333 (P&H)) (HC) (AY. 2018-19)

Chitra Supekar (Mrs.) v. ITO [2023] 149 taxmann.com 26 / 292 Taxman 511/ 453 ITR 530 / 332 CTR 374 (Bom)(HC)

S. 151 : Reassessment - Sanction for issue of notice -Approval obtained from additional Commissioner and not from specified authority - Notice was quashed. [S. 147, 148, 151(ii), Art. 226]

Allowing the petition, the Court held that the approval for issuance of notice under section 148 of the Income-tax Act, 1961 ought not to have been obtained from the Additional Commissioner but from the authority specifically mentioned under section 151(ii). The notice issued under section 148 was quashed. Followed J.M. Financial and Investments Consultancy Services (P) Ltd v. ACIT (2023) 451 ITR 205 (Bom)(HC) (AY.2015-16)

MA Multi-Infra Development Pvt. Ltd. v. ACIT (2023)451 ITR 181/149 taxmann.com 491 (Bom)(HC)

S. 151 : Reassessment - Sanction for issue of notice - After the expiry of four years - Sanction obtained from Additional Commissioner not from Principal Chief Commissioner or Chief Commissioner - Notice was quashed - Faceless Assessment - Mandatory condition - Draft Assessment order - Condition not complied with - Final assessment order was quashed and set aside. [S. 144B(1)(xvi), 147, 148, Art. 226]

Allowing the petition, the Court held that where the Assessing Officer issued reopening notice to assessee beyond period of four years after obtaining necessary sanction of Additional Commissioner, since approval for issuance of said notice ought to have been obtained from Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or

Commissioner in terms of section 151, impugned notice was quashed. The Court also held that there had been breach of the provisions of section 144B(1)(xvi) of the Income-tax Act, 1961 since no draft assessment order was issued to the assessee. Accordingly the final assessment order dated March 25, 2022 passed in violation of the provisions of section 144B was also quashed and set aside (AY. 2015-16)

Rinku R. Rai v. ITO [2023] 151 taxmann.com 478 / 454 ITR 33 (Bom)(HC)

S. 153 : Assessment - Reassessment - Limitation -Remand - Failure to comply with remand order made by Tribunal - Delay of 12 years - Assessment became time barred - Directed the Revenue to refund the amount along with interest under section 244A of the Act. [S. 132, 153(3), 158BC, 244A, Art. 226]

Allowing the petition, the Court held that the Assessing Officer had failed to comply with remand order made by Tribunal even after lapse of substantial period of 12 years and even after receiving assessee's letter to department in that regard, assessment became time barred and, thus, revenue was to be directed to issue refund along with interest under section 244A of the Act. [BP 1-4-1996 to 13-8-2002]

Lakhpatri Agarwal v. ACIT [2023] 149 taxmann.com 348 / 292 Taxman 282 (Bom)(HC)

S. 179 : Private company - Liability of directors - Order of the Assessing Officer holding director is liable for such outstanding demand with interest was quashed. [S. 220(2), Art, 226]

Tax dues could not be recovered from the company; show cause notice issued upon director clearly suggested that there was no such satisfaction recorded that outstanding demand was irrecoverable from the company. Order of the Assessing Officer holding director is liable for such outstanding demand with interest was quashed. (AY.2010-11)

Rajendra R. Singh v. ACIT (2022) 328 CTR 691 / 216 DTR 386 / 289 Taxman 682 / 143 taxmann.com 34 (Bom)(HC)

S. 179 : Private company - Liability of directors -Recovery proceedings- Gross neglect, misfeasance or breach of duty -Not proved - Order of the Assessing Officer and order rejecting the revision application was quashed. [S. 264, Art. 226]

In response to show cause notice the petitioner contended that she was not guilty of any gross neglect, misfeasance or breach of duty on her part in relation to the affairs of the company. The Assessing Officer passed the order under section 179 of the Act treating the petitioner as defaulter for not paying the tax due from the Company. The petitioner filed revision application under section 264 of the Act. Commissioner rejected the revision application on the ground that the petitioner was director and hence liable. On writ the Court held that the Assessing Officer has not specifically held that the petitioner to be guilty of gross neglect, misfeasance or breach of duty on part in relation to the affairs of the company. Not a single incident decision or action has been highlighted by the Assessing Officer, which would be treated as an act of gross neglect, breach of duty or malfeasance which would have remotest potential of resulting in non- recovery of tax due in future. Accordingly the order of the Assessing Officer and rejecting the order under section 264 of the Act was quashed. Relied on Maganbhai Hansrajbhai Patel v.ACIT (2012) 211 Taxman 386 / 2013] 353 ITR 567 (Guj)(HC), Ram Praksh Singeshwar Runta v.ITO (2015) 370 ITR 641 (Guj)(HC)

