

Important Judgments of Honourable Shri A.D. Jain, Vice-President, Income - tax Appellate Tribunal, Chandigarh, By Neelam Jadav Advocate.

1. S.2(14)(iii): Capital asset - Agricultural land- Not forming part of municipal limits- Not liable to be assessed as capital gains. [S.45]

Where the assessee sold a land in a village, since village was not forming part of municipal limits at time of sale of land and it was situated more than four kilometers away from municipal limits, as applicable at that time, land in question did not fall within definition of capital asset, as per definition contained in section 2(14) and same was agricultural land. (AY. 2017 - 18)

Avtar Singh v. ITO [2024] 166 taxmann.com 278 (Chand.)(Trib.)

2. S. 10 (23C): Educational institution- Educational institution was approved under section 10(23C)(vi), no disallowance could have been made by applying provisions of sections 11 and 12 .[S.10(23C)(v),11, 12]

Assessee-educational institution collected development fund, hostels fund, student activity fund and other funds from students as per express notification of State Government, since said funds could be spent for specified purposes only on specific approval of State Government, same were grant-in-aid which could not be considered as assessee's income and thus, same would be exempt from tax. Educational institution was approved under section 10(23C)(vi), no disallowance could have been made by applying provisions of sections 11 and 12. (AY 2015 - 16)

Baba Hira Singh Bhattal Institute of Engineering & Technology v. Dy. CIT [2024] 204 ITD 698 (Chand)(Trib.)

3. S. 10(38) : Long term capital gains from equities - Sale of investments - Assessable as capital gains and not as business income - Entitled to exemption. [S. 28(i), 45]

Shares were acquired personally by settlor of trust and he treated same as an investment and not as stock-in-trade till same were contributed towards corpus of

trust, if those shares were sold within a week of settlement to secure investment because of down trend of price of shares, activity could not be said to be a business activity or an adventure in nature of trade; profit on sale was assessable as capital gain exempt under section 10(38). (AY 2010 - 2011)

Asst. CIT v. Vernan Private Trust [2016] 157 ITD 211/ 178 TTJ 550 (Mum)(Trib.)

4. S. 11 : Property held for charitable purposes - Engaged in providing services for improvement and expansion of civic facilities, its activities relating to the acquisition of land, development of land, and sale - Entitled to exemption.

Assessee-trust, incorporated under the Punjab Town Improvement Act, was engaged in providing services for the improvement and expansion of civic facilities, its activities relating to the acquisition of land, development of land and sale thereof were not commercial or business venture per se but one necessary on account of implementation of provisions of trust through the statutory scheme and thus receipts of assessee-trust from its activities of sale of plots, flats, etc., were entitled for exemption under section 11. (AY 2016 -17)

Improvement Trust v. ACIT [2023] 156 taxmann.com 153 / 105 ITR(T) 502 (Chand.)(Trib.)

5. S. 12AA: Procedure for registration-Trust or institution-Plastic Waste Management-Preservation of Environment as defined in Section 2(15) of the Act-Eligible for exemption-Denial of registration is not valid. [S. 2(15), 11, 12A, 12AA(1)(b)(ii), Form No. 10A, Constitution of India Art, 14, 19 and 21, 47, 48-A, 51-A(g), Environment (Protection) Act, 1986, the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution), Act 1981] Assessee is engaged in Plastic Waste Management. The Assessee society was formed with the main aims and objects to set up a mechanism for collection, transportation, treatment & disposal of plastic material, especially multilayered plastic pouches, thermocol packing & utility items (polystyrene products) in environmentally sound and safe methods / technologies; etc. The Id. CIT (E), rejected the Assessee's application for registration, referring only a few clauses mentioned in the Assessee's

bye-laws and aims and objectives. Id. CIT(E) has adopted a pick and choose method to deny registration to the Assessee without looking at the picture in a holistic manner. On appeal the Honourable Tribunal Referred the various Article of the Constitution of India, various provision of the Environment Act and importance of preservation of the environment and duties of the citizens. Allowing the Registration the Honourable Bench by their well-considered and reasoned order, summarised the conclusion as under;

1. The Punjab Pollution Control Board is a creature of Legislation in the form of the Plastic Waste Management Rules, 2016, particularly Rule 12 and Schedule-II, containing the Guidelines with regard to the plastic waste management under the Extended Producer's Responsibility for Plastic Packaging and duties and functions of the State Pollution Control Boards.

