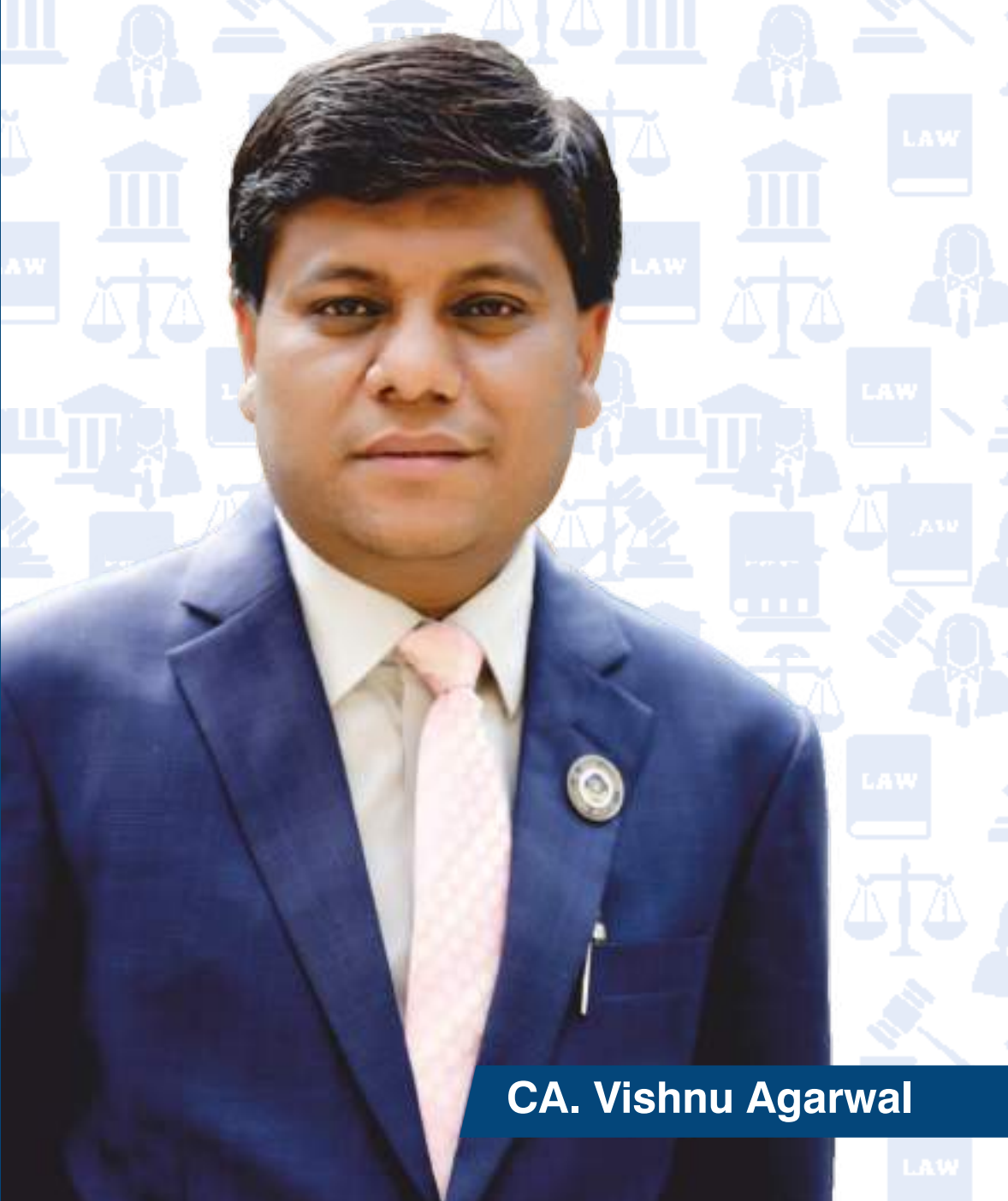


Landmark Judgments

of Income Tax



CA. Vishnu Agarwal



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CA. Vishnu Agarwal

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FOREWORD

I have immense pleasure presenting First Edition on **Landmark Judgments of Income Tax** which highlights and provides overviews of various Judgement delivered by Honorable Supreme Court of India, High Courts and various Tribunals.



A Chartered Accountant in practice needs to be well versed with the various provisions of Income Tax Act, Amendments, notifications and various Judgement delivered by different Authorities while drafting or preparing submissions before Tax Authorities.

An attempt has been made herewith to present the important Case Laws of various Tribunals, High Courts and Honorable Supreme Court favoring the Assessee in a more comprehensive and easy way for better understanding. An effort has been made to answer the queries/problems faced by practicing Chartered Accountants by providing maximum Landmark Judgement which can help for better drafting of submissions before various Tax Authorities, Tribunal and Courts.

I compliment our team of young Chartered Accountants for the efforts put in by them in penning down this publication.

I sincerely hope that this publication will be of immense help to the practicing Chartered Accountants handling scrutiny/ appeal/ assessment matters before various Income Tax Authorities.

CA. Vishnu Agarwal

ABOUT THE AUTHOR

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CA. Vishnu Agarwal is a member of the Institute of Chartered Accountants of India (ICAI). Professing an excellent academic record, he is a practicing Chartered Accountant and is the founder of CA firm Vishnu Agarwal & Co.

A distinguished leader of WIRC of ICAI, he was elected Chairman of WIRC for 2017-18 and has also served as Regional Council Member of WIRC for three consecutive terms from 2010 to 2019 with a vision to enhance the credibility of the profession, strengthen the profession in practice and employment and address the issues faced by students and members of ICAI.

He is also on various committees and sub-committees of ICAI and is associated with various social organisations namely Aravali Agarwal Samaj, Lions Club of Mumbai Western, RVG Alumni, Bharat Vikas Parishad and Vasai CA Hostel Alumni to name a few.

CA. Vishnu Agarwal has contributed extensively in the field of 'Direct and Indirect Taxation' by spreading awareness through seminars, papers and articles and has conducted more than 500 programs for students & members during his tenure as Chairman of WIRC.

As a regular speaker on Direct Taxes & Litigation, he has communicated his knowledge, perception and expertise through this publication "**Landmark Decisions on Direct Taxes**". CA. Vishnu Agarwal's book will benefit the entire CA fraternity and serve as a reference guide to all tax practicing Chartered Accountants across the nation.

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172	Principal Commissioner of Income-tax, Central-3 v. Dreamcity Buildwell (P.) Ltd. [2019] 110 taxmann.com 28 (Delhi)	187
173	Commissioner of Income-tax v. Bindals Apparels [2012] 20 taxmann.com 140 (Delhi)	188
174	Commissioner of Income-tax v. Prem Nath Nagpal [2008] 214 CTR 51 (Delhi)	190
175	Commissioner of Income-tax (Central), Ludhiana v. S.S.R.D. Somany Sikshan Sansthan [2011] 12 taxmann.com 452 (Punjab & Haryana)	191
176	Commissioner of Income-tax v. Mahesh Kumar [2011] 196 Taxman 415 (Delhi)	192
177	Commissioner of Income-tax, Bangalore v. Lancy Constructions [2016] 66 taxmann.com 264 (Karnataka)	193
178	Commissioner of Income-tax, Tiruchirapalli v. Smt. S. Jayalakshmi Ammal [2016] 74 taxmann.com 35 (Madras)	194
179	Principal Commissioner of Income-tax-9 v. Ram Avtar Verma [2017] 88 taxmann.com 666 (Delhi)	196
180	Principal Commissioner of Income-tax-1 v. Devangi [2017] 88 taxmann.com 610 (Gujarat)	197



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182	Principal Commissioner of Income-tax, Ahmedabad v. Dipak Jashvantlal Panchal [2017] 88 taxmann.com 611 (Gujarat)	198
183	Principal Commissioner of Income Tax, Central-3 v. Allied Perfumers (P) Ltd. [2021] 124 taxmann.com 358 (Delhi)	199
184	Commissioner of Income-tax v. Pramod Kumar Gupta [2010] 320 ITR 408 (DELHI)	200
185	Commissioner of Income-tax v. Avadhesh Kumar Gupta [2014] 42 taxmann.com 129 (Allahabad)	201
186	Commissioner of Income-tax, Delhi-I, New Delhi v. Vikas Electronics (International) (P.) Ltd. [2008] 166 Taxman 137 (Delhi)	202
187	Commissioner of Income-tax, Delhi-II v. Jupiter Builders (P.) Ltd. [2006] 156 Taxman 361 (Delhi)	203
188	Commissioner of Income-tax v. Khushlal Chand Nirmal Kumar [2003] 132 Taxman 274 (Madhya Pradesh)	204
189	Commissioner of Income-tax v. Soora Subramaniam HUF (Individual) [2013] 35 taxmann.com 98 (Madras)	205
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194	Ardent Steel Ltd. v. Assistant Commissioner of Income-tax (Central)-2, Raipur [2018] 94 taxmann.com 95 (Chhattisgarh)	211
195	Commissioner of Income-tax v. Dr. Ajay Prakash [2014] 42 taxmann.com 387 (Allahabad)	212
196	Commissioner of Income-tax v. Sunil Kumar Chhabra [2013] 33 taxmann.com 680 (Punjab & Haryana)	213
197	Commissioner of Income-tax v. Vishal Gupta [2004] 134 TAXMAN 734 (PUNJ. & HAR.)	214
198	ST Microelectronics (P.) Ltd. v. Deputy Commissioner of Income-tax [2016] 72 taxmann.com 203 (Delhi)	216
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202	My Car (Pune) (P.) Ltd. v. Income-tax Officer-14(4) [2019] 104 taxmann.com 18 (Bombay)	221
203	Central India Electric Supply Co. Ltd. v. Income-tax Officer, Company Circle-X, New Delhi [2011] 10 taxmann.com 169 (Delhi)	222
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205	Rajesh Lalitkumar Soni v. Income-tax Officer, Ward 3(3)(4) [2020] 114 taxmann.com 613 (Gujarat)	224
206	Shamshad Khan v. Assistant Commissioner of Income-tax [2017] 82 taxmann.com 35 (Delhi)	225
207	Signature Hotels (P.) Ltd. v. Income-tax Officer [2012] 20 taxmann.com 797 (Delhi)	226
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209	Deepak Extrusions (P.) Ltd. v. Deputy Commissioner of Income-tax, Central Circle 1(4), Bangalore [2017] 80 taxmann.com 77 (Karnataka)	229
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211	Bharat Jayantilal Patel v. Union of India [2015] 59 taxmann.com 333 (Bombay)	232
212	GKN Driveshafts (India) Ltd. v. Income-tax Officer [2002] 125 Taxman963 (SC)	233
213	Asian Paints Ltd. v. Deputy Commissioner of Income-tax [2009] 308 ITR 195 (Bombay)	233
214	Hirachand Kanuga v. Deputy Commissioner of Income-tax [2015] 56 taxmann.com 199 (Mumbai - Trib.)	234

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215	Principal Commissioner of Income-tax (Central), Bengaluru v. Goa Coastal Resorts and Recreation (P.) Ltd. [2020] 113 taxmann.com 574 (Bombay)	236
216	Commissioner of Income-tax, Ahmedabad v. Reliance Petroproducts (P.) Ltd. [2010] 189 Taxman 322 (SC)	237
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218	Commissioner of Income-tax v. Krishi Tyre Retreading & Rubber Industries [2014] 44 taxmann.com 9 (Rajasthan)	238
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Landmark
Judgments
of Income Tax

**Decision related to
Change of Opinion &
Non-failure on part of assessee
to disclose all material facts
u/s. 147 & 148**

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Where AO initiated reassessment proceedings taking a view that interest income earned by assessee had to be taxed as income from other sources and High Court quashed said proceedings by taking a view that entire question of taxing assessee's interest income was minutely scrutinized by Assessing Officer during original assessment proceedings and, in such a case, reopening of assessment would be based on mere change of opinion, SLP filed against said order was to be dismissed

[2019] 108 taxmann.com 177 (SC)

SUPREME COURT OF INDIA

Commissioner of Income Tax

v.

Rubix Trading (P.) Ltd.*

S.A. BOBDE AND B.R. GAVALI, JJ.

SLP (CIVIL) DIARY NO. 21285 OF 2019†

JULY 8, 2019

Section 56, read with section 147 of the Income-tax Act, 1961 - Income from other sources - Chargeable as (Interest) - Assessment year 2013-14 - Assessee was engaged in business of development of real estate projects - Assessee filed its return wherein it adjusted interest income against interest expenditure and remaining amount was transferred to work-in-progress account - Assessing Officer completed assessment under section 143(3) accepting assessee's treatment of interest income - Subsequently, Assessing Officer initiated reassessment proceedings taking a view that interest income earned by assessee had to be taxed as income from other sources - High Court opined that since entire question of taxing assessee's interest income was minutely scrutinized by Assessing Officer during original assessment proceedings, in such a case, in absence of any new material, reopening of assessment would be based on mere change of opinion - Accordingly, High Court set aside reassessment proceedings - Whether, on facts, SLP filed against order of High Court was to be dismissed - Held, yes [Para 2][In favour of assessee]

○○

SLP dismissed against High Court ruling that where AO issued reopening notice against assessee, engaged in life insurance business, after expiry of four years from end of relevant year, since in reasons recorded there was no reference to any new tangible material but reference was only to financial statement of assessee itself, impugned notice issued merely on basis of change of opinion, was to be quashed

**[2021] 125 taxmann.com 71 (SC)
SUPREME COURT OF INDIA
Deputy Commissioner of Income Tax, Circle 1(1)
v.
Bajaj Allianz Life Insurance Company Ltd.*
ASHOK BHUSHAN AND M.R. SHAH, JJ.
SLP (CIVIL) DIARY NO. 17857 OF 2020†
JANUARY 18, 2021**

Section 44, read with section 147, of the Income-tax Act, 1961 - Insurance business (Reassessment) - Assessment year 2012-13 - Assessee, engaged in business of life insurance, filed its return of income declaring taxable income in accordance with provisions of section 44 - Assessing Officer passed an assessment order accepting income declared by assessee - After four years, Assessing Officer sought to initiate reassessment proceedings - Assessee's objections to reassessment proceedings were rejected - It was noted that in reasons recorded there was no reference to any new tangible material, but reference was only to financial statement of assessee itself - High Court by impugned order held that since there was no failure on part of assessee to disclose all material facts at time of assessment, initiation of reassessment proceedings on basis of mere change of opinion was not justified - Whether special leave petition filed against impugned order was to be dismissed - Held, yes [Para 8] [In favour of assessee]





SLP dismissed due to low tax effect against High Court ruling that where Assessing Officer initiated reassessment proceedings on ground that sales promotion expenses claimed by assessee as deduction was in nature of capital expenditure and, thus, assessee's claim was wrongly allowed, in view of fact that there was a complete disclosure of all primary material facts on part of assessee in course of assessment, initiation of reassessment proceedings merely on basis of change of opinion was not justified

[2020] 113 taxmann.com 332 (SC)

SUPREME COURT OF INDIA

Deputy Commissioner of Income-tax LTU

v.

Asian Paints Ltd.*

ROHINTON FALI NARIMAN AND V.

RAMASUBRAMANIAN, JJ.

SLP (CIVIL) DIARY NO(S). 28152 OF 2019†

OCTOBER 4, 2019

Section 37(1), read with section 147, of the Income-tax Act, 1961 - Business expenditure - Allowability of (Sales promotion expenses) - Assessee carried on business of manufacturing and selling paints - Assessee evolved a marketing strategy in terms of which renovation of shops of dealers was done with an intention to increase its sales by providing a dedicated area for its products - Assessee filed its return claiming deduction of expenses incurred on such marketing strategy as a part of its advertisement and sales promotion expenses - Assessing Officer completed assessment under section 143(3) accepting assessee's claim - Subsequently, Assessing Officer initiated reassessment proceedings on ground that expenditure incurred on such marketing scheme was in nature of capital expenditure - High Court by impugned order held that in view of fact that there was a complete disclosure of all primary material facts on part of assessee in course of assessment, initiation of reassessment proceedings merely on basis of change of opinion was not justified - Whether Special leave petition filed against impugned order was to be dismissed on ground of low tax effect - Held, yes [Para 11] [In favour of assessee]

SLP dismissed against High Court's order setting aside reassessment proceedings on ground that issue relating to allowability of research and development expenses had duly been examined by Assessing Officer and, thus, initiation of reassessment proceedings was not permissible on basis of mere change of opinion

**[2020] 117 taxmann.com 116 (SC)
SUPREME COURT OF INDIA
Deputy Commissioner of Income-tax
v.
Sun Pharmaceutical Industries Ltd.***

**ROHINTON FALI NARIMAN AND S. RAVINDRA BHAT, JJ.
SLP APPEAL(C) NOS. 19423, 19425,
22336 OF 2015 & 713 OF 2018†
JANUARY 31, 2020**

Section 37(1), read with section 147 of the Income-tax Act, 1961 - Business expenditure - Allowability of (Research and development expenses) - Assessment year 2005-06 - Assessee was engaged in manufacturing, trading and export of bulk drugs and formulations - For relevant year, assessee filed its return declaring certain taxable income - Assessment was completed under section 143(3) - After expiry of four years from end of relevant year, Assessing Officer sought to initiate reassessment proceedings on ground that products manufactured at premises of associated concern were being developed at R&D facilities of assessee and expenditure related to such R&D was being debited in books of account of assessee thereby reducing its profit and correspondingly, inflating profit of associated concern - Assessee filed writ petition before High Court challenging validity of reassessment proceedings - High Court opined that issue related to research and development expenses had duly been examined by Assessing Officer and, thus, initiation of reassessment proceedings was not permissible on basis of mere change of opinion - Whether, on facts, SLP filed against order of High Court was to be dismissed - Held, yes [Para 3][In favour of assessee]



Where question as to how and to what extent deduction should be allowed under section 10A was well considered in original assessment proceedings itself, initiation of re-assessment proceedings under section 147 by issuing a notice under section 148 merely because of fact that now Assessing Officer was of view that deduction under section 10A was allowed in excess, was based on nothing but a change of opinion

**[2018] 92 taxmann.com 361 (SC)
SUPREME COURT OF INDIA
Income Tax Officer, ward No. 16(2)**

v.

TechSpan India (P.) Ltd.*

**R. K. AGRAWAL AND MOHAN M. SHANTANAGOUDAR,
JJ.**

CIVIL APPEAL NO. 2732 OF 2007+

APRIL 24, 2018

- I. Section 10A, read with section 147, of the Income-tax Act, 1961 - Free trade zone - (Reassessment) - Assessment year 2001-02 - Whether where question as to how and to what extent deduction should be allowed under section 10A was well considered in original assessment proceedings itself, initiation of re-assessment proceedings under section 147 by issuing a notice under section 148 merely because now Assessing Officer was of view that deduction under section 10A was allowed in excess, was based on nothing but a change of opinion on same facts and circumstances which were already in his knowledge even during original assessment proceedings - Held, yes [Para 13] [In favour of assessee]
- II. Section 148, read with section 147, of the Income-tax Act, 1961 - Income escaping assessment - Non-disclosure of primary facts (Change of opinion) - Assessment year 2001-02 - Whether before interfering with proposed re-opening of assessment on ground that same is based only on a change of opinion, Court ought to verify whether assessment earlier made has either expressly

or by necessary implication expressed an opinion on a matter which is basis of alleged escapement of income that was taxable; if assessment order is non-speaking, cryptic or perfunctory in nature, it may be difficult to attribute to Assessing Officer any opinion on questions that are raised in proposed re-assessment proceedings - Held, yes - Whether every attempt to bring to tax income that has escaped assessment, cannot be absorbed by judicial intervention on an assumed change of opinion even in cases where order of assessment does not address itself to a given aspect sought to be examined in re-assessment proceedings - Held, yes [Paras 12 - 14] [In favour of assessee]



*Your beliefs become your thoughts,
Your thoughts become your words,
Your words become your actions,
Your actions become your habits,
Your habits become your values,
Your values become your destiny."*

Mahatma Gandhi



SLP dismissed due to low tax effect against High Court ruling that where Assessing Officer had reopened assessment of assessee on ground that an advance of Rs. 1.05 crores received by assessee had not been credited to profit and loss account but to software development account and income on software development had not been offered on accrual basis and Tribunal held that reopening of assessment was purely based on change of opinion, no question of law involved in appeal

**[2019] 105 taxmann.com 98 (SC)
SUPREME COURT OF INDIA
Principal Commissioner of Income-tax 6
v.
Santech Solutions (P.) Ltd.***

**DR. D. Y. CHANDRACHUD AND HEMANT GUPTA, JJ.
SPECIAL LEAVE PETITION (CIVIL) DIARY NO. 7780 OF
2019†
MARCH 15, 2019**

Section 5, read with sections 147 and 260A, of the Income-tax Act, 1961 - Income - Accrual of (Advance) - Assessment year 2008-09 - Assessing Officer completed original assessment of assessee under section 143(3) - Later Assessing Officer having noticed that an advance of Rs. 1.05 crores received by assessee was not credited to profit and loss account but to software development account and income on software development was not offered on accrual basis, reopened assessment of assessee - Tribunal held that Assessing Officer while framing original assessment was aware of recovery of said amount and when there was no fresh material available with Assessing Officer for harbouring a doubt that income had escaped assessment, reopening of assessment was purely based on change of opinion - High Court by impugned order held that there was no question of law involved in appeal - Whether Special Leave petition filed against Impugned order was to be dismissed due to low tax effect - Held, yes [Para 19] [In favour of assessee]

○○

Where Assessing Officer initiated reassessment on ground that during assessment under section 143(3) loss on sale of stores was wrongly allowed as business loss, but Tribunal set aside reassessment holding it to be change of opinion and Tribunal's order was upheld by High Court, SLP against High Court's order was to be dismissed

**[2020] 119 taxmann.com 287 (SC)
SUPREME COURT OF INDIA
Principal Commissioner of Income Tax**

**v.
Atul Ltd.***

**UDAY UMESH LALIT AND VINEET SARAN, JJ.
SPECIAL LEAVE PETITION (CIVIL) DIARY NO. 44184 OF
2019†
FEBRUARY 7, 2020**

Section 28(i), read with section 147, of the Income-tax Act, 1961 - Business loss/deductions - Allowable as (Loss on sale of stores) - Assessment year 2007-08 - Assessee-company was engaged in manufacturing pharmaceuticals, fertilizers, chemicals, paints etc. - For relevant year, assessee filed its return declaring certain taxable income - Assessing Officer completed assessment under section 143(3) wherein loss incurred by assessee on sale of stores was allowed as business loss - Subsequently, Assessing Officer initiated reassessment proceedings by taking a view that loss in question was in nature of capital loss not eligible for deduction - Tribunal set aside reassessment proceedings by holding that same was based on mere change of opinion - High Court upheld Tribunal's order - Whether SLP filed by revenue against order of High Court was to be dismissed - Held, yes [Para 2][In favour of assessee]

○○



Where High Court upheld view taken by Tribunal that in absence of any failure on assessee's part to disclose all material facts, assessment could not be reopened on basis of mere change of opinion of AO that assessee had raised excessive claim of deduction under sec. 80-IC, SLP filed against said order of High Court was to be dismissed

**[2018] 99 taxmann.com 206 (SC)
SUPREME COURT OF INDIA
Principal Commissioner of Income-tax
v.
Century Textiles & Industries Ltd.***

**ROHINTON FALI NARIMAN AND NAVIN SINHA, JJ.
SPECIAL LEAVE PETITION (CIVIL) DIARY NO.(S) 34277
OF 2018†
OCTOBER 5, 2018**

Section 80-IC, read with section 147, of the Income-tax Act, 1961 - Deductions - Special provisions in respect of certain undertakings or enterprises in certain special category States (Reopening of assessment) - Assessment year 2007-08 - Assessee was engaged in manufacture of cotton piece goods, denim, yarn, caustic soda, salt, pulp and paper, etc. - Assessee filed its return claiming deduction under section 80-IC in relation to its paper and pulp unit on basis of audit report in Form 10CCA - During scrutiny proceedings under section 143(3), Assessing Officer raised specific queries with regard to above claim which was duly responded to by assessee - Assessing Officer thus allowed a part of deduction claimed - Subsequently, Assessing Officer initiated reassessment proceedings taking a view that assessee had made excessive claim of deduction under section 80-IC - Tribunal finding that Assessing Officer had made detailed enquiries while allowing assessee's claim in scrutiny assessment, set aside reassessment proceedings initiated on basis of change of opinion - High Court upheld order passed by Tribunal - Whether on facts, SLP filed against High Court's order was to be dismissed - Held, yes [Para 2] [In favour of assessee]

Where AO had already considered one-time settlement by assessee with its banker during original scrutiny assessment proceedings as capital receipt, thereafter AO could not initiate reassessment proceedings merely on basis of change of opinion that said relief was revenue receipt

**[2020] 113 taxmann.com 442 (Bombay)
HIGH COURT OF BOMBAY
Principal Commissioner of Income Tax-3
v.
Everlon Synthetics (P.) Ltd.***

**M.S. SANKLECHA AND NITIN JAMDAR, JJ.
IT APPEAL NO. 1039 OF 2017
NOVEMBER 4, 2019**

Section 4, read with section 148, of the Income-tax Act, 1961 - Income - Chargeable as (Bank settlement) - Assessment year 2006-07 - Assessee was granted relief/waiver towards overdrafts and other facilities pursuant to one-time settlement with bank - Assessing Officer initiated reassessment proceedings against assessee to tax said relief alleging that it was revenue receipt - It was found that during original scrutiny assessment proceedings, Assessing Officer had considered one-time settlement by assessee with its bankers as capital receipt and was not brought under taxation - Whether since reopening notice was not based on any fresh tangible material and same being issued on same facts which were considered earlier, it clearly amounted to mere change of opinion and, thus, was without jurisdiction - Held, yes [Para 9] [In favour of assessee]

○○

“

Man becomes great exactly in the degree in which he works for the welfare of his fellow-men.”

Mahatma Gandhi



Where reassessment notices were issued to assessee-bank on ground that deduction in value of its advances on account of change in contractual terms consequent to restructuring of assets was of contingent nature and did not qualify to be allowed as a loss/deductible expenditure and, thus, income chargeable to tax had escaped assessment, since said claim was considered during assessment proceedings and accepted for both years, it was a clear case of change of opinion and, thus, reassessment notices were without jurisdiction

[2018] 96 taxmann.com 77 (Bombay)

HIGH COURT OF BOMBAY

State Bank of India

v.

**Assistant Commissioner of Income-tax, Circle-2(2)(1),
Mumbai***

M.S. SANKLECHA AND SANDEEP K. SHINDE, JJ.

WRIT PETITION NOS. 271 & 278 OF 2018

JUNE 15, 2018

Section 28(i), read with section 147, of the Income-tax Act, 1961 - Business loss/deductions - Allowable as (Reassessment) - Assessment years 2013-14 and 2014-15 - Whether where reassessment notices were issued to assessee-bank on ground that deduction allowed to it in value of its advances on account of change in contractual terms, consequent to restructuring of assets, was of contingent nature and did not qualify to be allowed as a loss/deductible expenditure and, thus, income chargeable to tax had escaped assessment, since said claim was considered during assessment proceedings and accepted for both years, it was a clear case of a change of opinion and, thus, reassessment notices were without jurisdiction - Held, yes [Para 6] [In favour of assessee]

○○

Where Assessing Officer issued notice under section 148 on ground that income chargeable to tax had escaped assessment doubting genuineness of transaction of issue of shares by assessee-company to its existing shareholders, since said issue was subject matter of regular assessment proceedings under section 143(3), it was case of change of opinion by Assessing Officer, therefore, impugned notice was to be quashed

**[2020] 113 taxmann.com 533 (Bombay)
HIGH COURT OF BOMBAY
Uni VTL Precision (P.) Ltd.**

v.

Deputy Commissioner of Income-tax*

**M.S. SANKLECHA AND NITIN JAMDAR, JJ.
WRIT PETITION NO. 3098 OF 2019
NOVEMBER 26, 2019**

Section 68, read with section 147, of the Income-tax Act, 1961 - Cash credits (Share capital) - Assessments year 2012-13 - Assessment in case of assessee was completed under section 143(3) - Assessing Officer issued notice under section 148 after 4 years from end of relevant assessment year on ground that income chargeable to tax had escaped assessment doubting genuineness of transaction of issue of shares by assessee-company to its existing shareholders - Whether since very issue on which Assessing Officer had made reasons to believe that income chargeable to tax had escaped assessment were subject matter of regular assessment proceedings under section 143(3), it was case of change of opinion by Assessing Officer, therefore, impugned notice was to be quashed - Held, yes [Para 3] [In favour of assessee]

○○



Where Assessing Officer initiated reassessment proceedings taking a view that computation of book profit in order of assessment was incorrect, since there was no new material on record to suggest that assessee was guilty of suppression, initiation of reassessment proceedings merely on basis of change of opinion was not justified

[2018] 98 taxmann.com 472 (Calcutta)

HIGH COURT OF CALCUTTA

Binani Industries Ltd.

v.

**Deputy Commissioner of Income-tax Officer, Central Circle-
XXVIII, Kolkata***

DEBANGSU BASAK, J.

W.P. NO. 232 OF 2011

SEPTEMBER 27, 2018

Section 115JB, read with section 147, of the Income-tax Act, 1961 - Minimum alternate tax - (Reopening of assessment) - Assessment year 2007-08 - For relevant year, assessee filed its return disclosing taxable income under section 115JB - Assessing Officer completed assessment under section 143(3) making certain addition to taxable income - Subsequently, Assessing Officer initiated reassessment proceedings taking a view that computation of book profit in order of assessment was incorrect, resulting in escapement of income from assessment - Assessee's objection to initiation of reassessment proceedings was set aside - Whether since there was no new material on record to suggest that assessee was guilty of suppression of relevant facts at time of assessment, initiation of reassessment proceedings merely on basis of change of opinion was not justified - Held, yes [Para 12] [In favour of assessee]

○○

Where there was no failure on part of assessee and it had disclosed relevant facts, merely on basis of audit objection or change of opinion, reassessment could not be made beyond period of four years from end of relevant assessment year

**[2020] 122 taxmann.com 258 (Madras)
HIGH COURT OF MADRAS
Commissioner of Income Tax, Chennai
v.
Sterling Tree Magnum India Ltd.***

**DR. VINEET KOTHARI AND M.S. RAMESH JJ.
TAX CASE (APPEAL) NO.1377 OF 2008†
OCTOBER 9, 2020**

Section 147 of the Income-tax Act, 1961 - Income escaping assessment - General (Condition precedent) - Assessment year 1997-98 - Whether where there was no failure on part of assessee and it had disclosed all relevant facts, merely on basis of audit objection or change of opinion, reassessment under sections 147 and 148, could not be made beyond period of four years from end of relevant assessment year - Held, yes [Para 4] [In favour of assessee]

○○

“

When I despair, I remember that all through history the way of truth and love have always won. There have been tyrants and murderers, and for a time, they can seem invincible, but in the end, they always fall. Think of it-always.”

Mahatma Gandhi



Where there was no failure on part of assessee and it had disclosed relevant facts, merely on basis of audit objection or change of opinion, reassessment could not be made beyond period of four years from end of relevant assessment year

**[2020] 122 taxmann.com 258 (Madras)
HIGH COURT OF MADRAS
Commissioner of Income Tax, Chennai
v.
Sterling Tree Magnum India Ltd.***

**DR. VINEET KOTHARI AND M.S. RAMESH JJ.
TAX CASE (APPEAL) NO.1377 OF 2008†
OCTOBER 9, 2020**

Section 147 of the Income-tax Act, 1961 - Income escaping assessment - General (Condition precedent) - Assessment year 1997-98 - Whether where there was no failure on part of assessee and it had disclosed all relevant facts, merely on basis of audit objection or change of opinion, reassessment under sections 147 and 148, could not be made beyond period of four years from end of relevant assessment year - Held, yes [Para 4] [In favour of assessee]

○○

“

Power is of two kinds. One is obtained by the fear of punishment and the other by acts of love. Power based on love is a thousand times more effective and permanent than the one derived from fear of punishment.”

Mahatma Gandhi

Oversight, inadvertence or mistake of Assessing Officer or error discovered by him on reconsideration of same material is mere change of opinion and does not give him power to reopen a concluded assessment

**[2021] 123 taxmann.com 468 (Karnataka)
HIGH COURT OF KARNATAKA
Dell India (P.) Ltd.**

v.

Joint Commissioner of Income Tax, LTU, Bangalore*

**ABHAY S. OKA, CJ.
AND R. DEVDAS, J.
WRIT APPEAL NO. 1145 OF 2015 (I-IT)
JANUARY 27, 2021**

Section 147 of the Income-tax Act, 1961 - Income escaping assessment - General (Condition precedent) - Whether Assessing Officer has no power to review; he has power to reassess, but reassessment has to be based on fulfilment of certain pre-condition - Held, yes - Whether after 1-4-1989, Assessing Officer has power to reopen assessment under section 147, provided there is 'tangible material' to come to conclusion that there is escapement of income from assessment, reasons must have a live link with formation of belief - Held, yes - Whether further, when a power under section 147 is to be exercised, concept of change of opinion must be treated as an inbuilt test to check abuse of power of Assessing Officer, hence, 'reason to believe' in context of section 147 cannot be based on mere change of opinion of Assessing Officer - Held, yes - Whether oversight, inadvertence or mistake of Assessing Officer or error discovered by him on reconsideration of same material is mere change of opinion and does not give him power to reopen a concluded assessment - Held, yes [Paras 16, 17 and 19] [In favour of assessee]

○○



Where AO initiated reassessment proceedings on ground that deduction under section 10A was wrongly allowed as assessee's units were situated outside STPI, in view of fact that Assessing Officer had allowed assessee's claim for deduction after a detailed scrutiny, initiation of reassessment proceedings merely on basis of change of opinion was not justified

[2019] 102 taxmann.com 128 (Gujarat)

HIGH COURT OF GUJARAT

Hitech Outsourcing Services

v.

Commissioner of Income-tax*

AKIL KURESHI AND B.N. KARIA, JJ.

R/SPECIAL CIVIL APPLICATION NO.12770 OF 2017

SEPTEMBER 18, 2018

Section 10A, read with section 147 of the Income-tax Act, 1961 - Export oriented undertaking (STPI) - Assessment year 2010-11 - Assessee-firm was engaged in business of software development - For relevant year, assessee claimed deduction under section 10A - Return was picked up for scrutiny and assessee's claim was allowed - Subsequently, Assessing Officer initiated reassessment proceedings on ground that deduction under section 10A was wrongly allowed as assessee's units were situated outside STPI - Whether since Assessing Officer had allowed assessee's claim for deduction after a detailed scrutiny, initiation of reassessment proceedings merely on basis of change of opinion was not justified - Held, yes - Whether, therefore, impugned reassessment proceedings deserved to be quashed - Held, yes [Para 5.8] [In favour of assessee]

○○

Where aspect of non-deduction of TDS on machine hire charges was discussed by Assessing Authority during original assessment and he allowed said charges, on a mere change of opinion, Assessing Authority could not have invoked reassessment proceedings to disallow said hire charges under section 40(a)(ia)

**[2020] 121 taxmann.com 302 (Madras)
HIGH COURT OF MADRAS
Principal Commissioner of Income Tax, Coimbatore
v.
Bharathi Constructions***

**DR. VINEET KOTHARI AND KRISHNAN RAMASAMY, JJ.
TAX CASE (APPEAL) NOS. 772 TO 774 OF 2017†
SEPTEMBER 11, 2020**

Section 194-I, read with sections 44AB and 147, of the Income-tax Act, 1961 - Deduction of tax at source - Rent (Reassessment) - Assessment year 2007-08 - Machine Hire Charges paid by assessee to various contractors or sub-contractors were fully disclosed not only in books of account and Audit Reports furnished by Tax Auditor, but also by way of replies to notice issued by Assessing Authority - During course of original assessment proceeding, it was also contended while giving reply to audit objection that payments, having been made as machine hire charges, did not amount to rentals and thereby did not attract section 194-I - Despite that in reassessment, Assessing Authority made additions under section 40(a)(ia) - Whether since aspect of non-deduction of TDS on machine hire charges attracting section 194-I was very much discussed by Assessing Authority during original assessment proceeding, on a mere change of opinion, Assessing Authority could not have invoked reassessment proceedings under section 147/148 beyond period of four years after end of relevant assessment year to disallow impugned amount - Held, yes [Para 12] [In favour of assessee]

○○



SLP dismissed against High Court ruling that where Assessing Officer initiated reassessment proceedings after expiry of four years from end of relevant assessment year on ground that assessee had accepted loan, deposits etc. of Rs. 20,000 or more in cash in violation of provisions of section 269SS, since there was no omission or failure on part of assessee to disclose fully and truly all material facts at time of original assessment, impugned reassessment proceedings deserved to be set aside

[2019] 108 taxmann.com 326 (SC)

SUPREME COURT OF INDIA

Commissioner of Income-tax, KOLKATA III

v.

Sahara India Mutual Benefit Co. Ltd.*

ROHINTON FALI NARIMAN AND SURYA KANT, JJ.

SPECIAL LEAVE PETITION (CIVIL) DIARY NO. 21400 OF 2019†

JULY 12, 2019

Section 269SS, read with section 147, of the Income-tax Act, 1961 - Deposits - Mode of taking/accepting (Reassessment) - Assessment year 1992-93 - For relevant year, assessee filed its return declaring certain taxable income - Assessing Officer completed assessment under section 143(3) making certain additions to income declared - After expiry of four years, Assessing Officer initiated reassessment proceedings on ground that assessee had accepted loan, deposits etc. of Rs. 20,000 or more in cash in violation of provisions of section 269SS - Tribunal finding that there was no omission or failure on part of assessee to disclose fully and truly all material facts at time of original assessment and, further, allegation that deposits were unexplained, were not based on any cogent material evidence on record, set aside assessment proceedings - High Court by impugned order held that since initiation of reassessment proceedings was merely based on change of opinion of Assessing Officer, impugned order passed by Tribunal did not require any interference - Whether Special leave petition filed against impugned order was to be dismissed - Held, yes [Para 11] [In favour of assessee]

○○

SLP dismissed against High Court ruling that where AO issued reopening notice against assessee, engaged in life insurance business, after expiry of four years from end of relevant year, since in reasons recorded there was no reference to any new tangible material but reference was only to financial statement of assessee itself, impugned notice issued merely on basis of change of opinion, was to be quashed

**[2021] 125 taxmann.com 71 (SC)
SUPREME COURT OF INDIA
Deputy Commissioner of Income Tax, Circle 1(1)
v.
Bajaj Allianz Life Insurance Company Ltd.***

**ASHOK BHUSHAN AND M.R. SHAH, JJ.
SLP (CIVIL) DIARY NO. 17857 OF 2020†
JANUARY 18, 2021**

Section 44, read with section 147, of the Income-tax Act, 1961 - Insurance business (Reassessment) - Assessment year 2012-13 - Assessee, engaged in business of life insurance, filed its return of income declaring taxable income in accordance with provisions of section 44 - Assessing Officer passed an assessment order accepting income declared by assessee - After four years, Assessing Officer sought to initiate reassessment proceedings - Assessee's objections to reassessment proceedings were rejected - It was noted that in reasons recorded there was no reference to any new tangible material, but reference was only to financial statement of assessee itself - High Court by impugned order held that since there was no failure on part of assessee to disclose all material facts at time of assessment, initiation of reassessment proceedings on basis of mere change of opinion was not justified - Whether special leave petition filed against impugned order was to be dismissed - Held, yes [Para 8] [In favour of assessee]

○○



Where Assessing Officer issued notice to reopen assessment in case of assessee taking a view that funds raised by its subsidiary company by issue of Step UP Coupon Bonds represented its own unaccounted money, however, failed to show non-disclosure of material facts by assessee, notice issued to assessee after a period of 4 years was to be quashed and set aside

**[2020] 116 taxmann.com 151 (SC)
SUPREME COURT OF INDIA
New Delhi Television Ltd.**

v.