Geeta P. Kamat v. PCIT (2023) [2023] 150 taxmann.com 490 / 455 ITR 23 (Bom)(HC)

S. 220 : Collection and recovery of tax - High pitched assessment - Complete stay of demand was granted. [S. 10(34), 10(38), 68, Art. 226]

Held that since the assessment was high pitched and the prima facie case was in favour of the assessee, a complete stay of demand was granted. (AY. 2017-18)

Humuza Consultants v. ACIT [2023] 451 ITR 77 (Bom)(HC)

S. 220 : Collection and recovery - Assessee deemed in default - High pitched assessment - Change its status from firm to trust - Complete stay was granted - Remanded to Assessing Officer to consider assessee's status as Trust. [S. 250, Art. 226]

On writ allowing the petition the Court held that the Assessee's status had changed from firm to a trust and it was allotted a new PAN, however the Assessing Officer issued reopening notice under old name and PAN of assessee and raised demand by passing high-pitched assessment, since assessee had a strong prima facie case that it would not be liable to pay such a high demand if it was assessed in capacity of trust as against that of firm, complete stay of demand was granted. The Respondents was directed to consider the Petitioner's application under their status as a Trust and try to dispose of the matter preferably within a period of 4 months from the date of this order. No coercive steps shall be taken against the assessee for the recovery of the demand in pursuance of the impugned notice dated 30th March 2022. (AY. 2014-15)

BHIL Employees Welfare Fund No. 4 v. ITO [2023] 147 taxmann.com 427 / 455 ITR 130 (Bom)(HC)

S. 226 : Collection and recovery - Modes of recovery - Assessee-in-default- On remittance of Rs. 43 Crores the notice and order were to be quashed and set aside and all further action in respect thereof would be prohibited. [S. 226 (3), Art. 226]

Petitioner, a multi-state scheduled urban cooperative bank was by three separate notices under section 226(3) called upon to forthwith pay any amount held by it in accounts of three assessee's viz. M, S and N due to Deputy Commissioner on account of income-tax, wealth-

tax,/Interest/Penalty. Petitioner informed Deputy Commissioner that they had marked a 'Debit freeze' for stated accounts. Subsequently, petitioner was declared as an 'assessee-in-default' for non-compliance with notice under section 226(3) and RBI was called upon to attach all bank accounts, FDs, RDs, and other deposits held by petitioner to effect recovery of dues from 'S' in respect of arrears of income-tax. On writ the Court held that impasse between the petitioner and Deputy Commissioner could be resolved by directing petitioner to forthwith remit electronically a sum of Rs. 43 crores to Deputy Commissioner. Upon such remittance, petition was to be disposed of and impugned notice and impugned order were to be quashed and set aside and all further action in respect thereof would be prohibited.

TJSB Sahakari Bank Ltd. v. DCIT [2023] 151 taxmann.com 254 (Bom)(HC)

S. 245 : Refunds- Set off of refunds against tax remaining payable -Not given any prior intimation-Adjustment is held to be bad in law. [Art. 226]

Revenue adjusted refund payable to the assessee for AY.2008-09 against alleged outstanding demands from for AY 2014-15 and 2015-16, since the assessee was not given any prior intimation about proposed adjustment of refund in terms of section 245, the adjustment made was unjustified. (AY. 2014-15, 2015-16)

Greatship (India) Ltd. v. ACIT [2022] 289 Taxman 334 (Bom)(HC)

S. 245R : Advance rulings -Non -Resident - Capital gains -Shell company - CBDT circulars and press release of Ministry of Finance - Certificate of residence issued by Mauritius Authorities would constitute sufficient evidence - Denial of benefit of Double Taxation avoidance agreement - Matter remanded to Authority for Advance Rulings for reconsideration - DTAA -India - Mauritius. [S. 45, 197(1), 245Q, Art. 13, Art. 226]

On writ allowing the petition the Court held that certificate of residence issued by Mauritius Authorities would constitute sufficient evidence. Authority for Advance Rulings denying to benefits of Double Taxation Avoidance Agreement on ground that the assessee shell company and was treaty shopping held to be not valid. Matter Remanded to Authority for Advance Rulings for reconsideration. Referred CBDT Circular No Central Board Of Direct Taxes Circular Nos. 682, Dated 30-3-1994 ([1994] 207 ITR (St.) 7) and 789 Dated 13-4-2000 ([2000] 243 ITR (St.) 57), UOI v. Azadi Bachao Andolan (2003) 263 ITR 706 (SC) Vodafone International Holdings B.V. v. UOI (20012) 341 ITR 1 (SC). Court also observed that although scrutiny in writ jurisdiction under article 226 of the Constitution of India of orders passed by the Authority for Advance Rulings is minimal they can be interfered with if the ruling is without considering the entire material on record or the submissions made on behalf of the parties or the ruling suffers from a fundamental error or is absurd or perverse. Accordingly the matter was remanded back to the Authority for reconsideration after giving opportunity of hearing to the assessee and the Department. Accordingly, the ruling passed by the Authority for Advance Ruling was quashed and set aside.