2. In view of the above, there is nothing wrong in the factum of all the powers having been vested with the Punjab Pollution Control Board. Rather, this is in furtherance of the requirement of the Plastic Waste Management Rules, 2016.

3. The Bye-laws of the Assessee society are entirely in keeping with its Memorandum of Association which, in turn, is well within the four corners of the Plastic Waste Management Rules, 2016.

4. The aims and objects of the Assessee society are not restrictive in nature. Rather, as per requirement of the Plastic Waste Management Rules, they are centered towards the implementation of the preservation of the environment purpose of plastic waste management under the aegis of the Punjab Pollution Control Board. It is out of sheer ignorance of the law that the Id. CIT(E) has held that the Assessee society, as per its bye-laws, is meant to be run as a one man show and not as a public charity.

5. Apropos the finding of the Id. CIT(E) that none of the activities of the Assessee society is covered by any limb of 'charitable purpose', as envisaged by section 2(15) of the I.T. Act, we find that not only one, but all the objectives of the Assessee society are directly covered by the limb of preservation of the environment as a 'Charitable Purpose' under the provisions of section 2(15) of the I.T. Act.

6. Expenditure of multi-layered plastic collection and disposal charges for members

are the only major expenses incurred by the Assessee society. Considering its sole object of plastic waste management, obviously, there cannot be any other major expenditure attributable to the objects of the Assessee society. The factum of this major expenditure does not take away from the prevailing fact that the objects of the Assessee society are charitable objects and its activities are with regard to the Members of the society only, strictly as per the requirements of the scheme of plastic waste management under the Plastic Waste Management Rules, 2016, as amended from time to time.

7. The Id. CIT (E) is again wrong in observing the objects of the Assessee society to be merely ostensible charitable objects. All the objects of the Assessee society, taken either individually, or collectively, are directed towards the Assessee's charitable object of preservation of the environment.

8. The Id. CIT(E) has also erred in holding that the activity of the Assessee society does not enure for the public at large. It cannot be over stressed that the object of plastic waste management under the Plastic Waste Management Rules, 2016 is nothing other than an activity substantially and wholly enuring for one and all, so that the basic purpose of preservation of the environment is fulfilled so far as regards the pollution caused by plastic.

9. The National Green Tribunal as well as the Hon'ble Supreme Court, besides the High Courts of the country are repeatedly laying down law favouring plastic waste management as a measure for the preservation of the environment, enuring for the public at large.

Accordingly the appeal of the assessee was allowed and the Revenue was directed to grant the Registration. (ITA No. 17/CHD/2020 dt. 14-7-2023) (AY. 2019 -20)

Punjab Plastic Waste Management Society v. CIT(E) (Chd.)(Trib.)
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6. S. 12AB: Procedure for fresh registration - Electronically uploading the question to furnish details in Income -Tax Portal – Not an effective service of notice as per provisions of section 282 of the Act – Matter remanded.[S.282]

Commissioner (E) issued a questionnaire electronically requesting the assessee to furnish relevant documents to verify objects of trust/foundation and rejected registration under section 12AB on grounds of non-submission of relevant documents, since the assessee was not served with proper notice of hearing and information about date of hearing was only uploaded on Income Tax Portal, same would not be an effective service of notice as per provisions of section 282 and thus, matter was to be remanded for reconsideration. (AY 2021 - 22, 2024 - 25)

Idream Social Edtech Foundation v. CIT [2024] 163 taxmann.com 539 (Chand.)(Trib.)

7. S. 13: Denial of exemption-Trust or institution-Investment restrictions - Salary and remuneration- Disallowance is not justified.[S. 13(1)(c), 13(2)(c)]

Assessing Officer disallowed salary paid to specified persons by invoking provision of section 13(1)(c) read with section 13(2)(c) and section 13(3), since assessee was availing services of members of society and Assessing Officer himself admitted that specified persons were having higher qualification and no comparable case was brought on record to substantiate that salary/ remuneration paid to them was excessive, disallowance made by Assessing Officer was not justified. (AY 2011 -12 to 13-14 & 17-18)

ACIT v. Heritage Education Society [2024] 166 taxmann.com 62 (Chand.)(Trib.)