Deputy Commissioner of Income Tax*

**L. NAGESWARA RAO AND DEEPAK GUPTA, JJ.
CIVIL APPEAL NO. 1008 OF 2020†
APRIL 3, 2020**

Section 69A, read with section 147, of the Income-tax Act, 1961 - Unexplained moneys (Step UP Coupon Bonds) - Assessment year 2008-09 - Assessee-company namely, NDTV, invested in a number of foreign subsidiaries, primarily in UK and Netherlands - In course of assessment, Assessing Officer found that NNPLC, an indirect subsidiary of assessee incorporated in UK, raised funds by issuing \$ 100m Step Up Coupon Convertible Bonds for which assessee furnished corporate guarantee - These bonds were to be redeemed at a premium of 7.5 per cent after expiry of period of 5 years, however, these bonds were redeemed in advance at a discounted price of US \$74.2 million - Assessing Officer issued notice to assessee to reopen its assessment based on order of DRP for subsequent year, wherein DRP had held that though amount was introduced through its subsidiary companies in Netherlands, it ultimately reached coffers of assessee through circuitous round tripping - Assessee, however, claimed that transaction of step up bonds was a legal and valid transaction and Assessing Officer had no valid reasons to believe that income of assessee had escaped assessment - Whether at stage of issuance of notice, Assessing Officer is to only form a

prima facie view that income had escaped assessment and since material disclosed in assessment proceedings for subsequent years was sufficient to form such a view, it was to be held that there were reasons to believe that income had escaped assessment in instant case - Held, yes - Whether however, since during original assessment assessee had made a disclosure about having agreed to stand guarantee for transaction by NNPLC and it had also disclosed factum of issuance of convertible bonds and their redemption, there being no failure on part of assessee to disclose all material facts, notice issued to assessee after a period of 4 years was to be quashed and set aside - Held, yes [Paras 23, 34, 35, 43 and 44][In favour of assessee]

○○

“

A teacher who establishes rapport with the taught becomes one with them, learns more from them than he teaches them. He who learns nothing from his disciples is, in my opinion, worthless. Whenever I talk with someone I learn from him. I take from him more than I give him.”

Mahatma Gandhi



Where High Court upheld Tribunal's order holding that in absence of any failure on part of assessee to disclose all material facts at time of assessment, AO could not initiate reassessment proceedings after expiry of four years from end of relevant year on ground that construction of housing project had commenced prior to 1-10-1998 and, thus, assessee's claim for deduction under Section 80-IB(10) was wrongly allowed, SLP filed against said order was to be dismissed due to low tax effect

[2020] 113 taxmann.com 406 (SC)

SUPREME COURT OF INDIA

Principal Commissioner of Income Tax, 25

v.

Vaman Estate*

ROHINTON FALI NARIMAN AND S. RAVINDRA BHAT, JJ.

SLP (CIVIL) DIARY NO(S). 38827 OF 2019†

NOVEMBER 29, 2019

Section 80-IB, read with section 147 of the Income-tax Act, 1961 - Deductions - Profits and gains from industrial undertakings other than infrastructure development undertakings (Date of commencement of construction) - Assessment year 2004-05 - For relevant year, assessee filed its return claiming deduction under section 80-IB(10) in respect of development of a housing project - Assessing officer allowed assessee's claim - After expiry of four years from end of relevant assessment year, Assessing Officer sought to initiate reassessment proceedings on ground that construction of housing project had commenced prior to 1-10-1998 and, thus, assessee's claim for deduction was wrongly allowed - Tribunal as well as High Court took a view that there was no failure on part of assessee to disclose all material facts at time of assessment and, thus, reassessment proceedings could not be initiated - Accordingly, reassessment proceedings were set aside - Whether, on facts, SLP failed against order of High Court was to be dismissed due to low tax effect - Held, yes [Para 2] [In favour of assessee]

Where High Court upheld Tribunal's order holding that in absence of any failure on part of assessee to disclose fully and truly all material facts at time of assessment, reassessment proceedings could not be initiated after expiry of four years from end of relevant year, SLP filed against said order was to be dismissed

**[2020] 113 taxmann.com 48 (SC)
SUPREME COURT OF INDIA
Principal Commissioner of Income-tax-2**

**v.
L&T Ltd.***

**UDAY UMESH LALIT AND VINEET SARAN, JJ.
SPECIAL LEAVE TO APPEAL (C) NO. 17479 OF 2019†
NOVEMBER 22, 2019**

Section 147 of the Income-tax Act, 1961 - Income escaping assessment - Illustrations/Non-disclosed of primary facts (validity of proceedings) - Assessing Officer initiated reassessment proceedings in case of assessee - Tribunal noted that notice seeking to reopen assessment had been issued beyond four years from end of relevant assessment year and, there was no failure on part of assessee to disclose fully and truly all material facts at time of assessment - Tribunal thus taking a view that reassessment proceedings had been initiated merely on basis of change of opinion, set aside same - High Court upheld Tribunal's order - Whether, on facts, SLP failed against order of High Court was to be dismissed - Held [Para 2] [In favour of assessee]

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“

I object to violence because when it appears to do good, the good is only temporary; the evil it does is permanent.”

Mahatma Gandhi



Where Assessing Officer reopened assessment to disallow deduction under section 80-IB(10), since reasons not having alleged/particularized any failure on part of assessee to disclose fully and truly all material facts necessary for assessment, reopening of assessment was without jurisdiction

[2019] 104 taxmann.com 94 (Bombay)

HIGH COURT OF BOMBAY

Akshar Anshul Construction LLP

v.

Assistant Commissioner of Income-tax 28(1)*

AKIL KURESHI AND M.S. SANKLECHA, JJ.

WRIT PETITION NO. 14302 OF 2018

MARCH 1, 2019

Section 80-IB, read with sections 147 and 148, of the Income-tax Act, 1961 - Deductions - Profits and gains from industrial undertakings other than infrastructure development undertakings (Housing projects) - Assessment year 2011-12 - Assessee was engaged in construction activity - For assessment year 2011-12, it claimed deduction of 100 per cent of its income under section 80-IB(10) - Assessing Officer selected return for scrutiny and passed assessment order under section 143(3) allowing 100 per cent deduction under section 80-IB(10), as claimed - Thereafter Assessing Officer reopened said assessment after a period of four years from end of relevant assessment year for reasons that assessee was not entitled to benefit of deduction under section 80-IB(10) - Whether since reasons not having alleged/particularized any failure on part of assessee to disclose fully and truly all material facts necessary for assessment, reopening of assessment was without jurisdiction - Held, yes [Para 9] [In favour of assessee]

○○

Where assessee transferred equity shares of a company to its related entity at nil consideration to consolidate onshore media assets and requested to treat said transfer as gift not liable to tax under section 45 and Assessing Officer accepted said claim but after more than four years, section 148 notice was issued to assessee on basis of Commissioner (Appeal)'s decision in case of group entity that said transfer was nothing but colorable device, since communication between assessee and Assessing Officer clearly demonstrated that assessee had disclosed all primary facts regarding said transfer during assessment, section 148 notice would no longer survive

**[2020] 119 taxmann.com 481 (Bombay)
HIGH COURT OF BOMBAY
Asian Satellite Broadcast (P.) Ltd.**

v.

Income Tax Officer, Circle 6(1)(3)*

**UJJAL BHUYAN AND MILIND N. JADHAV, JJ.
WRIT PETITION NO. 2749 OF 2019
SEPTEMBER 28, 2020**

Section 47, read with sections 45 and 148, of the Income-tax Act, 1961 - Capital gains - Transactions not regarded as transfer (Gift) - Whether as per section 47(iii) any transfer of a capital asset under a gift or will or an irrevocable trust shall not be liable to income tax under head 'Capital gains' - Held, yes - During assessment, assessee had transferred equity shares of company ZEE to an associated entity as gift, i.e., without consideration, to consolidate onshore media assets including shares of listed companies and incurred loss - Assessing Officer completed assessment accordingly - After more than four years, section 148 notice was issued to assessee on basis of Commissioner (Appeals)'s decision in case of group entity that said transfer was nothing but colorable device - Communication between assessee and Assessing Officer clearly demonstrated that assessee had disclosed all primary facts regarding said transfer during assessment - Further, Tribunal in said group company's case held that such transfer of shares was a gift which was valid, permissible and genuine - Whether since very foundation on which impugned notice was issued no longer survived, section 148 noticed was to be quashed - Held, yes [Paras 25 to 32] [In favour of assessee]



**[2004] 269 ITR 186 (BOM.)
HIGH COURT OF BOMBAY
Bhogwati Sahakari Sakhar Karkhana Ltd.**

v.

Deputy Commissioner of Income-tax

**V.C. DAGA AND J.P. DEVADHAR, JJ.
WRIT PETITION NO. 3974 OF 1990
JANUARY 7, 2004**

Section 147 of the Income-tax Act, 1961 – Income escaping assessment – Non-disclosure of primary facts – Assessment years 1982-83 and 1983-84 – Assessing Officer issued notices upon assessee under section 147 on ground that deductions made on account of refundable and non-refundable deposits from sugar cane price payable by assessee to farmers ought to have been shown as trading receipts being in course of its trading operations; these receipts, therefore, ought to have been regarded as revenue receipts and were liable to be included in assessee's taxable income - It was found that figures of refundable and non-refundable deposits were disclosed in returns filed by assessee and apart from that, return was also accompanied by balance-sheets wherein said figures were disclosed – Further, how deductions were made out of cane bills was also disclosed by assessee – Whether on facts, it could not be said that assessee had failed to make full and true disclosure of income in its returns – Held, yes – Whether therefore, impugned notices were without jurisdiction and were liable to be quashed – Held, yes

○○

“

Non-violence is the greatest force at the disposal of mankind. It is mightier than the mightiest weapon of destruction devised by the ingenuity of man.”

Mahatma Gandhi

Where assessee disclosed all relevant facts at time of assessment, mere fact that he had confiscated certain amount received as advance for sale of property which had been allowed as bad debts in hands of purchaser, it could not be concluded that said amount escaped assessment and, thus, impugned reassessment proceedings deserved to be quashed

[2018] 89 taxmann.com 227 (Bombay)

HIGH COURT OF BOMBAY

Cedric De Souza Faria

v.

Deputy Commissioner of Income Tax, Goa*

N.M. JAMDAR

AND NUTAN D. SARDESSAI, JJ.

WRIT PETITION NO. 929 OF 2017

NOVEMBER 21, 2017

Section 4, read with section 147, of the Income-tax Act, 1961 - Income - Chargeable as (Advances) - Assessment year 2010-11 - For relevant year assessee filed his return wherein certain amount was shown as capital receipt - Assessing Officer initiated reassessment proceedings on reasoning that in course of assessment of 'K' it was seen by Assessing Officer that 'K' had advanced certain amount to assessee for purpose of purchase of land - Subsequently 'K' could not meet condition implicit in MOU within time frame and said amount was forfeited by assessee - Assessing Officer, while passing order under section 143(3) disallowed bad debts claim of firm 'K' - Firm 'K' got relief from Commissioner (Appeals) on issue of bad debts and, thereupon, Assessing Officer opined that amount confiscated by assessee had escaped assessment - Assessee filed instant petition challenging validity of reassessment proceedings - It was noted that there was no failure on part of assessee to disclose all material facts necessary for assessment - Even as per Department's own showing in view of subsequent events, i.e., appeal of 'K' in respect of bad debts being allowed, reopening of assessment became necessary - Whether in view of aforesaid, impugned reassessment proceedings deserved to be quashed - Held, yes [Para 11] [In favour of assessee]



Validity of reassessment proceedings could not be upheld on ground that assessee earned bogus long term capital gain on sale of shares when assessee gave full details of its share transactions carried out in relevant year at time of completing assessment under section 143(3)

[2020] 117 taxmann.com 442 (Bombay)

HIGH COURT OF BOMBAY

Gateway Leasing (P.) Ltd.

v.

Assistant Commissioner of Income-tax-1(1)(2)

MILIND N. JADHAV AND UJJAL BHUYAN, JJ.

WRIT PETITION NO. 2518 OF 2019

MARCH 11, 2020

Section 45, read with section 147, of the Income-tax Act, 1961 - Capital gains - Chargeable as (Shares) - Assessment year 2012-13 - For relevant year, assessee filed its return declaring certain taxable income - Assessment was completed under section 143(3) wherein certain additions were made to assessee's income - Subsequently, assessment was reopened in case of assessee - Reason recorded by Assessing Officer was that in case of search conducted in case of one 'N', it was found that there was a syndicate operating in stock market which created long term capital gain/loss for its beneficiaries - According to Assessing Officer, assessee was also a beneficiary of said syndicate as it earned bogus long term capital gain in case of sale of shares of 'S' Ltd. details of which were not reflected in records and, thus, said income escaped assessment- Assessee filed instant petition challenging validity of reassessment proceedings - It was noted that assessee had filed complete details of its share transactions in case of 'S' Ltd. at time of completion of assessment under section 143(3) - Whether since there was no failure on part of assessee to disclose all material facts at time of assessment, initiation of reassessment proceedings based on mere change of opinion was not justified - Held, yes [Paras 36 and 37] [In favour of assessee]

○○

Where AO having completed assessment under section 143(3), initiated reassessment proceedings after expiry of four years on ground that assessee had incurred certain expenditure but no evidence in respect of deduction of same was produced, in view of fact that there was no failure on part of assessee to disclose all material facts truly and fully at time of assessment, impugned reassessment proceedings deserved to be quashed

**[2019] 102 taxmann.com 325 (Bombay)
HIGH COURT OF BOMBAY
LSG Sky Chefs (India) (P.) Ltd.**

v.

**Assistant Commissioner of Income-tax, Circle 2(2)(1),
Mumbai***

**AKIL KURESHI AND M. S. SANKLECHA, JJ.
WRIT PETITION NO. 3361 OF 2018
JANUARY 24, 2019**

Section 37(1), read with section 147, of the Income-tax Act, 1961 - Business expenditure - Allowability of (Reopening of assessment) - Assessment year 2011-12 - Assessee-company was engaged in business of airline catering - During relevant year, assessee filed its return declaring certain loss - Assessment was completed under section 143(3) accepting loss disclosed by assessee - After expiry of four years from end of relevant year, Assessing Officer initiated reassessment proceedings on ground that assessee had paid certain amount to 'J' but no evidence had been furnished concerning allowability of said amount as an expense - Assessee's objection to initiation of reassessment proceeding was set aside - Whether in view of fact that there was no failure on part of assessee to disclose all material facts truly and fully at time of assessment, mandatory requirement for reopening of assessment beyond 4 years flowing from first proviso to section 147 was not satisfied - Held, yes - Whether, therefore, impugned reassessment proceedings deserved to be quashed - Held, yes [Para 5][In favour of assessee]

○○



Where AO after expiry of four years from end of relevant assessment year, initiated reassessment proceedings by taking a view that assessee was in possession of certain cash amount which was not disclosed in return and thus escaped assessment, in view of fact that Assessing Officer was in possession of all relevant documents at time of assessment, initiation of reassessment proceedings merely on basis of change of opinion was not justified

[2019] 106 taxmann.com 307 (Bombay)

HIGH COURT OF BOMBAY

Rajbhushan Omprakash Dixit

v.

**Deputy Commissioner of Income Tax, Central Circle-2(4),
Mumbai***

AKIL KURESHI AND SARANG V. KOTWAL, JJ.

WRIT PETITION NO. 3546 OF 2018

APRIL 5, 2019

Section 69A, read with section 147, of the Income-tax Act, 1961 - Unexplained money (Cash) - Assessment year 2011-12 - Assessee was subjected to search under section 132(1) - Subsequent to search, assessee filed return declaring taxable income of Rs. 7.20 lakhs - Assessing Officer completed assessment under section 153A, read with section 143(3) - After expiry of four years from end of relevant year, Assessing Officer initiated reassessment proceedings on ground that seized documents disclosed that assessee had cash in hand of Rs. 20 lakhs which did not form part of assessee's return and, thus, escaped assessment - Whether in view of fact that Assessing Officer was in possession of all relevant documents at time of assessment, there being no failure on part of assessee to disclose fully and truly all material facts, initiation of reassessment proceedings merely on basis of change of opinion was not justified - Held, yes [Para 12] [In favour of assessee]

○○

Where after expiry of four years from end of relevant year, Assessing Officer initiated reassessment proceedings on basis of information received from Investigation wing that 'N' Ltd. was a penny stock listed in BSE which used to facilitate introduction of unaccounted income of members in form of share capital and, assessee was one of those beneficiaries, in view of fact that there was no company by name of 'N' Ltd. which was in existence at relevant time period, impugned reassessment proceedings deserved to be quashed

[2019] 104 taxmann.com 216 (Bombay)

HIGH COURT OF BOMBAY

South Yarra Holdings

v.

Income Tax Officer, 16(1)(1)(4), Mumbai*

AKIL KURESHI AND M. S. SANKLECHA, JJ.

WRIT PETITION NO. 3398 OF 2018

MARCH 1, 2019

Section 69A, read with section 147 of the Income-tax Act, 1961 - Unexplained money (Shares) - Assessment years 2011-12 - For relevant year, assessee filed its return declaring certain taxable income - Assessing Officer completed assessment under section 143(3) - After expiry of four years from end of relevant year, Assessing Officer received Information from Investigation wing that 'N' Ltd. was a penny stock listed in BSE which used to facilitate introduction of unaccounted income of members in form of share capital and, assessee was one of those beneficiaries - On basis of said information, Assessing Officer initiated reassessment proceedings in case of assessee - It was noted that at relevant time period, there was no company by name of 'N' Ltd. was in existence and, thus, Assessing Officer had initiated reassessment proceedings merely on basis of information received from Investigation Wing without conducting any independent enquiries - Even otherwise, there was no failure on part of assessee to disclose all material facts at time of assessment and, thus, reassessment proceedings were hit by proviso to section 147 - Whether in view of aforesaid, impugned reassessment proceedings deserved to be quashed - Held, yes [Para 8] [In favour of assessee]



Where assessee-bank offered to tax entire interest receipt from money advanced as credit and claimed that particulars of its claim under section 10(15) were being collected and would be submitted when said details were received from other branches, and Assessing Officer allowed said exemption to assessee on gross basis, issuance of section 148 notice to disallow said exemption after 4 years of completion of assessment was without jurisdiction and illegal, particularly when assessee-bank had made full and true disclosure

[2020] 119 taxmann.com 322 (Bombay)

HIGH COURT OF BOMBAY

State Bank of India

v.

Vineet Agrawal, Assistant Commissioner of Income Tax*

UJJAL BHUYAN AND MILIND N. JADHAV, JJ.

WRIT PETITION NO.13 OF 2002

SEPTEMBER 21, 2020

Section 10(15), read with section 148, of the Income-tax Act, 1961 - Interest, exemption to (Reassessment) - Assessment year 1990-91 - Assessee-bank offered to tax interest received on money advanced as credit and submitted that particulars of its claim under section 10(15)(iv) were being collected and would be submitted separately - Assessment was completed accordingly - Thereafter, assessee furnished relevant details and in section 154 proceedings, Assessing Officer allowed exemption under section 10(15)(iv) on gross basis - However, after a period of 4 years, reassessment notice was issued to assessee on ground that by claiming gross receipts as exempt, assessee in fact claimed double deduction and, thus, excess exemption was allowed which resulted in escapement of income - It was found that there was no failure on part of assessee to disclose fully and truly all material facts necessary for its assessment - Whether, on facts, impugned notice issued by Assessing Officer under section 148 was to be set aside and quashed - Held, yes [Paras 30 and 32] [In favour of assessee]

○○

[2011] 13 taxmann.com 39 (Bombay)
HIGH COURT OF BOMBAY
Bombay Presidency Golf Club Ltd.
v.
Income-tax Officer*

MRS. MRIDULA BHATKAR AND J.P. DEVADHAR, JJ.
WRIT PETITION NO. 2018 OF 2010
JANUARY 31, 2011

Section 147, read with section 4, of the Income-tax Act, 1961 - Income escaping assessment - Non-disclosure of primary facts - Assessment year 2003-04 - For relevant assessment year, Assessing Officer sought to reopen assessment after expiry of four years on account of entrance fee received by assessee-club from its members - It was apparent from records that at time of framing assessment, Assessing Officer had enquired into question regarding allowability of entrance fee received by assessee from its members and on being satisfied allowed claim - Even otherwise, nothing was brought to notice which would suggest that there was any failure on part of assessee to disclose fully and truly all material facts - Whether in view of above, it was to be held that proviso to section 147 applied to assessee's case and, therefore, Assessing Officer was not justified in initiating reassessment proceedings - Held, yes [In favour of assessee]

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“

All the religions of the world, while they may differ in other respects, unitedly proclaim that nothing lives in this world but Truth.”

Mahatma Gandhi



Where reopening notice was issued against assessee for reason that assessee was not eligible for exemption under sections 53(b) and 54(1)(i) in respect of consideration received from sale of a property being an agricultural land in form of a farmhouse along with water tank, servant quarter, etc., constructed on it as property in question was an agricultural land, since assessee had disclosed fully and truly all relevant material facts regarding this issue during original assessment proceedings, impugned reassessment notice issued after four years from end of relevant assessment year was unjustified

[2020] 115 taxmann.com 72 (Gujarat)

HIGH COURT OF GUJARAT

Arun Munshaw HUF

v.

Income-tax Officer, Ward 7(1)*

J.B. PARDIWALA AND BHARGAV D. KARIA, JJ.

R/TAX APPEAL NO. 1091 OF 2008†

JANUARY 13, 2020

Section 53, read with sections 54 and 148, of the Income-tax Act, 1961 - Capital gains - Exemption of, on sale of residential house (Reassessment) - Assessment year 1991-92 - Assessee sold a property being an agricultural land in form of a farmhouse along with water tank, servant quarter, etc., constructed on it for a consideration of certain amount - Assessee claimed exemption under sections 53(b), 54(1)(i) and 54E in respect of capital gains arising from sale of property - Same was allowed - After four years, Assessing Officer issued a reopening notice on ground that property in question was an agricultural land and, therefore, exemption under sections 53(b) and 54(1)(i) was wrongly allowed - Accordingly, reassessment was completed withdrawing exemption under sections 53(b) and 54(1)(i) respectively - It was noted that there was full and true disclosure of all material facts regarding this issue during original assessment - Conveyance deed, permission of appropriate authority to sell property and other documents were filed by assessee at time of original assessment proceedings - Nothing was suppressed - In such circumstances, it could be said that there was no tangible material with Assessing Officer for purpose of reopening assessment after four years - Whether, on facts, impugned reassessment notice and consequent reassessment order was unjustified - Held, yes [Para 16] [In favour of assessee]

Where AO initiated reassessment proceedings on ground that assessee did not obtain permission from RBI for writing off of foreign receivables as bad debts, in view of fact that at time of assessment, assessee had explained that application for permission to write off bad debts was already made to RBI and Assessing Officer had accepted contention of assessee that upon application of RBI pending final approval, debts could be written off, initiation of reassessment proceedings merely on basis of change of opinion was not justified

**[2019] 108 taxmann.com 204 (Gujarat)
HIGH COURT OF GUJARAT
Chamunda Pharma Machinery (P.) Ltd.**

v.

Assistant Commissioner of Income-tax, Circle 1(1)(2)*

**HARSHA DEVANI AND BHARGAV D. KARIA, JJ.
R/SPECIAL CIVIL APPLICATION NO. 16139 OF 2018
APRIL 30, 2019**

Section 36(1)(vii), read with section 147 of the Income-tax Act, 1961 - Bad debts (Foreign debts) - Assessment year 2013-14 - Assessee company was engaged in business of manufacturing pharmaceutical machineries - It filed return claiming deduction of bad debts which also included certain amount recoverable from a foreign party - Assessing Officer issued notice under section 142(1) calling upon assessee to furnish various details including ledgers of persons whose bad debts were written off - Assessee furnished details called for - Assessing Officer thereupon completed assessment under section 143(3) accepting assessee's claim for bad debts - Subsequently, Assessing Officer initiated reassessment proceedings on ground that assessee did not obtain permission from RBI for writing off of foreign receivables as bad debts and, thus, such claim of bad debts could not be allowed - It was noted that as regards foreign debts, assessee had explained that application for permission to write off bad debts was already made to RBI and Assessing Officer had accepted assessee's contention that upon application of RBI pending final approval, debts could be written off - Whether on facts, since there was no failure on part of assessee to disclose all material facts at time of assessment, initiation of reassessment proceedings merely on basis of change of opinion was not justified - Held, yes [Paras 10 and 14] [In favour of assessee]



Where after expiry of four years from end of relevant year, Assessing Officer sought to reopen assessment on ground that deduction under section 80-IB(11A) was wrongly claimed as assessee was engaged in manufacturing and processing of fruit juices and did not derive profits from processing, preservation and packaging of fruits, since there was no failure on part of assessee to disclose fully and truly any material facts which were necessary for assessment, in view of proviso to section 147, impugned reassessment proceedings deserved to be set aside

**[2018] 94 taxmann.com 372 (Gujarat)
HIGH COURT OF GUJARAT
Dhirendra Hansraj Singh**

v.

Assistant Commissioner of Income-tax*

**AKIL KURESHI AND B.N. KARIA, JJ.
R/SPECIAL CIVIL APPLICATION NO. 23055 OF 2017
MARCH 15, 2018**

Section 80-IB, read with section 147, of the Income-tax Act, 1961 - Deductions - Profits and gains from industrial undertakings other than infrastructure development undertakings (Fruit processing) - Assessment year 2010-11 - For relevant year, assessee filed its return declaring nil taxable income - Assessment was completed under section 143(3) - After expiry of four years from end of relevant year, Assessing Officer sought to reopen assessment on ground that deduction under section 80-IB(11A) was wrongly claimed as assessee was engaged in manufacturing and processing of fruit juices and did not derive profits from processing, preservation and packaging of fruits - Whether since there was no failure on part of assessee to disclose fully and truly any material facts which were necessary for assessment, in view of proviso to section 147, impugned reassessment proceedings deserved to be set aside - Held, yes [Para 7] [In favour of assessee]

○○

Where all material facts with respect to deemed dividend income necessary for assessment are furnished by assessee, initiation of reassessment proceedings beyond a period of four years is not permissible

**[2015] 63 taxmann.com 104 (Gujarat)
HIGH COURT OF GUJARAT
Viren Sureshchandra Shah**

v.

Assistant Commissioner of Income-tax, Circle 1(1)(2)*

**M.R. SHAH AND S.H. VORA, JJ.
SPECIAL CIVIL APPLICATION NO. 3862 OF 2015
MAY 7, 2015**

Section 2(22), read with section 148 of the Income-tax Act, 1961 - Deemed dividend (Disclosure of) - Assessment year 2007-08 - Whether where from reasons recorded and communicated for reopening of assessment, it was found that there was no failure on part of assessee to disclose fully and truly all material facts with respect to deemed dividend income taxable under section 2(22)(e), assumption of jurisdiction for initiation of reassessment proceedings beyond a period of four years was not permissible and deserved to be quashed and set aside - Held, yes [Paras 5.1, 5.3, 5.4, 5.5 and 5.7] [In favour of assessee]

○○

“

The best way to find yourself is to lose yourself in the service of others.”

Mahatma Gandhi



Where during course of scrutiny assessment, Assessing Officer had examined claim for deduction under section 80IB (10) in detail, merely because he did not examine such claim from angle of clauses (e) and (f) thereof, would not be a valid ground for reopening assessment

[2019] 108 taxmann.com 388 (Gujarat)

HIGH COURT OF GUJARAT

Royal Infrastructure

v.

Deputy Commissioner of Income Tax, Circle 1(2)*

HARSHA DEVANI AND BHARGAV D. KARIA, JJ.

R/SPECIAL CIVIL APPLICATION NO. 20078 OF 2018

APRIL 29, 2019

Section 80-IB, read with section 147, of the Income-tax Act, 1961 - Deductions - Profits and gains from industrial undertakings other than infrastructure development undertaking (Housing project) - Assessment year 2012-13 - During course of scrutiny assessment, Assessing Officer examined assessee's claim for deduction under section 80-IB(10) in detail and raised several queries and thereafter accepted same - Subsequently, Assessing Officer issued impugned notice under section 148 seeking to reopen assessment on ground that seven flats had been allotted either to family members or to same individual in contravention of clauses (e) and (f) of section 80-IB(10) - Whether since assessee had disclosed all material facts necessary for assessment and Assessing Officer allowed claim under section 80-IB(10) after examining same in detail, merely because he did not examine such claim from angle of clauses (e) and (f) thereof, would not be a valid ground for reopening assessment -Held, yes [Para 20] [In favour of assessee]

○○

Subsequent decision of Supreme Court reversing legal position prevailing at time of regular assessment cannot be called an omission or failure on part of assessee in disclosing fully and truly material facts necessary for relevant assessment and reassessment on said basis is unjustified

[2020] 114 taxmann.com 560 (Calcutta)

HIGH COURT OF CALCUTTA

Calcutta Club Ltd.

v.

Income-tax officer, Ward-12(3), Kolkata*

MD. NIZAMUDDIN, J.

W.P. NO. 719 OF 2014

FEBRUARY 14, 2020

Section 4, read with section 147, of the Income-tax Act, 1961 - Income - Chargeable as (Principle of Mutuality) - Assessment years 2007-08 and 2008-09 - Whether subsequent decision of Supreme Court reversing legal position prevailing at time of regular assessment cannot be called an omission or failure on part of assessee in disclosing fully and truly material facts necessary for relevant assessment and reassessment on said basis is unjustified - Held, yes - Assessee-club, claimed that interest on fixed deposits with bank was outside purview of taxation on principle of mutuality and assessment was completed accordingly - However, proceedings were initiated under section 147 after expiry of four years from end of relevant assessment year on basis of subsequent, of Supreme Court in case of Bangalore Club v. CIT [2013] 29 taxmann.com 29/212 Taxman 566/350 ITR 509 (SC) wherein it was held income earned by way of interest for corporate members of a club is taxable income and does not come under ambit of mutuality principle - Whether, since there was no omission or failure on part of assessee in disclosing fully and truly material facts for assessment and Assessing Officer could not establish that information of alleged escaped income was not within his knowledge and was not considered at time of passing of assessment order under section 143(3), impugned proceedings were to be quashed - Held, yes [Para 31] [In favour of assessee]



Where assessee-company fully disclosed expenses incurred on purchase of software package and expenses were allowed in scrutiny assessment, reopening of assessment after expiry of four years was not permissible

**[2015] 60 taxmann.com 330 (Madras)
HIGH COURT OF MADRAS
Commissioner of Income-tax, Chennai
v.
Arvind Remedies Ltd.***

**R. SUDHAKAR AND MS. K.B.K. VASUKI, JJ.
T.C.A. NO. 1363 OF 2007†
JUNE 8, 2015**

Section 35D, read with section 147, of the Income-tax Act, 1961 - Preliminary expenses (Reassessment) - Assessment year 1996-97 - Assessee, engaged in business of manufacture and sale of drugs, filed return of income of Rs. 14.45 lakhs - During scrutiny, income was assessed at Rs. 17.16 lakhs - After four years reassessment proceeding were initiated by department - According to department, assessee-company purchased software package; and expenses incurred in this regard was claimed as revenue deduction, which was contrary to section 37 and, said deduction should have been allowed under section 35D - Commissioner (Appeals) dismissed assessee's appeal - Tribunal accepted assessee's plea that there was no failure on part of assessee to disclose fully and truly all material facts necessary for assessment - Whether since Assessing Officer failed to consider materials placed before him at time of regular assessment, assessee could not be found fault with and, therefore, notice issued under section 147 was not sustainable - Held, yes [Para 12][In favour of assessee]

○○

Where AO initiated reassessment proceedings after expiry of four years from end of relevant assessment year on ground that assessee had accepted loan, deposits etc. of Rs. 20 thousand or more in cash in violation of provisions of section 269SS, since there was no omission or failure on part of assessee to disclose fully and truly all material facts at time of original assessment, impugned reassessment proceedings deserved to be set aside

**[2019] 101 taxmann.com 356 (Calcutta)
HIGH COURT OF CALCUTTA
Commissioner of Income-tax, Kolkata-II
v.
Sahara India Mutual Benefit Co. Ltd.***

**I.P. MUKERJI AND AMRITA SINHA, JJ.
IT APPEAL NOS. 454 & 510 OF 2008
DECEMBER 21, 2018**

Section 269SS, read with section 147, of the Income-tax Act, 1961 - Deposits - Mode of taking/accepting (Reopening of assessment) - Assessment year 1992-93 - For relevant year, assessee filed its return declaring certain taxable income - Assessing Officer completed assessment under section 143(3) making certain additions to income declared - After expiry of four years from end of relevant year, Assessing Officer initiated reassessment proceedings on ground that assessee had accepted loan, deposits etc. of Rs. 20 thousand or more in cash in violation of provisions of section 269SS - Tribunal finding that there was no omission or failure on part of assessee to disclose fully and truly all material facts at time of original assessment and allegation that deposits were unexplained, were not based on any cogent material evidence on record, set aside assessment proceedings - Whether since initiation of reassessment proceedings was merely based on change of opinion of Assessing Officer, impugned order passed by Tribunal did not require any interference - Held, yes [Para 11] [In favour of assessee]



Where Assessing Officer issued reopening notice for considering several issues such as interest paid on purchase of securities, expenditure for increase in capital, loss on sale of securities, and excess claim of depreciation on building, etc., since there was no failure on part of assessee to disclose fully and truly all relevant material and, further, all these deductions/allowance/disallowance of expenses were dealt with by Assessing Authority at time of original scrutiny assessment under section 143(3), impugned reassessment was unjustified

[2019] 106 taxmann.com 311 (Madras)

HIGH COURT OF MADRAS

Commissioner of Income-tax, Trichy

v.

City Union Bank Ltd.*

DR. VINEET KOTHARI AND C.V. KARTHIKEYAN, JJ.

TAX CASE APPEAL NOS. 256, 258, 260 TO 262, 264, 265,

267 TO 270 & 272 TO 274 OF 2019 & ORS.†

APRIL 15, 2019

Section 37(1), read with section 148, of the Income-tax Act, 1961 - Business expenditure - Allowability of (Reassessment) - Assessment years 1988-89, 1990-91 to 1993-94, 1995-96 to 1998-99 and 2000-01 to 2004-05 - Assessment in case of assessee was completed under section 143(3) - Subsequently, Assessing Officer issued reassessment notice by recording reasons for considering several issues, namely, interest paid on purchase of securities, expenditure for increase in capital, expenses on issue of rights issue, loss on sale of securities, fees payable for liability and excess claim of depreciation on building - It was noted that it could not be inferred that there was any failure on part of assessee to disclose fully and truly all relevant material resulting in escapement of income in form of either excess deductions or additions or deductions under section 36(1) - Further, all these deductions/allowance/disallowance of expenses were dealt with by Assessing Authority at time of original scrutiny assessment made under section 143(3) and there was nothing on record to show that there was non-application of mind on part of Assessing Authority

on these aspects of matter at time of original scrutiny assessment - Whether, on facts, impugned reassessment notice was unjustified and, thus, same was rightly quashed by Tribunal - Held, yes [Paras 11, 12 and 15] [In favour of assessee]

○○

**[2008] 296 ITR 573 (Madras)
HIGH COURT OF MADRAS
Commissioner of Income-tax**

v.

Elgi Ultra Industries Ltd.

**P.D. DINAKARAN AND P.P.S. JANARTHANA RAJA, JJ.
TAX CASE (APPEAL) NO. 441 OF 2007
JUNE 6, 2007**

Section 147 of the Income-tax Act, 1961 - Income escaping assessment - Non-disclosure of primary facts - Assessment year 1999-2000 - Where assessment was reopened on ground that deduction claimed by assessee-company was found to be excessive, as there was no failure on part of the assessee to disclose material facts, reassessment proceedings after expiry of four years was not possible in view of provisions of section 147

The assessment was reopened on the ground that the deduction claimed by the assessee-company was found to be excessive, although it had disclosed all material facts necessary for the assessment. The Tribunal held that as there was no failure on the part of the assessee to disclose material facts, the reassessment proceeding after the expiry of four years was not possible in view of the provisions of section 147:

Held that in the instant case, there was no finding that there was failure on the part of the assessee to disclose fully and truly all material facts. Further, all the material facts were available at the time of making original assessment. As the re-assessment had been made after expiry of four years, the reopening was not valid.

○○



Where assessee-builder claimed proportionate deduction under section 80-IB(10) in respect of those residential units only which had area less than 1500 sq. ft. and Assessing Officer after conscious application of mind allowed same, reassessment after 4 years would be impermissible

**[2019] 105 taxmann.com 65 (Madras)
HIGH COURT OF MADRAS
Deputy Commissioner of Income Tax
v.
Visvas Promoters (P.) Ltd.***

**DR. VINEET KOTHARI AND MRS. T. KRISHNAVALLI, JJ.
W.A. (MD) NO. 1051 OF 2011†
MARCH 27, 2019**

Section 80-IB(10), read with sections 147 and 148, of the Income-tax Act, 1961 - Deductions - Profits and gains from industrial undertakings other than infrastructure development undertaking (Housing projects) - Assessment year 2003-04 - Assessee was engaged in business of construction and sale of flats - It undertook projects containing residential units/flats having area both less than and more than 1500 sq. ft. - In original return assessee claimed proportionate deduction to extent of eligible residential units below 1500 sq. ft. only - Assessing Authority, upon conscious application of mind, allowed said proportionate benefit - Whether re-assessment notice issued after end of 4 years without any failure on part of assessee to disclose all material facts, was not valid - Held, yes [Paras 13 and 14] [In favour of assessee]

○○

“

My religion is based on truth and non-violence. Truth is my God. Non-violence is the means of realising Him.”

Mahatma Gandhi

Where Assessing Officer issued reopening notice on grounds that amounts in respect of writing off of cost of obsolete asset and factory land development charges debited to profit and loss account could not be allowed, since assessee had specifically referred amount in respect of these two expenses in its original return and Assessing Officer accepting same passed an order under section 143(3), thus, there was no failure on part of assessee to disclose fully and truly all material facts necessary for assessment, impugned reopening was unjustified

[2019] 111 taxmann.com 68 (Madras)

HIGH COURT OF MADRAS

S.P. Mani & Mohan Diary

v.

Assistant Commissioner of Income-tax*

K. RAVICHANDRABAABU, J.

W.P. NO. 3648 OF 2018

WMP NO. 4476 OF 2018

SEPTEMBER 26, 2019

Section 37(1), read with sections 40A(3) and 147, of the Income-tax Act, 1961 - Business expenditure - Allowability of (Reassessment) - Assessment year 2011-12 - Assessee filed its return of income which was processed under section 143(3) - After four years, Assessing Officer issued a reopening notice for two reasons, firstly, amount in respect of writing off of cost of obsolete asset debited to profit and loss account was a capital loss and, therefore, same could not be allowed as an expense and; secondly, assessee had made payment towards land development charges in cash exceeding Rs. 20,000; thus, land development expense was made in violation of provision of section 40A(3) and, therefore, same was not allowable - It was noted that profit and loss account enclosed with original return clearly reflected asset written off and factory land development charges paid by assessee - It was not case of revenue that amounts referred under these two heads were not at all shown in profit and loss account -



Therefore, it was evident that materials relevant to subject matter in issue for reopening were already on record before Assessing Officer during original assessment and after perusing return filed along with its enclosures, Assessing Officer completed assessment under section 143(3) - Whether, on facts, impugned reassessment was unjustified - Held, yes [Paras 17 and 21] [In favour of assessee]



Freedom is not worth having if it does not include the freedom to make mistakes.

Rationalists are admirable beings; rationalism is a hideous monster when it claims for itself omnipotence. Attribution of omnipotence to reason is as bad a piece of idolatry as is the worship of stock and stone believing it to be God. I plead not for the suppression of reason, but for a due recognition of that in us which sanctifies reason.”

Mahatma Gandhi

Where AO having completed assessment under section 143(3), initiated reassessment proceedings proposing to disallow contribution to welfare fund as it was not an approved fund, in view of fact that assessee had disclosed all material facts relating to contribution to welfare fund, impugned reassessment proceedings deserved to be set aside

[2019] 102 taxmann.com 130 (Madras)

HIGH COURT OF MADRAS

Tractors & Farm Equipment Ltd.

v.