Bid Services Division (Mauritius) Ltd v. AAR (2023)453 ITR 461 (Bom)(HC)

S. 251: Appeal - Commissioner (Appeals) - Powers -Failure to submit grounds of appeal - Violation of principle of natural justice - Ex -parte order was set aside. [S. 250, Form No.35, Art. 226]

The petitioner had filed his memo of appeal in Form 35, however the grounds of appeal were not attached at the time of filing of Form 35 on account of some technical reasons. However the appellant has up loaded the submission in the portal. The CIT(A) passed the ex -parte order without considering the submissions. On writ allowing the petition the Court held that the Commissioner (Appeals) was not justified in deciding assessee's appeal ex parte basis merely because assessee failed to submit grounds of

appeal as an attachment at time of filing memo of appeal in Form No. 35 when submissions made by assessee sufficiently reflected grounds on which impugned assessment order was being challenged. The order was set aside and directed the CIT(A) to decide the matter within three months.

Prime ABGB (P.) Ltd. v. NFAC [2023] 147 taxmann.com 357 (Bom)(HC)

S. 254(1) : Appellate Tribunal - Powers - Notional income -Income from house property or Income from other sources -Tribunal has no power to review earlier order - Order of Tribunal is stayed [S. 22, 23, 56, 254(2), Art. 226]

Assessing Officer held that amount received by assessee as rent was to be taxed as income from other sources. Tribunal upheld said order and directed Assessing Officer to recompute same. Assessee filed rectification application challenging said order on ground that Tribunal failed to address issue whether notional income could be brought to be tax under head 'income from other source. Tribunal pursuant to applications recalled matter and fixed matter for passing order de novo. Tribunal however passed impugned order holding that rent income of assessee was to be treated as income from house property. On writ the assessee contended that consequence of rectification application filed by assessee being allowed was only to extent that issue regarding taxability of a notional income had to be considered. Since the Tribunal by virtue of impugned order reviewed its earlier order in which it was specifically ordered that income was to be treated as 'income from other sources', The order of the Tribunal was stayed. Petition was fixed for hearing on 30 -10 -2023 (AY. 2004-05)

Procter and Gamble Home Products (P.) Ltd. v. ITO [2023] 150 taxmann.com 124 (Bom)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue - Write off of interest receivable - Interest expenditure on slum rehabilitation project at Dindoshi - Inadequacy of enquiry does not

give jurisdiction to Commissioner to revise the order - Explanation 2 is prospective in nature. [S. 36(1)(iii), 36(1)(vii), 260A]

Dismissing the appeal of the Revenue the Court held that once the Assessing Officer has raised the queries which the assessee may not have answered fully, cannot be considered as no enquiry was conducted. What section 263 covered prior to insertion of Explanation 2 was a case of no enquiry but not of inadequate enquiry. Explanation 2 is prospective in nature. Accordingly the deduction under section 36(1)(vii) of the Act with respect to write off of interest receivable foregone under One Time Settlement ('OTS') entered into by the assessee with its borrowers and deduction under section 36(1)(iii) of the Act with respect to interest expenditure incurred with borrowings made for the slum rehabilitation project at Dindoshi, which was allowed by the Assessing Officer, revision order by the Commissioner which was quashed by the Tribunal was affirmed by the High Court. (AY. 2006 -07)

PCIT v. Shvshahi Punarvasan Prkalp Ltd (2023) 331 CTR 593 (Bom)(HC)

S. 271(1)(c) : Penalty - Concealment - Disallowance of deduction claimed - Deletion of penalty is justified. [S. 260A]

Dismissing the appeal of the Revenue the Court held that penalty proceedings had been initiated against assessee only on account of fact that deduction, which was claimed by assessee had been disallowed, Tribunal rightly deleted penalty levied by Assessing Officer under section 271(1)(c), as, making unsustainable claim could neither amount to concealment nor amount to furnishing inaccurate particulars of income. Order of Tribunal is affirmed. (AY. 2008-09)