8. S. 35 : Expenditure on scientific research - Mandate of approval is with effect from 1-7 2-16 - Disallowance is deleted - Depreciation- Higher revised opening WDV- Allowable - Exempt income - Not recording of finding- No disallowance can be made. [S.14A, 32, 35(2AB)]

Held that mandate of approval of quantum of expenditure had been put in place only with effect from 1-7-2016, hence, non-approval of quantum of expenditure for assessment year 2009-10 did not entitle Assessing Officer to make disallowance under section 35(2AB). Opening WDV of building had been revised on account of disallowance of depreciation in, Past years, depreciation claimed by assessee on such

higher revised opening WDV of the building was to be allowed. On finding at all had been recorded by the Assessing Officer as to incurrance of any expenditure by the assessee for earning exempt income, no disallowance under section 14A was called for. (AY 2009 -10)

ACIT v. Crompton Greaves Ltd. [2019] [2020] 181 ITD 40 (Mum.)(Trib.)

9. S. 35AD: Deduction in respect of expenditure on specified business- Hotel business - Section per se does not require any specific date of operation, deduction thereunder could not have been disallowed.[S.37(1)]

Revenue rejected the assessee hotelier's claim for deduction under section 35AD on grounds that the certificate approving the four-star hotel category, in respect of hotel, qua which deduction was claimed was issued post-passing of assessment order, however, in view of the fact that classification issued in favour of assessee had not been doubted and section 35AD, per se does not require any specific date of operation, deduction thereunder could not have been disallowed. (AY 2015 -16)

Benares Hotels Ltd. v. Dy. CIT [2020] 181 ITD 486 (Varanasi)(Trib)

10. S.37 (1): Business expenditure - Advertisement - Capital or revenue - Expenditure incurred on production of advertisement film is in nature of revenue expenditure- Expenditure on stamp duty - Lease agreement - Allowable as revenue expenditure.

An advertisement film ordinarily has life of not more than a year at maximum and such films are definitely covered by settled economic principles of diminishing marginal utility - Held, yes - Whether, therefore, expenditure incurred on production of advertisement film is in nature of revenue expenditure which should not be capitalised . Assessee-company⁶⁴⁵ affixed stamp duty on bills of exchanges which were drawn promising payment pertaining to acquisition of assets on lease. However, lease agreement could not come through. Stamp duty authority denied refund of duty. Tribunal held that when transaction involved is a lease and not purchase, then expenditure incurred thereon, including brokerage or commission on stamp duty or the like is allowable as revenue expenditure. (AY. 1991 -92)

Dy. CIT v. Metro Shoes (P.) Ltd. [2004] 2 SOT 127 (Mum)(Trib.)

11. S. 43(5): Speculative transaction - Commodity derivatives - Not speculative - loss arising therefrom can very well be set off against the profit of the medical derivatives business of the assessee.

Where trading in commodity derivatives was carried out by the assessee on recognized associations and loss shown in confirmations of broker matched with loss shown in profit and loss account and it was nowhere disputed that transactions of trading in commodity derivatives were chargeable to commodities transaction tax, impugned transactions could not be deemed to be speculative transactions. Derivatives commodity trading transaction was not a speculative transaction, loss arising therefrom can very well be set off against the profit of the medical derivatives business of the assessee. (AY 2015 - 16)

Ramesh Verma v. ACIT [2022] 195 ITD 545 (Luck.)(Trib.)

12. S. 43(5): Speculative transaction - Currency derivatives -Transactions through a recognised stock broker on recognised stock exchange, could not be termed as speculative transaction. [S.73]

Allowing the appeal of the assessee the Tribunal held that; transactions of currency derivatives were conducted through a recognised stock broker, on a recognised stock exchange and which were duly supported by time stamped contract notes, same could not be termed as speculative transaction (AY. 2013-14, 2014-15)

Nand Nandan Agrawal v. DCIT (2018) 169 ITD 161 (Agra) (Trib.)