**Assistant Commissioner of Income-tax, Company Circle
III(2), Chennai***

**T.S. SIVAGNANAM AND MRS. BHAVANI SUBBAROYAN,
JJ.**

T.C.(A) NO. 1548 OF 2008

OCTOBER 31, 2018

Section 80G, read with section 147 of the Income-tax Act, 1961 - Deductions - Donation to certain funds, charitable institutions (Contribution to unapproved fund) - Assessee filed its return declaring certain taxable income - Assessing Officer completed assessment under section 143(3) making certain addition to assessee's income - Subsequently, Assessing Officer initiated reassessment proceedings proposing to disallow contribution to welfare fund as it was not an approved fund - Tribunal upheld validity of reassessment proceedings - It was noted that assessee had disclosed all material facts relating to contribution to welfare fund - It was also undisputed that Assessing Officer had made detailed enquiries in respect of said issue while completing scrutiny assessment - Whether in aforesaid circumstances, it could be concluded that initiation of reassessment proceeding was based on change of opinion which was not permissible - Held, yes - Whether, therefore, impugned reassessment proceedings deserved to be quashed - Held, yes [Para 11] [In favour of assessee]



Where assessee had furnished its explanation on each and every seized document and after considering same Assessing Officer completed original assessment, reopening of assessment on basis of observation of first appellate authority in subsequent assessment year that for relevant assessment year, Assessing Officer should work out exact figure of bogus purchase on basis of seized bill book, was invalid

[2016] 67 taxmann.com 231 (Allahabad)

HIGH COURT OF ALLAHABAD

Commissioner of Income-tax

v.

Hemkunt Timbers Ltd.*

TARUN AGARWALA AND VINOD KUMAR MISRA, JJ.

IT APPEAL NO. 465 OF 2005

JANUARY 7, 2016

Section 69C, read with sections 147 and 150, of the Income-tax Act, 1961 - Unexplained expenditure (Reassessment) - Assessment year 1991-92 - Pursuant to observations made by first appellate authority while disposing of appeal for assessment year 1992-93 that for assessment year 1991-92, Assessing Officer had not meticulously gone through bill books found during search; and that he should work out exact quantum of bogus purchases on basis of said bill books, Assessing Officer issued notice under section 148 on 10-4-2001 and completed reassessment making addition on account of bogus purchases - Whether since assessee-company had disclosed all material facts necessary for making assessment and Assessing Officer in original assessment proceedings had considered each and every seized document and explanation given by assessee thereon, notice issued under section 148 beyond a period of four years from end of assessment year, was invalid - Held, yes [Para 15] [In favour of assessee]

○○



Landmark,
Judgments
of Income Tax

**Decision related to
Issue of Notice in Name of
Non-Existing Person/Company**

—————



Due to low tax effect SLP dismissed against High Court ruling to effect that upon amalgamation, Transferor Company ceased to exist and thereafter notice of reopening issued under section 148 in its name would be fundamentally illegal and without jurisdiction

[2021] 125 taxmann.com 167 (SC)

SUPREME COURT OF INDIA

Assistant Commissioner of Income Tax, Circle (2)(1)(1)

v.

Gayatri Microns Ltd.*

**DR. D.Y. CHANDRACHUD, MRS. INDIRA BANERJEE AND
SANJIV KHANNA, JJ.**

SLP APPEAL (C) NO. 13270 OF 2020

JANUARY 4, 2021

Section 148 of the Income-tax Act, 1961 - Income escaping assessment - Issue of notice for (Validity of) - Assessment year 2012-13 - High Court by impugned order held that upon amalgamation, transferor company ceases to exist and thereafter notice issued under section 148 in its name would be fundamentally illegal and without jurisdiction - Whether special leave petition filed against impugned order was to be dismissed on ground of low tax effect - Held, yes [Para 2] [In favour of assessee]

○○

“

One who hooks his fortune to ahimsa, the law of love, daily lessens the circle of destruction and to that extent promotes life and love.”

Mahatma Gandhi

Where High Court set aside reassessment proceedings on ground that no valid notice under section 148 could be issued against a dead person, SLP filed against said order was to be dismissed

**[2020] 114 taxmann.com 482 (SC)
SUPREME COURT OF INDIA
Income Tax Officer Ward 1(3)(7), Surat
v.
Durlabhbhai Kanubhai Rajpara*
ROHINTON FALI NARIMAN AND V.
RAMASUBRAMANIAN, JJ.
SPECIAL LEAVE PETITION (CIVIL) DIARY NO.
30693/2019†
OCTOBER 18, 2019**

Section 148 of the Income-tax Act, 1961 - Income escaping assessment - Issue of notice for (Notice to dead person) - Pursuant to summons issued in name of assessee's father under section 131(1A), assessee brought to notice of revenue authorities that his father had already died - Despite knowing said fact, Assessing Officer issued notice in name of assessee's father under section 148 seeking to reopen assessment - Assessee thus filed instant petition contending that impugned notice was without any jurisdiction which was issued against a dead person - High Court held that no valid notice could be issued against a dead person and, thus impugned notice was required to be quashed and set aside - Whether, on facts, SLP filed against order of High Court was to be dismissed - Held, yes [Para 2][In favour of assessee]

○○

“

Be the change you want to see in the world.”

Mahatma Gandhi



Where during pendency of assessment proceedings, Assessee Company was amalgamated with another company and thereby lost its existence, assessment order passed subsequently in name of said non-existing entity, would be without jurisdiction and was to be set aside

[2019] 107 taxmann.com 375 (SC)

SUPREME COURT OF INDIA

Principal Commissioner of Income Tax, New Delhi

v.

Maruti Suzuki India Ltd.*

**DR. DHANANJAYA Y. CHANDRACHUD AND MS. INDIRA
BANERJEE, JJ.**

CIVIL APPEAL NO. 5409 OF 2019†

JULY 25, 2019

Section 170, read with section 292B, of the Income-tax Act, 1961 - Succession to business otherwise than on death (Validity of assessment) - Assessment year 2012-13 - Whether issuance of jurisdictional notice and assessment order thereafter passed in name of non-existing company is a substantive illegality and not a procedural violation of nature adverted to in section 292B - Held, yes - Whether, therefore, where during pendency of assessment proceedings, assessee company was amalgamated with another company and thereby lost its existence, assessment order passed subsequently in name of said non-existing entity would be without jurisdiction and was to be set aside - Held, yes [Paras 31, 33 and 34] In favour of assessee]



Whenever you are confronted with an opponent, conquer him with love."

Mahatma Gandhi

Where on basis of information received from Investigation Wing that assessee had received certain cash from one 'M' which was not offered to tax, Assessing Officer initiated reassessment proceedings, in view of fact that said amount had been received by another entity having separate legal existence, impugned reassessment proceedings initiated on basis of erroneous information deserved to be quashed

[2019] 103 taxmann.com 162 (Bombay)

HIGH COURT OF BOMBAY

Akshar Builders & Developers

v.

Assistant Commissioner of Income-tax-28(1), Mumbai*

AKIL KURESHI AND M.S. SANKLECHA, JJ.

WRIT PETITION NO. 14490 OF 2018

JANUARY 17, 2019

Section 69A, read with section 147, of the Income-tax Act, 1961 - Unexplained moneys (Cash receipts) - Assessment years 2011-12 - Assessee-firm filed its return for relevant year which was accepted under section 143(1) - Subsequently, Assessing Officer received information from Investigation Wing that assessee had received Rs. 3.54 crores in cash from 'M' Ltd. which was not offered to tax - He thus initiated reassessment proceedings in order to bring said unexplained cash payments to tax - It was noted that cash payments were made by 'M' to another firm namely 'AD' whereas, assessee-firm was known in market as 'AB&D' - It was also undisputed that two entities were separate, having different partners and having distinct PAN numbers - Whether, on facts, even though assessee's return was accepted without scrutiny, yet Assessing Officer could not proceed mechanically on erroneous information supplied by Investigation wing - Held, yes - Whether, therefore, impugned reassessment proceedings deserved to be quashed - Held, yes [Para 7] [In favour of assessee]

○○



Where a company 'M' was amalgamated with assessee-company, Tax Recovery Officer could not seek recovery of taxes due of 'M' arising out of order of reassessment from assessee-company inasmuch as assessee neither had been served with notice of reopening of assessment, nor had any occasion to participate in such reassessment proceedings

[2019] 109 taxmann.com 465 (Bombay)

HIGH COURT OF BOMBAY

Hinal Estates (P.) Ltd.

v.

Union of India*

AKIL KURESHI AND S.J. KATHAWALLA, JJ.

WRIT PETITION NO. 878 OF 2019

JUNE 24, 2019

Section 222 of the Income-tax Act, 1961 - Collection and recovery of tax - Certificate proceedings (Companies, in case of) - Assessment year 2010-11 - A company 'M' was amalgamated with assessee-company - Thereafter Assessing Officer had reopened assessment of company 'M' and passed assessment order on raising tax demand upon it - Subsequently Tax Recovery Officer issued on assessee-company a notice to recover tax dues of company 'M' and on failure of assessee to pay tax dues of company 'M' had attached bank accounts of assessee - Whether Tax Recovery Officer could not seek recovery of taxes due of 'M' arising out of order of reassessment from assessee-company inasmuch as assessee neither had been served with notice of reopening of assessment, nor had any occasion to participate in such reassessment proceedings - Held, yes - Whether, therefore impugned notice of recovery deserved to be set aside and attachment of assessee's bank accounts required to be lifted - Held, yes [Para 5] [In favour of assessee]

○○

Where petitioner, a widow of original assessee, produced death certificate of her deceased husband, which indicated that notice under section 148 was issued against a dead person, impugned notice was invalid and was to be set aside

[2020] 120 taxmann.com 323 (Bombay)

HIGH COURT OF BOMBAY

Rupa Shyamsundar Dhumatkar

v.

Assistant Commissioner of Income Tax*

AKIL KURESHI AND SARANG V. KOTWAL, JJ.

WRIT PETITION NO. 404 OF 2019

APRIL 5, 2019

Section 148, read with section 159, of the Income-tax Act, 1961 - Income escaping assessment - Issue of notice (In name of dead person) - Assessment year 2011-12 - Petitioner was widow of 'S' - For reopening of assessment, Assessing Officer issued a notice under section 148, dated 27-3-2018, in name of her late husband - Petitioner informed revenue department that she was widow and legal heir of deceased 'S', but Assessing Officer issued a notice under section 142(1) - It was found that petitioner produced death certificate before revenue authorities, which indicated that her husband died on 14-10-2016 - Whether since impugned notice of reopening of assessment was issued against a dead person, same was invalid and was to be set aside along with assessment order - Held, yes [Para 2] [In favour of assessee]

○○

“

It is better to be violent, if there is violence in our hearts, than to put on the cloak of nonviolence to cover impotence.”

Mahatma Gandhi



A notice issued under section 143(2) which gives jurisdiction to complete assessment having been issued in name of dead person, is non-est in law and it is not saved even by section 292B

[2019] 112 taxmann.com 93 (Bombay)

HIGH COURT OF BOMBAY

Sumit Balkrishna Gupta

v.

**Assistant Commissioner of Income-tax, Circle 16(2),
Mumbai***

AKIL KURESHI AND M.S. SANKLECHA, JJ.

WRIT PETITION NO. 3563 OF 2018

FEBRUARY 15, 2019

Section 143, read with section 292B, of the Income-tax Act, 1961 - Assessment - Issue of notice (Notice u/s 143(2)) - Assessment year 2016-17 - Whether issue of notice under section 143(2) in name of wrong person is not a procedural/clerical error rather it is a substantive defect - Held, yes - Whether, therefore, a notice issued under section 143(2) which gives jurisdiction to complete assessment having been issued in name of dead person, is non est in law and it is not saved even by section 292B - Held, yes [Para 8][In favour of assessee]

○○

“

Victory attained by violence is tantamount to a defeat for it is momentary.”

Mahatma Gandhi

Notice issued in name of dead person is not enforceable in law

[2018] 95 taxmann.com 155 (Madras)

HIGH COURT OF MADRAS

Alamelu Veerappan

v.

Income Tax Officer, Non-corporate Ward-2(2), Chennai*

T.S. SIVAGNANAM, J.

WRIT PETITION NO. 30060 OF 2017

WMP NO. 32631 OF 2017

JUNE 7, 2018

Section 159, read with sections 148 and 292B, of the Income-tax Act, 1961 - Legal representatives (Notice to dead person) - Assessment year 2010-11 - Whether notice issued in name of dead person is not enforceable in law - Held, yes - Whether there is no statutory obligation on part of legal representative of deceased to immediately intimate death of assessee or take steps to cancel PAN registration - Held, yes [Para 17] [In favour of assessee]

○○

“

You can chain me, you can torture me, you can even destroy this body, but you will never imprison my mind.”

Mahatma Gandhi



Notice in name of Transferor Company after amalgamation was void ab initio; search in name of Transferor Company could not be ground to initiate abated/time barred reassessment proceedings

**[2017] 85 taxmann.com 146 (Delhi)
HIGH COURT OF DELHI
BDR Builders & Developers (P.) Ltd.**

v.

Assistant Commissioner of Income-tax*

**S. MURALIDHAR
AND PRATHIBA M. SINGH, JJ.
W.P. (C) NO. 2712 OF 2016
JULY 26, 2017**

Section 147 read with sections 68 and 153A of the Income-tax Act, 1961 - Income escaping assessment - General (Amalgamation) - Assessment year 2008-09 - Transferor company (VBPPL) was amalgamated with Petitioner company w.e.f. 1-4-2012 - Still notice for reassessment was issued to VBPPL - Later on search took place and both warrant of authorization and panchnama was drawn in name of VBPPL - Furthermore, proceedings under section 153A was initiated - Notices under sections 142(1) and 143(3) were issued but withdrawn later on - Assessing Officer again issued reassessment notice under section 148 - Whether entire proceedings under section 153A were void ab initio - Held, yes - Whether since second notice for initiating reassessment was time barred, section 153A to revive abated reassessment proceedings under section 147/148 did not arise - Held, yes [Paras 25 & 26] [In favour of assessee]

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“

A 'No' uttered from the deepest conviction is better than a 'Yes' merely uttered to please, or worse, to avoid trouble.

Mahatma Gandhi

Reopening notice issued in name of a dead person would not be a valid notice

[2019] 109 taxmann.com 389 (Gujarat)

HIGH COURT OF GUJARAT

Bharti Harendra Modi

v.

Income Tax Officer, Ward 3(1)(2), Vadodara*

J.B. PARDIWALA AND A.C. RAO, JJ.

R/SPECIAL CIVIL APPLICATION NO. 10404 OF 2019

JUNE 25, 2019

Section 148, read with section 159, of the Income-tax Act, 1961 - Income escaping assessment - Issue of notice for (Dead person) - Assessment year 2012-13 - Whether a notice issued under section 148 in name of a dead person would not be a valid notice - Held, yes - Original assessee, namely, BHM died on 26-5-2017- Assessing Officer issued a reopening notice under section 148 in name of BHM on ground that on basis of information in Annual Information Return (AIR), it was found that said deceased assessee had sold one immovable property amounting to Rs. 82.89 lakhs but did not file any income tax return, thus, income to said extent had escaped assessment due to failure of BHM to submit her return of income - Petitioner being heir and legal representative of BHM contended that BHM had already expired and, therefore, impugned notice in name of BHM was not valid - Whether impugned notice issued under section 148 against BHM was to be quashed and set aside - Held, yes [Paras 6 to 8][In favour of assessee]

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“

An eye for an eye will only make the whole world blind.”

Mahatma Gandhi



Where original assessee died and thereafter Assessing Officer issued notice under section 148 in his name to reopen assessment and petitioner being heir and legal representative of deceased raised an objection that assessee had already expired and, therefore, notice in his name was not valid, merely because petitioner had informed Assessing Officer about death of assessee and asked him to drop proceedings, it could not be construed that petitioner had participated in proceedings and, therefore, provisions of section 292B would not be attracted and notice under section 148 was to be treated as invalid

**[2019] 101 taxmann.com 362 (Gujarat)
HIGH COURT OF GUJARAT
Chandreshbhai Jayantibhai Patel**

v.

Income-tax Officer*

**MS. HARSHA DEVANI AND DR. A.P. THAKER, JJ.
R/SPECIAL CIVIL APPLICATION NO. 15172 OF 2018
DECEMBER 10, 2018**

Section 148, read with section 159, of the Income-tax Act, 1961 - Income escaping assessment - Issue of notice for (Dead person) - Assessment year 2011-12 - Whether a notice issued under section 148 against a dead person is invalid, unless legal representative submits to jurisdiction of Assessing Officer without raising any objection - Held, yes - Original assessee, namely, 'JHP' died on 24-6-2015 - Assessing Officer issued a notice under section 148 in name of 'JHP' to reopen assessment - Thereupon petitioner being heir and legal representative of 'JHP' informed Assessing Officer that 'JHP' had already expired and, therefore, notice in his name was not valid - He also enclosed death certificate of 'JHP' - Assessing Officer disposed of objections raised by petitioner stating that since original assessee's son-legal heir had received notice and replied to it, he had participated in proceedings and, thus, defect in issue of notice was automatically cured as per provisions of section 292B - Accordingly, Assessing Officer continued

with reassessment proceedings against 'JHP' - Whether merely because in response to notice issued against 'JHP', petitioner had informed Assessing Officer about death of assessee and asked him to drop proceedings, it could not, by any stretch of imagination, be construed as petitioner having participated in proceedings and, therefore, provisions of section 292B would not be attracted - Held, yes - Whether, therefore, impugned notice issued under section 148 was to be treated as invalid - Held, yes [Paras 16, 18 and 19] [In favour of assessee]



Literacy in itself is no education. Literacy is not the end of education or even the beginning. By education I mean an all-round drawing out of the best in the child and man-body, mind and spirit.

Literary education must follow the education of the hand -the one gift that distinguishes man from beast.”

Mahatma Gandhi



Where assessee-company had amalgamated with transferee-company, notice under section 153C ought to have sent to latter, and since such notice had not been issued to transferee-company, assessment made in hands of assessee-company was a nullity

**[2015] 57 taxmann.com 163 (Delhi)
HIGH COURT OF DELHI
Commissioner of Income-tax (C)-II
v.
Micra India (P.) Ltd.***

**S. RAVINDRA BHAT AND R.K. GAUBA, JJ.
IT APPEAL NOS. 441, 444 TO 446, 452 & 461 OF 2013†
JANUARY 22, 2015**

Section 143, read with section 153C, of the Income-tax Act, 1961 - Assessment (In case of amalgamation) - Assessment years 2003-04 - 2008-09 - Assessee-company amalgamated with other company with effect from 1-4-2008 and this fact was intimated to revenue - While so, revenue issued notice under section 153C to assessee on basis of search conducted in premises of some other parties - Despite assessee's objection that it ceased to exist on account of its amalgamation, Assessing Officer completed assessment in name of assessee-company - Whether since assessee had amalgamated with transferee-company, notice ought to have been sent to latter, and since such notice had not been issued to transferee-company, entire proceedings were a nullity - Held, yes [Para 8][In favour of assessee]

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“

Love is the strongest force the world possesses.”

Mahatma Gandhi

Interactive Meeting with ITAT Members



CA. P. K. Bansal, Vice-President, ITAT



CA. G. S. Pannu



Shri Ramesh C. Sharma



Shri B. R. Baskaran



Shri Saktijit Dey



Shri D. T. Garasia



Shri Manoj Kumar Aggarwal



Shri Pawan Singh

Interactive Meeting with ITAT Members



Shri Rajendra



Shri Joginder Singh



Shri Rajesh Kumar



Shri Ram Lal Negi



Shri Ravish Sood



Shri Manjunatha G.



Shri Shamim Yahya



Shri Sandeep Gosain

Interactive Meeting with Income Tax Department



Shri P. C. Mody
Principal, CCIT-Mumbai



Shri R. K. Gupta
D. G. of Income Tax



Smt. Anuradha Bhatia
Chief Commissioner of Income Tax



Shri V. K. Gupta
Principal Commissioner of Income Tax



Shri Pratap Singh
Principal Commissioner of Income Tax



Shri Pramod Kumar
Principal Commissioner of Income Tax

Interactive Meeting with Income Tax Department



Shri Shrikrishna
Principal Commissioner of Income Tax



Shri Rakesh Bhaskar
Principal Commissioner of Income Tax



Shri Arijun Jaikaran
Addl. Commissioner of Income Tax



CA. Lovish Kumar
Addl. Commissioner of Income Tax



Shri Rajiv Garg
Addl. Commissioner of Income Tax



Meeting with Commissioner of Income Tax and Add. CIT & Dy. CIT on Filing of the Statement of Financial Transactions u/s. 285 BA with Income Tax Department (Investigation) Mumbai (L-R): Shri Laxman Singh Gurjar, IRS-DDIT, Shri Jai Raj Kajla, IRS-DI-I&CI, Mumbai, CA. Vishnu Agarwal, Smt. Anu Krishna Aggarwal, IRS-ADD, DI-I&CI, Mumbai, Smt. Aastha Madhur, IRS-DDIT

Where AO issued notice under sec. 148 to assessee on ground that it had received certain accommodation entries from a bogus company, in view of fact that by time of issuance of notice, assessee had already merged with another company and thereby lost its legal existence, notice issued in name of assessee became invalid and, therefore, impugned reassessment proceedings deserved to be quashed

**[2018] 94 taxmann.com 458 (Gujarat)
HIGH COURT OF GUJARAT
Dharmnath Shares & Services (P.) Ltd.**

v.

Assistant Commissioner of Income-tax, Cen. Cir. 1(2)*

**AKIL KURESHI AND B.N. KARIA, JJ.
SPECIAL CIVIL APPLICATION NOS. 22594, 22601, 22605,
22609, 22621 OF 2017
MARCH 7, 2018**

Section 148 of the Income-tax Act, 1961 - Income escaping assessment - Issue of notice for (Validity of) - Assessment year 2010-11 - For relevant assessment year, assessee-company had not filed any return - Assessing Officer issued a notice to assess/reassess assessee's income, since he was of opinion that income chargeable to tax had escaped assessment - According to reasons recorded, in search operations carried under section 132 in case of 'B' group of companies which was engaged in providing accommodation entries, it was found that funds received by companies in form of share capital was not genuine, one of them being 'D' Limited - Assessing Officer noted that assessee-company had merged with 'D' Ltd., however, before its merger, assessee-company had been engaged in entire chain of transactions of bogus share capital money and of providing accommodation entries - Whether once assessee-company had amalgamated with transferee company, its independent existence did not survive, and therefore, it would no longer be amenable to assessment proceedings - Held, yes - Whether in view of aforesaid legal position, impugned notice issued in name of assessee-company was invalid and same deserved to be quashed - Held, yes [Para 4] [In favour of assessee]



Where Assessing Officer issued notice under section 148 to non-existing company, it was a substantive illegality and not procedural violation of nature adverted to in section 292-B, hence, not curable

**[2020] 117 taxmann.com 550 (Karnataka)
HIGH COURT OF KARNATAKA
eMudhra Ltd.**

v.

Assistant Commissioner of Income tax*

**MRS. S. SUJATHA, J.
WRIT PETITION NO. 56004 OF 2018(T-IT)
DECEMBER 10, 2019**

Section 292B, read with section 148, of the Income-tax Act, 1961 - Return of income, etc., not to be invalid on certain grounds (Reassessment notice) - Whether where assessee company was amalgamated with another company and thereby lost its existence, jurisdiction assumed by Assessing Officer to issue notice under section 148 to non-existing company was substantive illegality and not procedural violation of nature adverted to in section 292B and hence not curable - Held, yes - Whether therefore, notice issued under section 148 to non-existing company was to be quashed and set aside - Held, yes [Paras 13 and 14] [In favour of assessee]

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“

Nonviolence is a weapon of the strong.”

Mahatma Gandhi

Upon amalgamation, transferor company ceases to exist and thereafter notice issued under section 148 in its name would be fundamentally illegal and without jurisdiction

**[2020] 114 taxmann.com 318 (Gujarat)
HIGH COURT OF GUJARAT
Gayatri Microns Ltd.**

v.

Assistant Commissioner of Income-tax*

**MS. HARSHA DEVANI AND MS SANGEETA K. VISHEN, JJ.
R/SPECIAL CIVIL APPLICATION NO. 13871 OF 2019
DECEMBER 24, 2019**

Section 148 of the Income-tax Act, 1961 - Income escaping assessment - Issue of notice for (Validity of) - Assessment year 2012-13 - In June 2015, High Court approved scheme of amalgamation of three transferor companies with assessee-company - Details of amalgamation were informed to revenue by assessee through return filed for assessment year 2015-16 - In year 2019, Assessing Officer issued notice under section 148 to one of three transferor companies for reopening assessment for assessment year 2012-13 - Whether transferor company had ceased to exist as a result of approved scheme of amalgamation and in such case notice issued under section 148 in its name would be fundamentally illegal and without jurisdiction - Held, yes - Whether therefore, impugned notice issued and all proceedings were to be quashed and set aside - Held, yes [Paras 9 and 10] [In favour of assessee]

○○

“

You may never know what results come of your action, but if you do nothing there will be no result.”

Mahatma Gandhi



Where assessee was amalgamated with a company and a reopening notice was issued in name of amalgamating company which was not in existence, since department was not put to notice of factum of amalgamation and assessee had also, by filing a return in name of amalgamating company and receiving refunds addressed to amalgamating entity furthered impression that amalgamating company was an existing entity, impugned reassessment notice was valid

[2020] 115 taxmann.com 153 (Madras)

HIGH COURT OF MADRAS

Oasys Green Tech (P.) Ltd.

v.

Income-tax Officer*

DR. ANITA SUMANTH, J.

W.P. NOS. 1759 & 21858 OF 2018

WMP NOS. 2180, 16198, 18734 & 25634 OF 2018

JANUARY 21, 2020

Section 148, read with section 68, of the Income-Tax Act, 1961 - Income escaping assessment - Issue of notice for (Amalgamating Company) - Assessment year 2010-11 - Company, namely, OAS was amalgamated with assessee-company OGT - Assessing Officer issued a reassessment notice addressed to OAS on ground that cash deposits in bank account of assessee were unexplained - He further completed reassessment making additions under section 68 on account of such cash deposits in bank account of assessee - Assessee contended that impugned order was based on a notice issued to OAS which was non-existent on that date and, hence, aforesaid reopening notice and subsequent reassessment order was to be set aside - It was noted that department was not put to notice of factum of amalgamation by assessee - Assessee had also by filing a return in name of amalgamating company and receiving refunds addressed to amalgamating company, furthered impression that OAS was an existing entity - Whether, on facts, impugned reassessment notice issued in name of amalgamating company was valid - Held, yes [Partly in favour of assessee]

○○

Where Assessing Officer framed assessment on a company which got amalgamated with another company and ceased to exist, Tribunal was justified in quashing said assessment holding that same was void ab initio

**[2019] 109 taxmann.com 421 (Delhi)
HIGH COURT OF DELHI
Principal Commissioner of Income-tax-9**

v.

Transcend MT Services (P.) Ltd.*

DR. S. MURALIDHAR AND TALWANT SINGH, JJ.

IT APPEAL NO. 263 OF 2019†

JULY 30, 2019

Section 143 of the Income-tax Act, 1961 - Assessment - General (Assessment on non-existing company) - A company 'HDTS' ceased to exist pursuant to order of High Court dated 25-7-2008 and got amalgamated with company 'HICS' - Further, name of new amalgamated entity got changed to 'TMTS' (respondent-assessee) - Assessing Officer framed assessment on 22-2-2011 on 'HDTS' that ceased to exist from 25-7-2008 - Tribunal quashed said assessment and held that assessment framed by Assessing Officer on a non-existing company would be void ab initio - Whether Tribunal was justified - Held, yes [Para 15][In favour of assessee]

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“

The difference between what we do and what we are capable of doing would suffice to solve most of the world's problem.”

Mahatma Gandhi



Where notice seeking to reopen assessment was issued in name of deceased assessee, since she could not have participated in reassessment proceedings, provisions of section 292BB were not applicable to assessee's case and as a consequence, impugned reassessment proceedings deserved to be quashed

[2019] 101 taxmann.com 233 (Delhi)

HIGH COURT OF DELHI

Rajender Kumar Sehgal

v.

Income Tax Officer, Ward 56(1), New Delhi*

S. RAVINDRA BHAT AND PRATEEK JALAN, JJ.

W.P. (C) NO. 11255/2017

CM NO. 46017/2017

NOVEMBER 19, 2018

Section 292BB, read with section 148 of the Income-tax Act, 1961 - Notice deemed to be valid in certain circumstances (Notice issued to dead person) - Assessment year 2010-11 - For relevant year, assessee filed her return declaring certain taxable income - Return was processed in a routine manner and assessee was intimated about it - After death of assessee, Assessing Officer issued a notice under section 148 in her name seeking to reopen assessment - Legal representative of assessee filed instant petition contending that Act did not provide any mechanism for issuing and carrying on reassessment in respect of a dead person, if reassessment notice was issued against a deceased - Revenue, on other hand, raised a plea that error in issuing notice to a non-existent person or entity was capable of correction by reason of section 292BB- Whether, on facts, if original assessee had lived and later participated in proceedings, then, by reason of section 292BB, she would have been precluded from saying that no notice was factually served upon her - Held, yes - Whether, however, in instant case, since notice was issued in name of assessee when she was no longer alive, it was inconceivable that she could have participated in reassessment proceedings to be estopped from contending that she did not receive it - Held, yes - Whether, therefore, provisions of section 292BB were not applicable to assessee's case and as a consequence, impugned reassessment proceedings deserved to be quashed - Held, yes [Para 9] [In favour of assessee]

○○

Where original assessee, namely, 'B' died on 2-12-2009 and after a period of six years Assessing Officer issued notice under section 148 in her name to reopen assessment for assessment year 2009-10 and further despite pointing out by heir of 'B' that 'B' had expired long back, he relying upon section 159 continued with reassessment proceedings against 'B', section 159 would not applicable to instant case and, therefore impugned notice was liable to be set aside

[2017] 77 taxmann.com 39 (Gujarat)

HIGH COURT OF GUJARAT

Rasid Lala

v.

Income-tax Officer, Ward-1(3)(6)*

M.R. SHAH AND B.N. KARIA, JJ.

SPECIAL CIVIL APPLICATION NO. 18987 OF 2016

NOVEMBER 29, 2016

Section 148, read with section 159, of the Income-tax Act, 1961 - Income escaping assessment - Issue of notice (Dead person) - Assessment year 2009-10 - Original assessee, namely, 'B' died on 2-12-2009 - After a period of six years, Assessing Officer issued a notice under section 148 in name of 'B' to reopen assessment for assessment year 2009-10 - Thereupon petitioner-heir and legal representative of 'B' informed Assessing Officer that 'B' had already expired on 2-12-2009 and, therefore, notice in her name was not valid - Despite it, Assessing Officer relying upon section 159 informed petitioner to file return of income for assessment year 2009-10 and continued with reassessment proceedings against 'B' - Whether even if section 159 relied upon by Assessing Officer was attracted in instant case, in that case also, notice under section 148 was required to be issued against and in name of heir of 'B' - Held, yes - Whether under circumstances section 159 shall not be any assistance to Assessing Officer - Held, yes - Whether, therefore, impugned notice issued under section 148 was liable to be set aside - Held, yes [Paras 7 and 10] [In favour of assessee]



Where impugned notices under section 148 seeking to re-open assessment of assessee were issued to assessee after it had amalgamated with petitioner company and was no longer in existence, they were invalid and had to be set aside

**[2016] 67 taxmann.com 284 (Delhi)
HIGH COURT OF DELHI
Rustagi Engineering Udyog (P.) Ltd.**

v.

Deputy Commissioner of Income-tax*

**S. MURALIDHAR AND VIBHU BAKHRU, JJ.
W.P. (C) NOS. 1289 TO 1293 OF 1999
FEBRUARY 24, 2016**

Section 148 of the Income-tax Act, 1961 read with section 394 of the Companies Act, 1956 - Income escaping assessment - Issue of notice for (Amalgamation, in case of) - Assessment years 1989-90 to 1993-94 - Whether in case of amalgamation, amalgamating company would stand dissolved from date on which amalgamation/transfer takes effect - Held, yes - Impugned notices under section 148 seeking to re-open assessment of assessee were issued after assessee had amalgamated with petitioner company and was no longer in existence - Whether impugned notices having been issued to an assessee that had ceased to exist, they were liable to be set aside - Held, yes[Paras 20 & 21][In favour of assessee]

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“

Happiness is when what you think, what you say, and what you do are in harmony.”

Mahatma Gandhi

In absence of a statutory provision, a duty cannot be cast upon legal representatives to intimate factum of death of assessee to department and, thus, where Assessing Officer issued a notice to assessee under section 148 after his death and, in such a case, it could not have been validly served upon assessee, said notice being invalid, was to be quashed

[2020] 118 taxmann.com 46 (Delhi)

HIGH COURT OF DELHI

Savita Kapila

v.

Assistant Commissioner of Income-tax, Circle 4(1)*

MANMOHAN AND SANJEEV NARULA, JJ.

W.P.(C) NO. 3258/2020

JULY 16, 2020

Section 148 of the Income-tax Act, 1961 - Income escaping assessment - Issue of notice for (Service of notice) - Assessment year 2012-13 - An information was received by Assessing Officer that assessee had deposited certain amount in his bank account source of which was not explained - Assessing Officer thus issued a notice to assessee under section 148 seeking to reopen assessment - Petitioner i.e. legal representative of assessee filed instant petition challenging validity of said notice by contending that it was issued subsequent to death of assessee and, thus, statutory requirement of service of notice had not been fulfilled - Whether in absence of a statutory provision, a duty cannot be cast upon legal representatives to intimate factum of death of assessee to department - Held, yes - Whether, therefore, question as to whether PAN record was updated or not or whether department was made aware by legal representatives or not is irrelevant - Held, yes - Whether in view of aforesaid legal position and, having regard to fact that impugned notice could not have been served upon assessee, same deserved to be quashed - Held, yes [Paras 32, 41 and 42] [In favour of assessee]

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SECTION 148/INCOME-TAX ACT

**[2005] 145 TAXMAN 186 (ALL.)
HIGH COURT OF ALLAHABAD
Sri Nath Suresh Chand Ram Naresh
v.
Commissioner of Income-tax**

**R.K. AGRAWAL AND P. KRISHNA, JJ.
IT REFERENCE NO. 175 OF 1985
DECEMBER 15, 2004**

Section 148 of the Income-tax Act, 1961 - Income escaping assessment - Issue of notice for - Assessment years 1968-69 to 1976-77 - Whether service of prescribed notice on a particular assessee who is to be assessed is a condition precedent to validity of any reassessment to be made under section 147 and it is foundation of jurisdiction of assessing authority - Held, yes - Whether where name of assessee was not correctly mentioned in notice issued under section 148, such notice was vague and not valid and, therefore, consequent reassessment proceedings were null and void - Held, yes

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“

Strength does not come from physical capacity. It comes from an indomitable will.”

Mahatma Gandhi

Once scheme for amalgamation was sanctioned, amalgamating-company would not be in existence and therefore, reassessment notice could not be issued against original amalgamating-company for any prior year

**[2017] 77 taxmann.com 160 (Gujarat)
HIGH COURT OF GUJARAT
Takshashila Realities (P.) Ltd.**

v.

Deputy Commissioner of Income-tax, Circle 4(1)*

**M.R. SHAH AND B.N. KARIA, JJ.
SPECIAL CIVIL APPLICATION NOS. 16513,17596, 17598 &
17599 OF 2016
DECEMBER 5, 2016**

Section 143 of the Income-tax Act, 1961 - Assessment (In case of amalgamating company) - Assessment year 2009-10 - Original assessee-company was ordered to be amalgamated with another company with effect from 1-4-2010 - Notices for reopening assessment for assessment year 2009-10 were issued against original assessee-amalgamating company on 21-1-2011 - Whether once scheme for amalgamation had been sanctioned by High Court with effect from 1-4-2010, from that date amalgamating company would not be in existence and under such circumstances, impugned reassessment notices could not be issued against non-existent company, i.e., original assessee amalgamating company - Held, yes [Para 6] [In favour of assessee]

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“

If I have the belief that I can do it, I shall surely acquire the capacity to do it even if I may not have it at the beginning.”

Mahatma Gandhi



Reopening notice under section 148 issued against a dead person would be a nullity and; proceedings pursuant to a reopening notice issued to a dead person could not be continued against legal representatives

[2020] 117 taxmann.com 504 (Gujarat)

HIGH COURT OF GUJARAT

Urmilaben Anirudhhasinhji Jadeja

v.

Income-tax Officer*

J.B. PARDIWALA AND A.C. RAO, JJ.

R/SPECIAL CIVIL APPLICATION NO. 15310 OF 2018

AUGUST 27, 2019

Section 148, read with section 159, of the Income-tax Act, 1961 - Income escaping assessment - Issue of notice for (Dead Person) - Assessment year 2011-12 - Whether reopening notice issued against a dead person would be a nullity - Held yes - Whether proceedings pursuant to reopening notice under section 148 issued to a dead person could not be continued against legal representatives - Held, yes - Whether where applicant in response to reopening notice issued in name of assessee i.e., his dead father had informed Assessing Officer about demise of his father, it could not be said that applicant had participated in reassessment proceedings - Held, yes [Paras 19 and 23] [In favour of assessee]

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“

Never has man reached his destination by persistence in deviation from the straight path.”

Mahatma Gandhi



Landmark
Judgments
of Income Tax

**Decision related to
Cross Examination with
third party not provided
during the Course of Assessment**



SLP granted against ruling of Settlement Commission where it denied assessee for cross-examination of witnesses, relying upon whose statements rejected application for settlement

**[2019] 106 taxmann.com 250 (SC)
SUPREME COURT OF INDIA
Amrapali Fincap Ltd.**

v.

**Vice Chairman/Member Secretary Income-tax Settlement
Commission***

**KURIAN JOSEPH AND HEMANT GUPTA, JJ.
SPECIAL LEAVE TO APPEAL (CIVIL) NO(S). 34350 OF
2016†
NOVEMBER 13, 2018**

Section 245D of the Income-tax Act, 1961 - Settlement Commission - Procedure on application under section 245C (Cross-examination) - Assessment years 2008-09 to 2014-15 - Authorized Officer conducted search under section 132 upon assessee - He also carried out search and survey operations in case of one 'S' and others at Mumbai - Assessee filed an application before Settlement Commission for settlement of cases for assessment years 2008-09 to 2014-15 - During settlement proceedings, it applied for cross-examination of different witnesses including 'S', whose statements were recorded behind its back - Settlement Commission did not accede to assessee's request and relying on statements of these witnesses to some extent rejected application for settlement holding that assessee had not made true and full disclosures - High Court by impugned order held that since Settlement Commission besides relying upon statements of 'S' and other witnesses had also taken into consideration other facts available on record, there was no scope for interference in order of Settlement Commission - Whether Special leave petition filed against impugned order of High Court was to be granted - Held yes [Paras 18, 20 and 22] [In favour of assessee]

○○

Where assessee had submitted purchase bills, transportation bills, confirmed copy of accounts and VAT Registration of sellers as also their Income-tax Return and payment was made through cheques, impugned purchases could not be disallowed

**[2019] 110 taxmann.com 64 (SC)
SUPREME COURT OF INDIA
Commissioner of Income Tax-7, New Delhi**

**v.
Odeon Builders (P.) Ltd.***

**R.F. NARIMAN AND MS. INDU MALHOTRA, JJ.
REVIEW PETITION (C) DIARY NO(S). 22394 OF 2019
CIVIL APPEAL NOS. 9604-9605 OF 2018†
AUGUST 21, 2019**

Section 37(1) of the Income-tax Act, 1961 - Business expenditure - Allowability of (Bogus purchase) - Certain portion of purchases made by assessee was disallowed - Commissioner (Appeals) found that entire disallowance was based on third party information gathered by Investigation Wing of Department, which had not been independently subjected to further verification by Assessing Officer and he had not provided copy of such statements to appellant, thus, denying opportunity of cross examination to appellant, who on other hand, had prima facie discharged initial burden of substantiating purchases through various documentation including purchase bills, transportation bills, confirmed copy of accounts and fact of payment through cheques, VAT Registration of sellers and their Income-tax Return - He held that purchases made by appellant was acceptable and disallowance was to be deleted - Tribunal dismissed revenue's appeal - High Court affirmed judgments of Commissioner (Appeals) and Tribunal being concurrent factual findings - Whether no substantial question of law arose from impugned order of Tribunal - Held, yes [Para 4] [In favour of assessee]

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Where issue involved was about not extending opportunity to appellant to cross-examine witnesses relied upon by Assessing Officer, entire matter would be considered by First Appellate Authority afresh by giving fair opportunity to both sides to espouse their claim

[2020] 117 taxmann.com 723 (SC)

SUPREME COURT OF INDIA

I.C.D.S. Ltd.

v.