PCIT v. E-City Investments & Holdings Company (P.) Ltd. [2022] 144 taxmann.com 61 (Bom)(HC)

S. 279 : Offences and prosecutions - Sanction - Chief Commissioner -Tax deduction at source - Compounding application - Application

was filed beyond twelve months- Rejection of application was set aside. [S. 276B, 278B, 279(2), Art, 226]

Assessee voluntarily deposited TDS due to be credited to Central Government along with penal interest liability, though beyond the time stipulated, but before any demand or show-cause notice was issued upon it. Order of Chief Commissioner (TDS) rejecting assessee's application for compounding of the offence charged u/s. 276B r.w.s.287B on the ground that the same was filed beyond twelve months which was contrary to the provision of s. 279(2) and thus the order is liable to be set aside. (AY. 2010-11)

Footcandles Film (P.) Ltd. v. ITO [2023] 453 ITR 402 (Bom)(HC)

Direct Tax Vivad Se Vishwas Act, 2020, (2020) 422 ITR 121(St)

S. 3 : Amount payable by declarant-Disputed tax -Bogus purchases-Tax to be calculated after giving effect to the order of the Tribunal-Competent Authority was directed to grant the certificate after determining the tax payable giving effect to the order of the Tribunal. [S. 2(1)(j)(B), Art. 226]

Assessee's income was reassessed after making an addition of 100 per cent of alleged bogus purchases. Commissioner (Appeals) restricted addition to 25 per cent of amount of purchases made. Tribunal held that additions would be made to extent of difference between gross profit rate on genuine purchases and gross profit rate on hawala purchases. However, since specific details were not available for facilitating calculations of gross profit rates of genuine and hawala purchases, Tribunal remanded back matter to Assessing Officer to calculate same accordingly. Subsequently the, assessee filed declaration in Form-1 under Direct Tax Vivad Se Vishwas Act and declared thereunder an amount to be taxed. In response to same, Pr. Commissioner issued certificate in Form-3 and made demand on account of disputed tax, however, demand raised was as per order of Assessing

Officer which was more than what was declared by assessee. On writ, allowing the petition the Court held that the order of remand passed by Tribunal was certainly not one where Assessing Officer was directed to carry out a fresh examination on any issue. It had only remanded matter for calculation of tax based on its finding. Since Tribunal had already passed an order before specified date and time for filing for appeal had not expired, disputed tax had to be calculated in terms of section 2(1)(j)(B) by giving effect to order of Tribunal. Accordingly the action of Pr. Commissioner raising tax demand based upon order of Assessing Officer was unsustainable and same was set aside.

Agarwal Industrial Corporations Ltd. v. UOI [2023] 150 taxmann.com 438/ 332 CTR 861 (Bom)(HC)

S. 3 : Amount payable by declarant - Disputed tax - Rectification order - Reduction or increase in income and tax liability - Disputed tax would be calculated after giving effect to said rectification order passed- The respondents are directed to act in furtherance of the petitioner's declaration by way of Form-3, dated 18th January 2021 in accordance with the clarification of the Act of 2020. [S. 2(1)(J), 154, Art. 226]

Assessee's case was selected for scrutiny and assessment order was passed making an addition in income of assessee which was taxed at 30 per cent. The Assessee filed rectification application seeking rectification of computation of tax payable. Assessing Officer allowed said application on ground that there was an error in treating income as taxable business income instead of taxable long-term capital gains. Accordingly, tax and interest demand earlier raised was reduced. The assessee filed declaration under Direct Tax Vivad se Vishwas Act. Principal Commissioner issued revised Form 3 ignoring rectification order and treated income liable to be taxed at 30 per cent instead of 20 per cent. On writ allowing the petition the Court held that as per clarification issued by CBDT if there was a reduction or increase in income and tax liability of assessee as a result of

rectification, disputed tax would be calculated after giving effect to rectification order passed. The respondents are directed to act in furtherance of the petitioner's declaration by way of Form-3, dated 18th January 2021 in accordance with the clarification of the Act of 2020. (AY. 2014-15)

Rajpal Lakhmichand Arya v. PCIT [2023] 150 taxmann.com 184 (Bom)(HC)

S. 3 : Amount payable by declarant - Disputed tax - Amount paid by assessee under IDS, 2016 which was lying with revenue should be adjusted while determining tax payable by assessee under DTVSV Act. [S. 4, Finance Act, 2016, S. 191]