13. S. 48: Capital gains -Mode of Computation - Paid towards repair fund and charity in connection with transfer⁶⁴⁵ - Allowable as deduction while computing capital gains. [S.45]

Assessee sold a house property, while computing capital gains assessee deducted amount paid by her to housing society towards repair funds and charity in connection with the transfer - Assessing Officer disallowed the claim holding that it was a voluntary contribution and could not be regarded as a transfer fee. Transfer

of capital asset itself could not have come about in the absence of such payment, irrespective of nomenclature being given to such payment, and, thus, it was an allowable expenditure incurred by the assessee wholly and exclusively in connection with such transfer (AY. 1996-97)

Add. CIT v. Madhur I. Teckchandaney (Mrs.) [2005] 93 ITD 65 / 93 TTJ 721 (Mum.)(Trib)

14. S. 68: Cash credits - Advance received from parties - Filed copy of ITR bank account etc. - Cash deposit -Depreciation- Addition is deleted. [S.32]

The Assessing Officer had made an addition on account of advance received by the assessee under section 68 without considering a copy of ITR, copy of the bank account statement, and copy of the account of the creditor in the books of the company submitted by assessee, impugned addition was to be deleted. Addition made by Assessing Officer on account of cash deposits was to be deleted as it included an amount which was withdrawn and re-deposited by company and amount which was already declared by company as income in its Profit and Loss Account. Where vehicle registered in name of assessee-company was used for business purposes only and assessee had submitted copy of registration certificate, addition made by Assessing Officer disallowing depreciation on vehicle was to be deleted. Where Assessing Officer had made an addition of amount credited in bank account of assessee-company under section 68, since Assessing Officer did not make any adverse findings in remand report and entire investigation/proceedings of Assessing Officer revolved around stating assessee-company as shell company on dictate of third party, Commissioner (Appeals) was justified in deleting impugned addition holding that identity and creditworthiness of persons from whom such credits were received were proved. (AY 2017⁶⁴⁵-18)

TJR Properties (P.) Ltd. v. Dy. CIT [2024] 162 taxmann.com 94 (Chand.)(Trib.)

15. S. 68: Cash credits - Advances - Addition cannot be made as cash credits.

Where the Assessing Officer made an addition under section 68 treating trade advances received by assessee as unexplained cash credits, since books, bills

vouchers, etc., were produced before the Assessing Officer and were test checked, as noted in the assessment order itself and Assessing Officer had also admitted that goods were supplied to customers, against which, advances were received, and there was only a small amount of advances which remained outstanding and adjusted at end of year, impugned addition was to be deleted. (AY 2012 -13)

Girish Kumar & Sons v. ITO [2023] 155 taxmann.com 208 / 105 ITR (T) 424 (Chand.)(Trib.)

16. S. 68: Cash credits - Cash deposit in the bank - Sale and cash realizations - Addition is deleted.

Cash deposit in the bank on account of cash sales and cash realizations from debtors was a normal feature of the assessee's business and the same was not found to be incorrect, it was legally not permissible to add the same to the income of the assessee as unexplained cash credit under section 68. (AY 2017 -18)

Rachit Aggarwal (Prop.) Ashok Kumar Gupta & Co. v. ITO [2024] 162 taxmann.com 49 (Chand.)(Trib.)

17. S. 69: Unexplained investments - Information from Sales tax Department - No opportunity is given - Addition is deleted.

Additions to income of assessee under section 69 on basis of information received from Sales Tax Department could have been made without giving any opportunity to assessee. (AY 2009-10)

ITO v. Rajkumar B. Mutreja [2016] 72 taxmann.com 76 (Mum)(Trib.)

18. S. 69A : Unexplained money - Survey - Surrender of excess stock- Cannot be assessed under deeming provisions⁶⁴⁵ of section 69A and 69B of the Act , [S. 69B, 133A]

During course of survey, assessee surrendered excess stock, cash and receivables and offered same to tax as business income, however, AO treated said surrendered amount as unexplained investment under sections 69A and 69B, since it emerged that the source of income of assessee was from its business operations, income

surrendered by assessee during survey could not be brought to tax under deeming provisions of sections 69A and 69B. (AY 2019 – 20)

Veer Enterprises v. Dy. CIT [2024] 158 taxmann.com 655 / 206 ITD 289 (Chand.)(Trib.)

19. S. 73: Losses in speculation business (Explanation) - brought forward losses of earlier years were rightly set off against speculative business

The Assessing Officer allowed the assessee's claim of set-off under the order passed u/s. 143(3). However, thereafter, the AO passed order u/s. 154 holding that brought forward losses of earlier years were speculative losses that could not be set off against the business income of the relevant assessment year.