Commissioner of Income Tax*

A. M. KHANWILKAR AND DINESH MAHESHWARI, JJ.

CIVIL APPEAL NOS. 6053-6054 OF 2014†

FEBRUARY 12, 2020

Section 251, read with sections 226 and 261, of the Income-tax Act, 1961 - Commissioner (Appeals) - Powers of (General) - It was alleged that opportunity was not extended to appellant to cross-examine witnesses relied upon by Assessing Officer - Whether entire matter would be considered by First Appellate Authority afresh by giving fair opportunity to both sides to espouse their claim in remanded appeal(s) - Held, yes - Whether demand and attachment notice would not be given effect until Commissioner (Appeals) decided matter afresh - Held, yes [Paras 3 and 6] [In favour of assessee/Matter remanded]



If we could change ourselves, the tendencies in the world would also change. As a man changes his own nature, so does the attitude of the world change towards him. We need not wait to see what others do."

Mahatma Gandhi

Where Assessing Officer made an addition under section 69A to income of assessee primarily on basis of statement of a person and raised tax demand, since said person did not appear for cross-examination and, further, for previous assessment year he had retracted such statement, reliance placed on such uncorroborated statement of said person for making impugned addition was highly questionable, thus, entire tax demand was to be kept in abeyance till disposal of appeal on merits by Commissioner (Appeals)

[2021] 125 taxmann.com 187 (Bombay)

HIGH COURT OF BOMBAY

Dilipkumar P. Chheda

v.

Income Tax Officer-4(1), Thane*

UJJAL BHUYAN AND MILIND N. JADHAV, JJ.

WRIT PETITION NO. 537 OF 2021

FEBRUARY 4, 2021

Section 220, read with section 69A, of the Income-tax Act, 1961 - Collection and recovery of tax - When tax payable and when assessee deemed in default (Stay of demand) - Assessment year 2012-13 - Assessing Officer passed an assessment order in case of assessee making addition of certain amount under section 69A on basis of a statement of one NB and tax demand was raised - Assessee filed an appeal against such addition before Commissioner (Appeals) - During pendency of said appeal, assessee filed an application under section 220(6) for stay of demand before ITO who granted same subject to payment of 20 per cent of outstanding demand - Assessee contended that total demand was to be kept in abeyance till disposal of appeal by Commissioner (Appeals) - It was noted that said addition was made primarily on basis of statement of NB - However, it was found from materials on record that though summons were issued to NB for cross-examination, he did not appear and, therefore, he could not be cross-examined - Further, for previous assessment year he had retracted such statement - Thus, reliance placed on such uncorroborated and untested statement of NB while making additions to income of assessee was highly questionable - That apart, assessee



had pleaded financial hardship to meet demand even to extent of 20 per cent - Whether, on facts, entire demand was to be kept in abeyance till disposal of appeal on merits by Commissioner (Appeals) - Held, yes [Paras 15 and 16] [In favour of assessee]

○○

Where assessee had taken loan from one 'N' and Assessing Officer added loan amount in income of assessee under section 68 on basis that no confirmation letter had been obtained from 'N', since loan was advanced and repaid vide account payee cheques, Assessing Officer should have provided assessee material used against him apart from providing him an opportunity to cross examine deponents whose statements were relied upon

[2016] 72 taxmann.com 110 (Bombay)

HIGH COURT OF BOMBAY

H. R. Mehta

v.

Assistant Commissioner of Income-tax, Mumbai*

M.S. SANKLECHA AND A.K. MENON, JJ.

IT APPEAL NO. 58 OF 2001†

JUNE 30, 2016

Section 68 of the Income-tax Act, 1961 - Cash credit (Loan) - Assessment year 1983-84 - Assessing Officer having learnt from appraisal report in case of one 'S' that during relevant period assessee appeared to have taken a bogus hawala loan from one 'N' called upon assessee to obtain confirmatory letter from 'N' - Further he added loan amount in income of assessee under section 68 on basis that no confirmation letter had been obtained from 'N' nor any other verifiable evidence in respect of loan transaction had been filed - Whether since loan was advanced and repaid vide account payee cheques, Assessing Officer should have provided assessee material used against him apart from providing him an opportunity to cross examine deponents whose statements were relied upon - Held, yes [Para 17] [In favour of assessee]

○○

[2019] 108 taxmann.com 454 (Bombay)
HIGH COURT OF BOMBAY
Principal Commissioner of Income Tax
v.
Uni Packs (India)*

AKIL KURESHI AND SARANG V. KOTWAL, JJ.
IT APPEAL NO. 194 OF 2017
APRIL 30, 2019

Section 69C of the Income-tax Act, 1961 - Unexplained expenditure (Bogus purchases) - Assessee made payments to several suppliers for supply of goods - Assessing Officer made additions under section 69C on account of such payments - Tribunal deleted addition, inter alia, on grounds that Assessing Officer made such additions merely relying on material collected by Sales Tax Department - He relied on submissions of witnesses without offering them for cross-examination - There was no independent evidence that assessee's suppliers were not genuine - It was noted that assessee had also pointed out that payments were made through cheques - Whether there was no any error in view of Tribunal, thus, impugned addition under section 69C were correctly deleted - Held, yes [Paras 2 and 3] [In favour of assessee]

○○

“

An error does not become truth by reason of multiplied propagation, nor does truth become error because nobody sees it. Truth stands, even if there be no public support. It is self sustained.”

Mahatma Gandhi



Where assessee was not given an opportunity to cross-examine representatives of two companies whose statement was relied upon by revenue in disallowing amount paid by assessee to said companies to carry out promotional and advertisement activities, same was breach of principles of natural justice and accordingly issue was to be restored for fresh disposal

[2015] 61 taxmann.com 54 (Bombay)

HIGH COURT OF BOMBAY

R.W. Promotions (P.) Ltd.

v.

Assistant Commissioner of Income-tax, 9(3), Mumbai*

M.S. SANKLECHA AND N.M. JAMDAR, JJ.

IT APPEAL NO. 1489 OF 2013†

JULY 13, 2015

Section 37(1) of the Income-tax Act, 1961 - Business expenditure - Allowability of (Advertisement expenses) - Assessment year 2007-08 - Assessee engaged services of two companies to enable it to carry out promotional and advertisement activities for its clients - Amount paid to said companies was treated as expenditure - Same was accepted by Assessing Officer - Later on, Assessing Officer sought for reassessment on ground that expenditure claimed was bogus as evidenced by statement of representatives of two companies - Assessee sought for cross-examination of representatives of companies - Assessing Officer, inspite of request made by assessee for cross-examination, disallowed expenditure - Same was confirmed by lower appellate authorities - Whether where assessee was not given an opportunity to cross-examine representatives whose statement was relied upon by revenue, same was breach of principles of natural justice and, accordingly, issue was to be restored to Assessing Officer for fresh disposal - Held, yes [Para 13] [In favour of assessee/Matter remanded]

○○

Where assessee during search conducted under section 132 made admission that a sum of Rs. 86 lakhs seized from his employee belonged to him and it represented undisclosed income and subsequently he retracted above admission and offered an explanation that said amount was verifiable from records and books of account and Assessing Officer did not accept explanation and added said amount in income as unexplained cash credit, impugned addition was not justified

Where Assessing Officer on basis of statement of one 'S', who obtained export orders for assessee, made an addition of Rs. 1.38 crores to income of assessee as unexplained cash credit, it was incumbent on Assessing Officer to afford assessee an opportunity of cross-examination of 'S' and in absence of such an opportunity, impugned addition was not justified

**[2015] 64 taxmann.com 107 (Delhi)
HIGH COURT OF DELHI
Commissioner of Income-tax**

v.

Sunil Aggarwal*

**S. MURALIDHAR AND VIBHU BAKHRU, JJ.
IT APPEAL NO. 224 OF 2003†
NOVEMBER 2, 2015**

Section 68, read with sections 132 and 158BC, of the Income-tax Act, 1961 - Cash credits (Others) - Block period 1-4-1986 to 20-6-1996 - Authorized Officer conducted a search under section 132 upon assessee and seized cash amounting to Rs. 86 lakhs from his employee - During search, assessee made a categorical admission under section 132(4) that said amount belonged to him and it represented undisclosed income not recorded in books of account - During assessment proceedings, i.e., around two weeks before deadline for finalization of assessment, assessee retracted his above admission and offered an explanation that said cash amount was from undisclosed sales of disclosed purchases which were verified



from records and books of account - Assessing Officer did not accept explanation of assessee and added amount of Rs. 86 lakhs in his income as unexplained cash credit - Assessing Officer further on basis of statement of one 'S', who obtained export orders for assessee, made an addition of Rs. 1.38 crores in income of assessee as unexplained cash credit - Whether since assessee did not simply retract statement made during search and he also offered an explanation for amount of Rs. 86 lakhs and this was verifiable from books of account, impugned addition of Rs. 86 lakhs was not justified - Held, yes - Whether it was incumbent on Assessing Officer to afford assessee an opportunity of cross-examination of 'S' and in absence of such an opportunity, impugned addition of Rs. 1.38 crores was not justified - Held, yes [Paras 13, 15 and 19] [In favour of assessee]



Love requires that true education should be easily accessible to all and should be of use to every villager in this daily life. The emphasis laid on the principle of spending every minute of one's life usefully is the best education for citizenship.

My imperfections and failures are as much a blessing from God as my successes and my talents and I lay them both at his feet."

Mahatma Gandhi

Where assessee was not provided with opportunity to cross examine person providing information that lead into addition to income, fresh adjudication was required

**[2013] 39 taxmann.com 185 (Punjab & Haryana)
HIGH COURT OF PUNJAB AND HARYANA
Panchvati Motors (P.) Ltd.**

v.

Assistant Commissioner of Income-tax, Circle -1, Bathinda*

**RAJIVE BHALLA AND DR.BHARAT BHUSHAN PARSOON,
JJ.
IT APPEAL NO. 211 OF 2012 (O&M)†
SEPTEMBER 2, 2013**

Section 143, read with section 147, of the Income-tax Act, 1961 - Assessment - Addition of income [Opportunity of hearing] - Assessee Sales Tax authority held that there was sale of spare parts of cars to assessee by car manufacturer but same was not recorded in books - Said information was supplied to Assessing Officer - Assessing Officer initiated reassessment proceedings and made addition to assessee's income - On appeal, Tribunal found that Sales Tax Appellate Tribunal had set aside order of Sales Tax authority - Further, no authenticated document providing information was collected from car manufacturer, nor was same furnished to assessee or assessee was given opportunity of cross-examining officer who made statement relating to sale in question - Tribunal remitted matter to Assessing Officer for granting an opportunity to assessee to cross-examine officer who made statement relating to sale of cars and to comply with principles of natural justice - Whether order of Tribunal was just and proper - Held, yes [Para 5] [In favour of assessee]

○○



Section 68 addition was not called for on basis of statement that assessee had received share capital through accommodation entry, recorded at back of assessee

Where during search proceeding one of directors of assessee-company surrendered a certain sum as undisclosed income only for assessment year in question and not for each of six assessment years preceding year of search, said submission could not be said to be incriminating material qua each of preceding assessment years

[2017] 84 taxmann.com 287 (Delhi)

HIGH COURT OF DELHI

Principal Commissioner of Income-tax, Delhi-2

v.

Best Infrastructure (India) (P.) Ltd.*

S. MURALIDHAR AND PRATHIBA M. SINGH, JJ.

IT APPEAL NOS. 11 TO 22 OF 2017†

AUGUST 1, 2017

- I. Section 68, read with section 132, of the Income-tax Act, 1961 - Cash credit (Share capital) - Assessment years 2005-06 to 2009-10 - During search proceedings, 'T', accommodation entry provider, submitted that he had received cash from assessee and in return he had given them entry of share capital in form of a cheque - On said basis, Assessing Officer concluded that share premium and share application money were unexplained credit under section 68 - It was found that statement of 'T' was recorded at back of assessee and assessee was not allowed any opportunity to cross-examine him - Further, assessee had duly furnished declaration of director of share applicant company, share application form, certificate of incorporation from Registrar of Companies as well as income tax return of share applicant company and Assessing Officer did not make any verification about said documents - Whether, on facts, section 68 addition was not called for - Held, yes [Paras 34 to 43][In favour of assessee]

- II. Section 153A of the Income-tax Act, 1961 - Search and seizure - Assessment in case of (General) - Assessment years 2005-06 to 2009-10 - Whether where during search proceeding one of directors of assessee company surrendered a certain sum as undisclosed income only for assessment year in question and not for each of six assessment years preceding year of search, said submission could not be said to be incriminating material qua each of preceding assessment years and, consequently, assumption of jurisdiction under section 153A and consequent additions made by Assessing Officer were not justified - Held, yes [Para 36][In favour of assessee]

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“

I offer you peace. I offer you love. I offer your friendship. I see your beauty. I hear your need. I feel your feelings. My wisdom flows from the highest source. I salute the source in you. Let us work together for unity and love.”

Mahatma Gandhi



[2008] 174 Taxman 440 (Rajasthan)
HIGH COURT OF RAJASTHAN
Commissioner of Income-tax
v.
Geetanjali Education Society*

NARAYAN ROY, C.J.
AND SANGEET LODHA, J.
D.B. IT APPEAL NO. 91 OF 2008
AUGUST 18, 2008

Section 11 of the Income-tax Act, 1961 - Charitable or religious trust - Exemption of income from property held under - Assessing authority assessed assessee-society ignoring donations given to it by different persons, holding donors as bogus -Tribunal held that donors could not have been declared to be bogus as some of them were not examined nor those who were examined had been allowed to be cross examined - It further held that since society was a registered society under provisions of section 12AA, it enjoyed exemption as provided under section 11 - Whether donations given in favour of society could not have been held to be bogus without examining donors and subjecting them to cross-examination - Held, yes - Whether, therefore, order passed by Tribunal was to be affirmed - Held, yes

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“

You must not lose faith in humanity. Humanity is like an ocean; if a few drops of the ocean are dirty, the ocean does not become dirty.”

Mahatma Gandhi

Where investing companies were genuinely existing and identity of individual investors were also established, no addition could be made under section 68 on account of share application money, only on basis of any third party statement

**[2014] 44 taxmann.com 460 (Rajasthan)
HIGH COURT OF RAJASTHAN
Commissioner of Income-tax, Central, Jaipur
v.
Supertech Diamond Tools (P.) Ltd.***

**DINESH MAHESHWARI AND V.K. MATHUR, JJ.
D.B. IT APPEAL NO. 74 OF 2012†
DECEMBER 12, 2013**

Section 68 of the Income-tax Act, 1961 - Cash credit (Share application money) - Assessment year 2004-05 - Assessing Officer made addition under section 68 on account of amount received for share capital, its premium and amount paid as commission for arranging it on basis of statement made by third parties who were related to purchasing companies stating that these companies were engaged in providing accommodation entries in lieu of commission - However, said third party statement was made behind back of assessee and no opportunity of being heard or cross-examining third parties was provided to assessee - Assessing Officer could not bring any material to disapprove genuineness of confirmation and affidavits filed by assessee - Further, all transaction were through account payee cheques, all these companies had PAN numbers and were regularly assessed to tax - Investor companies were registered under Companies Act and Form No. 2 for allotment was also filed - Whether appellate authorities could not be said to have erred in deleting addition - Held, yes [Paras 8 and 9] [In favour of assessee]

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[2010] 191 Taxman 51 (Delhi)
HIGH COURT OF DELHI
Commissioner of Income-tax

v.

Ashwani Gupta

BADAR DURREZ AHMED AND SIDDHARTH MRIDUL, JJ.
IT APPEAL NO. 1264 OF 2008
FEBRUARY 16, 2010

Section 158B of the Income-tax Act, 1961 - Block assessment in search cases - Undisclosed income - Block period 1-4-1990 to 20-8-2000 - Pursuant to a search conducted at premises of assessee certain documents were seized - Subsequently, Assessing Officer recorded statement of one 'M' and on basis of same made addition on account of unaccounted transaction - On appeal, Commissioner (Appeals) held that Assessing Officer had passed an assessment order in violation of principles of natural justice inasmuch as he had neither provided copies of seized material to assessee nor had allowed assessee to cross-examine 'M', on basis of whose statement said addition was made - He also held that entire addition deserved to be deleted, particularly so because transactions also stood duly reflected in his regular returns - Tribunal, after referring to decision of High Court in case of CIT v. SMC Share Brokers Ltd. [2007] 288 ITR 345 / 159 Taxman 306 (Delhi), came to conclusion that there was no infirmity in order of Commissioner (Appeals) and, therefore, declined to interfere with same - Whether since there was a violation of principles of natural justice, it would be fatal to proceedings, and, therefore, there was no reason to interfere with impugned order - Held, yes

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“

A man is but the product of his thoughts. What he thinks, he becomes.”

Mahatma Gandhi



Landmark
Judgments
of Income Tax

**Decisions related to
Share Capital Additions u/s. 68**

—————



Where payment made by assessee against purchase of shares after expiry of accounting year was fully supported by bank statement, addition by Assessing Officer was not justified

**[2015] 58 taxmann.com 45 (Calcutta)
HIGH COURT OF CALCUTTA
Commissioner of Income-tax, Central - III**

v.

Chandela Trading Co. (P.) Ltd.*

**SOUMITRA PAL AND ARINDAM SINHA, JJ.
IT APPEAL NO. 831 OF 2004†
OCTOBER 30, 2014**

Section 69 of the Income-tax Act, 1961 - Unexplained investments (Share dealings) - Assessment year 2005-06 - Whether where payment was made by assessee for purchase of shares after expiry of accounting year and same was supported by bank statement, payment was not bogus and addition was not justified - Held, yes [Para 10][In favour of assessee]

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**[2008] 216 CTR 195 (SC)
SUPREME COURT OF INDIA
Commissioner of Income-tax**

v.

Lovely Exports (P.) Ltd.

**S.H. KAPADIA AND B. SUDERSHAN REDDY, JJ.
APPLICATION NO. 11993 OF 2007
JANUARY 11, 2008**

Section 68 of the Income-tax Act, 1961 - Cash credit - If share application money is received by assessee-company from alleged bogus shareholders, whose names are given to Assessing Officer, then Department is free to proceed to reopen their individual assessments in accordance with law but this amount of share money cannot be regarded as undisclosed income under section 68 of assessee-company

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Where revenue urged that Assessee Company received share application money from bogus shareholders, it was for revenue to proceed by reopening assessment of such shareholders and assessing them to tax and not to add same to assessee's income as unexplained cash credit

[2017] 80 taxmann.com 272 (Bombay)

HIGH COURT OF BOMBAY

Commissioner of Income-tax- 1

v.

Gagandeep Infrastructure (P.) Ltd.*

M.S. SANKLECHA AND A.K. MENON, JJ.

IT APPEAL NO. 1613 OF 2014†

MARCH 20, 2017

Section 68 of the Income-tax Act, 1961 - Cash credit (Share Capital) - Assessment year 2008-09 - Whether proviso to section 68 introduced by Finance Act 2012 with effect from 1-4-2013, would not have retrospective effect - Held, yes - Whether where assessee-company had established identity, genuineness and capacity of shareholders who had subscribed to its shares, Assessing Officer was not justified in adding amount of share capital subscription as unexplained credit - Held, yes - Whether where revenue urged that assessee had received share application money from bogus shareholders, it was for Income-tax Officers to proceed by reopening assessment of such shareholders and assessing them to tax in accordance with law and it did not entitle revenue to add same to assessee's income as unexplained cash credit - Held, yes [Para 3] [In favour of assessee]

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Where assessee had furnished income-tax returns, balance sheets, ROC particulars and bank account statements of shareholders, source of share application money had been satisfactorily explained

[2014] 51 taxmann.com 208 (Delhi)

HIGH COURT OF DELHI

Commissioner of Income-tax

v.

Expo Globe India Ltd.*

S. RAVINDER BHAT AND R. V. EASWAR, JJ.

IT APPEAL NO. 1257 OF 2011†

JULY 20, 2012

Section 68 of the Income-tax Act, 1961 - Cash credits (Share application money) - Assessment year 2000-01 - Assessee received share application money during relevant assessment year - Assessing Officer held that assessee had not given satisfactory explanation and included entire amount under section 68 - On appeal, assessee furnished income-tax returns, balance sheets, ROC particulars and bank account statements of shareholders - Commissioner (Appeals) considering said materials held that share application money or source of share application money had been satisfactorily explained and deleted addition - Tribunal confirmed order of Commissioner (Appeals) - Whether entire issue being purely factual, no interference was called for with Tribunal's order - Held, yes [Para 7] [In favour of assessee]

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“

The greatness of humanity is not in being human, but in being humane.”

Mahatma Gandhi

SLP dismissed as withdrawn due to low tax effect against High Court ruling that where assessee had received share application money and produced documents to establish genuineness of parties such as PAN of all creditors along with confirmation, their bank statements showing payment of share application money, merely because those persons had not appeared before Assessing Officer would not negate case of assessee so as to invoke section 68

[2020] 116 taxmann.com 113 (SC)

SUPREME COURT OF INDIA

Commissioner of Income-tax

v.

Orchid Industries (P.) Ltd.*

**A. M. KHANWILKAR, HEMANT GUPTA AND DINESH
MAHESHWARI, JJ.**

**SPECIAL LEAVE TO APPEAL (C) NO(S). 8679 OF 2018†
JANUARY 23, 2020**

Section 68 of the Income-tax Act, 1961 - Cash credit (Share application money) - High Court by impugned order held that where assessee had received share application money and produced on record documents to establish genuineness of parties such as PAN of all creditors along with confirmation, their bank statements showing payment of share application money, merely because those persons had not appeared before Assessing Officer would not negate case of assessee so as to invoke section 68 - Whether special leave petition filed against impugned order was to be dismissed as withdrawn due to low tax effect - Held, yes [Para 6] [In favour of assessee]

○○



**[2001] 115 Taxman 99 (SC)
SUPREME COURT OF INDIA
Commissioner of Income-tax**

v.

Steller Investment Ltd.*

S.P. BHARUCHA AND MRS. RUMA PAL, JJ.

CIVIL APPEAL NO. 7968 OF 1996

JULY 20, 2000

Section 68, read with section 256, of the Income-tax Act, 1961 - Cash credits - ITO accepted increase in assessee's subscribed capital - Commissioner, in section 263 proceedings, set aside ITO's order holding that there was a device used by assessee for converting black money by issuing shares and ITO failed to conduct detailed investigation into genuineness of shareholders - Tribunal reversed Commissioner's order and rejected reference application - High Court held that no question of law arose out of Tribunal's order - Whether Tribunal came to a conclusion on facts and as such no interference was called for - Held, yes

○○

“

I cannot teach you violence, as I do not myself believe in it. I can only teach you not to bow your heads before anyone even at the cost of your life.”

Mahatma Gandhi

[2017] 88 taxmann.com 648 (Delhi)
HIGH COURT OF DELHI
Principal Commissioner of Income-tax-5

v.

Laxman Industrial Resources Ltd.*

S. RAVINDRA BHAT AND NAJMI WAZIRI, JJ.

IT APPEAL NO. 169 OF 2017

C.M. APPL. NO. 7385 OF 2017

MARCH 14, 2017

Section 68 of the Income-tax Act, 1961 - Cash credit (Share application money) - Assessment year 2002-03 - Where share applicants, in addition to their confirmation letters, had provided their particulars, PAN details, assessment particulars, mode of payment for share application money but Assessing Officer failed to conduct any scrutiny of said documents, addition made by Assessing Officer merely on basis of report of investigation wing pointing out that assessee was beneficiary of accommodation entries was not justified [In favour of assessee]

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IN THE ITAT MUMBAI “F” BENCH
ITO 6(3)(1)

v.

M/s Frohar Trading Pvt. Ltd.*

SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

SHRI AMARJIT SINGH, JUDICIAL MEMBER

IT APPEAL NO. 543/ M/ 2018

[ASSESSMENT YEAR: 2012-13]

APRIL 6, 2021

“No addition could be made under section 68 where Assessee Company issued its shares at premium to certain companies in lieu of shares held by said companies and there was no inflow of cash”. Held Yes [In favour of Assessee]

○○



[2017] 88 taxmann.com 695 (Bombay)
HIGH COURT OF BOMBAY
Principal Commissioner of Income-tax
v.
Apeak Infotech*

M.S. SANKLECHA AND MANISH PITALE, JJ.
IT APPEAL NOS. 26 TO 31 OF 2017†
JUNE 8, 2017

Section 4 of the Income-tax Act, 1961 - Income - Chargeable as (Share capital premium) - Assessment year 2012-13 - Amount received on issue of share capital as premium are on capital account and cannot be considered to be income [In favour of assessee]

○○

IN THE ITAT MUMBAI “A” BENCH
ITO 12(1)(1)

v.

M/s Ahaan Financial Services Pvt. Ltd.*

SHRI JOGINDER SINGH, VICE PRESIDENT
SHRI N. K. PRADHAN, ACCOUNTANT MEMBER
IT APPEAL NO. 5904/ MUM/ 2017
[ASSESSMENT YEAR: 2007-08]
JANUARY 9, 2019

Where assessee company received share capital amount from several companies and furnished necessary details such as copy of share application form, copy of confirmation of shareholders, copy of bank statement, copy of PAN Card, annual report of the company furnished by the company etc., so as to prove genuineness of its transactions, impugned addition of said amount to assessee's income under section 68. Therefore additions made by Ld. A.O. was unjustified and same was to be deleted – Held, Yes [In favour of assessee]

○○

**IN THE ITAT MUMBAI “F” BENCH
ITO 6(3)(1)**

v.

M/s Fulton Corporation Pvt. Ltd.*

SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

SHRI AMARJIT SINGH, JUDICIAL MEMBER

IT APPEAL NO. 544/ M/ 2018

[ASSESSMENT YEAR: 2012-13]

APRIL 6, 2021

“No addition could be made under section 68 where Assessee Company issued its shares at premium to certain companies in lieu of shares held by said companies and there was no inflow of cash”. Held Yes [In favour of Assessee].

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**IN THE ITAT MUMBAI “A” BENCH
ITO 4(1)(3)**

v.

M/s Agarwal Cloth Agency Pvt. Ltd.*

SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

SHRI RAM LAL NEGI, JUDICIAL MEMBER

IT APPEAL NO. 2969/ MUM/ 2017

[ASSESSMENT YEAR: 2007-08]

AUGUST 23, 2019

Where assessee company received share capital amount from several companies and furnished necessary details such as copy of PAN and CIN, MOA/AOA, confirmation of parties, bank extracts etc., so as to prove genuineness of its transactions, impugned addition of said amount to assessee’s income under section 68 merely on basis of statement of a person who was controlling and managing these companies without providing an opportunity for his cross examination to assessee was unjustified and same was to be deleted – Held, Yes [In favour of assessee]

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**IN THE ITAT MUMBAI “G” BENCH
M/s Shakti Share Shoppee Pvt. Ltd.**

v.

ITO WARD 13(2)(3).*

SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

SHRI AMARJIT SINGH, JUDICIAL MEMBER

IT APPEAL NO.4100 & 4101/ MUM/ 2017

[ASSESSMENT YEAR: 2008-09 & 2009-10]

DECEMBER 23, 2020

Where assessee company received share capital amount from several companies and furnished necessary details such as copy of ITR, annual accounts, bank statements, PAN no., application from share applicants, copies of Board Resolutions, etc., so as to prove genuineness of its transactions, impugned addition of said amount to assessee's income under section 68 merely on basis of statement of a person who was controlling and managing these companies without providing an opportunity for his cross examination to assessee was unjustified and same was to be deleted – Held, Yes [In favour of assessee]

○○

“

Earth provides enough to satisfy every man's needs, but not every man's greed.”

Mahatma Gandhi



Landmark,
Judgments
of Income Tax

**Decisions related to
Unsecured Loans
Additions u/s 68**

■



[2010] 189 Taxman 141 (Rajasthan)

HIGH COURT OF RAJASTHAN

Labh Chand Bohra*

v.

Income-tax Officer

N.P. GUPTA AND KISHAN SWAROOP CHAUDHARI, JJ.

IT APPEAL NO. 92 OF 2005

APRIL 28, 2008

Section 68 of the Income-tax Act, 1961 - Cash credits - Whether where amounts found as cash credits in assessee's account books had been advanced by lenders by account payee cheques; identity of creditors had been established; their confirmations were available and they had also confirmed credits by making statements on oath, it could be said that assessee had discharged burden of proving identity and genuineness of transaction; so far as creditors' capacity to advance money to assessee was concerned, it was not a matter which would require assessee to establish, as that would amount to calling upon him to establish source of source - Held, yes

○○

“

Nearly everything you do is of no importance, but it is important that you do it.

Mahatma Gandhi

Where assessee had received unsecured loan of certain amount from an individual, since loan amount was received by assessee through cheque and there was no dispute as to identity of creditor and genuineness of transaction and revenue could not prove or bring any material to impeach source of credit, no addition under section 68 could be made on account of this loan amount

**[2020] 121 taxmann.com 86 (Bombay)
HIGH COURT OF BOMBAY
Gaurav Triyugi Singh
v.
Income Tax Officer 24(3)(1), Mumbai***

**UJJAL BHUYAN AND MILIND N. JADHAV, JJ.
IT APPEAL NO. 1750 OF 2017
JANUARY 22, 2020**

Section 68 of the Income-tax Act, 1961 - Cash credit (Unsecured loan) - Assessment year 2010-11 - Whether in order to establish receipt of credit in cash, as per requirement of section 68, assessee has to explain three conditions, namely, identity of creditor; genuineness of transaction; and credit worthiness of creditor - Held, yes - Assessee individual had taken unsecured loan of certain amount from one ST - Assessing Officer observed that ST had given said loan amount from its bank account and prior to which this amount was credited to her bank account as gift from two persons, namely, RBS and SST who were her relatives - He was of view that sources RBS and SST were suspected - Consequently, he treated loan amount received by assessee from ST as unexplained cash credit and made additions under section 68 - It was noted that loan amount was given to assessee through cheque by ST - There was no dispute as to identity of creditor ST - There was also no dispute about genuineness of transaction - That apart, creditor had explained as to how credit was given to assessee as amount was received by it from RBS and ST - Further, revenue could not prove or bring any material to impeach source of credit - Whether, on facts, assessee had discharged its onus



as per requirement of section 68 and it was not required for assessee to explain sources of source i.e. genuineness of receipt of amount by ST from RBS and SST - Held, yes - Whether, therefore, impugned addition under section 68 made to income of assessee was to be deleted - Held, yes [Paras 13 to 16] [In favour of assessee]

○○

Section 68 addition deleted, where assessee had discharged its onus of establishing identity, genuineness and creditworthiness of both investors to whom shares were allotted by assessee as well as lenders from whom unsecured loans were taken

**[2018] 96 taxmann.com 402 (Delhi)
HIGH COURT OF DELHI
Principal Commissioner of Income Tax-4
v.
Hi-Tech Residency (P.) Ltd.***

**S. MURALIDHAR AND PRATHIBA M. SINGH, JJ.
IT APPEAL NO. 628 OF 2016†
JULY 7, 2018**

Section 68 of the Income-tax Act, 1961 - Cash credit (Share capital) - Assessment year 2009-10 - Section 68 addition was made in hands of assessee company since assessee was not able to produce any of director, shareholders or principal officer of companies to whom shares were allotted lenders from whom unsecured loans was taken - Tribunal considered said issued in detailed manner and deleted said addition holding that assessee had discharged its onus of establishing identity, genuineness and creditworthiness of both investors as well as lenders - Whether, on facts, there was no infirmity in said order - Held, yes [Paras 4 to 6] [In favour of assessee]

○○

Where omission on part of creditors to subject themselves to enquiry being initiated by revenue could not establish that creditors lacked identity, addition as undisclosed income was not justified

**[2015] 58 taxmann.com 45 (Calcutta)
HIGH COURT OF CALCUTTA
Commissioner of Income-tax, Central - III
v.
Chandela Trading Co. (P.) Ltd.***

**SOUMITRA PAL AND ARINDAM SINHA, JJ.
IT APPEAL NO. 831 OF 2004†
OCTOBER 30, 2014**

Section 69A of the Income-tax Act, 1961 - Unexplained moneys (Loan) - Assessment year 2005-06 - Whether where omission on part of creditors to subject themselves to enquiry initiated by revenue or non-furnishing of accounts by them could not lead to conclusion that creditors lacked identity - Held, yes - Whether where particulars of transactions with them furnished by assessee were uncontroverted, addition as undisclosed income was not justified - Held, yes [Para 7] [In favour of assessee]

○○

“

I will not let anyone walk through my mind with their dirty feet.”

Mahatma Gandhi



Where assessee firm on being asked to explain certain credits in its books of account, pointed out three partners (creditors) who had advanced loans and said creditors had produced credible material to show their source of income for specific advances made to firm, additions made under section 68 had rightly been deleted by Tribunal

**[2019] 107 taxmann.com 130 (Kerala)
HIGH COURT OF KERALA
Commissioner of Income-tax, Kottayam
v.
Sree Ganesh Trading Company***

**K. VINOD CHANDRAN AND ASHOK MENON, JJ.
IT APPEAL NO. 286 OF 2009
JANUARY 31, 2019**

Section 68 of the Income-tax Act, 1961 - Cash credit (Advance) - Assessee-firm was asked to explain certain credits in its books of account - Assessee claimed that amounts were received from three partners, who had advanced loans - However, though identity of creditors was not in dispute, said three partners were not able to explain or establish creditworthiness of persons who were their source, hence, unexplained credits were added to income of assessee under section 68 - Tribunal deleted the additions so made - Whether if at all source of donor/creditor is doubted, then there could be an assessment made only on that donor or creditor and not on firm, who had proved identity and creditworthiness of their creditor - Held, yes - Whether moreover, where creditors, as pointed out by assessee firm, were three partners who had produced credible material to show their source of income for specific advances made to firm, additions so made had rightly been deleted by Tribunal - Held, yes [Para 11][In favour of assessee]

○○

Where assessee received share capital and unsecured loan from several entities and produced documentary evidences such as copy of confirmation of accounts, copy of PAN card, bank statement ITR acknowledgement and financial statements of all investors/lenders so as to substantiate these transactions and funds were transferred to assessee through proper banking channels, no addition under section 68 could be made on basis of third party statements

**[2021] 124 taxmann.com 72 (Mumbai - Trib.)
IN THE ITAT MUMBAI BENCH 'A'
Abhijavala Developers (P.) Ltd.**

v.

Income Tax Officer 9(1)(1), Mumbai*

**AMARJIT SINGH, JUDICIAL MEMBER
AND MANOJ KUMAR AGGARWAL, ACCOUNTANT
MEMBER**

**IT (APPEAL) NO. 952 (MUM) OF 2019
[ASSESSMENT YEAR 2012-13]
DECEMBER 3, 2020**

Section 68 of the Income-tax Act, 1961 - Cash credit (Share capital and unsecured loan) - Assessment year 2012-13 - During year, assessee company received unsecured loan and share application money from six corporate entities - Assessing Officer noted that summons issued under section 131 to these entities were returned back with remarks like not known/incomplete address and assessee was unable to produce any of these parties - He further noted that an information was received from DGIT (Inv.) that all these entities were involved in providing bogus accommodation entries of varied nature - Accordingly, he held that unsecured loans as well as share application money received by assessee from all six entities was non-genuine and a sham and added these amount to income of assessee under section 68 - It was noted that assessee had furnished all documentary evidences such as copy of confirmation of accounts by lender/investor, copy of PAN Card, bank statement, ITR



acknowledgement and copy of financial statements of all investor/lender entities - Further, all these six entities had filed their return of income after paying taxes - They had also duly confirmed transactions carried out with assessee - All funds were transferred to assessee through proper banking channels and there was no immediate cash deposits in their accounts before transfer of funds to assessee - Allegations of revenue were not supported by any corroborative evidences - So far as information of DGIT (Inv.) was concerned, these were found merely third party statements which were never confronted to assessee and those statements on standalone basis could not form basis of making additions in hands of assessee - Whether, on facts, impugned additions made under section 68 to income of assessee was unjustified and same was to be deleted - Held, yes [Para 5] [In favour of assessee]



Carefully watch your thoughts, for they become your words. Manage and watch your words, for they will become your actions. Consider and judge your actions, for they have become your habits, for they shall become your values. Understand and embrace your values, for they become your destiny."

Mahatma Gandhi

Where assessee received loan from bank account of 'K' in which money from sister concerns of assessee was found deposited before issuance of cheque to assessee, there being no doubt about genuineness of transaction, loan amount could not be added to assessee's taxable income by resorting to provisions of section 68

[2013] 33 taxmann.com 347 (Gujarat)

HIGH COURT OF GUJARAT

Commissioner of Income-tax - III

v.

Hemant Hasmukhlal Shah*

AKIL KURESHI AND MS. SONIA GOKANI, JJ.

TAX APPEAL NO. 2417 OF 2009

FEBRUARY 12, 2013

Section 68 of the Income-tax Act, 1961 - Cash credits [Loan] - Assessment year 2001-02 - Assessee filed return declaring loss - In course of assessment, Assessing Officer made addition on account of unexplained cash credit - Commissioner (Appeals) noted that loans were received from bank account of 'K' in which money from sister concerns of assessee were found deposited before issuance of cheques to assessee - Commissioner (Appeals), thus, having felt satisfied with regard to genuineness of credit and creditworthiness of creditor, deleted addition made by Assessing Officer - Tribunal upheld order of Commissioner (Appeals) - Whether since finding recorded by appellate authorities was a finding of fact, no substantial question of law arose therefrom - Held, yes [Para 8] [In favour of assessee]

○○

“

The weak can never forgive. Forgiveness is the attribute of the strong.”

Mahatma Gandhi



Where assessee proved loan transactions from various parties by producing details like copy of PAN card, copy of return of income, balance sheet and copy of bank accounts of creditors, Tribunal was justified in deleting addition made by AO under sec. 68 in respect of said transactions

[2017] 86 taxmann.com 22 (Bombay)

HIGH COURT OF BOMBAY

Commissioner of Income-tax-15

v.

Haresh D. Mehta*

S.C. DHARMADHIKARI

AND PRAKASH D. NAIK, JJ.

IT APPEAL NO. 1785 OF 2014

SEPTEMBER 4, 2017

Section 68 of the Income-tax Act, 1961 - Cash credits (Burden of proof) - Assessment year 2007-08 - During relevant year, assessee obtained unsecured loans from various parties - Assessing Officer took a view that assessee had not proved capacity or genuineness of parties to undertake such huge loan transactions - He thus added said amount to assessee's income under section 68 - Tribunal found that assessee had produced details like copy of PAN card, copy of return of income, balance sheet and copy of bank accounts before Assessing Officer - Tribunal thus opined that once initial burden was discharged, Assessing Officer had then to find out that despite production of record in relation to those parties, why version of assessee could not be accepted - In view of failure of Assessing Officer to carry out said exercise, Tribunal set aside addition made by him - Whether since finding recorded by Tribunal was based on material available on record, same did not require any interference - Held, yes [Paras 15 and 16] [In favour of assessee]

○○

SLP dismissed against High Court ruling that where Assessing Officer had made addition to income of assessee by way of unexplained cash credit only on presumption that loan was not found to be reflected in balance sheet of donor, since assessee had demonstrated genuineness of transaction as well as reliability and creditworthiness of donor, said addition was unjustified

**[2018] 95 taxmann.com 19 (SC)
SUPREME COURT OF INDIA
Principal Commissioner of Income-tax
v.
Bhanuprasad D. Trivedi (HUF)***

**ROHINTON FALI NARIMAN AND ABHAY MANOHAR
SAPRE, JJ.
PETITION FOR SPECIAL LEAVE TO APPEAL (C) NOS.
9599 OF 2018†**

Section 68 of the Income-tax Act, 1961 - Cash credit (Loans) - Assessment year 2005-06 - High Court by impugned order held that where Assessing Officer had made addition to income of assessee by way of unexplained cash credit only on presumption that loan was not found to be reflected in balance sheet of donor, since assessee had demonstrated genuineness of transaction as well as reliability and creditworthiness of donor, said addition was unjustified - Whether Special Leave Petition against impugned order was to be dismissed - Held, yes [Para 3] [In favour of assessee]

○○

“

Love never claims, it ever gives. Love ever suffers, never resents never revenges itself.”