The assessee declared his undisclosed income under Income Declaration Scheme, 2016 and deposited certain amount of tax by way of two challans but could not deposit rest amount, amount deposited under said two challans. When the Direct Tax Vivad Se Vishwas Act, 2020 was enacted the assessee applied thereunder and submitted forms 1 and 2 declaring a disputed income of Rs. 15,50,500. Form 3 issued under the Direct Tax Vivad Se Vishwas Act, 2020 required the assessee to pay a sum of Rs.6,97,500 on or before March 31, 2021 and if the amount was not paid by that date, an amount of Rs. 7,67,250 after March 31, 2021. The assessee stated that credit was not given for the taxes paid and the request made to the Principal Commissioner for rectification in form 3 was not responded to. On a writ petition Held, allowing the petition, that the amount deposited by the assessee under the 2016 Scheme could not have been forfeited as it had neither been refunded nor adjusted. It was not a case where the assessee had failed to make the payment within the time prescribed under the 2020 Act which would result in denying the benefit of the Scheme but a case where the money which was lying in the corpus of the Department had only to be adjusted by way of a mathematical exercise and benefit accorded to the assessee under the 2020 Act. A revised form 3 was issued on September 27, 2021, which required the assessee to deposit

an amount of Rs. 1,90,000 before September 30, 2021 and Rs. 2,59,750 after September 30, 2021. The amount so specified in form 3 also took into consideration an amount of Rs. 2,09,400 deposited by the assessee on October 30, 2021. The assessee had paid an amount of Rs. 51,000 in the month of November 2021. As on the last date specified, i. e., October 30, 2021, the assessee had admittedly not paid the entire amount in terms of the revised form 3, dated September 27, 2021. After adjusting the amount earlier deposited, the assessee would be entitled to refund which would accordingly be considered for payment. This would be in accordance with the purpose, intent and the spirit of the 2020 Act aimed at eliminating and resolving the disputes between the assessee and Department. The Court directed the respondents to issue a fresh form 3, after giving to the assessee credit of the amount paid under the 2016 Scheme and the balance amount if any be refunded. (AY. 2016 -17)

Sunil Wamanrao Sakore v. UOI [2023] 152 taxmann.com 132 / 454 ITR 659 / 332 CTR 641 (Bom)(HC)

S. 5 : Time and manner of payment-Filing of declaration and particular to be furnished-Short payment of tax of Rs.300 before specified date-Directed to accept the declaration by paying interest of 10% on balance payment of tax. [S. 4, Art. 226]

Assessee for settlement of disputes under Direct Tax Vivad Se Vishwas Act, 2020 submitted Forms 1 and 2 with Principal Commissioner. Principal Commissioner issued Form 3 reflecting therein an amount of Rs. 8,39,676 as balance tax payable - Assessee responded to Form 3 and deposited an amount of Rs. 8,39,376, which was short by Rs. 300, before specified date. Principal Commissioner had not issued Form 5 to assessee on account of short payment of balance tax payable. On writ allowing the petition the Court held that since payment which was required to be paid in terms of Form 3 was short only by Rs. 300, this clearly appeared to be an inadvertent error on part of assessee which was neither deliberate nor intentional. Accordingly the Principal Commissioner was to be directed to

accept balance payment of Rs. 300 with interest and issue Form 5 in terms of Scheme. (AY. 2013-14)

Kartik Pravinchandra Mehta v. PCIT [2023] 149 taxmann.com 482 / 293 Taxman 81 (Bom)(HC)

The Prohibition of Benami Property Transactions Act, 1988.

S. 2(8) : Benami property-Attachment of property-Transactions took place before amendment Act came into force- Criminal prosecution or confiscation proceedings could not be initiated for transaction entered into prior to coming into force of Amendment Act, 2016- Provisional order of attachment and order of reference was quashed. [S. 24, Art, 226]

Petitioner challenged order of provisional attachment and confiscation proceedings under Prohibition of Benami Property Transactions Act, 1988, as amended by Benami Transactions (Prohibition) Amendment Act, 2016 on the ground that date of transaction for Benami properties was before Amendment Act came into force, hence the proceedings ought to be quashed. Respondents admitted that transactions took place before amendment act came into force, but raised objection that a review petition was pending hearing before Apex Court. Following the ratio in UOI v. Ganpati Dealcom (P.) Ltd (2022) 141 taxmann. com 389/ 289 Taxman 177 / 447 ITR 108 (SC), the court held that where date of transaction for Benami properties was before Benami Transactions (Prohibition) Amendment Act, 2016 came into force, provisional order of attachment and order of reference were liable to be quashed.

Parvesh Construction (P.) Ltd. v. UOI (2023) 150 taxmann.com 427 (Bom)(HC)

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