Held that relevant assessment year there was no change in business, the assessee claimed set off of losses of earlier two years against the profit of the relevant assessment year, the AO allowed set off of loss in accordance with Explanation to section 73 as per which, the business of the assessee was deemed to be a speculative business. Set off against speculative business income for the year under consideration and there was no mistake apparent from the record in the assessment order. (r.w.s.154)

Surya Commercials Ltd. v. Dy. CIT [2020] 113 taxmann.com 247 / 181 ITD 597 (Luck.)(Trib.)

20.S. 80IC: Special category States – Audit report – Delay in up loading the Form No 10CCB – Reasonable cause- Delay is condoned - Fall in GP -Addition is not justified. [S.139(1), Form No. 1CCB, Form No. 3CA]

Assessee furnished an audit report in Form No. 10CCB, Form No. 3CA and Form No. 3CA before due date for filing ⁶⁴⁵return of income but filed return of income after due date as prescribed under section 139(1) claiming deduction under section 80-IC, since auditor of assessee uploaded return of income after due date despite fact that digital signature of assessee was handed over to him before due date of filing of return, reason for late filing of return was beyond control of assessee and delay in filing of return deserved to be condoned . Assessing Officer having found that there

was a fall of 2.5 per cent in gross profit rate during year under consideration as compared to earlier year made addition of 2 per cent to assessee's income on account of low gross profit declared, since Assessing Officer did not point out any specific defect or discrepancy in account books of assessee or its vouchers, order of Commissioner (Appeals) deleting impugned addition deserved to be confirmed. (AY 2014 - 15)

Dy. CIT v. Symbiosis Pharmaceuticals (P.) Ltd. [2024] 164 taxmann.com 747 / 113 ITR(T) 468 (Chand.)(Trib.)

21. S. 92C : Transfer pricing – Arm’s length price - Avoidance of tax - International transaction - Merely on basis of proposal made by TPO addition is not justified. Transfer pricing proceedings, Assessing Officer as well as Commissioner (Appeals) failed to apply their mind to TP report filed by assessee, or to any other material or information or document furnished, impugned addition made to assessee's ALP merely on basis of proposal made by TPO was not sustainable. (AY 2007 - 08)

Dy. CIT v. Tata Consultancy Services Ltd [2015] 64 taxmann.com 369 / 46 ITR (T) 394 / [2015] 174 TTJ 570 (Mum.)(Trib.)

22. S. 92C: Transfer pricing – Arm’s length price - Avoidance of tax - International transaction -Comparable – Functionally different cannot be comparable – addition of adjustment is deleted.

Assessee Company is engaged in the business of providing contract software development services to its AE. Where the related party transaction of a company was more than 25 percent, the company would be excluded from the final set of companies comparable to the assessee. A software product manufacturer could not be comparable. A company engaged in the business of providing Geospatial Information System services needed to be excluded from a set of comparables. A global company that specializes in software product and technology innovation and utilizing its product engineering processes to develop solutions for its customers who were players in technology, telecommunication, life science, healthcare, banking and consumer products sectors and outsourced software product

development services and was deriving its revenues primarily from sale of software services and software products, it could not be comparable. A company that provided end to end business solutions that leverage cutting-edge technology, thereby enabling clients to enhance business performance as also provided solutions that span entire software lifecycle encompassing technical consulting, design, development, re-engineering, maintenance, systems integration, package evaluation and implementation, testing and infrastructure management services; and additionally, it also offered software products for banking industry and it had a strength of about one lakh employees as against approximately 4600 employees of assessee, it was not functionally comparable. Where a company was engaged into development of software and software products and segmental information regarding its software development segment was not available, this company was incomparable with assessee. (AY. 2009-10, 2010-11)

Lionbridge Technologies (P.) Ltd. v. ITO [2015] 64 taxmann.com 461 (Mum.)(Trib.)

- 23.S. 115VA: Shipping business - Qualifying ships - Computation - Tonnage Taxation Scheme (TTS) - Transfer Pricing provision is not applicable.[S. 92,115VG]

Assessee has opted to be governed by Tonnage Taxation Scheme (TTS) TP provisions, enclosing within them, the arm's length principle, under Chapter X (sections 92 to 92F) are not applicable to TTS and ALP does not affect computation and taxability of tonnage income of the assessee.

Van Oord India (P.) Ltd. v. Dy. CIT [2019] 111 taxmann.com 480 (Mum)(Trib.)