Mahatma Gandhi



[2004] 270 ITR 157 (MP)
HIGH COURT OF MADHYA PRADESH
Commissioner of Income-tax

v.

Mehrotra Brothers

DIPAK MISHRA AND SHRIVASTAVA, JJ.

M.I.T.A NO. 5 OF 2003

FEBRUARY 5, 2003

Section 263 of the Income-tax Act, 1961 – Revision – Of orders prejudicial to interest of revenue - Commissioner invoked provision of section 263 against assessment order passed in case of assessee-firm on ground that Assessing Officer did not make proper enquiry regarding genuineness of certain cash credits found in books of firm – However, Tribunal held that since assessee had explained satisfactorily cash credit in books of account and discharged burden and Department had not brought out material or evidence to rebut same, cash credits were not income of assessee-firm and, accordingly, set aside order of Commissioner passed under section 263 – Whether in view of finding of fact recorded by Tribunal, no substantial question of law arose out of impugned order – Held, yes – Whether, therefore, instant appeal was to be dismissed – Held, yes

○○

“

We may never be strong enough to be entirely nonviolent in thought, word and deed. But we must keep nonviolence as our goal and make strong progress towards it.”

Mahatma Gandhi

**[2005] 147TAXMAN18 (ALL.)
HIGH COURT OF ALLAHABAD
Commissioner of Income-tax***

v.

S. Kamaljeet Singh

R.K. AGRAWAL AND PRAKASH KRISHNA, JJ.

IT REFERENCE NO. 154 OF 1991

JANUARY 28, 2005

Section 68 of the Income-tax Act, 1961 - Cash credits - Assessment year 1974-75 - In a search operation, certain incriminating books and papers were found and seized from assessee's room - Assessing Officer found cash loans of certain parties in seized account books and same were added in hands of assessee - Tribunal found that explanation submitted by assessee established genuineness of cash credit in his account books and held that assessee had discharged onus which was on him to explain nature and source of cash credit in question and allowed assessee's appeal - Whether since assessee discharged onus by placing (i) confirmation letters of cash creditors; (ii) their affidavits; (iii) their full addresses and GIR numbers and permanent account numbers it could be said that assessee had discharged its burden and, no addition to his income on account of cash credits was called for - Held, yes

○○

“

Change yourself – you are in control.”

Mahatma Gandhi



Where High Court confirmed Tribunal's order deleting addition made to assessee's income under sec. 68 on ground that assessee had discharged initial burden cast upon it by providing necessary details, SLP filed against said decision of High Court was to be dismissed

[2018] 99 taxmann.com 45 (SC)

SUPREME COURT OF INDIA

Principal Commissioner of Income Tax, Central-1

v.

Adamine Construction (P.) Ltd.*

ROHINTON FALI NARIMAN AND

MS INDU MALHOTRA, JJ.

SPECIAL LEAVE PETITION (CIVIL) DIARY NO. 33542 OF

2018†

SEPTEMBER 28, 2018

Section 68 of the Income-tax Act, 1961 - Cash credits (Burden of proof) - A search in premises of 'B' Group led to survey in premises of assessee herein - Thereupon Assessing Officer completed assessment wherein addition was made to assessee's income under section 68 - Commissioner (Appeals) as well as Tribunal deleted said addition holding that relevant enquiry based upon materials furnished by assessee had not been made - High Court also found that assessee had discharged onus initially cast upon it by providing basic details which were not suitably enquired into by Assessing Officer - Accordingly, High Court upheld order passed by Tribunal - Whether, on facts, SLP filed against order of High Court was to be dismissed - Held, yes [Para 4] [In favour of assessee]

○○

“

In a gentle way, you can shake the world.”

Mahatma Gandhi



Landmark
Judgments
of Income Tax

**Decisions related to LTCG
u/s 10(38) From Penny Stock**

—————



Where DMAT account and contract note showed details of share transaction, and Assessing Officer had not proved said transaction as bogus, capital gain earned on said transaction could not be treated as unaccounted income under section 68

[2015] 54 taxmann.com 108 (Bombay)

HIGH COURT OF BOMBAY

Commissioner of Income-tax-13

v.

Shyam R. Pawar*

S.C. DHARMADHIKARI AND A.A. SAYED, JJ.

IT APPEAL NOS. 1568 TO 1571 OF 2012†

DECEMBER 10, 2014

Section 68 of the Income-tax Act, 1961 - Cash credit (Share dealings) - Assessment years 2003-04 to 2006-07 - Assessee declared capital gain on sale of shares of two companies - Assessing Officer, observing that transaction was done through brokers at Calcutta and performance of concerned companies was not such as would justify increase in share prices, held said transaction as bogus and having been done to convert unaccounted money of assessee to accounted income and, therefore, made addition under section 68 - On appeal, Tribunal deleted addition observing that DMAT account and contract note showed credit/details of share transactions; and that revenue had stopped inquiry at particular point and did not carry forward it to discharge basic onus - Whether on facts, transactions in shares were rightly held to be genuine and addition made by Assessing Officer was rightly deleted - Held, yes [Para 7] [In favour of assessee]

○○

“

Champions are made from something they have deep inside of them—a desire, a dream, and a vision.”

Mahatma Gandhi

Where AO made addition under section 68 in respect of LTCG declared by assessee from sale of shares by treating said transaction as bogus, since assessee had produced all necessary documentary evidences to prove genuineness of its transaction and Assessing Officer failed to produce any material/evidence to controvert genuineness of such evidences produced by assessee in support of his claim, impugned addition was to be deleted.

**IN THE ITAT MUMBAI BENCH 'A'
Smt. Anusmriti Sarkar**

v.

ITO 16(1)(1), Aaykar Bhavan, Churchgate*

**SHRI. RAJESH KUMAR, ACCOUNTANT MEMBER
AND SHRI AMARJIT SINGH, JUDICIAL MEMBER
IT (APPEAL) NO. 390/M/2020 OF 2020
[ASSESSMENT YEAR 2014-15]
MARCH 24, 2021**

Section 68 of the Income-tax Act, 1961 - Cash credit (Share dealing) - Assessment year 2014-15 - Assessee purchased shares of company M/s Surabhi Chemical and Investment Ltd. and further sold them and declared long-term capital gains (LTCG) on same as exempt - Assessing Officer drawing support from report of investigation wing disbelieved transaction of sale of shares by assessee and treated said LTCG earned by assessee as bogus and made addition under section 68 - It was noted that assessee had furnished all necessary documentary evidences to prove genuineness of its transaction - However, Assessing Officer simply rubbished all documentary evidences by referring to report of investigation wing. Further, Assessing Officer failed to produce any material/evidence to dislodge or controvert genuineness of conclusive documentary evidences produced by assessee in support of his claim - Whether, on facts, impugned addition under section 68 was unjustified and same was to be deleted - Held, yes [Paras 6 to 10] [In favour of assessee]

○○



Where transactions of purchase and sale of shares was made by assessee through registered stock exchange at prevailing market prices after duly suffering STT and assessee had furnished all primary evidences in form of trade files, contract rates, demat statements and bank statements to prove genuineness of said transactions, loss incurred on such transactions could not be disallowed treating same to be bogus

**[2019] 105 taxmann.com 129 (Kolkata - Trib.)
IN THE ITAT KOLKATA BENCH 'C'**

Deputy Commissioner of Income-tax, Circle-5(1), Kolkata

v.

PRB Securities (P.) Ltd.*

**A.T. VARKEY, JUDICIAL MEMBER
AND M. BALAGANESH, ACCOUNTANT MEMBER
IT APPEAL NO. 211 (KOL) OF 2017
[ASSESSMENT YEAR 2013-14]
DECEMBER 5, 2018**

Section 28(i), read with section 68, of the Income-tax Act, 1961 - Business loss/deduction - Allowable as (Share transactions) - Assessment year 2013-14 - Assessee, a registered share broker, filed his return claiming loss of certain amount on sale of equity shares - Assessing Officer alleged that he had received an information from investigation wing that assessee had received accommodation entry of bogus/fictitious loss by way of share trading - On basis of same, he held impugned loss claimed by assessee to be bogus and disallowed same - It was noted that assessee had furnished all details of purchase and sale of shares as called for in requisite format by Assessing Officer - Assessee also furnished obligation files of stock exchange and trade files received from stock exchange in which all details were given showing transactions entered into by assessee - Demat transaction and holding statements showing delivery of shares for purchase and sale of shares were also furnished - Assessee also provided copy of bank statements marking payments made to/received from stock exchange

in respect of purchase and sale of shares - It also furnished copies of contract notes issued by registered share broker for purchase and sale of shares - It was not case of revenue that assessee had resorted to any client code modification - All transactions were routed through recognized stock exchange with registered share broker at prevailing market prices after duly suffering STT - Whether, on facts, Assessing Officer was unjustified in disallowing loss in respect of purchase and sale of shares by assessee treating same to be bogus - Held, yes [Paras 4.1, 4.2 and 4.5][In favour of assessee]



Keep your thoughts positive because your thoughts become your Words. Keep your words positive because your words become your Behaviour. Keep your behaviour positive because your behaviour becomes your Habit. Keep your habits positive because your habits become your Values. Keep your values positive because your values become your Destiny.”

Mahatma Gandhi



Where assessee claimed exemption under section 10(38) on account of LTCG arose on sale of shares of a company, since there was no dispute that these shares were purchased by assessee online, payments were made through banking channel and shares were dematerialized and, further, sales were routed from demat account and, sale consideration was received through banking channels, impugned addition made by Assessing Officer under section 68 treating such LTCG as bogus was unjustified

**[2021] 126 taxmann.com 80 (Delhi)
HIGH COURT OF DELHI
Principal Commissioner of Income Tax-12
v.
Smt. Krishna Devi ***

**RAJIV SAHAI ENDLAW AND SANJEEV NARULA, JJ.
IT APPEAL NOS. 125, 130 AND 131 OF 2020†
JANUARY 15, 2021**

Section 68 of the Income-tax Act, 1961 - Cash credit (Bogus LTCG on sale of shares) - Assessment years 2014-15 and 2015-16 - Assessee had sold shares of a company held by it and claimed exemption under section 10(38) on account of long-term capital gain (LTCG) arose on such sale of shares - Assessing Officer noted that there was astounding 4849.2 per cent jump in share prices of said company within a span of two years and financials of said company did not show any reason for such extraordinary performance of its stock - Thus, he concluded that assessee had adopted a colorable device of LTCG to avoid tax and, accordingly, made addition under section 68 treating such LTCG arose on sale of such shares as bogus - It was noted that there was no dispute that shares of said company were purchased by assessee online and payments were made through banking channel - Shares were dematerialized and sales were routed from demat account and consideration was received through banking channels - Assessing Officer simply proceeded on basis of financials of company to come to conclusion that transactions were bogus -

Assessing Officer had not made its conclusion on basis of any cogent material - Finding of Assessing Officer was thus purely an assumption based on conjecture made by Assessing Officer - Whether, on facts, impugned addition made under section 68 by treating impugned LTCG as bogus was unjustified and same was to be deleted - Held, yes [Paras 11 and 13] [In favour of assessee]

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**[2017] 88 taxmann.com 657 (Mumbai - Trib.)
IN THE ITAT MUMBAI BENCH 'A'
Smt. Anjali Pandit**

v.

**Assistant Commissioner of Income-tax, Central Circle 12,
Mumbai***

**JOGINDER SINGH, JUDICIAL MEMBER
AND RAJESH KUMAR, ACCOUNTANT MEMBER
IT APPEAL NOS. 3028 TO 3043 (MUM.) OF 2011
[ASSESSMENT YEARS 2002-03 TO 2006-07]
NOVEMBER 17, 2016**

Section 68 of the Income-tax Act, 1961 - Cash credit - (Share dealings) - Assessment years 2002-03 to 2006-07 - Where all transactions of purchase and sales of shares were evidenced and supported with bills and vouchers of brokers and confirmations from brokers, acknowledgements of payments and receiving sale proceeds by account payee cheques and fact that department could not bring any evidence to rebut evidence on record, long-term capital gain shown on such transactions could not be treated as cash credit under section 68 [In favour of assessee]

○○



Where AO made addition under section 68 in respect of LTCG declared by assessee from sale of shares by treating said transaction as bogus, since assessee had produced all necessary documentary evidences to prove genuineness of its transaction and Assessing Officer failed to produce any material/evidence to controvert genuineness of such evidences produced by assessee in support of his claim, impugned addition was to be deleted

[2021] 124 taxmann.com 440 (Delhi - Trib.)

IN THE ITAT DELHI BENCH 'F'

Smt. Ritu Jain

v.

ACIT, Central Circle-53(1), New Delhi*

N.K. BILLAIYA, ACCOUNTANT MEMBER

AND SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

IT (APPEAL) NO. 9358 (DELHI) OF 2019

[ASSESSMENT YEAR 2015-16]

DECEMBER 4, 2020

Section 68 of the Income-tax Act, 1961 - Cash credit (Share dealing) - Assessment year 2015-16 - Assessee purchased shares of company LDPL and further sold them and declared long-term capital gains (LTCG) on same as exempt - Assessing Officer drawing support from report of investigation wing disbelieved transaction of sale of shares by assessee and treated said LTCG earned by assessee as bogus and made addition under section 68 - It was noted that assessee had furnished all necessary documentary evidences to prove genuineness of its transaction - However, Assessing Officer simply rubbished all documentary evidences by referring to report of investigation wing - LDPL was not a paper company nor a shell company - Further, Assessing Officer failed to produce any material/evidence to dislodge or controvert genuineness of conclusive documentary evidences produced by assessee in support of his claim - Neither assessee nor his brokers were named as illegitimate beneficiaries to bogus LTCG in any reports/orders of investigation wing - Whether, on facts, impugned addition under section 68 was unjustified and same was to be deleted - Held, yes [Paras 22 to 24, 25 and 30] [In favour of assessee]

Where after expiry of four years from end of relevant year, Assessing Officer initiated reassessment proceedings on basis of information received from Investigation wing that 'N' Ltd. was a penny stock listed in BSE which used to facilitate introduction of unaccounted income of members in form of share capital and, assessee was one of those beneficiaries, in view of fact that there was no company by name of 'N' Ltd. which was in existence at relevant time period, impugned reassessment proceedings deserved to be quashed

[2019] 104 taxmann.com 216 (Bombay)

HIGH COURT OF BOMBAY

South Yarra Holdings

v.

Income Tax Officer, 16(1)(1)(4), Mumbai*

AKIL KURESHI AND M. S. SANKLECHA, JJ.

WRIT PETITION NO. 3398 OF 2018

MARCH 1, 2019

Section 69A, read with section 147 of the Income-tax Act, 1961 - Unexplained money (Shares) - Assessment years 2011-12 - For relevant year, assessee filed its return declaring certain taxable income - Assessing Officer completed assessment under section 143(3) - After expiry of four years from end of relevant year, Assessing Officer received Information from Investigation wing that 'N' Ltd. was a penny stock listed in BSE which used to facilitate introduction of unaccounted income of members in form of share capital and, assessee was one of those beneficiaries - On basis of said information, Assessing Officer initiated reassessment proceedings in case of assessee - It was noted that at relevant time period, there was no company by name of 'N' Ltd. was in existence and, thus, Assessing Officer had initiated reassessment proceedings merely on basis of information received from Investigation Wing without conducting any independent enquiries - Even otherwise, there was no failure on part of assessee to disclose all material facts at time of assessment and, thus, reassessment proceedings were hit by proviso to section 147 - Whether in view of aforesaid, impugned reassessment proceedings deserved to be quashed - Held, yes [Para 8] [In favour of assessee]



Where Assessing Officer made addition to assessee's income under section 68 in respect of capital gain earned from sale of shares by taking said transaction as bogus, in view of fact that shares were purchased and sold through security broker by online portal and, moreover, securities transaction tax was also paid, impugned addition was to be deleted

[2020] 117 taxmann.com 678 (Delhi - Trib.)

IN THE ITAT NEW DELHI BENCH 'G'

Suresh Kumar Agarwal

v.

Assistant Commissioner of Income Tax, Central Circle-25*

**SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

IT APPEAL NO 8703 (DELHI) OF 2019

[ASSESSMENT YEAR 2011-12]

JUNE 29, 2020

Section 68, read with section 10(38), of the Income-tax Act, 1961 - Cash credit (Shares) - Assessment year 2011-12 - During relevant year, assessee declared long term capital gain on sale of shares - He claimed exemption under section 10(38) in respect of said gain - Assessing Officer taking a view that share transaction in question was bogus, added said amount to assessee's taxable income under section 68 - It was noted that assessee had purchased shares through a stock broker by online portal which were duly reflected in assessee's Demat account - Subsequently, assessee sold those shares through same broker by online portal and securities transaction tax was also paid - Whether, on facts, share transactions in question were to be regarded as genuine and, thus, impugned addition was to be deleted - Held, yes [Para 34] [In favour of assessee]

○○

Where Assessing Officer made addition under section 68 in respect of sale proceeds of shares of a company received by assessee and as been manipulated, since assessee had submitted evidence to prove identity, source and nature of said transaction and Assessing Officer had not pointed out any deficiency in said documents, section 68 addition could not be sustained

[2020] 121 taxmann.com 100 (Mumbai - Trib.)

IN THE ITAT MUMBAI BENCH 'E'

Vijayrattan Balkrishan Mittal

v.

**Deputy Commissioner of Income Tax, Central Circle-8(1),
Mumbai***

MAHAVIR SINGH, JUDICIAL MEMBER

AND RAJESH KUMAR, ACCOUNTANT MEMBER

**IT APPEAL NOS. 3427 TO 3429 (MUM.) OF 2019 &
OTHERS**

[ASSESSMENT YEARS 2012-12 TO 2015-16]

OCTOBER 1, 2019

Section 68, read with section 10(38), of the Income-tax Act, 1961 - Cash credit (Accommodation entry) - Assessment years 2012-13 to 2015-16 - Assessee had earned long term capital gain (LTCG) on sale of shares of a company and claimed same as exempt under section 10(38) - Assessing Officer observed that as per interim order of SEBI in case of said company, shares of said company had been manipulated and thereafter had been sold by beneficiaries to avail accommodation entry and he held that claim under section 10(38) made by assessee could not be allowed and sale proceed of shares was required to be added back under section 68 - It was found that SEBI's final order did not find any adverse evidence against assessee - Assessee had explained and submitted evidences to prove identity, nature and source of cash credit and also furnished all evidences comprising of contract notes, brokers and banking details in support of genuineness of transactions - Further, Assessing Officer did not produce any evidence to prove allegation that unaccounted money changed hands between assessee



and broker or any other person including alleged entry provider -
Whether, on facts, addition under section 68 could not be sustained
- Held, yes [Paras 34 and 35] [In favour of assessee]



IN THE ITAT MUMBAI BENCH 'D'
Dipesh Ramesh Vardhan

v.

**Deputy Commissioner of Income Tax, Central Circle-2(2),
Mumbai***

**MAHAVIR SINGH, VICE PRESIDENT
AND SHRI MANOJ KUMAR, ACCOUNTANT MEMBER
IT APPEAL NOS. 7648/MUM/2019
[ASSESSMENT YEARS 2014-15]
AUGUST 11, 2020**

“Sec 10(38)/68: Bogus Capital Gains from Penny Stocks: The A.O. has not discharged the onus of controverting the documentary evidences furnished by the assessee and by bringing on record any cogent material to sustain the addition. The allegation of price rigging/manipulation has been levied without establishing the vital link between the assessee and other entities. The whole basis of making additions is third party statement and no opportunity of cross-examination has been provided to the assessee to confront the said party. As against this, the assessee’s position that the transactions were genuine and duly supported by various documentary evidences, could not be disturbed by the revenue.”



Basic education links the children, whether of the cities or the villages, to all that is best and lasting in India.”

Mahatma Gandhi

Interactive Meeting With Goods & Services Tax (GST) Department



Shri Subhash Varshnay
Principal CC-CST-Mumbai



Shri Ganesh Havanur
Commissioner of CGST



Smt. Jyoti Agrawal
Dy. Commissioner of CGST



Shri Arvind Singhal
Dy. Commissioner of CGST



Shri B. R. Beniwal
Dy. Commissioner of CGST



Shri V. L. Kamble
Dy. Commissioner of CGST

Interactive Meeting With Goods & Services Tax (GST) Department



Shri Niraj Srivastava
Dy. Commissioner of CGST



Shri Prakash M. Modak
Dy. Commissioner of CGST



Shri Sandeep Puri
Commissioner of CGST



Shri Shyam Raj Prasad
Commissioner of CGST



Shri Suresh Kishnani
Commissioner of CGST



Shri Anoop Sharma
Addl. Commissioner of CGST

Interactive Meeting With Registrar Of Companies (ROC)



Shri A. K. Chaturvedi
Regional Director, MCA



Shri N. K. Bhola
Direct General, Ministry of Corporate Affairs



Shri M. M. Juneja
Director, Inspections & Investigations



Shri M. V. Chakranarayan



Shri S. P. Kumar
Registrar of Companies, Maharashtra



Shri Rajesh Dalmiya
Deputy Regional Director of Maharashtra

Interactive Meeting with C & AG, Vigilance Commissioner, IPS, IAS, SEPC



CA. Saurabh Deshmukh
Asst. Director General, Ministry
of Communications, Govt. of India



Ms. Sangeeta Godbole
Director General, SEPC



CA. Vishnu Agarwal, Shri Atulchandra Kulkarni,
Add. DG, ATS, Maharashtra, Shri Satish Mathur,
DGP, Maharashtra



Dr. Suhas Warke, IPS, DIG



Dr. T. M. Bhasin
Vigilance Commissioner



Interactive Meeting with C & AG

**IN THE ITAT KOLKATA BENCH ‘SMC’
Mahavir Jhanwar
v.
ITO Ward 35(4), Kolkata*
SUDHAKAR REDDY, ACCOUNTANT MEMBER
IT APPEAL NO. 2474/KOL/2018
[ASSESSMENT YEAR 2014-15]
FEBRUARY 1, 2019**

“S. 10(38) Bogus long-term capital gains from penny stocks: If the assessee has filed evidences for (a) purchase of shares, (b) payment by account payee cheque, (c) balance sheet disclosing investments, (d) demat statement (e) evidence of sale of shares through stock exchange, (e) bank statement reflecting sale receipts, (f) brokers ledger, (g) Contract Notes etc., the gains cannot be treated as bogus on human probabilities, suspicion, conjectures and surmises” Held, yes [In favour of assessee]

○○

“

Seven social sins: politics without principles, wealth without work, pleasure without conscience, knowledge without character, commerce without morality, science without humanity, and worship without sacrifice.”

Mahatma Gandhi



Where assessee purchased shares at a very high rate and sold out same at a very low price within a short span of time thereby incurring a huge loss, since assessee produced details and evidences such as brokers' ledger account, contract notes for both purchase and sale of shares, copy of bank statement and copy of balance sheet and profit and loss account, etc., so as to prove impugned transactions, such loss incurred by assessee could not be disallowed on grounds of being bogus

[2020] 113 taxmann.com 246 (Kolkata - Trib.)

IN THE ITAT KOLKATA BENCH 'B'

Chandra Prakash Jhunjhunwala

v.

Deputy Commissioner of Income-tax*

A.T. VARKEY, JUDICIAL MEMBER

AND DR. A.L. SAINI, ACCOUNTANT MEMBER

IT APPEAL NO. 2351 (KOL.) OF 2017

[ASSESSMENT YEAR 2014-15]

AUGUST 9, 2019

Section 45 of the Income-tax Act, 1961 - Capital gains - Chargeable as (Capital loss) - Assessment year 2014-15 - Assessee purchased scrips of two stocks at a very high rate and sold out same at a very low price within a short span of time thereby incurring a huge loss - Assessee claimed same as short-term capital loss - Assessing Officer was of view that purchase and sale of shares was a pre-arranged transaction to book loss for setting off same with taxable profit of assessee, thus, impugned loss incurred by assessee was bogus and was to be disallowed - It was noted that assessee had submitted several details and evidences such as brokers' ledger account, contract notes for both purchase and sale of shares, DMAT holding statement, copy of bank statement for sale proceeds, copy of ledger account of stock broker, copy of bank statement wherein sale proceeds of shares were received and credited to account, copy of income-tax return, etc., so as to prove impugned transactions of purchase and sale of shares - Whether impugned disallowance of short-term capital loss incurred by assessee on grounds of being bogus was unjustified - Held, yes [Paras 17 and 18] [In favour of assessee]

Where once purchase and sale of shares had been made through Bombay Stock Exchange and routed through DMAT account, sale proceeds had to be reckoned from sale of such shares and would be treated as explained credit or investment, and, thus, long-term capital gain shown by assessee was genuine and consequently, liable for exemption under section 10(38)

**[2019] 101 taxmann.com 361 (Delhi - Trib.)
IN THE ITAT DELHI BENCH 'SMC'
Vidhi Malhotra**

v.

Income-tax Officer, Ward-2(5), Faridabad*

**AMIT SHUKLA, JUDICIAL MEMBER
IT APPEAL NOS. 93 AND 94 (DELHI) OF 2018
[ASSESSMENT YEAR 2014-15]
DECEMBER 20, 2018**

Section 69, read with section 10(38), of the Income-tax Act, 1961 - Unexplained investments (Long-term capital gain) - Assessment year 2014-15 - Assessee had purchased and sold shares of a company which amalgamated into another company (Kailash) by order of High Court - Assessing Officer noticed that scrips of Kailash were used by entry providers for providing bogus accommodation entries and that in some other matter in course of proceedings before Investigation Wing, one Chartered Accountant had confirmed that he had provided accommodation entry in scrip of Kailash and, consequently, he treated long-term capital gain under section 69 - Assessee had duly shown transaction in cheques right from purchase to sale of shares and all transactions had been routed through DMAT account in Bombay Stock Exchange as per quoted price as on that date - SEBI did not find any prima facie material for manipulation in price of scrip of Kailash - Further, statement of Chartered Accountant could not be sole ground to implicate assessee and justify additions especially when, nowhere assessee had been found to be beneficiary of any kind of accommodation entry in any inquiry by Investigation Wing or any such material had been unearthed by department - Whether, on facts, long-term capital gain shown by assessee was genuine and, consequently liable for exemption under section 10(38) - Held, yes [Para 8] [In favour of assessee]

○○



Where AO made addition to assessee's income under section 68 in respect of capital gain arising from sale of shares taking a view that said transaction was bogus, in view of fact that assessee purchased shares by issue of cheque and those shares were duly credited in his D-mat account and, moreover, sale consideration was also directly credited to assessee's bank account, share transaction in question could not be regarded as bogus and, thus, impugned addition was to be deleted

**[2019] 103 taxmann.com 374 (Jaipur - Trib.)
IN THE ITAT JAIPUR BENCH
Meghraj Singh Shekhawat**

v.

Deputy Commissioner of Income-tax, Central Circle-3, Jaipur*

**VIJAY PAL RAO, JUDICIAL MEMBER
AND VIKRAM SINGH YADAV, ACCOUNTANT MEMBER
IT APPEAL NOS. 443 & 444 (JP.) OF 2017
[ASSESSMENT YEARS 2013-14 & 2014-15]
MARCH 7, 2018**

Section 68 of the Income-tax Act, 1961 - Cash credit (Shares) - Assessment years 2013-14 and 2014-15 - For relevant year, assessee filed his return wherein long-term capital gain arising from sale of shares of 'R' Ltd. was claimed as exempt under section 10(38) - Assessing Officer received information from Investigation Wing that one of promoters of 'R' Ltd., namely 'AG', was engaged in providing bogus long-term capital gain to customers on commission basis - Assessing Officer thus added amount of long-term capital gain to assessee's income under section 68 - It was noted that shares were directly allotted to assessee by 'R' Ltd. against consideration paid by cheque and, thus, role of any intermediary particularly 'AG' was ruled out - Moreover, assessee was holding shares in question in his D-mat account which was not disputed - Even otherwise, Assessing Officer had not disputed sale of shares from D-mat account of assessee - Whether, on facts, share transactions entered into by assessee could not be regarded as bogus and, thus, impugned addition was to be deleted - Held, yes [Para 5] [In favour of assessee]



Landmark
Judgments
of Income Tax

Decisions related to Sec 263

—————



Where Tribunal set aside revisional order passed by Commissioner finding that while issuing notice under section 263, Commissioner had referred to only one ground that deduction under section 80-IA had been wrongly allowed, however, final order was passed on various other grounds as well, impugned order of Tribunal did not require any interference

**[2019] 102 taxmann.com 48 (Bombay)
HIGH COURT OF BOMBAY
Commissioner of Income Tax, Mumbai
v.
Maharashtra Hybrid Seeds Co. Ltd.***

**S.C. DHARMADHIKARI AND B.P. COLABAWALLA, JJ.
IT APPEAL NO. 47 OF 2002†
SEPTEMBER 4, 2018**

Section 263 of the Income-tax Act, 1961 - Revision - Of orders prejudicial to revenue (Validity of order) - Assessment year 1995-96 - In case of assessee, assessment was completed under section 143(3) wherein assessee's claim for deduction under section 80-IA was allowed - Commissioner passed a revisional order under section 263 taking a view that Assessing Officer had allowed excess deduction to assessee - Tribunal noted that while issuing notice under section 263, Commissioner had referred to only one ground that deduction under section 80-IA had been wrongly allowed, however, final order was passed on other grounds also which did not form a part of notice issued by Commissioner - Tribunal thus set aside revisional order - Whether, on facts, impugned order passed by Tribunal did not require any interference - Held, yes [Para 4] [In favour of assessee]

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Where AO after issuing several notices to assessee and conducting detailed hearings concluded that plots of land were purchased and sold by assessee within maximum period of 20 months and it showed that assessee was engaged in real estate business and, thus, income earned by it on sale of plots of land was to be assessed as business income and not as capital gain, impugned invocation of revision jurisdiction was unjustified

[2021] 126 taxmann.com 22 (Karnataka)

HIGH COURT OF KARNATAKA

K. R. Satyanarayana

v.

Commissioner of Income Tax, Mysuru*

ALOK ARADHE AND H.T. NARENDRA PRASAD, JJ.

IT APPEAL NO. 192 OF 2015†

DECEMBER 21, 2020

Section 28(i), read with sections 45 and 263, of the Income-tax Act, 1961 - Business income - Chargeable as (Land dealings) - Assessment year 2009-10 - Assessee individual was running a proprietorship concern - During year, it sold plots of land and filed its return of income declaring capital gains - Assessing Officer noted that it was found that assessee was engaged in business of sale and purchase of properties, thus, income declared by assessee on sale of plots of land was to be assessed as business income - Commissioner invoked revision under section 263 on ground that Assessing Officer had not conducted proper enquiry before concluding that income from sale of plots of land was to be taxed as business income and that such income from sale of plots of land was to be assessed as capital gains - It was noted that Assessing Officer had put several questions to assessee to ascertain nature of his business and from perusal of certain questions, it was evident that same were specifically pertained to issue of classification of income - Several notices were



issued to assessee and detailed hearings were conducted - Assessing Officer in its order had mentioned details of all properties with dates of purchase and sale and from perusal of same it was evident that properties were brought and sold within a maximum period of 20 months which showed that assessee was engaged in real estate business - Thus, Assessing Officer had conducted sufficient enquiry as required under Explanation 2(a) to section 263 - Whether, on facts, impugned invocation of jurisdiction under section 263 by Commissioner was unjustified - Held, yes [Para 9] [In favour of assessee]



Seven Deadly Sins: Wealth without work. Pleasure without conscience. Science without humanity. Knowledge without character. Politics without principle. Commerce without morality. Worship without sacrifice.”

Mahatma Gandhi

Where Commissioner passed a revisional order under section 263 directing Assessing Officer to examine matter relating to unsecured loans obtained by assessee, in view of fact that in course of scrutiny assessment, Assessing Officer had already made detailed enquiries in respect of loan received by assessee, impugned revisional order deserved to be set aside

**[2019] 110 taxmann.com 170 (Allahabad)
HIGH COURT OF ALLAHABAD
Meerut Roller Flour Mills (P.) Ltd.**

v.

Commissioner of Income tax*

**BHARATI SAPRU AND ROHIT RANJAN AGARWAL, JJ.
IT APPEAL NO. 223 OF 2013
AUGUST 14, 2019**

Section 69A, read with section 263, of the Income-tax Act, 1961 - Unexplained money (Loan) - Assessment year 2007-08 - For relevant year, assessee filed its return declaring certain taxable income - Assessee's case was selected for scrutiny and a notice was issued under section 143(2) to which assessee replied alongwith documentary evidence - Assessing Officer being satisfied, passed assessment order under section 143(3) - Commissioner subsequently passed a revisional order directing Assessing Officer to examine matter relating to unsecured loans obtained by assessee - Tribunal confirmed said revisional order - It was noted that in course of assessment, Assessing Officer had raised various queries from assessee in respect of unsecured loan which were duly replied by assessee along with documentary evidence in regard to each of query - Whether in aforesaid circumstances, unless Commissioner exercising power under section 263 brought on record any evidence showing that order of Assessing Officer was erroneous, as same was passed without application of mind or Assessing Officer had made an incorrect assessment of fact or incorrect application of law, revisional order passed by him was not sustainable - Held, yes - Whether since Commissioner failed to do so, impugned revisional order was to be set aside - Held, yes [Paras 21 and 22] [In favour of assessee]



Where out of provision of Rs. 407 crore made by assessee bank for depreciation on investment, Assessing Officer had added only Rs. 233 crore relating to investments in India and excluded Rs. 175 crore pertaining to investment outside India, in view of Tribunal's order for earlier years upholding such addition, order of Assessing Officer could not be termed as erroneous

**[2021] 123 taxmann.com 207 (Karnataka)
HIGH COURT OF KARNATAKA
Commissioner of Income Tax, LTU, Bangalore
v.
Canara Bank***

**ALOK ARADHE AND H.T. NARENDRA PRASAD, JJ.
IT APPEAL NO. 340 OF 2015†
NOVEMBER 17, 2020**

Section 32, read with section 263, of the Income-tax Act, 1961 - Depreciation - Allowance/ Rate of (Investment) - Assessment year 2009-10 - Subsequent to scrutiny assessment, Commissioner found that out of provision of Rs. 407 crore made by assessee bank for depreciation on investment, Assessing Officer had added only Rs. 233 crore relating to investments in India and excluded Rs. 175 crore pertaining to investment outside India - Commissioner invoking revisionary power directed Assessing Officer also to add sum of Rs. 175 crore - On appeal, Tribunal placing reliance on its decision passed in earlier years, set aside order passed by Commissioner - Revenue contended that decision of Tribunal in earlier year was set aside by High Court in appeal and hence, revision order was just - Whether merely because order of Assessing Officer was passed relying upon order of Tribunal which was subsequently reversed by High Court could not justify order passed by Commissioner under section 263 - Held, yes [Para 6] [In favour of assessee]

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Where assessee was able to demonstrate that expenditure on R&D claimed under section 35(2AB), had no connection with its 100 per cent EOUs, no disallowance could be made under section 35, read with section 10B

**[2021] 125 taxmann.com 99 (Karnataka)
HIGH COURT OF KARNATAKA
Commissioner of Income Tax, LTU, Bangalore
v.
Bosch Ltd.***

**ALOK ARADHE AND H.T. NARENDRA PRASAD, JJ.
IT APPEAL NO. 368 OF 2016†
NOVEMBER 30, 2020**

Section 35, read with sections 10B and 263, of the Income-tax Act, 1961 - Scientific research expenditure (Computation of deductions) - Assessment year 2008-09 - Assessee, having two Export Oriented Units (EOUs) at Naganathapura and Nashik, claimed deduction on expenditure incurred on scientific research under section 35(2AB) and same was assessed and allowed by regular assessment order - Commissioner, on suo motu revision, noted that profits of EOUs were entitled to 100 per cent deduction under section 10B and benefits of R & D accrued to all manufacturing units of assessee - Commissioner noted that expenditure on scientific research claimed and allowed as deduction was not apportioned and debited to profit and loss account of these EOUs separately and, hence, excess deduction amounting to Rs. 19.05 lakhs was wrongly allowed by Assessing Officer - Invoking revision jurisdiction, Commissioner set aside Assessing Officer's order for suitable enquiries and deciding issue afresh - Whether since during revision proceedings, assessee was able to clearly demonstrate to Commissioner that expenditure on R&D claimed under section 35(2AB) had no connection whatsoever with 100 per cent EOUs, Tribunal was justified in quashing order of Commissioner passed under section 263 - Held, yes [Para 10] [In favour of assessee]

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Amendment to section 54EC brought with effect from 1-4-2015 restricting investment in assets from sale consideration on sale of original asset to Rs. 50 lakhs is prospective in nature, thus; prior to assessment year 2015-16, it was possible for assessee to claim deduction of Rs. 1 crore by investing Rs. 50 lakhs in each of financial years but within six months from date of transfer

**[2021] 123 taxmann.com 205 (Karnataka)
HIGH COURT OF KARNATAKA
Commissioner of Income Tax
v.
Smt. Neena Krishna Menon***

**ALOK ARADHE AND H.T. NARENDRA PRASAD, JJ.
IT APPEAL NO. 343 OF 2015†
NOVEMBER 19, 2020**

Section 54EC, read with section 263, of the Income-tax Act, 1961 - Capital gains - Not to be charged on investment in certain bonds (2015 Amendment) - Assessment year 2009-10 - Whether amendment to section 54EC brought with effect from 1-4-2015 restricting investment in assets from sale consideration on sale of original asset to Rs. 50 lakhs is prospective in nature, thus; prior to assessment year 2015-16, it was possible for assessee to claim deduction of Rs. 1 crore by investing Rs. 50 lakhs in each of financial years but within six months from date of transfer- Held, yes [Paras 6 to 9] [In favour of assessee]



Nobody can hurt me without my permission"

Mahatma Gandhi

Where Commissioner while invoking his power under section 263 faults with Assessing Officer on ground that he did not make proper enquiry, in absence of any clarity as to why in opinion of Commissioner, enquiry was not proper, invocation of power under section 263 was not justified

[2020] 120 taxmann.com 187 (Madras)

HIGH COURT OF MADRAS

Commissioner of Income Tax, Ward-3, Tirunelveli

v.

Smt. Padmavathi*

**T.S. SIVAGNANAM AND MRS. V. BHAVANI SUBBAROYAN,
JJ.**

TAX CASE APPEAL NO. 350 OF 2020†

OCTOBER 6, 2020

Section 263 of the Income-tax Act, 1961 - Revision - Of orders prejudicial to interest of revenue (General) - Assessment year 2014-15 - Whether where Commissioner while invoking his power under section 263 faults with Assessing Officer on ground that he did not make proper enquiry, there being no finding as to why in opinion of Commissioner, enquiry was not proper invocation of power under section 263 was not justified - Held, yes [Para 15] [In favour of assessee]

○○

“

A principle is the expression of perfection, and as imperfect beings like us cannot practice perfection, we devise every moment limits of its compromise in practice.”

Mahatma Gandhi



Where assessee filed all details before Assessing Officer (AO) that no expenditure under section 14A was attributable to exempt dividend income earned by it during year and AO accepted same, since AO had taken a plausible view, impugned invocation of revision under section 263 merely on ground that enquiry conducted by AO was inadequate was unjustified

**[2020] 119 taxmann.com 358 (Karnataka)
HIGH COURT OF KARNATAKA
Commissioner of Income Tax, Bangalore
v.
Chemsworth (P) Ltd.***

**ALOK ARADHE AND H.T. NARENDRA PRASAD, JJ.
IT APPEAL NO. 423 OF 2013†
SEPTEMBER 16, 2020**

Section 14A , read with section 263, of the Income-tax Act, 1961 - Expenditure incurred in relation to income not includible in total income (Revision) - Assessment year 2007-08 - Assessee had earned exempt dividend income during year - Assessee filed its return of income which was accepted and an assessment order was passed - Commissioner invoked power under section 263 for reason that Assessing officer had not examined quantum of expenditure under section 14A incurred by assessee for earning such exempt income – It was noted that assessee had filed all details before Assessing Officer that no expenditure was attributable to such exempt dividend income earned by it during year and Assessing Officer accepted same – Whether since Assessing Officer had taken a plausible view in allowing claim of assessee, impugned invocation of revision under section 263 by Commissioner merely on ground that enquiry conducted by Assessing Officer was inadequate was unjustified - Held, yes [Para 8] [In favour of assessee]

○○

Where Assessing Officer on meticulous appreciation of evidence on record allowed claim of assessee of depreciation on leasehold right held by it in a land by treating it as intangible asset, impugned invocation of revision under section 263 against said order on ground of inadequacy of enquiry by Assessing Officer was unjustified

**[2020] 121 taxmann.com 172 (Karnataka)
HIGH COURT OF KARNATAKA
Commissioner of Income Tax, Bangalore**

v.

Cyber Park Development & Construction Ltd.*

**ALOK ARADHE AND H.T. NARENDRA PRASAD, JJ.
IT APPEAL NO. 115 OF 2012†
OCTOBER 5, 2020**

Section 32, read with section 263, of the Income-tax Act, 1961 - Depreciation - Allowability of (Intangible asset) - Assessment year 2006-07 - Assessee was engaged in business of developing, operating and maintaining infrastructure facilities for software and related sectors - Assessee claimed depreciation on leasehold right held by it in a land classifying it as an intangible asset - Assessing Officer allowed 25 per cent depreciation on same - Commissioner initiated proceedings under section 263 on ground that enquiry and verification made by Assessing Officer was inadequate and land could not be treated as intangible asset, thus, impugned order of Assessing Officer was prejudicial to interest of revenue - It was noted that Tribunal had found that Assessing Officer had allowed depreciation claimed by assessee on such intangible asset on meticulous appreciation of evidence on record - Whether Tribunal had rightly held that impugned invocation of section 263 by Commissioner merely on ground of inadequacy of an enquiry by Assessing Officer was unjustified - Held, yes [Para 8] [In favour of assessee]

○○



Where there was no material to support finding of Commissioner that assessee-firm was used as a device to divert excess profit to sons of partners of assessee, Commissioner erred in revising assessment order on issue of deduction under section 80-IB

**[2020] 120 taxmann.com 261 (Madras)
HIGH COURT OF MADRAS
Commissioner of Income Tax, Chennai
v.
Doshi Estates***

**T.S. SIVAGNANAM AND MRS. PUSHPA
SATHYANARAYANA, JJ.
T.C.A.NO.244 OF 2020†
SEPTEMBER 1, 2020**

Section 80-IB, read with section 263, of the Income-tax Act, 1961 - Deductions - Profits and gains from industrial undertaking other than infrastructure development undertakings (Housing projects) - Assessment year 2012-13 - Assessee-firm consisted of five partner divided into two groups, viz., 'D' and 'C' Group - Assessee firm developed a housing project on land given by 'C' group and flats on such projects were sold during year under consideration - Accordingly, assessee claimed deduction under section 80-IB(10) which was allowed by Assessing Officer - Commissioner found that land was transferred to firm at lower price and firm was used as a device to divert excess profit to sons of land owners, i.e., 'C' - He accordingly set aside assessment order by invoking section 263 - Whether there was no material available before Commissioner that such guideline value of land was ridiculously low - Held, yes - Whether therefore, in absence of any material to show that assessee had so arranged business and made transaction to produce more than ordinary profits, there was no ground for Commissioner to exercise its power under section 263 - Held, yes [Para 10] [In favour of assessee]

○○

Where assessee, a banking company, had kept amount from lapsed demand drafts, gift cheques etc., in its general reserve and same was routed through its P&L account, since assessee was under an obligation to meet future claims in respect of such drafts, gift cheques etc., out of general reserve so created, amount in question could not be treated as income of assessee

**[2020] 122 taxmann.com 86 (Karnataka)
HIGH COURT OF KARNATAKA
Commissioner of Income Tax, LTU, Bangalore
v.
Canara Bank***

**ALOK ARADHE AND H.T. NARENDRA PRASAD, JJ.
IT APPEAL NO. 419 OF 2012†
OCTOBER 20, 2020**

Section 28(i), read with section 263, of the Income-tax Act, 1961 - Business income - Chargeable as (Banks, in case of) - Assessment year 2007-08 - Assessee was a banking company - It had kept amount from lapsed demand drafts, gift cheques etc., in its general reserve - Assessee had also credited such amount towards write back of demand drafts, gift cheques, etc. in its profit and loss account and same was claimed as deduction - Same was allowed - Commissioner invoked powers under section 263 on ground that there was no provision to exclude such amount from taxable income when same was credited by assessee in its profit and loss account to his income, thus, order passed by Assessing Officer was erroneous and was prejudicial to interest of revenue - It was noted that amount in question was kept by assessee in general reserve account and same was routed through its profit and loss account as per direction of Reserve Bank of India vide its instruction dated 30-3-2007 - Assessee was under an obligation to meet future claims out of general reserve so created - Whether, on facts, amount in question could not be treated as income of assessee and could not be subjected to tax - Held, yes - Whether, therefore, impugned invocation of jurisdiction under section 263 was to be set aside - Held, yes [Para 12] [In favour of assessee]



Multiple prior to 1-4-2015 residential units located on different floors of same structure are eligible to deduction under section 54F

**[2020] 121 taxmann.com 30 (Gujarat)
HIGH COURT OF GUJARAT
Principal Commissioner of Income Tax-3**

v.

Minal Nayan Shah*

**VIKRAM NATH, CJ.
AND J.B. PARDIWALA, J.
R/TAX APPEAL NO. 141 OF 2020†
SEPTEMBER 1, 2020**

Section 54F, read with section 263, of the Income-tax Act, 1961 - Capital gains - Exemption of, in case of investment in residential house (On residential house - Position prior to 1-4-2015) - Assessment year 2014-15 - Assessee sold land and invested sale consideration for purchase of a block of residential project - Assessee claimed exemption under section 54F - Same was allowed - Principal Commissioner noticed that block purchased consisted of three independent units located on separate floors - Hence, he invoked section 263 and concluded that assessee was not eligible for deduction under section 54F - Tribunal observed that three units were located on different floors of same structure and were purchased by assessee by a common deed - Tribunal held that in instant case multiple residential units would be included within sphere of section 54F - Whether, Assessing Officer was justified in allowing exemption under section 54F to assessee - Held, yes [Paras 15 and 16] [In favour of assessee]

Words and Phrases: Words 'a residential house' as occurring in section 54F of the Income-tax Act, 1961.



Where Assessing Officer after making due enquiries found assessee's claim for exemption of income as correct and, thus, dropped reassessment proceedings, since view taken by him was one of possible views, impugned revisional order passed under section 263 was to be set aside

[2020] 117 taxmann.com 799 (Karnataka)

HIGH COURT OF KARNATAKA

Commissioner of Income-tax

v.

International Society For Krishna Consciousness*

ALOK ARADHE AND HEMANT CHANDANGOUDAR, JJ.

IT APPEAL NO. 36 OF 2009†

JUNE 9, 2020

Section 263, read with sections 11, 139 and 147 of the Income-tax Act, 1961 - Revision - Of order prejudicial to interest of revenue (Dropping of reassessment proceedings) - Assessment year 1997-98 - Assessee was a society registered under section 12A - During proceedings for grant of registration under section 80G, assessee filed statement of accounts showing certain income before grant of exemption under sections 11 and 12 - Assessee was thus required to file return under section 139(4A) - Assessee, however, did not submit its return under section 139(4A) stating that its accounts have been submitted to ISKON, Mumbai, for consolidation purpose - Assessing Officer thus initiated reassessment proceedings in response to which assessee submitted its return claiming exemption of income under section 11 - Assessing Officer after making due enquiries found claim for exemption of income as correct and, thus, reassessment proceedings were dropped - Director (Exemptions) passed an order under section 263 setting aside assessment and directing Assessing Officer to pass a fresh assessment order - It was noted that Assessing Officer had allowed assessee's claim for exemption of income under section 11 after making due enquiries - Moreover, Director (Exemptions) had also recorded in his revisional order that assessee had submitted its accounts to ISKON, Mumbai, for consolidation



and nothing wrong was found in same - Whether, in aforesaid circumstances, it could be concluded that view taken by Assessing Officer to drop reassessment proceedings was one of possible views and, thus, impugned revisional order was to be set aside - Held, yes [Paras 8 and 9] [In favour of assessee]

○○

Where assessee-company, engaged in business of computer software development services and export, incurred expenditure in foreign currency development of software at client's site outside India, since assessee had neither rendered any technical services nor had earned any receipt from rendering technical services to any outsider in foreign country, said expenditure was not to be reduced from export turnover for purpose of computing deduction under section 10A,

**[2020] 119 taxmann.com 318 (Karnataka)
HIGH COURT OF KARNATAKA
Commissioner of Income Tax, Bangalore**

v.

Aztec Software Technology Ltd.*

**ALOK ARADHE AND H.T. NARENDRA PRASAD, JJ.
IT APPEAL NO. 348 OF 2013†
SEPTEMBER 16, 2020**

Section 10A, read with section 263, of the Income-tax Act, 1961 - Free trade zone (Computation of deduction) - Assessment year 2005-06 - Assessee company was engaged in business of computer software development services and export - It filed its return of income claiming exemption under section 10A - Assessing Officer granted same - Commissioner (Appeals) in exercise of power under section 263 noted that assessee had claimed exemption under section 10A without reducing expenses such as travelling expenses, professional charges and onsite service charges incurred in foreign currency while developing software at client's site outside India from total export

turnover as required under Explanation 2 to section 10A and, thus, order passed by Assessing Officer was erroneous and prejudicial to interest of revenue - Thus, he modified assessment order by excluding such expenditure incurred in foreign currency from export turnover for computing exemption under section 10A - Whether since assessee had neither rendered any technical services nor had earned any receipt from rendering technical services to any outsider in foreign country, expenditure in question could not be excluded from export turnover for purpose of computing deduction under section 10A - Held, yes - Whether, therefore, view taken by Assessing Officer was a plausible view and same could not be said to be erroneous and invocation of power under section 263 by Commissioner was unjustified - Held, yes [Paras 7 and 8][In favour of assessee]



For me, the different religions are beautiful flowers from the same garden, or they are branches of the same majestic tree. Therefore, they are equally true, though being received and interpreted through human instruments equally imperfect."

Mahatma Gandhi



Where Assessing Officer examined issue regarding substantial increase in capital investment reflected by assessee in balance sheet in scrutiny assessment and passed assessment order, in absence of any finding by Pr. Commissioner as to how assessment order was erroneous, Tribunal rightly set aside revisional order passed by Pr. Commissioner on said issue

**[2020] 120 taxmann.com 430 (Madras)
HIGH COURT OF MADARAS
Commissioner of Income Tax, Chennai**

v.

Vijay Kumar Koganti*

**T.S. SIVAGNANAM AND MRS. V. BHAVANI SUBBAROYAN, JJ.
TCA NO. 335 OF 2020†
SEPTEMBER 29, 2020**

Section 69, read with section 263, of the Income-tax Act, 1961 - Unexplained investment (Share application money) - Assessment year 2014-15 - Assessee filed its return for relevant assessment year - Case was selected for scrutiny to consider (i) substantial increase in capital investment and, (ii) mismatch in sale consideration of property in return of income and AIR - Assessing Officer after perusal of documents, verification of income tax returns of assessee and making enquiries with company where assessee held shares, passed assessment order - Principal Commissioner invoked revisionary jurisdiction under section 263 and set aside assessment order mainly on ground that substantial increase in capital investment reflected by assessee in his balance sheet as compared to preceding year was not examined by Assessing Officer - Tribunal set aside revisional order observing that these issues were raised by Assessing Officer in scrutiny assessment and that assessee had given proper explanation, which was taken note of by Assessing Officer while completing assessment under section 143(3) - Whether since Pr. Commissioner did not point out anything specifically as to how assessment order was erroneous, no question of law arose out of impugned order of Tribunal - Held, yes [Paras 10 and 13] [In favour of assessee]

○○

Where Assessing Officer after due application of mind and on proper consideration of material available on record, had allowed claim for depreciation on leasehold land, Commissioner was not justified in revising said order on ground that revenue audit objection was raised in case of assessee with regard to depreciation on leasehold land as intangible asset

**[2020] 122 taxmann.com 82 (Karnataka)
HIGH COURT OF KARNATAKA
Commissioner of Income Tax**

v.

Cyber Park Development & Constructions Ltd.*

**ALOK ARADHE AND H.T. NARENDRA PRASAD, JJ.
IT APPEAL NO. 137 OF 2014†
OCTOBER 5, 2020**

Section 32, read with section 263, of the Income-tax Act, 1961 - Depreciation - Allowance/Rate of (Intangible asset - Leasehold land) - Assessment year 2007-08 - Assessee-company was engaged in business of development and maintenance in respect of infrastructure facilities for software and related sectors - It claimed depreciation on leasehold land which was allowed accordingly - However, Commissioner found that revenue audit objection was raised in case of assessee with regard to depreciation on leasehold land as intangible asset and he concluded that order of assessment passed by Assessing Officer was erroneous and prejudicial to interest of revenue - Whether since Assessing Officer after due application of mind and on proper consideration of material available on record, had allowed claim for depreciation, Commissioner was not justified in revising said order - Held, yes [Para 7] [In favour of assessee]

○○



When a notice under section 263 raises new issues, which are not subject matter of re-assessment proceedings, then two year period contemplated under sub-section (2) of section 263 would begin to run from date of original assessment and not from date of re-assessment

[2018] 95 taxmann.com 103 (Madras)

HIGH COURT OF MADRAS

Indira Industries

v.

Principal Commissioner of Income-tax, Chennai-8*

MS. INDIRA BANERJEE, C.J.

AND M. SUNDAR, J.

W.A. NO. 1092 OF 2017

AND C.M.P. NO. 15224 OF 2017†

JUNE 14, 2018

Section 263 of the Income-tax Act, 1961 - Revision - Of order prejudicial to interest of revenue (Period of limitation) - Assessment year 2012-13 - Whether when a notice under section 263 raises issues, which are not subject matter of re-assessment proceedings, then two year period contemplated under sub-section (2) of section 263 would begin to run from date of original assessment and not from date of re-assessment - Held, yes [Para 3][In favour of assessee]

○○

“

A vow is a purely religious act which cannot be taken in a fit of passion. It can be taken only with a mind purified and composed and with God as a witness.”

Mahatma Gandhi



Landmark
Judgments
of Income Tax

**Decisions related to
Remission and Cessation of
Trading Liability Sec 41(1)**

—————



SLP dismissed against High Court ruling that where loan amount was never claimed by assessee as expenditure, waiver of same could not amount to cessation of trading liability and was not chargeable to tax under section 41(1)

**[2021] 126 taxmann.com 154 (SC)
SUPREME COURT OF INDIA
Principal Commissioner of Income Tax
v.
Gujarat State Financial Corporation***

**ROHINTON FALI NARIMAN AND B.R. GAVAI, JJ.
SLP APPEAL (C) NO(S). 2720 OF 2021†
FEBRUARY 19, 2021**

Section 41(1) of the Income-tax Act, 1961 - Remission or cessation of trading liability (Loan waiver) - Assessment year 2009-10 - During year, under one time settlement scheme, assessee-company got a waiver of principal amount of loan due to a bank - Assessing Officer opined that waiver of loan amount would be considered as cessation of trading liability and such loan amount was income of assessee under section 41(1) - High Court by impugned order held that since loan amount was never claimed by assessee as expenditure in its accounts, waiver of same could not amount to cessation of trading liability and was not chargeable to tax under section 41(1) - Whether special leave petition filed against impugned order was to be dismissed - Held, yes [Para 1] [In favour of assessee]

○○

“

The hardest heart and the grossest ignorance must disappear before the rising sun of suffering without anger and without malice.”

Mahatma Gandhi

Merely because liability had remained outstanding for more than three years and same was not written back in profit and loss account, application of provisions of section 41(1) could not be made to consider such liability as income for year under consideration without there being any remission or cessation of liability

**[2020] 118 taxmann.com 307 (Gujarat)
HIGH COURT OF GUJARAT
Principal Commissioner of Income-tax
v.
Adani Agro (P.) Ltd.***

**J.B. PARDIWALA AND BHARGAV D. KARIA, JJ.
R/TAX APPEAL NO. 886 OF 2019
FEBRUARY 10, 2020**

Section 41(1) of the Income-tax Act, 1961 - Remission or cessation of trading liability - (General) - Assessment year 2012-13 - Whether as per provisions of section 41(1), there has to be remission or cessation of trading liability - Held, yes - Whether merely because liability had remained outstanding for more than three years and same was not written back in profit and loss account, application of provisions of section 41(1) could not be made to consider such liability as income of year under consideration without there being any remission or cessation of liability - Held, yes [Para 10][In favour of assessee]

○○

“

Live as if you were to die tomorrow. Learn as if you were to live forever.”

Mahatma Gandhi



Where co-operative society took capital loan and guarantor State Government wrote off outstanding commission as capital grant, amount written off could not be taxed as per section 41(1) as remission/ cessation of liability

[2020] 122 taxmann.com 38 (Rajasthan)

HIGH COURT OF RAJASTHAN

Principal Commissioner of Income Tax, Jaipur-II

v.

Rajasthan Co-operative Dairy Federation Ltd.*

S. RAVINDRA BHAT, CJ.

SANJEEV PRAKASH SHARMA, J.

D.B. IT APPEAL NO. 357 OF 2018

JULY 23, 2019

Section 41(1), read with section 28(iv), of the Income-tax Act, 1961 - Remission or cessation of trading liability (Commission) - Assessment year 2004-05 - Assessee co-operative society secured a loan from NDDB for which Government of Rajasthan stood as guarantor subject to payment of commission - Loan taken was utilized by assessee for capital purposes - Assessee used to claim commission amount as expenditure - Outstanding amount was shown as commission payable to government - Later on, said outstanding commission was written off by government on condition that said amount was to be used only for capital and rehabilitation purposes; thus, it was treated as capital grant - Whether since writing off was conditional upon use of amount in hands of assessee for capital purpose, Assessing Officer was not correct in holding that there was remission/cessation of liability of payment of guarantee commission - Held, yes [Paras 6 and 7] [In favour of assessee]

○○

Non-payment of outstanding liability which is admitted and acknowledged as due and payable by an assessee does not indicate remission or cessation of liability

**[2018] 97 taxmann.com 399 (Delhi)
HIGH COURT OF DELHI
Principal Commissioner of Income Tax-6
v.
New World Synthetics Ltd.***

**SANJIV KHANNA AND CHANDER SHEKHAR, JJ.
IT APPEAL NO. 806 OF 2018†
AUGUST 27, 2018**

Section 41(1) of the Income-tax Act, 1961 - Remission or cessation of trading liability (General) - Whether non-payment of outstanding liability which is admitted and acknowledged as due and payable by an assessee does not indicate remission or cessation of liability - Held, yes - Whether when an assessee suffers losses, payments and debts due including those due to financial institutions are not paid, delay or non-payment, even though Assessing Officer is of opinion that likelihood of payment was remote as business has stopped, would not by itself denote and mean cessation or remission of liability - Held, yes [Para 9] [In favour of assessee]

○○

“

A nation's greatness is measured by how it treats its weakest members.”

Mahatma Gandhi



Where existence of liabilities was doubted, same could have been disallowed in year in which it was claimed, or could have been treated as unexplained cash credit in hands of assessee under section 68, but same could not be taxed under section 41(1), inasmuch as if liability itself was not genuine, question of remission or cessation thereof would not arise

**[2019] 104 taxmann.com 366 (Gujarat)
HIGH COURT OF GUJARAT
Dattatray Poultry Breeding Farm (P.) Ltd.
v.
Assistant Commissioner of Income-tax***

**MS. HARSHA DEVANI AND A.P. THAKER, JJ.
R/TAX APPEAL NO. 1393 OF 2018†
JANUARY 29, 2019**

Section 41(1) of the Income-tax Act, 1961 - Remission or cessation of trading liability (Applicability of) - Assessment year 2010-11 - Assessee was engaged in business of job work of hatching of eggs for 'S' Farm Ltd. - During course of scrutiny assessment, Assessing Officer noted from balance sheet that assessee had shown huge amount of sundry creditors - Assessing Officer took a view that assessee company was doing job work only and hence, there would be no purchases and hence, there was no possibility of such huge amount outstanding in respect of such sundry creditors - He therefore forming an opinion that there was no genuine creditors appearing in balance sheet, treated amount in question as cessation of liability within meaning of section 41(1) - Tribunal upheld addition made by Assessing Officer - Whether, on facts, if existence of liabilities was doubted, same could have been disallowed in year in which it was claimed, or could have been treated as unexplained cash credit in hands of assessee under section 68, but same could not be taxed under section 41(1), inasmuch as if liability itself was not genuine, question of remission or cessation thereof would not arise - Held, yes - Whether, therefore, impugned addition was to be deleted - Held, yes [Para 15][In favour of assessee]

○○

Surplus arising on prepayment of deferred sales tax loan at NPV is a capital receipt not liable to tax under section 41(1)

**[2020] 117 taxmann.com 391 (Bombay)
HIGH COURT OF BOMBAY
Principal Commissioner of Income-tax, Mangaluru
v.
Mangalore Refinery & Petrochemicals Ltd.***

**UJJAL BHUYAN AND MILIND N. JADHAV, JJ.
IT APPEAL (IT) NOS. 875 & 1237 OF 2017†
MARCH 17, 2020**

Section 41(1) of the Income-tax Act, 1961 - Remission or cessation of trading liability (Deferred sales tax loan) - Assessment year 2005-06 - Whether surplus arising on prepayment of deferred sales tax loan at NPV is a capital receipt which cannot be termed as remission or cessation of a trading liability so as to attract section 41(1) - Held, yes [Para 31] [In favour of assessee]

○○

“

When restraint and courtesy are added to strength, the latter becomes irresistible.”

Mahatma Gandhi



Assessing Officer could not make addition to assessee's income under section 41(1) in respect of sundry creditors shown in books of account merely on ground that assessee failed to furnish PAN or correct address of those creditors

**[2019] 106 taxmann.com 308 (Karnataka)
HIGH COURT OF KARNATAKA
Principal Commissioner of Income Tax, Bengaluru
v.
B.T. Nagraj Reddy***

**RAVI MALIMATH AND S.G. PANDIT, JJ.
IT APPEAL NO. 791 OF 2018†
APRIL 1, 2019**

Section 41(1) of the Income-tax Act, 1961 - Remission or cessation of trading liability (Applicability of) - Assessment year 2011-12 - For relevant year assessee filed its return declaring certain taxable income - In course of assessment, a notice was issued asking assessee to explain sundry creditors which had been continued in books of account without any change - Assessee submitted his explanation with regard to sundry creditors - Assessing Officer finding that assessee had not furnished PAN numbers or address of creditors brought to tax said amount - Commissioner (Appeals) deleted addition holding that Assessing Officer had failed to make any cross-verification as to remission or cessation of liability before invoking provision of section 41(1) - Tribunal confirmed order passed by Commissioner (Appeals) - Whether in order to invoke provisions of section 41(1), Assessing Officer on basis of available material ought to have verified as to whether there was any remission or cessation of liability - Held, yes - Whether in absence of any such verification, Assessing Officer could not have added amount in question to assessee's income - Held, yes - Whether, therefore, impugned order passed by Tribunal did not require any interference - Held, yes [Para 6] [In favour of assessee]

○○

Where assessee had shown outstanding ‘trade payables’ in its books of account for last three years, in absence of any evidence on record that there was a final remission or cessation of a ‘trading liability’ or any part of it during relevant previous year, provisions of section 41(1) could not have been invoked to add said amount to assessee’s taxable income

**[2019] 110 taxmann.com 62 (Mumbai - Trib.)
IN THE ITAT MUMBAI BENCH ‘D’
Deputy Commissioner of Income Tax, Central Circle-4(2)
v.
Sri Radhakrishna Shipping Ltd.***

**RAVISH SOOD, JUDICIAL MEMBER
AND N.K. PRADHAN, ACCOUNTANT MEMBER
IT APPEAL NO. 691 (MUM.) OF 2018
[ASSESSMENT YEAR 2013-14]
AUGUST 7, 2019**

I. Section 41(1) of the Income-tax Act, 1961 - Remission or cessation of trading liability (Applicability of) - Assessment year 2013-14 - For relevant year, assessee filed its return declaring certain loss - In course of assessment, Assessing Officer noted that assessee had shown outstanding ‘trade payables’ in its books of account for last more than three years - Since there were no transactions even during relevant assessment year, Assessing Officer having invoked provisions of section 41(1), brought said amount to tax - Whether in order to characterise an outstanding liability as a ceased liability, Assessing Officer remains under a statutory obligation to show that assessee has obtained some benefit in respect of such trading liability by way of remission or cessation thereof, during relevant year - Held, yes - Whether, therefore, merely on stand-alone basis that a ‘trade liability’ is outstanding in ‘books of account’ of an assessee for several years cannot suffice for bringing same within realm of provisions of section 41(1) - Held, yes - Whether, since, in instant case, there was no evidence to conclude that there was a final remission or cessation of a ‘trading liability’ or any part of it, provisions of section 41(1) could not have been invoked by Assessing Officer - Held, yes - Whether, consequently, impugned addition was to be deleted - Held, yes [Para 8][In favour of assessee]



Where there was neither cessation of liability of assessee in respect of payment of sales tax dues, nor was assessee granted benefit of said cessation for assessment years in question, one of requirements for applicability of section 41(1)(a) had not been fulfilled

**[2016] 67 taxmann.com 154 (SC)
SUPREME COURT OF INDIA
Commissioner of Income tax, Delhi
v.
SI Group India Ltd.***

**A.K. SIKRI AND ROHINTON FALI NARIMAN, JJ.
CIVIL APPEAL NOS. 10873 & 10874 OF 2011†
NOVEMBER 4, 2015**

Section 41(1) of the Income-tax Act, 1961 - Remission or cessation of trading liability (Deferred sales tax liability) - Assessment years 2000-01 and 2001-02 - Assessee set up a unit in a notified area - By virtue of packaged incentives scheme of Maharashtra State Government assessee became entitled to collect sales tax from customers while deferring payments to State Government and it could pay sales tax in future in five equal instalments - However, assessee made payment of sales tax to concerned state agency and claimed deduction towards sales tax in income-tax return - Assessee's payment to state agency was not accepted by Sales Tax Authorities - Assessing Officer disallowed assessee's claim for deduction towards sales tax - High Court held that since assessee's payment to state agency had not been accepted by Sales Tax Authorities, there was no remission/cessation of liability under section 41(1)(a) and thus, there was neither cessation of liability of assessee in respect of payment of sales tax dues, nor was assessee granted benefit of said cessation for assessment years in question - Whether High Court had rightly held that one of requirement for applicability of section 41(1)(a) had not been fulfilled and, thus, Department's appeal lacked merits - Held, yes [Paras 3 & 4] [In favour of assessee]

○○

SLP dismissed against High Court ruling that where revenue had not established that excess provision for bad and doubtful debts allowable under section 36(1)(viia) written back in profit and loss account was allowed as deduction in previous years, no addition could be made holding that excess provision written back amounted to income within meaning of section 41(1)

**[2018] 99 taxmann.com 153 (SC)
SUPREME COURT OF INDIA
Commissioner of Income-tax
v.
Pragathi Gramina Bank***

**ROHINTON FALI NARIMAN AND NAVIN SINHA, J.J.
SPECIAL LEAVE PETITION (CIVIL)
DIARY NO. 35592 OF 2018†
OCTOBER 26, 2018**

Section 41(1), read with section 36(1)(viia), of the Income-tax Act, 1961 - Remission or cessation of trading liability (Allowance as deduction) - Assessment year 2008-09 - Assessee as per RBI guidelines made provision of bad and doubtful debts, in terms of section 36(1)(viia) - Same being excess, was written back in books of account - Assessing Authority made certain additions relating to excess provision of bad and doubtful debts viewing that excess provision written back amounted to income within meaning of section 41(1) - High Court by impugned order held that since revenue had not established that excess provision for bad and doubtful debts allowable under section 36(1)(viia) written back in profit and loss account was allowed as deduction in previous years, no addition could be made holding that excess provision written back amounted to income within meaning of section 41(1) - Whether Special Leave Petition filed against impugned order was to be dismissed - Held, yes [Para 9] [In favour of assessee]

○○



Section 41(1) will not apply to waiver of loan since waiver of loan does not amount to cessation of trading liability

**[2020] 116 taxmann.com 410 (Bombay)
HIGH COURT OF BOMBAY
Principal Commissioner of Income Tax*
v.
SICOM Ltd.†**

**UJJAL BHUYAN AND MILIND N. JADHAV, JJ.
IT APPEAL NO. 1692 OF 2017
JANUARY 21, 2020**

Section 41(1), read with section 28(iv), of the Income-tax Act, 1961 - Remission or cessation of trading liability (Loan waiver) - Assessment year 2003-04 - Whether section 41(1) will not apply to waiver of loan since waiver of loan does not amount to cessation of trading liability - Held, yes - Assessing Officer noted that loan given by Government to assessee-company was waived off and he opined that waiver of principal amount would be considered as income falling under section 28(iv) being benefit arising for business of assessee and, accordingly, said amount was to be treated as income of assessee for year under consideration and taxable under sections 41(1) and 28(iv) - Whether since entire sum represented principal amount payable to Government and no part thereof comprised of waiver of any interest liability, it was not chargeable to tax either under section 41(1) or under section 28(iv) - Held, yes [para 9] [In favour of assessee]

○○

“

Each night, when I go to sleep, I die. And the next morning, when I wake up, I am reborn.”

Mahatma Gandhi

SLP dismissed against High Court ruling that waiver of repayment of certain amount in respect of which there was no allowance or deduction claimed by assessee during previous year, amounted to capital receipt not liable to tax under section 41(1)

**[2019] 101 taxmann.com 400 (SC)
SUPREME COURT OF INDIA
Commissioner of Income-tax
v.
Compaq Electric Ltd.***

**A.K. SIKRI AND S. ABDUL NAZEER, JJ.
SPECIAL LEAVE TO APPEAL (C) NO. 19981 OF 2012†
JANUARY 3, 2019**

Section 41(1) of the Income-tax Act, 1961 - Remission or cessation of trading liability (Allowance or deduction) - Assessment year 2003-04 - Assessee-company was a wholly owned subsidiary company of DRL - In view of huge losses suffered by assessee-company, operations of company were funded by way of unsecured loans from DRL from year to year - During relevant assessment year, assessee-company proposed and DRL accepted a request to agree for conversion of unsecured loan partly into equity share capital and waived balance as not recoverable - Assessing Officer was of view that loans were received during course of assessee's business with DRL, and that liability of assessee was a trading liability - Assessing Officer, thus, held that provisions of section 41(1) were attracted in respect of amount of unsecured loan written off - High Court by impugned order held that in view of fact that in respect of amount in question, there was no allowance or deduction claimed by assessee for previous years, when creditor waived repayment of said amount, it amounted to capital receipt not liable to tax - Whether Special Leave Petition filed against impugned order was to be dismissed - Held, yes [Para 7][In favour of assessee]

○○



Where entire income from banking of assessee became taxable on withdrawal of exemption by insertion of section 80P(4) by Finance Act, 2006 with effect from 1-4-2007 and, thereupon, High Court confirmed addition made by authorities below in respect of amount transferred to statutory reserve out of carried forward account of provision for expenses under section 41(1), SLP filed against said order of High Court was to be granted

**[2018] 100 taxmann.com 153 (SC)
SUPREME COURT OF INDIA
Rajasthan State Co-Operative Bank Ltd.
v.
Assistant Commissioner of Income Tax***

**ROHINTON FALI NARIMAN AND INDU MALHOTRA, JJ.
SPECIAL LEAVE PETITION (CIVIL) DIARY NO. (S).
28056/2018†
AUGUST 24, 2018**

Section 41(1), read with section 80P, of the Income-tax Act, 1961 - Remission or cessation of trading liability (Cessation of liability) - Assessment year 2007-08 - Assessee was an apex co-operative bank of Rajasthan deriving income from banking business - Income of assessee co-operative bank was exempt under section 80P(2) in all earlier year(s) - However, from assessment year in question i.e. 2007-08, entire income from banking business of assessee became taxable on withdrawal of exemption by insertion of section 80P(4) by Finance Act, 2006 with effect from 1-4-2007 - Assessment was completed under section 143(3) wherein amount transferred to statutory reserve out of carried forward account of provision for expenses was treated as taxable under section 41(1) - Tribunal as well as High Court confirmed said addition - Whether, on facts SLP filed against decision of High Court was to be granted - Held, yes [Para 2] [In favour of assessee]

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Landmark
Judgments
of Income Tax

**Decisions related to
Disallowance of Expenses to
earn Exempt Income
as per Sec. 14A r.w.r 8D**

████████████████████



Where assessee invested certain own funds in exempted categories such as mutual funds and earned income and, had not incurred any expenditure in earning said income, assessee would be entitled to exemption under section 14A, read with rule 8D

**[2020] 121 taxmann.com 335 (Bombay)
HIGH COURT OF BOMBAY
Commissioner of Income Tax, Aaykar Bhavan
v.
Sociedade De Fomento Industrial (P.) Ltd.***

**M.S. SONAK AND DAMA SESHADRI NAIDU, JJ.
TAX APPEAL NOS. 23 & 25 OF 2012 & 69 TO 74 OF 2014
OCTOBER 22, 2020**

Section 14A of the Income-tax Act, 1961, read with rule 8D of the Income-tax Rules, 1962 - Expenditure incurred in relation to income not includible in total income (Interest) - Whether where assessee invested certain own funds in exempted categories such as mutual funds and earned income and assessee had not incurred any expenditure in earning said income and there was no material for Assessing Officer to conclude that assessee borrowed funds, assessee would be entitled to exemption under section 14A, read with rule 8D - Held, yes [Paras 48, 49 and 51] [In favour of assessee]

○○

“

It is unwise to be too sure of one's own wisdom. It is healthy to be reminded that the strongest might weaken and the wisest might err."

Mahatma Gandhi

Where assessee declared tax exempt income and voluntarily disallowed certain expenditure under section 14A, in absence of reason why assessee's claim for disallowance under section 14A had to be rejected, Assessing Officer was not justified in recomputing disallowance

**[2015] 59 taxmann.com 295 (Delhi)
HIGH COURT OF DELHI
Joint Investments (P.) Ltd.**

v.

Commissioner of Income-tax*

**S. RAVINDRA BHAT AND R.K. GAUBA, JJ.
IT APPEAL NO.117 OF 2015†
FEBRUARY 25, 2015**

Section 14A of the Income-tax Act, 1961, read with rule 8D of the Income-Tax Rules, 1962 - Expenditure incurred in relation to exempt income not includible in total income (Dividend) - Assessment year 2009-10 - Assessee-company was engaged in diverse investment activities and in course of its business derived income from rent, sale of investments, dividend and interest - It declared tax exempt income in form of dividend to tune of Rs. 48.90 lakhs and voluntarily disallowed certain expenditure under section 14A - Assessing Officer recomputed disallowance and disallowed sum of Rs. 52.56 lakhs under section 14A, read with rule 8D - Assessee's grievance was that entire tax exempt income was lower than disallowance - Whether since Assessing Officer had not disclosed why assessee's claim for disallowance under section 14A had to be rejected, order of Assessing Officer was to be set aside - Held, yes [Para 9] [In favour of assessee]

○○



In terms of section 14A, satisfaction of Assessing Officer about correctness of expenditure offered for disallowance by assessee therefore is a pre-condition and, thus, where Assessing Officer did not in any manner reject explanation of assessee but merely proceeded to make disallowance by invoking section 14A read with Rule 8D of 1962 Rules, Tribunal was justified in deleting same

**[2019] 110 taxmann.com 303 (Bombay)
HIGH COURT OF BOMBAY
Principal Commissioner of Income-tax
v.
Bajaj Finance Ltd.***

**AKIL KURESHI AND SARANG V KOTWAL, JJ.
IT APPEAL NOS. 237 & 485 OF 2017
APRIL 2, 2019**

I. Section 14A of the Income-tax Act, 1961, read with Rule 8D of the Income-Tax Rules, 1962 - Expenditure incurred in relation to income not includible in total income (Recording of satisfaction) - Assessment year 2009-10 - In course of assessment, assessee offered certain expenses for disallowance in respect of earning tax free income - Assessing Officer having rejected assessee's explanation, proceeded to make disallowance by invoking section 14A read with rule 8D - Tribunal, however, deleted said disallowance on ground that Assessing Officer had not recorded necessary satisfaction for not accepting disallowance offered by assessee - Whether in terms of section 14A, satisfaction of Assessing Officer about correctness of expenditure offered for disallowance by assessee is a pre-condition - Held, yes - Whether, since, in instant case, Assessing Officer did not in any manner reject explanation of assessee but merely proceeded to make disallowance by invoking section 14A read with rule 8D, Tribunal was justified in deleting same - Held, yes [Para 9] [In favour of assessee]

○○

Where Assessing Officer did not record satisfaction as per section 14A(2), rule 8D could not be applied for computation of amount of expenditure to be disallowed under section 14A

**[2021] 125 taxmann.com 227 (Gujarat)
HIGH COURT OF GUJARAT
Principal Commissioner of Income Tax**

**v.
CIMS Hospital (P.) Ltd.***

**J.B. PARDIWALA AND BHARGAV D. KARIA, JJ.
R/TAX APPEAL NO. 101 OF 2020†
FEBRUARY 25, 2020**

I. Section 14A of the Income-tax Act, 1961, read with rule 8D of the Income-tax Rules, 1962 - Expenditure incurred in relation to income not includible in total income - Assessment year 2012-13 - In course of assessment, Assessing Officer opined that assessee had not correctly worked out disallowance under section 14A - He thus made additions in disallowance made by assessee under section 14A read with rule 8D - Tribunal deleted said additions on ground that Assessing Officer had not recorded any satisfaction under section 14A(2) to apply rule 8D for computation of amount of expenditure to be disallowed under section 14A - Whether pre-condition for applying rule 8D by Assessing Officer is to record satisfaction as per section 14A(2) - Held, yes - Whether since no such satisfaction was recorded by Assessing Officer, disallowance could not be made by applying rule 8D - Held, yes [Paras 7 and 9] [In favour of assessee]



Our ability to reach unity in diversity will be the beauty and the test of our civilization.”

Mahatma Gandhi



Where High Court upheld Tribunal's order holding that in absence of any exempt income reported by assessee, disallowance could not be made under section 14A, SLP filed against said order was to be dismissed

[2019] 106 taxmann.com 181 (SC)

SUPREME COURT OF INDIA

Principal Commissioner of Income-tax

v.

GVK Project and Technical Services Ltd.*

ASHOK BHUSHAN AND K.M. JOSEPH, JJ.

SLP (CIVIL) DIARY NO(S). 13507 OF 2019†

MAY 3, 2019

Section 14A of the Income-tax Act, 1961 - Expenditure incurred in relation to income not includible in total income (Applicability of) - Assessment year 2013-14 - In course of assessment, Assessing Officer proceeded to calculate disallowance under section 14A on basis of investments made by assessee - Tribunal opined that in absence of any exempt income reported by assessee, disallowance could not be made under section 14A - Tribunal thus deleted disallowance made by Assessing Officer - High Court upheld Tribunal's order - Whether, on facts, SLP filed against order of High Court was to be dismissed - Held, yes [Para 1] [In favour of assessee]

○○

“

The spirit of democracy is not a mechanical thing to be adjusted by abolition of forms. It requires change of heart.”