- 24.S. 127: Power to transfer cases -No notice was served - Assessment order is bad in law - Not an eligible assessee⁶⁴⁵ - Order is barred by limitation. [S.92CA, 144C(15)(b), 153(2)]

Notice under section 148 was issued by Asstt. Commissioner, Moradabad to assessee but case of assessee was transferred by Asstt. Commissioner, Moradabad to Dy. Director/Asstt. Director (Intl. Taxn.), Lucknow, considering the NRI status of the assessee but no notice under section 127 was served on the assessee before

transferring jurisdiction, final assessment order passed by Dy. Director/Asstt. Director (Intl. Taxn.), Lucknow was without jurisdiction, non-est, illegal and bad in law. No variation prejudicial to assessee's interest, at hands of Assessing Officer, had arisen as a consequence of order passed by TPO under section 92CA(2), nor was assessee a foreign company, neither of conditions prescribed by section 144C(15)(b) being fulfilled, assessee was not an 'eligible assessee' within meaning of section 144C(15). Assessee was not an 'eligible assessee', no draft order was to be forwarded to him, and requirement of section 144C(12) could not have been complied with, and thus, limitation to pass assessment order would be one provided under section 153(2) (AY 2016 -17)

Shyam Sunder Bhartia v. Dy. CIT (IT) [2023] 200 ITD 117 (Luck)(Trib.)

25. S. 147: Reassessment-After the expiry of four years-Accommodation entries-Shell companies-Borrowed satisfaction-Information from investigation wing-Natural justice-Search-Survey-No failure to disclose material facts-Without the application of mind-Opportunity for cross-examination was not provided-Reassessment was quashed. (The Tribunal has passed a 359-page order dealing with all issues on reassessment proceedings. [S. 131, 132.132(4), 133(6), 133A, 148, 153A, 153C]

Allowing the appeal of the assessee the Tribunal held that the reasons recorded for the formation of belief of escapement of income chargeable to income tax are found to be wrong and irrelevant for the reopening of the completed assessment of the assessee company. Company formed for real estate development purposes, purchased land, obtained license from the Government of Haryana for the proposed commercial project, and invested Rs. 28.29 crore under the said project, it cannot be alleged to be a shell entity for the reasons recorded for the formation of belief of escapement of income chargeable to income tax as it has no income earning apparatus. that the learned Commissioner of Income Tax (Appeals) has gone wrong in upholding the initiation of the re-opening of the completed assessment on the basis of information contained in the search material found during the search of a third party, since there was no incriminating material; that so, the initiation,

completion and consequential upholding of the re-assessment proceedings is not sustainable in law; that the reasons recorded for the formation of belief of escapement of income chargeable to income tax by the Assessing Officer are based solely on the Investigation Wing's report and the statement of Shri Himanshu Verma; that the report of the Investigation Wing only suggested to the Assessing Officer to examine the details and to only thereafter determine whether there could be any justification for initiating the re-assessment proceedings; that the statement of Shri Himanshu Verma does not implicate the assessee in any manner that the information received from Income Tax Officer, Ward 1(5) Chandigarh was denied to be confronted to the assessee, and not providing the copy of the statement of Shri Himanshu Verma to the assessee is in violation of the principles of natural justice, as well as the provisions of section 142(3) of the Income-tax Act; that therefore, such information and statement of Shri Himanshu Verma cannot be used against the assessee for making addition that it is also patent that the learned Commissioner of Income Tax (Appeals) erroneously upheld the re-opening, which was based on wrong and irrelevant facts recorded under reasons recorded for the formation of belief of escapement of income chargeable to income tax for reopening by Assessing Officer; that we were, therefore cancelling the assessment, as the grounds on which the re-assessment notice was issued were not found to exist or were found to be irrelevant and that the reopening of the assessment under section 147 of the Act is based on wrong and irrelevant facts and the reopening is held to be bad in law. (The Tribunal has passed a 359-page order dealing with all issues on reassessment proceedings).

(ITA No. 718 / Chd / 2022 dt.15-9-2023)(AY. 2012-13)

Evershine Recreation Private Limited v. DCIT (2023)107 ITR 65 (SN)
(Chd)(Trib) www.itatonline.org

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26.S. 150: Assessment in pursuance of an order of appeal etc. - (Period of limitation) - direction given by CIT (A) to AO to execute remedial action u/s. 148, was a non-est direction.