Mahatma Gandhi

No disallowance should be made under section 14A, read with rule 8D, if no exempt income had been earned in relevant previous year

**[2020] 116 taxmann.com 770 (Bombay)
HIGH COURT OF BOMBAY
Principal Commissioner of Income-tax**

v.

Red Chillies Entertainment (P.) Ltd.*

**M.S. SANKLECHA AND NITIN JAMDAR, JJ.
IT APPEAL NO. 842 OF 2017
AUGUST 20, 2019**

Section 14A of the Income-tax Act, 1961, read with rule 8D of the Income-Tax Rules, 1962 - Expenditure incurred in relation to income not includible in total income (Condition precedent) - Assessment year 2009-10 - Tribunal held that no disallowance should be made under section 14A, read with rule 8D, if no exempt income is earned in relevant previous year - Whether no substantial question of law arose from Tribunals order - Held, yes [Para 4(iii)] [In favour of assessee]

○○

“

An education which does not teach us to discriminate between good and bad, to assimilate the one and eschew the other, is a misnomer.”

Mahatma Gandhi



Disallowance under rule 8D, read with section 14A can never exceed exempted income earned by assessee during particular assessment year

[2021] 123 taxmann.com 378 (Madras)

HIGH COURT OF MADRAS

**Principal Commissioner of Income Tax, Corporate
Circle-2(1), Chennai**

v.

Envestor Ventures Ltd.*

T.S. SIVAGNANAM AND MS. R.N. MANJULA, JJ.

TAX CASE APPEAL NO.16 OF 2021†

JANUARY 18, 2021

Section 14A of the Income-tax Act, 1961, read with rule 8D of the Income-tax Rules, 1962 - Expenditure incurred in relation to income not includible in total income (General) - Assessment year 2015-16 - Whether disallowance under rule 8D read with section 14A can never exceed exempted income earned by assessee during particular assessment year - Held, yes, - Whether without recording satisfaction by Assessing Authority, that apportionment of disallowable expenditure made by assessee with respect to exempted income is not acceptable for reasons to be assigned by Assessing Authority, he cannot resort to computation method under rule 8D - Held, yes [Para 8] [In favour of assessee]

○○

“

Each one has to find his peace from within. And peace to be real must be unaffected by outside circumstances.”

Mahatma Gandhi

Section 14A is not applicable in respect of share application money

**[2013] 30 taxmann.com 169 (Mumbai - Trib.)
IN THE ITAT MUMBAI BENCH 'D'
Rainy Investments (P.) Ltd.**

v.

Assistant Commissioner of Income-tax - 9(3), Mumbai*

**SANJAY ARORA, ACCOUNTANT MEMBER
AND VIJAY PAL RAO, JUDICIAL MEMBER
IT APPEAL NO. 5491 (MUM.) OF 2011
[ASSESSMENT YEAR 2008-09]
JANUARY 16, 2013**

Section 14A of the Income-tax Act, 1961, read with rule 8D of the Income-tax Rules, 1962 - Expenditure incurred in relation to income not includible in total income - Share application money - Assessment year 2008-09 - Whether share application money being incapable of yielding any tax-free income, same would have to be excluded in working out disallowance under rule 8D - Held, yes [Para 4] [In favour of assessee]

○○

“

I do not want to foresee the future. I am concerned with taking care of the present. God has given me no control over the moment following.”

Mahatma Gandhi



Disallowance under section 14A cannot be made more than exempt income itself

[2020] 114 taxmann.com 529 (Bombay)

HIGH COURT OF BOMBAY

Principal Commissioner of Income-tax-3

v.

Reliance Ports and Terminals Ltd.*

M.S. SANKLECHA AND NITIN JAMDAR, JJ.

IT APPEAL NO. 1034 OF 2017†

NOVEMBER 19, 2019

Section 14A of the Income-tax Act, 1961, read with rule 8D of the Income-tax Rules, 1962 - Expenditure incurred in relation to income not includible in total income (General) - Assessment year 2008-09 - Whether disallowance under section 14A cannot be more than exempt income itself - Held, yes [Para 4] [In favour of assessee]

○○

“

A man who was completely innocent, offered himself as a sacrifice for the good of others, including his enemies, and became the ransom of the world. It was a perfect act.”

Mahatma Gandhi

Where assessee had maintained proper accounts, duly audited and based his claim of having incurred a lower expenditure than that as per statutory prescription of rule 8D and no inquiry was made by revenue into expenditure stood debited in account books, assessee's claim of disallowance under section 14A was to be allowed

[2015] 56 taxmann.com 155 (Mumbai - Trib.)

IN THE ITAT MUMBAI BENCH 'F'

Fali S. Nariman

v.

**Additional Commissioner of Income-tax, Range-11 (2),
Mumbai***

JOGINDER SINGH, JUDICIAL MEMBER

AND SANJAY ARORA, ACCOUNTANT MEMBER

IT APPEAL NO. 2368 (MUM.) OF 2013

[ASSESSMENT YEAR 2009-10]

JANUARY 30, 2015

Section 14A of the Income-tax Act, 1961 read with rule 8D of the Income-tax Rules, 1962 - Expenditure incurred in relation to income not includible in total income (Rule 8D) - Assessment year 2009-10 - Assessee, an advocate by profession, earned certain tax-free income by way of interest and dividend - He allocated expenditure on basis of tax exempt income and professional income and made suo motu disallowance under section 14A at Rs. 1 lakh - Assessing Officer disallowed higher amount by applying rule 8D - Whether income, which may or may not arise on incurring expenditure, and again with no certainty as to its quantum, cannot, by itself, form basis of either incurring or allocation of expenditure - Held, yes - Whether however, since assessee had maintained proper accounts, duly audited and based his claim of having incurred lower expenditure than that as per statutory prescription of rule 8D and revenue had not made any inquiry regarding expenditure stood debited in assessee's account books, assessee's claim of disallowance of Rs. 1 lakh under section 14A was to be allowed - Held, yes [Para 4][In favour of assessee]



Where Assessing Authority disallowed expenditure incurred by assessee for earning exempt income in excess of actual exempted income, same was unjustified

[2018] 95 taxmann.com 41 (Karnataka)

HIGH COURT OF KARNATAKA

Pragathi Krishna Gramin Bank

v.

Joint Commissioner of Income-tax*

DR. VINEET KOTHARI AND DR. H.B. PRABHAKARA

SASTRY, JJ.

IT APPEAL NOS.100001 & 100002 OF 2018†

MAY 28, 2018

Section 14A of the Income-tax Act, 1961, read with Rule 8D of the Income-Tax Rules, 1962 - Expenditure incurred in relation to income not includible in total income (Conditions precedents) - Assessment years 2011-12 and 2012-13 - Whether expenditure for earning exempted income has to have reasonable proportion to exempted income - Held, yes - Whether thus, where Assessing Authority as well as Appellate Authority disallowed expenses incurred by assessee bank in earning exempt income in excess to actual exempt income, same was per se absurd and hypothetical and therefore, matter was to be remanded back to Assessing Authority - Held, yes [Para 15] [Matter remanded/in favour of assessee]

○○

“

Before the throne of the Almighty, man will be judged not by his acts but by his intentions. For God alone reads our hearts.”

Mahatma Gandhi



Landmark
Judgments
of Income Tax

**Decisions related to
No Incriminating Evidence found
during the Course of Search**

—————



SLP dismissed against High Court ruling that where seized documents were not in name of assessee, no action could be undertaken in case of assessee under section 153C and further entire decision being based on huge amounts revealed from seized documents not being supported by actual cash passing hands, additions under section 69C were not sustainable

[2019] 103 taxmann.com 9 (SC)

SUPREME COURT OF INDIA

Principal Commissioner of Income-tax, Central III

v.

Krutika Land (P.) Ltd.*

**ROHINTON FALI NARIMAN AND VINEET SARAN, JJ.
SPECIAL LEAVE TO APPEAL (C) NO(S). 7112 OF 2018†
JANUARY 11, 2019**

Section 153C, read with section 69C, of the Income-tax Act, 1961 - Search & seizure - Assessment in case of (Assessment in case of any other person) - Assessment year 2009-10 - During search certain incriminating documents were found in possession of one DD, managing and handling land acquisition on behalf of assessee-company and his statement was recorded - He stated that there were amounts disbursed for purchase of lands and a certain amount of cash had also been received by him to purchase lands - However, later he had retracted said statement - Assessing Officer issued notice under section 153C and initiated proceedings against assessee and made additions under section 69C - High Court by impugned order held that since seized documents did not belong to assessee but were seized from residential premises of one DD who had later retracted his statement, no action under section 153C could be undertaken in case of assessee - It further held that since entire decision was based on seized documents and there was no material to conclusively show that huge amounts revealed from seized documents were actually transferred from one side to another, additions under section 69C were not sustainable - Whether Special leave petition filed against impugned order was to be dismissed - Held, yes [Para 21] [In favour of assessee]

Where High Court held that only undisclosed income and undisclosed assets detected during search could be brought to tax in relation to those years for which notice under section 153A had been issued, SLP filed against said order was to be dismissed due to low tax effect

**[2020] 114 taxmann.com 104 (SC)
SUPREME COURT OF INDIA
Principal Commissioner of Income Tax
v.
Caprihans India Ltd.***

**ROHINTON FALI NARIMAN AND V.
RAMASUBRAMANIAN, JJ.
SPECIAL LEAVE PETITION (CIVIL) DIARY NO. 25297 OF
2019†
SEPTEMBER 30, 2019**

Section 153A of the Income-tax Act, 1961 - Search and seizure - Assessment in case of (Scope of) - In appellate proceedings, Tribunal held that completed assessment could not be abated unless some incriminating evidence or material was found during search qua additions made by Assessing Officer - High Court also opined that only undisclosed income and undisclosed assets detected during search could be brought to tax in relation to those years for which notice under section 153A had been issued - High Court thus dismissed revenue's appeal - Whether, on facts, SLP filed against said order was to be dismissed due to low tax effect - Held, yes [Para 2] [In favour of assessee]



Education is the basic tool for the development of consciousness and the reconstitution of society.”

Mahatma Gandhi



Assessment u/s 153A can be made only on basis of incriminating material found in search u/s 132 and only income related to incriminating documents found during search can be considered in assessment

[2017] 86 taxmann.com 3 (Bombay)

HIGH COURT OF BOMBAY

Commissioner of Income-tax-20

v.

Deepak Kumar Agarwal*

S.C. DHARMADHIKARI AND PRAKASH D. NAIK, JJ.

**IT APPEAL NOS. 1169,1178,1709,1780 OF 2014 & 131 OF
2015, 467 TO 470,472,477,483,566,914,1194 & 1197 OF
2017 †**

SEPTEMBER 11, 2017

Section 153A, read with sections 132 and 143, of the Income-tax Act, 1961 - Search and seizure - Assessment in case of (Scope of) - Whether assessment under section 153A can be made only on basis of incriminating material found in search under section 132 - Held, yes - Whether only income related to incriminating documents found during search under section 132 can be considered in assessment under section 153A - Held, yes - Assessing Officer as a result of search conducted under section 132 on assessee framed assessment of assessee under section 143(3) read with section 153A and made additions under sections 68 and 14A to his income - Tribunal held that additions were made beyond scope of section 153A, as no incriminating material in support of additions made under section 68 and under section 14A was brought on record by revenue - Whether in peculiar facts and circumstances of case, no substantial question of law arose from order of Tribunal - Held, yes [Paras 32 and 34] [In favour of assessee]

○○

158BC notice could not be issued where search was conducted on account of mistaken identity and no undisclosed income was recovered during search

[2016] 74 taxmann.com 128 (Bombay)

HIGH COURT OF BOMBAY

Dr. Gautam Sen

v.

Chief Commissioner of Income-tax*

M.S. SANKLECHA AND S.C. GUPTE, JJ.

WRIT PETITION NO. 1344 OF 2000

SEPTEMBER 14, 2016

Section 158BC, read with section 132, of the Income-tax Act, 1961 - Block assessment in search cases - Procedure for (Conditions precedent) - A search and seizure operation was carried out on company C during which search party came across a bank account in name of petitioner's proprietary concern - Revenue carried out search under section 132 on petitioner's premises - No incriminating documents were found during course of search nor it was found that he was in any manner involved in said bank account - Whether, therefore, it appeared that revenue took search and seizure proceedings in respect of petitioner on account of mistaken identity - Held, yes - Whether no notice under section 158BC could be issued to petitioner as condition precedent to issue such notice under section 158BC, viz. recovery of undisclosed income during search proceedings, was not satisfied - Held, yes [Para 8] [In favour of petitioner]

○○

“

*Capital as such is not evil; it is its wrong use that is evil.
Capital in some form or other will always be needed.”*

Mahatma Gandhi



[2017] 79 taxmann.com 398 (Bombay)
HIGH COURT OF BOMBAY
Commissioner of Income-tax, Central - II, Mumbai
v.
Gurinder Singh Bawa*

M.S. SANKLECHA AND G.S. KULKARNI, JJ.
IT APPEAL NO. 1839 OF 2013
OCTOBER 5, 2015

Section 153A of the Income-tax Act, 1961 - Search and seizure - Assessment in case of - Proceedings under section 153A were without jurisdiction where no assessments were pending at that time and no incriminating evidence was found during search [Assessment year 2005-06] [In favour of assessee]

Where no assessments were pending at time of the initiation of proceedings under section 153A and no incriminating material was found during course of the search, entire proceedings under section 153A were without jurisdiction.

○○

[2018] 99 taxmann.com 424 (Bombay)
HIGH COURT OF BOMBAY
Commissioner of Income-tax
v.
SKS Ispat & Power Ltd.*

S.V. GANGAPURWALA AND A.M. BADAR, JJ.
IT APPEAL NOS. 1874 OF 2014 AND 58 OF 2015
JULY 12, 2017

Section 153A of the Income-tax Act, 1961 - Search and seizure - Assessment in case of search and seizure - Assessment years 2002-03 and 2003-04 - Scope of assessment after search under section 153A would be limited to incriminating evidence found during search and no further [In favour of assessee]

○○

[2012] 20 taxmann.com 626 (Bombay)
HIGH COURT OF BOMBAY
Commissioner of Income-tax

v.

Templeton Asset Management (India) P. Ltd.*

J.P. DEVADHAR AND A.A. SAYED, JJ.

ITA NO. 113 OF 2010

AUGUST 5, 2011

- I. Section 158BB of the Income-tax Act, 1961 - Block assessment in search cases - Undisclosed income, computation of - Addition made on account of estimated profits from total fees received by assessee without there being any evidence or material found during search was not justified [In favour of assessee]

The Tribunal deleted the additions made in the block assessment on account of estimated profits from the total fees received by the assessee on the ground that such additions were not based on evidence found during the course of search.

Held that it was neither the case of revenue that the assessee had not accounted any part of the fees received nor was it the case of the revenue that the assessee had inflated the claim. The discrepancies noticed by the Assessing Officer from the trial balance found during the course of search had been explained by the assessee and in fact no additions were made on the basis of the discrepancies found in the trial balance. In these circumstances, the decision of the Tribunal was justified.

- II. Section 158BB of the Income-tax Act, 1961 - Block assessment in search cases - Undisclosed income, computation of - Question as to whether interest on debentures was includible in total income on accrual basis or not was a question to be considered in regular assessment and not in block assessment; and, hence, Tribunal was justified in deleting addition made on account of accrued interest on debentures in block assessment of [In favour of assessee]



The Tribunal deleted addition made on account of accrued interest on debentures in block assessment.

Held that whether interest on those debentures was includible in total income on accrual basis or not, was a question to be considered in regular assessment and not in block assessment. Therefore, no fault could be found with the decision of the Tribunal in deleting the interest on accrual basis in the block assessment order.

○○

Where revenue could not adduce any cogent material or evidence to prove that addition made in case of assessee in assessment completed under section 144 read with section 153C was on basis of any incriminating material or document found during course of search, impugned addition was unjustified

[2019] 112 taxmann.com 163 (Karnataka)

HIGH COURT OF KARNATAKA

Principal Commissioner of Income-tax, (Central) Bangaluru

v.

Star PVG Exports*

ALOK ARADHE AND P.G.M. PATIL, JJ.

IT APPEAL NO. 100037 OF 2018†

OCTOBER 10, 2019

Section 153C, read with section 144, of the Income-tax Act, 1961 - Search and seizure - Assessment of any other person - Assessment year 2007-08 - Whether where revenue could not adduce any cogent material or evidence to prove that addition made in case of assessee in assessment completed under section 144 read with section 153C was on basis of any incriminating material or document found during course of search, impugned addition was unjustified - Held, yes [Para 10] [In favour of assessee]

○○

Where a notice under section 153C was issued against assessee-company on basis of a statement of main controlling person of group companies to which assessee company belonged that several group companies including assessee had received bogus accommodation entries, said statement contained information that 'related' to assessee but it could not be said to be a document that 'belonged' to assessee so as to initiate proceedings against assessee under section 153C

[2019] 110 taxmann.com 28 (Delhi)

HIGH COURT OF DELHI

Principal Commissioner of Income-tax, Central-3

v.

Dreamcity Buildwell (P.) Ltd.*

DR. S. MURALIDHAR AND TALWANT SINGH, JJ.

IT APPEAL NO. 1152 OF 2017†

AUGUST 9, 2019

Section 153C of the Income-tax Act, 1961 - Search and seizure - Assessment of any other person (Condition precedent) - Assessment year 2005-06 - Whether onus is on revenue to show that incriminating material/documents recovered at time of search 'belongs' to a person other than searched person and it is not enough for revenue to show that documents either 'pertain' to assessee or contains information that 'relates to' assessee - Held, yes - A search operation under section 132(1) was carried upon TP Group of cases to which assessee company belonged - During search, various incriminating documents were found and seized which included a letter from Director Town and Country Planning (DTCP) granting licence to assessee for setting up of a residential plot colony and; a letter from DTCP to assessee granting it permission for transfer of aforesaid license number granted to assessee - Further, one DNT who was main controlling person of TP Group of companies, in his sworn statement given under section 132(4), admitted that various group companies including assessee had received bogus accommodation entries from concerns of one SKG who was an accommodation entry



operator - On basis of abovesaid documents Assessing Officer issued notice under section 153C against assessee - It was noted that licence issued to assessee by DTCP and letter issued by DTCP permitting it to transfer such licence, had no relevance for purposes of determining escapement of income of assessee - Consequently, even if those two documents could be said to 'belonged' to assessee they were not documents on basis of which jurisdiction could be assumed by Assessing Officer under section 153C - As far as statement of DNT was concerned, though such statement contained information that 'related' to assessee, but it could not be said to be a document that 'belonged' to assessee - Whether, on facts, assumption of jurisdiction quo assessee under section 153C was not valid - Held, yes [Paras 17 to 19] [In favour of assessee]

○○

Where no discrepancies were found in trading operations and stock of assessee as well as no incriminating document was found during course of survey and relevant year was first year of assessee's business, rejection of books of account of assessee and estimation of gross profit at rate of 21 per cent as against 14 per cent declared by assessee was not justified

**[2012] 20 taxmann.com 140 (Delhi)
HIGH COURT OF DELHI
Commissioner of Income-tax**

v.

Bindals Apparels*

**A.K. SIKRI AND M.L. MEHTA, JJ.
IT APPEAL NO. 599 OF 2009
FEBRUARY 18, 2011**

Section 145 of the Income-tax Act, 1961 - Method of accounting - Rejection of accounts - Assessment year 1998-99 - A survey under section 133A was conducted - Assessee firm filed its return of income - Gross profit rate for whole year as shown by assessee was 14.40

per cent - Assessing Officer found that there was wide fluctuation in gross profit rates for three different periods in same year - Assessing Officer also found that assessee was not maintaining any stock register and sale/purchase register; that assessee failed to correlate any sale with corresponding purchase of an item - Assessing Officer therefore, rejected books of account and applied gross profit rate of 21 per cent - Accordingly, he estimated gross profit and made certain additions - On second appeal, Tribunal found that virtually, no discrepancies were found in trading operations and stock; that though day-to-day stock register was not maintained, yet books of account could not be rejected merely because of its absence; that no incriminating document was found by department during course of survey - Tribunal also found that books of account were correct, complete and supported by vouchers, and hence these could not be rejected - In respect of gross profit rate declared by assessee, Tribunal pointed out that during survey, actual stock of assessee had been physically verified and valued by Department resulting in gross profit rate at rate of 19.59 per cent; that reason for less gross profit rate in post-survey period, was because of fact that in this period huge discounts were offered by assessee on merchandise - Tribunal also held that relevant year was first year of business and gross profit rate of 14.40 per cent disclosed by assessee was quite reasonable - In view of said findings, Tribunal deleted addition made by Assessing Officer - Whether findings arrived at by Tribunal were findings of facts and hence no question of law arose out of its order - Held, yes [In favour of assessee]



Service which is rendered without joy helps neither the servant nor the served. But all other pleasures and possessions pale into nothingness before service which is rendered in a spirit of joy.”

Mahatma Gandhi



[2008] 214 CTR 51 (Delhi)
HIGH COURT OF DELHI
Commissioner of Income-tax

v.

Prem Nath Nagpal*

MADAN B. LOKUR AND V.B. GUPTA, JJ.

IT APPEAL NO. 411 OF 2007

MAY 4, 2007

Section 158BB of the Income-tax Act, 1961 - Block assessment in search cases - Undisclosed income computation of - Where during search only ownership papers of property were found and seized and no other incriminating document was found which may show that there was understatement of purchase consideration or cost of improvement, addition of undisclosed income in respect of such property was not justified

During the search, only ownership papers of the property were found and seized and no other incriminating document was found which might show that there was understatement of the purchase consideration or the cost of improvement. Based upon the valuation report, the Assessing Officer made an addition in respect of understatement of the cost of acquisition and another addition was made in respect of understatement of expenditure on its development etc.

Held that the papers with regard to the ownership will always be found with the owner and finding of such documents does not lead to any inference that either the purchase consideration or the cost of improvement has been understated. Since no document was found in the course of search leading to any adverse inference about the aforesaid understatement, under these circumstances, no computation of undisclosed income could have been made by resorting to the provisions of Chapter XIV-B.

○○

**[2011] 12 taxmann.com 452 (Punjab & Haryana)
HIGH COURT OF PUNJAB AND HARYANA
Commissioner of Income-tax (Central), Ludhiana**

v.

S.S.R.D. Somany Sikshan Sansthan*

**ADARSH KUMAR GOEL, ACTG.CJ.
AND AJAY KUMAR MITTAL, J.
IT APPEAL NOS. 775 AND 784 OF 2010†
MAY 2, 2011**

Section 143 of the Income-tax Act, 1961 - Assessment - Additions to income - Assessment year 2007-08 - During search and seizure operation at assessee's premises, certain incriminating documents were found and seized - Assessee filed return declaring nil income - Case was taken up for scrutiny and Assessing Officer made addition on account of inflation of expenditure under head 'Salary to Staff on basis of statement of an employee of assessee that part of salary paid by assessee to his employees was later received back from them - On appeal, Commissioner (Appeals) deleted addition made by Assessing Officer on ground that there was no evidence found during search in that regard and 11 other employees had stated in their statements that they were getting full salary as debited by assessee in its books of account - On revenue's appeal, Tribunal upheld decision of Commissioner (Appeals) - Whether on facts, no question of law did arise from Tribunal's order - Held, yes [In favour of assessee]

○○

“

Constant development is the law of life, and a man who always tries to maintain his dogmas in order to appear consistent drives himself into a false position.”

Mahatma Gandhi



[2011] 196 Taxman 415 (Delhi)
HIGH COURT OF DELHI
Commissioner of Income-tax

v.

Mahesh Kumar*

CHIEF JUSTICE AND MANMOHAN, J.
IT APPEAL NOS. 1191 AND 1192 OF 2010†
AUGUST 20, 2010

Section 69 , read with section 142A , of the Income-tax Act, 1961 - Unexplained investments - Assessment year 2004-05 - Assessee had purchased two plots for Rs. 2 lakhs and Rs. 3 lakhs, respectively - A search operation was conducted on assessee's premises - No incriminating document or material was found or seized during search operation in respect of aforesaid two plots purchased by assessee - However, Assessing Officer referred those two plots for valuation under section 142A - On basis of valuation report submitted by DVO, Assessing Officer made certain addition to assessee's income - On appeal, Commissioner (Appeals) deleted a part of that addition - On second appeal, Tribunal finding that instances of sale taken into account by Valuation Officer were not comparable as they were situated far away from location of plots purchased by assessee, deleted entire addition - Whether primary burden of proof regarding under-statement or concealment of income is on revenue and it is only when such a burden is discharged that it would be permissible to rely upon valuation given by DVO - Held, yes - Whether since, in instant case, no evidence, much less incriminating evidence, was found as a result of search to suggest that assessee had made any payment over and above consideration mentioned in registered sale deeds, Tribunal was justified in deleting entire addition - Held, yes

○○

Interactive Meeting with SEBI, Bankers, & BSE



Shri G. Mahalingam
Whole Time Member-SEBI



Shri Sethurathnam Ravi
Chairman, Bombay Stock Exchange



Shri Ashishkumar Chauhan
M.D. of Bombay Stock Exchange



Shri Pawan Bajaj
M.D. of United Bank



Shri Dinabandhu Mohapatra
MD & CEO, Bank of India



Shri R. Subramania Kumar
CMD, Indian Overseas Bank

Appreciation Letters given by Various Government Departments



Interactive Meeting with Hon'ble Ministers



Dr. Subash Bhamare



Shri Sudhir Mungantiwar



Shri Devendra Fadnavis



Shri Nitin Gadkari



Dr. Subramanian Swamy



Shri Sudhir Mungantiwar



Shri Bandaru Dattatreya



Shri Satish Mahana



Shri Arjun Ram Megwal

सीए क्षेत्राच्या उन्नतीसाठी नगर सीए शाखेचे कार्य उल्लेखनीय

सीए विष्णू अगरवाल | अ.नगर सीए शाखेस वेस्टन इंडिया रिझनल कौन्सिल (डब्ल्यू.आय.आर.सी) च्या पदाधिकाऱ्यांची सदृच्छा भेट व संवाद

अद्ययवगार | नगर बघाठी

सीए क्षेत्राकडे पुढेकडे प्रेरित करण्याचे व त्यांना सर्व सुविधा व सोपे मार्गदर्शन करण्याचे अत्यावश्यक कार्य अ.नगर सीए शाखेने केले असून त्याचे सामाजिक कार्यातील योगदान व विकासात्मक प्रतीकोन वाढता राहण्या वर देणारा अ.नगर सीए शाखेचे कार्य उल्लेखनीय आहे असे मत वेस्टन इंडिया रिझनल कौन्सिलचे अध्यक्ष सीए विष्णू अगरवाल यांनी व्यक्त केले.

अ.नगर सीए शाखेस वेस्टन इंडिया रिझनल कौन्सिलच्या पदाधिकाऱ्यांच्या सदृच्छा भेटिळा वेस्टन संवाद साधणाना अध्यक्ष सीए विष्णू अगरवाल बोलत होते. याप्रसंगी



वेस्टन इंडिया रिझनल कौन्सिलचे उपाध्यक्ष सीए सर्वेक जोशी, भाजी अध्यक्ष सीए कुली जहा, भाजी सचिव सीए कमलेशा कापू, रिजलनल कमिटी वीरक सत्यनारायण मुंढरा, उमेक घार्गी, अ.नगर सीए शाखेचे अध्यक्ष

प्रसाद भंडारी, उपाध्यक्ष सीए शानेक कुलकर्णी, सचिव सीए परेश बोर, खजिनदार सीए किल्ल भंडारी, भाजी प्रेअरमन सीए सुधीस शैव व सीए सनीत मुया उपस्थित होते. यावेळी सीए विष्णू अगरवाल

म्हणता कि, देशातील अर्थिक क्षेत्रातील बदल, नोटबंदी, जीएसटी कायदासाठी घरे घरिणाम वेगळी होण शीव बघीत दिसतीलच त्याबघकवेरर सीएची गरज वाढणार असून सीए क्षेत्राला उच्चस्त रवितय असणारचे

सांगितले. एखादा गरीब कुटुंबातील विद्यार्थ्याकडे सीए घरीका उत्तीर्ण केली तर तो रवतारचे व पुढील पिढ्याचे अर्थिक नियोजन करणय उत्तम जीवन जणू शकतो. याची जाणीव विद्यार्थ्यांवर झाली पाडिजे असेही सांगितले. प्रास्ताविक व शरणम सीए नगर शाखेचे अध्यक्ष भंडारी यांनी केले. नगरच्या आजची व भाजी सीए संघेच्या पदाधिकाऱ्यांनी एकदिसने व रवियणया विचार करणय रवतयाने विविध उपक्रम रावतिले व घरातली करण दखविले. शाखेचे बहुयोग्य सदस्य व सीए क्षेत्राका विकास हे घरण ठेऊन नगर शाखाका कार्यरत असून रवियणत देशासाठी उत्तम सीए देशाती काळा म्हणून नगरचे नाव घेतले जाईन असा विचार त्यांनी व्यक्त केला.

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नगर सीए शाखेचे कार्य उल्लेखनीय : विष्णू अगरवाल

वेस्टन इंडिया रिझनल कौन्सिलच्या पदाधिकाऱ्यांची सदृच्छा भेट

नगर बघाठी - सीए क्षेत्राकडे पुढेकडे प्रेरित करण्याचे व त्यांना सर्व सुविधा व सोपे मार्गदर्शन करण्याचे अत्यावश्यक कार्य अ.नगर सीए शाखेने केले असून त्याचे सामाजिक कार्यातील योगदान व विकासात्मक प्रतीकोन वाढता राहण्या वर देणारा अ.नगर सीए शाखेचे कार्य उल्लेखनीय आहे असे मत वेस्टन इंडिया रिझनल कौन्सिलचे अध्यक्ष सीए विष्णू अगरवाल यांनी व्यक्त केले.

वेस्टन इंडिया रिझनल कौन्सिलचे उपाध्यक्ष सीए सर्वेक जोशी, भाजी अध्यक्ष सीए कुली जहा, भाजी सचिव सीए कमलेशा कापू, रिजलनल कमिटी वीरक सत्यनारायण मुंढरा, उमेक घार्गी, अ.नगर सीए शाखेचे अध्यक्ष प्रसाद भंडारी, उपाध्यक्ष सीए शानेक कुलकर्णी, सचिव सीए परेश बोर, खजिनदार सीए किल्ल भंडारी, भाजी प्रेअरमन सीए सुधीस शैव व सीए सनीत मुया उपस्थित होते.

यावेळी सीए विष्णू अगरवाल म्हणता कि, देशातील अर्थिक क्षेत्रातील बदल, नोटबंदी, जीएसटी कायदासाठी घरे घरिणाम वेगळी होण शीव बघीत दिसतीलच त्याबघकवेरर सीएची गरज वाढणार असून सीए क्षेत्राला उच्चस्त रवितय असणारचे

सांगितले. एखादा गरीब कुटुंबातील विद्यार्थ्याकडे सीए घरीका उत्तीर्ण केली तर तो रवतारचे व पुढील पिढ्याचे अर्थिक नियोजन करणय उत्तम जीवन जणू शकतो. याची जाणीव विद्यार्थ्यांवर झाली पाडिजे असेही सांगितले. प्रास्ताविक व शरणम सीए नगर शाखेचे अध्यक्ष भंडारी यांनी केले. नगरच्या आजची व भाजी सीए संघेच्या पदाधिकाऱ्यांनी एकदिसने व रवियणया विचार करणय रवतयाने विविध उपक्रम रावतिले व घरातली करण दखविले. शाखेचे बहुयोग्य सदस्य व सीए क्षेत्राका विकास हे घरण ठेऊन नगर शाखाका कार्यरत असून रवियणत देशासाठी उत्तम सीए देशाती काळा म्हणून नगरचे नाव घेतले जाईन असा विचार त्यांनी व्यक्त केला.

सांगितले. एखादा गरीब कुटुंबातील विद्यार्थ्याकडे सीए घरीका उत्तीर्ण केली तर तो रवतारचे व पुढील पिढ्याचे अर्थिक नियोजन करणय उत्तम जीवन जणू शकतो. याची जाणीव विद्यार्थ्यांवर झाली पाडिजे असेही सांगितले. प्रास्ताविक व शरणम सीए नगर शाखेचे अध्यक्ष भंडारी यांनी केले. नगरच्या आजची व भाजी सीए संघेच्या पदाधिकाऱ्यांनी एकदिसने व रवियणया विचार करणय रवतयाने विविध उपक्रम रावतिले व घरातली करण दखविले. शाखेचे बहुयोग्य सदस्य व सीए क्षेत्राका विकास हे घरण ठेऊन नगर शाखाका कार्यरत असून रवियणत देशासाठी उत्तम सीए देशाती काळा म्हणून नगरचे नाव घेतले जाईन असा विचार त्यांनी व्यक्त केला.



अ.नगर सीए शाखेस वेस्टन इंडिया रिझनल कौन्सिल (डब्ल्यू.आय.आर.सी) च्या पदाधिकाऱ्यांची सदृच्छा भेट व संवाद साधणाना अध्यक्ष सीए विष्णू अगरवाल बोलत होते. याप्रसंगी वेस्टन इंडिया रिझनल कौन्सिलचे उपाध्यक्ष सीए सर्वेक जोशी, भाजी अध्यक्ष सीए कुली जहा, भाजी सचिव सीए कमलेशा कापू, रिजलनल कमिटी वीरक सत्यनारायण मुंढरा, उमेक घार्गी, अ.नगर सीए शाखेचे अध्यक्ष प्रसाद भंडारी, उपाध्यक्ष सीए शानेक कुलकर्णी, सचिव सीए परेश बोर, खजिनदार सीए किल्ल भंडारी, भाजी प्रेअरमन सीए सुधीस शैव व सीए सनीत मुया उपस्थित होते.

अ.नगर सीए शाखेस वेस्टन इंडिया रिझनल कौन्सिलच्या पदाधिकाऱ्यांच्या सदृच्छा भेटिळा वेस्टन संवाद साधणाना अध्यक्ष सीए विष्णू अगरवाल बोलत होते. याप्रसंगी

वेस्टन इंडिया रिझनल कौन्सिलचे उपाध्यक्ष सीए सर्वेक जोशी, भाजी अध्यक्ष सीए कुली जहा, भाजी सचिव सीए कमलेशा कापू, रिजलनल कमिटी वीरक सत्यनारायण मुंढरा, उमेक घार्गी, अ.नगर सीए शाखेचे अध्यक्ष

प्रसाद भंडारी, उपाध्यक्ष सीए शानेक कुलकर्णी, सचिव सीए परेश बोर, खजिनदार सीए किल्ल भंडारी, भाजी प्रेअरमन सीए सुधीस शैव व सीए सनीत मुया उपस्थित होते.

यावेळी सीए विष्णू अगरवाल म्हणता कि, देशातील अर्थिक क्षेत्रातील बदल, नोटबंदी, जीएसटी कायदासाठी घरे घरिणाम वेगळी होण शीव बघीत दिसतीलच त्याबघकवेरर सीएची गरज वाढणार असून सीए क्षेत्राला उच्चस्त रवितय असणारचे

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सोमिनार सीए ब्रांच ने जीएसटी, इनकम टॅक्स पर सजन प्रभा हॉल में किया आयोजन

विजन बड़ा रखकर छू सकते हैं ऊंचाइयां

भारत संघप्रदाता | रातलम

सीए ब्रांच का जीएसटी, इनकम टैक्स और "रोल ऑफ सीए इन इन्सोल्वेंसी एंड बैक्रेप्सी कोड" विषय पर सोमिनार हुआ। आईसीएआई की रत्नलम ब्रांच द्वारा सजन प्रभा हॉल में हुए कार्यक्रम के मुख्य अतिथि वेस्टन इंडिया रिजलल कौन्सिल ऑफ आईसीएआई के चेयरमैन सीए विष्णू अगरवाल ने कहा सीए विरव पठल पर अपनी अहम ज्ञाप छोडने में रक्षम हैं। उन्होंने रमणी स्टूडेंट्स को मोटीवेट करते हुए कहा अपना विजन बड़ा रखकर हम कई ऊंचाइयां छू सकते हैं।



सजन प्रभा हॉल में आयोजित सोमिनार को संबोधित करते उक्तर।

की कैपेसिटी विरलडिंग रमिडि के अध्यक्ष सीए मुकेश कुरशवाह ने इंसिडेंट्युट के विभिन्न नए प्रकल्प और सीए मैकर्स और स्टूडेंट्स की नई सुविधाओं के बारे में जानकारी दी। स्टूडेंट कौन्सिल मैबर ओक आईसीएआई दिल्ली के विजय कुमार झालानी ने "रोल ऑफ सीए इन इन्सोल्वेंसी एंड बैक्रेप्सी कोड"

के बारे में बताया। उन्होंने कहा सरकार द्वारा लागू इन्सोल्वेंसी एंड बैक्रेप्सी कानून से सीए प्रोफेशन को एक नया रवत मिल गया है उन्होंने विस्तृत रूप से इन्सोल्वेंसी एंड बैक्रेप्सी कानून की बारीकियों से सटन को अक्नत करणया, मुख्य वक्ता के रूप में सीए राजेश जी मोहन, इंदौर ने सचं एंड सीजर अंडर इनकम टैक्स एक्ट पर अपनी वडोहन

को हुए सचं सचं और सीजर के केस में विधान के अंडर करदशा के विभिन्न अर्थिकरों के बारे में चार्टर्ड एकाउंटेंट्स को कई नई ज्कनकारीयों से अक्नत करणया। सीएसटी एमएसटी रममोहन सोमका ने जीएसटी के नवीनतम परिवर्तनों के बारे में विस्तृत चर्चा की। रत्नलम सीए ब्रांच के अध्यक्ष सीए रवतन श्रीमाल ने अतिथियों का स्वागत अत्यवधीय वडोहन से किया। स्थगत ब्रांच उपाध्यक्ष जितेंद्र बंडमवा, कोषाध्यक्ष सीए अरिंठ शर्मा और रमिकाया चेयरमैन सीए दीपेंद्र चौपड़ा, एम एल चपलोट, केदार अग्रवाल, गोपाल काकानी, सदीप मृगत, गोपाल अग्रवाल, टी एच खामोशी, रवि डफरिया आदि ने किया।

Accounts which were duly verified during regular assessment of assessee could not be reappreciated merely because further a search was conducted in premises of assessee as same would amount to reopening of concluded assessment

**[2016] 66 taxmann.com 264 (Karnataka)
HIGH COURT OF KARNATAKA
Commissioner of Income-tax, Bangalore
v.
Lancy Constructions***

**VINEET SARAN AND MRS. S. SUJATHA, JJ.
IT APPEAL NOS. 528 TO 531 OF 2014†
DECEMBER 15, 2015**

Section 132A, read with section 143 of the Income-tax Act, 1961 - Search & seizure - Requisition of books of account, etc. (Reassessment) - Assessment years 2005-06 to 2008-09 - Assessee's assessment was completed - Thereafter, a search was conducted in premises of assessee - Assessing Officer made certain addition - Whether where accounts which were duly verified during regular assessment of assessee could not be reappreciated merely because further a search was conducted in premises of assessee as same would amount to reopening of concluded assessment - Held, yes [Paras 4 & 6] [In favour of assessee]

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“

Everyone who wills can hear the inner voice. It is within everyone.”

Mahatma Gandhi



Where addition of undisclosed income was made on basis of mere statement given by his son under section 132(4) which was not corroborated by any material evidence, neither such statement would be a conclusive evidence, nor any addition could be made

Even though there was difference in cost of construction estimated by valuation officer and cost disclosed by assessee, in absence of any material document recovered during search, there would be no addition with regard to improvement of property and it would not be treated as an unexplained expenditure

Where reconciliation statement had been filed, no further addition or deletion would be made in respect of excess stock of jewellery

[2016] 74 taxmann.com 35 (Madras)

HIGH COURT OF MADRAS

Commissioner of Income-tax, Tiruchirapalli

v.