In terms of s. 149(1)(b), the period of limitation for initiating reassessment proceedings for the relevant assessment year had already expired, direction given

by CIT(A) u/s.150 to AO to execute certain remedial action u/s. 148, was a non-est direction and, thus, the same deserved to be set aside. An appellate authority cannot confer jurisdiction that the AO does not have, e.g., as in the case of an assessment being barred by limitation.

Allahabad Bank Karamchari Co-operative Credit Society Ltd. v. ITO [2019] 108 taxmann.com 539 / 73 ITR(T) 700 / 179 ITD 188 (Luck) (Trib.)

27. S. 249: Appeal - Commissioner (Appeals) - Form of appeal and limitation - Delay of 233 days - Mistake of Chartered Accountant -Delay is condoned. [S. 254(1)]
Assessee filed an appeal before Tribunal after a delay of 233 days contending that its Chartered Accountant (CA) did not inform assessee about appeal proceedings and kept assessee in dark stating that needful had been done, since the assessee had immediately filed appeal when it came to know about attachment of its bank account by revenue and it had also lodged a complaint against its CA for gross negligence in his professional duties, assessee should not suffer for mistake and negligence of its CA, and thus, delay in filing appeal was to be condoned and matter was to be restored back to Commissioner (Appeals) for fresh adjudication. (AY 2017 -18)
The Mullana Agriculture Coop. Society v. ITO [2024] 159 taxmann.com 1497 (Chand.)(Trib.)

28.S. 263 : Commissioner - Revision of orders prejudicial to revenue -Valuation of shares - DCF Method - Interest income - Reduced from cost of construction-Capital receipt - Revision is not justified[S.4, 145 , R.11UA(2)]
Assessee-company determined value of shares issued at premium on basis of DCF method, valuation method opted by assessee could not be changed in view of statutory mandate of rule 11UA(2) and Principal Commissioner could not invoke revisionary proceedings by adopting NAV method as same would be in direct contravention to provisions of Explanation (a)(i) to section 56(2)(viib) read with rule 11UA. Principal Commissioner invoked revisionary proceedings on the ground that the assessee claimed TDS on interest income, however, no such income was offered for tax since interest was earned on fixed deposits made for obtaining bank

guarantee against EPCG licenses which were availed to import machinery required for construction of assessee's hotel, said interest was directly linked with the activity of setting up hotel and was to be viewed as a capital receipt going to reduce cost of construction and thus, revisionary order was to be quashed. (AY 2016-17)

Apna Punjab Resorts Ltd. v. PCIT [2023] 149 taxmann.com 20 / 107 ITR (T) 11 / 200 ITD 75 (Chand.)(Trib.)

29.S. 263: Commissioner-Revision of orders prejudicial to revenue-Loans-Creditors-Opinion of internal audit machinery not binding on him-Revision is quashed. [S. 143(3)]

Held that the Principal Commissioner did not state either in the show-cause notice or in his order the creditors from whom the alleged amount of Rs. 2,00,00,000 had been received by the assessee, which amount was not the amount of unsecured loan accepted by the assessee during the year, for which the assessee's explanation was ignored by the Principal Commissioner. Instruction No. 7 of 2017, dated July 21, 2017 ([2017 396 ITR (St.) 36), of the Central Board of Direct Taxes stating that on acceptance of the audit objection, it was incumbent upon the Principal Commissioner to take action under section 263 was not accepted by the jurisdictional High Court, which rule was binding on the other courts. The assessee's grievance was justified and to be accepted as such. Revision order is quashed. (AY. 2015-16)

Ganpati International v. PCIT (2023)105 ITR 266(Chd) (Trib)

30.S. 271C: Penalty - Failure to deduct at source - Bonafide belief - Failure to deduct tax at source - Technical breach - Penalty is deleted. [R. 29C]

Assessee-Land Acquisition Authority, did not deduct tax on interest payment on delayed compensation voluntarily paid to farmers for acquiring their land under bona fide belief that tax was not deductible at source, as assessee was ignorant of amendment in rule 29C which came into effect during the year under consideration, same being bona fide belief and mere technical breach, penalty imposed by Assessing Officer under section 271C was to be deleted. (AY 2010-11 to 2012-13)

Additional District Magistrate Land Acquisition v. Jt. CIT [2020] 181 ITD 576
(Luck)(Trib.)