Smt. S. Jayalakshmi Ammal*

S. MANIKUMAR AND D. KRISHNAKUMAR, JJ.

TAX CASE APPEAL NOS. 488 & 489 OF 2016†

C.M.P. NO. 9944 OF 2016

AUGUST 1, 2016

Section 69B, read with sections 158B and 132, of the Income-tax Act, 1961 - Undisclosed investments (Purchase of property) - Assessment years 1990-91 to 2000-01 - During search, statement was given under section 132(4) by assessee's son that there was payment of Rs. 31 lakh towards purchase of property - This statement was not confronted to assessee during examination, nor was it corroborated with any material document - Whether neither such statement would be a conclusive evidence, nor any addition could be made - Held, yes [Para 14] [In favour of assessee]

Section 69C, read with section 158B, of the Income-tax Act, 1961 - Unexplained expenditure (Cost of construction) - Assessment years 1990-91 to 2000-01 - Valuation Officer estimated cost of construction of property at Rs. 2.99 lakh while assessee had disclosed cost of construction at Rs. 2.16 lakh - Difference of Rs. 83,700 was treated as unexplained investment - Tribunal noticed that no books of account was found during course of search - Valuation report had been obtained after search was over - Further, no material was available in respect of construction of building - Whether in absence of any material obtained during course of search, there would not be any addition with regard to improvement of property - Held, yes [Para 13] [In favour of assessee]

Section 69A, read with sections 145 and 158B, of the Income-tax Act, 1961 - Unexplained moneys (Jewellery) - Assessment years 1990-91 to 2000-01 - Assessing Officer made addition on account of difference in stock - Commissioner (Appeals), in view of quantum of stock of gold jewellery traded by assessee, considered excess gold of 215 gms as negligible and deleted addition towards excess stock of gold jewellery - Tribunal found that inspite of reconciliation statement made by assessee, Assessing Officer had proceeded to assess value of difference of gold jewellery - Whether since assessee had filed reconciliation statement there was no need for making any further addition or deletion - Held, yes [Para 17] [In favour of assessee]



Ours is one continued struggle against degradation sought to be inflicted upon us by the European, who desire to degrade us to the level of the raw Kaffir, whose occupation is hunting and whose sole ambition is to collect a certain number of cattle to buy a wife with, and then pass his life in indolence and nakedness.”

Mahatma Gandhi



[2017] 88 taxmann.com 666 (Delhi)
HIGH COURT OF DELHI
Principal Commissioner of Income-tax-9

v.

Ram Avtar Verma*

S. RAVINDRA BHAT AND NAJMI WAZIRI, JJ.
IT APPEAL NOS. 61 & 62 OF 2017
C.M.APPL. NOS. 2768, 2769 & 2770 OF 2017
FEBRUARY 7, 2017

Section 153B of the Income-tax Act, 1961 - Time limit for completion of assessment under section 153A - Assessment years 2000-01 and 2001-02 - No addition can be made while making assessment under section 153A in absence of any incriminating material unearthed during course of search or requisition of documents [In favour of assessee]

Pursuant to search, a notice under section 153A was issued to the assessee, which led to the assessee filing returns for the relevant years. The Assessing Officer made additions on standard deductions and also recalculated the net profit rate under section 80HHC resulting in additions. The Tribunal held that since no incriminating material was referred to by the Assessing Officer which was found during the course of search for making these additions, additions could not be justified.

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“

A nation's culture resides in the hearts and in the soul of its people.”

Mahatma Gandhi

[2017] 88 taxmann.com 610 (Gujarat)
HIGH COURT OF GUJARAT
Principal Commissioner of Income-tax-1

v.

Devangi*

M.R. SHAH AND B.N. KARIA, JJ.
TAX APPEAL NOS. 54 TO 57 OF 2017†
FEBRUARY 2, 2017

Section 153A of the Income-tax Act, 1961 - Search and seizure - Assessment in case of - Assessment years 2000-01 to 2004-05 - Only undisclosed income and undisclosed assets detected during search can be brought to tax under section 153A [In favour of assessee]

After the search conducted at the assessee's premises, the Assessing Officer initiated proceedings under section 153A on the basis of the incriminating material seized for the period of the assessment year 2004-05 onwards, and made the addition for the assessment years 2000-01 to 2004-05. The Tribunal deleted the addition holding that only undisclosed income and undisclosed assets deducted during the search could be brought to tax and in assessee's case no incriminating material was found with respect to the assessment years 2000-01 to 2004-05, at the time of search.

Held that the Tribunal was correct in law in holding that the scope of section 153A was limited to assessing only search related income.

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“

To give pleasure to a single heart by a single act is better than a thousand heads bowing in prayer.”

Mahatma Gandhi



[2017] 81 taxmann.com 271 (Gujarat)
HIGH COURT OF GUJARAT
Principal Commissioner of Income-tax
v.
Desai Construction (P.) Ltd.*
AKIL KURESHI AND A.J. SHASTRI, JJ.
TAX APPEAL NOS. 216 & 217 OF 2016
JULY 20, 2016

Section 153A of the Income-tax Act, 1961 - Search and seizure - Assessment in case of (Scope of assessment) - Assessment years 2004-05 and 2005-06 - In absence of any incriminating material found during search, Assessing Officer, in assessment under section 153A, would not be entitled to interfere with assessee's claim for deduction under section 80-IA, which was part of original assessment proceedings and such assessment had abated [In favour of assessee]

In absence of any incriminating material found during search, the Assessing Officer, in the assessment under section 153A, would not be entitled to interfere with the assessee's claim for deduction under section 80-IA, which was part of original assessment proceedings and such assessment had abated.

○○

[2017] 88 taxmann.com 611 (Gujarat)
HIGH COURT OF GUJARAT
Principal Commissioner of Income-tax, Ahmedabad
v.
Dipak Jashvantlal Panchal*
M.R. SHAH AND B.N. KARIA, JJ.
TAX APPEAL NOS. 110, 111, 115 & 116 OF 2017
FEBRUARY 14, 2017

Section 153A of the Income-tax Act, 1961 - Search and seizure - Assessment in case of - Only undisclosed income and undisclosed assets detected during search can be brought to tax in assessment under section 153A [In favour of assessee].

○○

Where pursuant to search conducted upon group to which assessee company belonged, a notice under section 153C was issued against assessee, since Tribunal had recorded a finding of fact that there was no reference to any incriminating material related to assessee found during search, impugned notice under section 153C against assessee was unjustified

[2021] 124 taxmann.com 358 (Delhi)

HIGH COURT OF DELHI

Principal Commissioner of Income Tax, Central-3

v.

Allied Perfumers (P.) Ltd.*

MANMOHAN AND SANJEEV NARULA, JJ.

IT APPEAL NOS. 380 AND 391 OF 2019†

DECEMBER 14, 2020

Section 153C, read with section 68, of the Income-tax Act, 1961 - Search and seizure - Assessment of any other person (Incriminating material) - Assessment years 2001-02 and 2002-03 - Assessee filed its return of income which was processed under section 143(1) - Subsequently, a search and seizure operation under section 132 was conducted upon 'SV' group to which assessee company belonged - Main allegation against this group was that it had taken a large number of accommodation entries in its various group companies by paying cash to several entry operators - Thus, after recording a satisfaction note, a notice under section 153C was issued against assessee - Subsequently, an assessment order was passed under section 153/143(3) making additions to income of assessee under section 68 - Assessee contended that no addition could be made to its income in absence of any incriminating material found against it during course of search - It was noted that Tribunal had given a clear finding of fact that there was no reference to any incriminating material related to assessee found during search which could justify action of revenue - Merely because a satisfaction note was recorded, same could not lead to reach conclusion that notice under section 153C was justified - Whether, on facts, impugned notice under section 153C issued against assessee and further additions under section 68 were unjustified and same were to be set aside - Held, yes [Para 13] [In favour of assessee]



**[2010] 320 ITR 408 (DELHI)
HIGH COURT OF DELHI
Commissioner of Income-tax**

v.

Pramod Kumar Gupta

BADAR DURREZ AHMED AND RAJIV SHAKDHER, JJ.

IT APPEAL NO 839 OF 2008

AUGUST 4, 2008

Section 158B of the Income-tax Act 1961 - Block assessment in search cases - Undisclosed income - Block period 1-4-1996 to 4-10-2002

Where there was no evidence found during search showing any unaccounted investment in property, no addition could be made in block assessment on basis of valuation report of District Valuation Officer [In favour of assessee]

Block assessment could only be made on the basis of evidence found during search and/or any other material or information relatable to such evidence.

Where there was no evidence found during search showing any unaccounted investment in property, no addition could be made in the block assessment on the basis of the valuation report of the District Valuation Officer.

R.D. Jolly and Paras Chaudhary *for the Appellant.*

JUDGMENT

This appeal pertains to the block period April 1, 1996, to October 4, 2002. The Assessing Officer had found undisclosed investment in property. The Commissioner of Income-tax (Appeals) deleted the addition made on the said basis. This was confirmed by the Income-tax Appellate Tribunal by its impugned order. The Tribunal noted that the assessee had explained the investment in the property by declaring it in the return of income before the date of search and the same had been accepted in the assessment made under section 143(3) after the date of search, i.e., February 26, 2004. The Tribunal further noted that it is also not in dispute that no material was found during search to indicate that any undisclosed investment for the block period

had been made in the property. The Tribunal was of the view that the block assessment could only be made on the basis of evidence found during search and/or any other material or information relatable to such evidence. The Tribunal held that in this case, there was no evidence found during search showing any unaccounted investment in the said property. The Tribunal also concluded that no addition could, therefore, have been made in the block assessment on the basis of the valuation report of the District Valuation Officer.

2. There is no reason for us to interfere with the findings of the Tribunal. No substantial question of law arises for our consideration. The appeal is dismissed.

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For computing undisclosed income, Assessing Officer cannot rely upon material disclosed by assessee in regular return filed prior to search

[2014] 42 taxmann.com 129 (Allahabad)

HIGH COURT OF ALLAHABAD

Commissioner of Income-tax

v.

Avadhesh Kumar Gupta*

SUNIL AMBWANI AND ADITYA NATH MITTAL, JJ.

IT APPEAL NO. 575 OF 2008†

SEPTEMBER 3, 2012

Section 158BB of the Income-tax Act, 1961 - Block assessment in search case - Undisclosed income, computation of [Evidence in search] - Whether in block assessment, undisclosed income is required to be computed on basis of evidence found during search - Held, yes - Whether, where no incriminating material was found during search to suggest that books of account maintained by assessee were unreliable, for purpose of computation under section 158BB, Assessing Officer could not rely upon material disclosed by assessee in regular return of income filed prior to date of search - Held, yes [Paras 11 & 12] [In favour of assessee]

○○



[2008] 166 Taxman 137 (Delhi)
HIGH COURT OF DELHI
Commissioner of Income-tax, Delhi-I, New Delhi*

v.

Vikas Electronics (International) (P.) Ltd.

MADAN B. LOKUR AND V.B. GUPTA, JJ.

IT APPEAL NO. 1407 OF 2006

AUGUST 27, 2007

I. Section 158B, read with section 158BC, of the Income-tax Act, 1961 - Block assessment in search cases - Undisclosed income - Whether in respect of a block assessment, undisclosed income is required to be computed on basis of evidence found during search or being directly relatable to evidence found during search - Held, yes - A search and seizure operation was conducted at various residential and business premises of assessee and during said search, books of account of assessee were seized - Subsequent to search and with a view to verify correctness of books, Deputy Director of Income-tax recorded statement of one 'V' who admitted to have made purchases of some goods from assessee - Subsequently, 'V' retracted from his statement and stated that goods were directly sent to his customers and he did not physically receive goods in his shop - Assessing Officer, however, held that 'V' was only preparing false bills for assessee for which he received a commission, and, therefore, he added back some amounts to income of assessee - Whether since statement of 'V' was recorded after search proceedings with a view to confirm correctness of account books and it was not recorded because of some incriminating material that was unearthed during search proceedings, it could not be said that statement of 'V' was a direct consequence or result of obtaining some incriminating material which showed that assessee had undisclosed income - Held, yes - Whether, therefore, addition made was unjustified - Held, yes

II. Section 158BA of the Income-tax Act, 1961 - Block assessment in search cases- Assessment of undisclosed income- Assessee was engaged in manufacture of mild steel galvanized iron wires- Wires were stacked in bundles and they apparently run into thousands of

bundles- Search party instead of actually counting bundles and using machines/cranes for weighing each bundle, as it was time consuming, estimated stock position which was higher than stock shown by assessee in its books- A.O, accordingly made addition of alleged excess stock- Whether since assessee could not be made to suffer consequences of lethargy on part of officers of revenue, alleged excess stock calculated by revenue was liable to be deleted - Held, yes

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[2006] 156 Taxman 361 (Delhi)
HIGH COURT OF DELHI
Commissioner of Income-tax, Delhi-II
v.
Jupiter Builders (P.) Ltd.*

MADAN B. LOKUR AND VIPIN SANGHI, JJ.
IT APPEAL NO. 273 OF 2005
SEPTEMBER 7, 2006

Section 158B of the Income-tax Act, 1961 - Block assessment in search cases - Undisclosed income - Block period 1987-88 to 1997-98 - Whether those elements of income which already stand disclosed in relevant assessment years falling within block period should be excluded while computing undisclosed income - Held, yes - Pursuant to search conducted at residential and business premises of assessee, notice under section 158BC was issued to assessee - During course of block assessment, Assessing Officer made certain additions representing expenses/income of assessee, as undisclosed income - Whether since there was no evidence found during search by Assessing Officer to make said additions, and relevant expenses/income had been duly reflected and disclosed in course of regular assessment proceedings, same could not be said to be undisclosed income of assessee - Held, yes

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[2003] 132 Taxman 274 (Madhya Pradesh)
HIGH COURT OF MADHYA PRADESH
Commissioner of Income-tax

v.

Khushlal Chand Nirmal Kumar*

DIPAK MISRA AND A.K. SHRIVASTAVA, JJ.

I.T. APPEAL NO. 58 OF 2000

APRIL 14, 2003

Section 158BC of the Income-tax Act, 1961 - Block assessment in search cases - Procedure for - Block period 1-4-1986 to 31-3-1996 - Whether no additions could be made in income of assessee merely on basis of report obtained from Departmental Valuation Officer, whose evidence was not found during course of search - Held, yes - Whether, in instant case, since nothing was found during search in assessee's premises with regard to investment in house, Tribunal was justified in deleting additions made by Assessing Officer on account of unexplained investment in construction - Held, yes

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“

Sense perceptions can be and often are false and deceptive, however real they may appear to us. Where there is realization outside the senses, it is infallible. It is proved not by extraneous evidence but in the transformed conduct and character of those who have felt the real presence of God within.”

Mahatma Gandhi

Where no material or evidence were found showing undisclosed income during search, block assessment was invalid

**[2013] 35 taxmann.com 98 (Madras)
HIGH COURT OF MADRAS
Commissioner of Income-tax
v.
Soora Subramaniam HUF (Individual)*

MRS. CHITRA VENKATARAMAN AND
P.P.S. JANARTHANA RAJA, JJ.
TAX CASE (APPEAL) NO. 289 OF 2005†
JUNE 29, 2011**

Section 158BB of the Income-tax Act, 1961 - Block assessment in search cases - Undisclosed income, computation of [No material found during search] - Block assessment 1986-87 to 1995-96 - During search conducted in the residential premises of assessee, only jewellery belonging to family members were seized - Whether, where no materials or evidence were found showing undisclosed income during search operations, entire block assessment was not sustainable - Held, yes [Para 4] [In favour of assessee]

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“

I claim to be a simple individual liable to err like any other fellow mortal. I own, however, that I have humility enough to confess my errors and to retrace my steps.”

Mahatma Gandhi



[2010] 2 taxmann.com 136 (Delhi)

HIGH COURT OF DELHI

Commissioner of Income Tax*

v.

Kuber Ploritech Ltd.

A.K. SIKRI AND VALMIKI J. MEHTA, JJ.

IT APPEAL NO. 516 OF 2009

AUGUST 7, 2009

Section 68 of the Income-tax Act, 1961 - Cash credits - An addition was made in hands of assessee in respect of share application money received by assessee from alleged bogus shareholders purporting it to be undisclosed income under section 68 – Assessee’s contention was that shares were purchased by ‘P’ and in that situation, additions should have been made in hands of ‘P’ and not in hands of assessee – Tribunal found that no evidence was found during course of search that shares were purchased under buy-back system by directors of assessee company – Tribunal, accordingly, held that addition could not be made in hands of assessee – Whether no question of law arose out of Tribunal’s order – Held, yes

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“

Among the many misdeeds of the British rule in India, history will look upon the act depriving a whole nation of arms as the blackest.”

Mahatma Gandhi

Where no incriminating evidence against assessee was found or seized during course of search so as to attract provisions of section 153A proceedings, no additions could be made on basis of statement of director of assessee company which were recorded under section 131 much later after search

An assessment order can be passed under section 153C by Income Tax Officer only after obtaining prior approval, under section 153D, of Joint Commissioner

**[2018] 89 taxmann.com 1 (Gujarat)
HIGH COURT OF GUJARAT
Principal Commissioner of Income-tax
v.
Sunrise Finlease (P.) Ltd.*
MS. HARSHA DEVANI
AND A.S. SUPEHIA, JJ.
TAX (APPEAL) NOS. 936 & 937 OF 2017†
NOVEMBER 28, 2017**

Section 153A of the Income-tax Act, 1961 - Search and seizure - Assessment in case of (Condition precedent) - Assessment year 2007-08 - Whether where no incriminating evidence against assessee was found during course of search so as to attract provisions of section 153A proceedings, no additions could be made on basis of material collected after search - Held, yes - Whether since no incriminating evidence against assessee was found or seized during course of search so as to attract provisions of section 153A proceedings, no additions could be made on basis of statement of director of assessee company which was recorded under section 131 much later after search - Held, yes [Paras 6 and 7] [In favour of assessee]

Section 153D, read with section 153A of the Income-tax Act, 1961 - Search and seizure - Prior approval - Assessment year 2007-08 - Whether an assessment order under section 153C can be passed by Income Tax Officer only after obtaining prior approval under section 153D of Joint Commissioner inasmuch as compliance of section 153D requirement is absolute - Held, yes [Paras 9 and 11] [In favour of assessee]



Where Assessing Officer made addition in hands of assessee firm for unaccounted investment and purchases merely on basis of confessional statement of assessee firm's partner before DRI, but no other evidences were brought on record, said addition was to be deleted

**[2020] 122 taxmann.com 41 (Gujarat)
HIGH COURT OF GUJARAT
Principal Commissioner of Income Tax, Surat
v.
Nageshwar Enterprises***

**J.B. PARDIWALA AND BHARGAV D. KARIA, JJ.
R/TAX APPEAL NO. 806 OF 2019†
FEBRUARY 3, 2020**

Section 69B of the Income-tax Act, 1961 - Undisclosed investments (Purchases) - Assessment year 2007-08 - During search conducted in assessee's premises, one partner of assessee-firm admitted before Directorate of Revenue Intelligence (DRI) that there was undervaluation of imported goods and that difference of undervalued amount was paid to seller firms of China and Japan in cash - Assessing Officer made additions on account of unaccounted investment and unaccounted purchases - Commissioner (Appeals) found that a partner of assessee-firm had stated that payment to Japanese and Chinese sellers were made after lifting of goods from port - Commissioner (Appeals) held that it was unbelievable that seller who was sitting in Japan/China delivered goods to a purchaser of India without receiving full payment - Tribunal also observed that no evidence or finding in this respect was brought on record either by DRI or Assessing Officer to suggest that under invoicing was done while importing goods - Tribunal held that no addition could be made in assessee's hand - Whether confessional statement had to be brought only in aid of other materials on record and since Commissioner (Appeals) and Tribunal both had concurrently recorded that except statement recorded under section 108 of Customs Act there was no other evidence, addition made by Assessing Officer was to be deleted - Held, yes [Paras 9 and 11] [In favour of assessee]



Landmark,
Judgments
of Income Tax

Decisions related to Wrong Address





Where even though Assessing Officer was in possession of correct address of assessee, yet he failed to serve notice under section 143(2) within statutory period of 12 months as provided in proviso to section 143(2), assessment order passed by him deserved to be set aside

[2017] 78 taxmann.com 321 (Bombay)

HIGH COURT OF BOMBAY

Commissioner of Income-tax-3

v.

Abacus Distribution Systems (India) (P.) Ltd.*

M.S. SANKLECHA AND A.K. MENON, JJ.

IT APPEAL NO. 1382 OF 2014†

FEBRUARY 7, 2017

Section 143 of the Income-tax Act, 1961 - Assessment - Issue of notice (Notice under section 143(2)) - Assessee filed its return of income on 20-11-2006 declaring its income as Nil - On 23-11-2006, assessee filed a communication to Assessing Officer intimating him that its address had changed - On 30-11-2007, Assessing Officer handed over notice under section 143(2) to Post Office for service at wrong/ earlier address of assessee - On 11-12-2007, Assessing Officer once again sent a notice under section 143(2) by post to assessee at address given by assessee in its communication later on - On receipt of notice, assessee objected to assessment proceedings on ground that no notice under section 143(2) had been served within statutory period of 12 months as provided in proviso to section 143(2) - Notwithstanding above, Assessing Officer passed an assessment order under section 143(2) - Tribunal, however allowed assessee's appeal and set aside impugned assessment order - Whether since it was undisputed that Assessing Officer issued notice under section 143(2) to correct address after expiry of prescribed period on basis of record which was already available with him, impugned order passed by Tribunal did not require any interference - Held, yes [Paras 9 and 10] [In favour of assessee]

○○

Where reassessment notice under section 148(1) was issued against assessee after expiry of period of limitation at old address of assessee which was already changed by assessee before date of issuance of said reassessment notice in official record by updating PAN data base, it could be said that there was no service of reassessment notice upon assessee

**[2018] 94 taxmann.com 95 (Chhattisgarh)
HIGH COURT OF CHHATTISGARH
Ardent Steel Ltd.**

v.

Assistant Commissioner of Income-tax (Central)-2, Raipur*

**SANJAY K. AGRAWAL, J.
WRIT PETITION (T) NO. 168 OF 2016
MAY 4, 2018**

Section 148, read with section 292BB, of the Income-tax Act, 1961 - Income escaping assessment - Issue of notice for (Service of notice) - Assessment year 2009-10 - Whether where notice for reopening of assessment was issued to assessee after expiry of period of limitation at old address of assessee which had already been changed by assessee in official record by updating PAN data base, it could be said that there was no service of reassessment notice upon assessee - Held, yes - Whether, further, service of notice to Chartered Accountant of assessee was not service at all and merely because assessee had participated in reassessment proceedings by filing return and filing objection to reassessment, notice issued to it through its Chartered Accountant, to sought reasons to believe, same could not make service of notice valid - Held, yes - Whether, therefore, reassessment proceedings on assessee was bad in law and deserved to be quashed - Held, yes [Paras 25 and 45] [In favour of assessee]

○○



Where Assessing Officer issued notice seeking to reopen assessment on wrong address and person alleged to be an employee of assessee was not authorized to receive notice, presumption of service of notice under section 292BB would not be attracted and, therefore, impugned additions made in reassessment proceedings deserved to be set aside

**[2014] 42 taxmann.com 387 (Allahabad)
HIGH COURT OF ALLAHABAD
Commissioner of Income-tax**

v.

Dr. Ajay Prakash*

**SUNIL AMBWANI AND SURYA PRAKASH KESARWANI, JJ.
IT APPEAL NO. 551 OF 2009†
SEPTEMBER 12, 2013**

Section 292BB, read with sections 148 and 282 of the Income-tax Act, 1961 - Notice - Deemed to be valid in certain circumstances [Conditions precedent] - Assessment year 1998-99 - Assessing Officer issued notice to assessee under section 148 - Assessee did not appear in proceedings - Assessing Officer considered service to be sufficient are thereafter made various additions - Tribunal noted that notice was sent on wrong address and person alleged to be an employee of assessee was not authorized to receive notice - Tribunal thus opined that presumption of service of notice under section 292BB would not be attracted - Accordingly, additions made in reassessment proceedings were deleted - Whether finding recorded by Tribunal being a finding of fact, no substantial question of law arose therefrom - Held, yes [Para 7] [In favour of assessee]

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[2013] 33 taxmann.com 680 (Punjab & Haryana)
HIGH COURT OF PUNJAB & HARYANA
Commissioner of Income-tax

v.

Sunil Kumar Chhabra*

M.M. KUMAR AND ALOK SINGH, JJ.
IT APPEAL NO. 85 OF 2011
FEBRUARY 1, 2012

- I. Section 143 of the Income-tax Act, 1961 - Assessment - Issue of notice for - Assessment year 2006-07 - Assessment was invalid where notice under section 143(2) was sent at wrong address [In favour of assessee]

The Tribunal set aside assessment order on the ground that the notice under section 143(2) was sent to the assessee at wrong address and no evidence had been placed on record showing that the said notice was delivered on the assessee or his authorized representative.

Held that from the bare perusal of section 27 of the General Clauses Act it is clear that service would be deemed to be sufficiently effected if a letter containing the document is properly addressed and posted by registered post. In the instant case, the notice in question had not been properly addressed, which was amongst a condition precedent for inferring 'service'. Therefore, the Tribunal was justified in setting aside assessment order.

- II. Section 143 of the Income-tax Act, 1961 - Assessment - Issue of notice - Assessment year 2006-07 - Assessment was invalid where notice under section 143(2) was issued after prescribed period of limitation [In favour of assessee]

The Commissioner (Appeals) set aside assessment order on the ground that there was no evidence of service of notice under section 143(2) upon the assessee within the prescribed period. The Tribunal sustained the order of the Commissioner (Appeals).

Held that the revenue had not been able to substantiate by adducing any evidence that any notice under section 143(2) was issued within the prescribed period of limitation. Therefore, assessment order was rightly set aside.



**[2004] 134 TAXMAN 734 (PUNJ. & HAR.)
HIGH COURT OF PUNJAB AND HARYANA
Commissioner of Income-tax**

v.

Vishal Gupta

**N.K. SODHI AND VIRENDER SINGH, JJ.
IT APPEAL NOS. 132 AND 133 OF 2002
SEPTEMBER 17, 2002**

Section 143, read with section 260A of the Income-tax Act, 1961 - Assessment - Notice for - Tribunal found that notice under section 143(2) was sent on address different from one which was furnished by assessee and came to conclusion that same was not validly served and, therefore, cancelled assessments - Whether question whether notice was validly served or not is pure question of fact and no question of law, much less substantial question arose from order of Tribunal - Held, yes

R.P. Sawhney and N.G. Sharma for the Appellant.

JUDGMENT

N.K. Sodhi, J. - This order will dispose of two Income-tax Appeal Nos. 132 and 133 of 2002, in which common questions of law and facts arise.

2. The only question that was raised before the Tribunal and in fact throughout the proceedings by the assessee was that the notice under section 143(2) of the Income-tax Act, 1961, had not been validly served. It is on record that a notice under this provision was initially served on Smt. Radhika Gupta on April 17, 1998. Admittedly, Smt. Radhika Gupta has no concern with the assessee. Notices were again sent by registered post on April 29, 1998, but these were sent to a wrong address as the address to which they were sent was not given by the assessee. It is not known how the Department obtained this address. It is clear from the finding recorded by the Tribunal in paragraph 11 of its order that the address as furnished by the assessee

was C/o. Gupta and Gupta, Agro Tech., Near Police Post, Sadar Bazar, Karnal, and the notices were sent at the address of Hindustan Agro Tech., 106, HSIDC, Sector 3, Karnal. In view of these findings, the Tribunal came to the conclusion that the notice under section 143(2) of the Act had not been validly served and, therefore, the assessments were cancelled. The question whether notice was validly served or not is a pure question of fact and, in our opinion, no question of law much less a substantial question of law arises from the order of the Tribunal. Consequently, these appeals are dismissed.

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“

I have learnt through bitter experience the one supreme lesson to conserve my anger, and as heat conserved is transmuted into energy, even so, our anger controlled can be transmuted into a power which can move the world.”

Mahatma Gandhi



Where notices for scrutiny, questionnaires, draft assessment order, etc., were all sent to new address of assessee, while final assessment order was shown in departmental record to have been sent at old address, and though said assessment order was typed, it had a hand written entry of date, a presumption had to be drawn that final assessment order was not at all passed within period of limitation

**[2016] 72 taxmann.com 203 (Delhi)
HIGH COURT OF DELHI
ST Microelectronics (P.) Ltd.**

v.

Deputy Commissioner of Income-tax*

**DR. S. MURALIDHAR AND VIBHU BAKHRU, JJ.
W.P. (C) NO. 3648 OF 2014
MAY 18, 2016**

Section 144, read with section 143, of the Income-tax Act, 1961 - Best judgment assessment (Period of limitation) - Assessment year 2009-10 - Petitioner shifted its premises and updated new address with department - During scrutiny, all notices, questionnaires, TPO's order and draft assessment order were sent to new address - Assessment order was shown in departmental record to have been issued only at old address - Assessee made specific averments that, in fact, no assessment order was passed within period of limitation - Revenue filed no counter affidavit - It was found that entire assessment order contained date only in one place and that too was hand written, while notice issued to petitioner on very same date under section 274 had date typed - Revenue failed to show that final assessment order was in fact passed within period of limitation i.e., on date which was written by hand - Whether a presumption had to be drawn that final assessment order was not passed within time period specified under section 144C(4), read with section 144C(3) and, hence, consequent penalty and demand notice was to be quashed - Held, yes [Paras 28 and 29] [In favour of assessee]

○○

When department had correct address of assessee furnished in return of income, sending notice at incorrect address available with bank and then drawing presumption of service of notice on ground that notice was not received back unserved, cannot be sustained

[2018] 96 taxmann.com 401 (Allahabad)

HIGH COURT OF ALLAHABAD

Suresh Kmar Sheetlani

v.

Income-tax Officer-1(3)*

BHARATI SAPRU AND DINESH KUMAR SINGH, JJ.

IT APPEAL NO. 413 OF 2011†

AUGUST 14, 2018

Section 148, read with sections 68 and 133, of the Income-tax Act, 1961 - Income escaping assessment - Issue of notice for (Service of notice) - Assessment year 1999-2000 - Assessee was not residing at 109, North Idgah Colony, Agra and he had left address two years back - Assessee had filed his return and in it he had mentioned his new address, i.e., 2, Rishi Marg, Shahganj, Agra - Department had with it new address of assessee, but notice was sent at old address on ground that it was address available with Bank in respect of bank account of assessee - Whether when department had correct address of assessee furnished in return of income, sending notice at incorrect address available with bank and then drawing presumption of service of notice on ground that notice was not received back unserved, could not be sustained - Held, yes [Paras 19 and 20] [In favour of assessee]

○○



Where show cause notice by Commissioner under section 263 was not properly served upon assessee which resulted in assessee not being given an opportunity of heard, order passed pursuant to said show cause notice was contrary to law and unsustainable

**[2017] 86 taxmann.com 35 (Delhi)
HIGH COURT OF DELHI
Tulsi Tracom (P.) Ltd.**

v.

Commissioner of Income-tax-9*

**DR. S.MURALIDHAR AND PRATHIBA M. SINGH, JJ.
IT APPEAL NO. 853 OF 2015†
SEPTEMBER 14, 2017**

Section 263 of the Income-tax Act, 1961 - Revision - Of orders prejudicial to interest of revenue (Opportunity of hearing) - Assessment year 2008-2009 - An assessment of assessee was done under section 143(3)/147 - Commissioner invoked its jurisdiction under section 263 by issuing a show cause notice and passed a revisional order holding that said assessment order was erroneous - It was apparent from records that show cause notice was initially given at wrong address of assessee and thereafter posted to correct address just two days prior to hearing - However, said notice was also returned unserved - Thus, full opportunity to attend hearing was not given to assessee - Whether therefore, order passed pursuant to said show cause notice was contrary to law and unsustainable, and, thus, was to be set aside - Held, yes [Para 24][In favour of assessee]

○○

“

I reject any religious doctrine that does not appeal to reason and is in conflict with morality.”

Mahatma Gandhi



Landmark
Judgments
of Income Tax

**Decisions related to
approval given u/s 151
in Mechanical Manner**

—————



SLP dismissed against High Court's ruling that where Joint Commissioner recorded satisfaction in mechanical manner and without application of mind to accord sanction for issuing notice under section 148, reopening of assessment was invalid

**[2015] 64 taxmann.com 313 (SC)
SUPREME COURT OF INDIA
Commissioner of Income-tax, Jabalpur (MP)
v.
S. Goyanka Lime & Chemical Ltd.***

**A.K. SIKRI AND ROHINTON FALI NARIMAN, JJ.
SPECIAL LEAVE TO APPEAL (C) NO.11916 OF 2015†
JULY 8, 2015**

Section 151, read with section 148 of the Income-tax Act, 1961 - Income escaping assessment - Sanction for issue of notice (Recording of satisfaction) - High Court by impugned order held that where Joint Commissioner recorded satisfaction in mechanical manner and without application of mind to accord sanction for issuing notice under section 148, reopening of assessment was invalid - Whether Special Leave Petition filed against impugned order was to be dismissed - Held, yes [In favour of assessee]

○○

“

I look only to the good qualities of men. Not being faultless myself, I won't presume to probe into the faults of others.”

Mahatma Gandhi

Where reopening notice was issued against assessee on grounds that assessee had received accommodation entries from an entity while order granting sanction to reopening under section 151 was on basis that it was assessee who was engaged in providing accommodation entries, since impugned sanction was granted without application of mind to reasons recorded for reopening, impugned reopening notice was bad in law

[2019] 104 taxmann.com 18 (Bombay)

HIGH COURT OF BOMBAY

My Car (Pune) (P.) Ltd.

v.

Income-tax Officer-14(4)*

AKIL KURESHI AND M.S. SANKLECHA, JJ.

WRIT PETITION NO. 14479 OF 2018

FEBRUARY 21, 2019

Section 151, read with section 68, of the Income-tax Act, 1961 - Income escaping assessment - Sanction for issue of notice (Recorded reasons) - Assessment year 2011-12 - Whether it is a settled position in law that grant of sanction by Commissioner under section 151 is not a mechanical act on his part but it requires due application of mind to reasons recorded before granting sanction - Held, yes - An information was received from ADIT (Investigation) that during search conducted in case of 'HV' group, it was found that 'HV' was engaged in activity of providing bogus accommodation entries and that assessee was also a beneficiary of 'HV' group - On basis of such information, reopening notice was issued against assessee - Commissioner also granted sanction under section 151 to issue of impugned reopening notice - It was noted that reasons recorded in support of reopening notice recorded activity of 'HV' group in providing accommodation entries while order granting sanction proceeded on basis that it was assessee who was engaged in providing accommodation entries - Whether sanction order indicated non-application of mind to reasons recorded for reopening, therefore, impugned reopening notice was bad in law and deserved to be quashed - Held, yes [Paras 8 and 9] [In favour of assessee]



[2011] 10 taxmann.com 169 (Delhi)
HIGH COURT OF DELHI
Central India Electric Supply Co. Ltd.

v.

Income-tax Officer, Company Circle-X, New Delhi*

SANJAY KISHAN KAUL AND RAJIV SHAKDHER, JJ.
IT APPEAL NO. 17 OF 1999
JANUARY 28, 2011

Section 147 of the Income-tax Act, 1961 - Income escaping assessment - Non-disclosure of primary facts - Assessment year 1965-66 - Assessee-company was engaged in generation and supply of electricity from its units - Said units were acquired by State Government in 1964 and compensation, therefor, was paid in same year - Assessee disclosed such compensation in its return for assessment year 1965-66 and assessment for that year was completed on certain loss - However, assessee had made claim for higher compensation and matter was in appeal which was finally settled by Supreme Court on 24-7-1985 - Assessee received a part of amount of enhanced compensation in assessment year 1979-80 - Thereafter, Assessing Officer issued notice under section 148 stating that since income had accrued to assessee under head of 'Long-term capital gains' on transfer of asset in respect of its two units, it was liable to be taxed in same assessment year when transfer took place; Assessing Officer made reassessment accordingly - Whether on facts there was no lack of disclosure by assessee inasmuch issue of enhanced compensation was settled only when Supreme Court pronounced its judgment and on receipt of enhanced compensation assessee had disclosed same in its return for that year - Held, yes - Whether, therefore, reopening of assessment for relevant assessment year was without jurisdiction - Held, yes

Section 151 of the Income-tax Act, 1961 - Income escaping assessment - Sanction for issue of notice - Assessment year 1965-66 - Whether even if CBDT agrees upon reasoning set out by ITO for reopening assessment, least, which is expected, is that an appropriate endorsement is made in this behalf setting out brief reasons; mere rubber stamping of underlying material would suggest that there was no application of mind and decision had been taken in a mechanical manner - Held, yes

[2017] 88 taxmann.com 649 (Delhi)
HIGH COURT OF DELHI
Principal Commissioner of Income-tax

v.

N.C. Cables Ltd.*

S. RAVINDRA BHAT AND NAJMI WAZIRI, JJ.
IT APPEAL NO. 335 OF 2015
JANUARY 11, 2017

Section 68 of the Income-tax Act, 1961 - Cash credit (Share Application money) - Assessment year 2001-02 - Where assessee had furnished large amount of materials in form of documents to evidence genuineness of identity and transactions as well as creditworthiness of share applicants and other creditors and Assessing Officer did not conduct appropriate enquiry to conclude that share infusion and advances received were from bogus entities, no addition could be made on that account by invoking section 68 [In favour of assessee]

The Assessing Officer made addition under section 68 on account of share application money and advances received by assessee relying upon information received from the investigation wing that the assessee was a beneficiary of accommodation entries received from certain established entry operators identified by the wing.

Held that the assessee had furnished large amount of materials in the form of documents to evidence the genuineness of the identity and the transactions as well as the creditworthiness of the parties. The Assessing Officer apparently conducted the perfunctory inquiry by deputing an inspector to the premises. The absence of these parties, after seven or eight years, ipso facto could not have led the Assessing Officer to conclude that the parties were fictitious or non-existent. The assessee had provided details of the Permanent Account Numbers (PAN) and Income Tax Returns (ITR) for the relevant years. Nothing prevented the Assessing Officer from inquiring into these details in support of its suspicion that the transactions were not genuine. Since the investigation wing had levelled several allegations, the Assessing Officer should have carried out a more intensive investigation into the income tax records to actually discern the volume of trade or



commerce of the share applicants/creditors and their inability, if any, to invest or advance the amounts in issue. Having failed to do so, the Assessing Officer was not justified in making the addition under section 68.

Section 151 of the Income-tax Act, 1961 - Income escaping assessment - Sanction for issue of notice - Assessment year 2001-02 - Reassessment was not valid when there was no proper application of mind by concerned sanctioning authority under section 151 [In favour of assessee]

○○

Assessee having submitted copy of bank statements along with bank book and reconciliation of banks and also furnished ledger accounts of sundry debtors for verification of bank transactions by Assessing Officer, proceedings pursuant to impugned notice seeking to reopen assessment in case of assessee were to be stayed as Assessing Officer had assumed jurisdiction under section 147 without there being any failure on part of assessee to disclose fully and truly all material facts regarding bank deposits

**[2020] 114 taxmann.com 613 (Gujarat)
HIGH COURT OF GUJARAT
Rajesh Lalitkumar Soni**

v.

Income-tax Officer, Ward 3(3)(4)*

**MS. HARSHA DEVANI AND MS SANGEETA K. VISHEN, JJ.
R/SPECIAL CIVIL APPLICATION NO. 21387 OF 2019
DECEMBER 3, 2019**

Section 68, read with section 147, of the Income-tax Act, 1961 - Cash credits (Bank deposits) - Sanction for issue of notice (Condition precedent) - Assessing Officer sought to reopen assessment in case of assessee with a view to verify large value transactions in ICICI Bank, Sarvodaya Co-operative Bank and DCB Bank wherein cash had been

deposited - However, assessee submitted that it had furnished copy of bank statements along with bank book and reconciliation of banks and also furnished ledger accounts of sundry debtors along with party's confirmations, PAN and address for verification by Assessing Officer - It was further submitted that assessment was sought to be reopened in case of assessee beyond a period of four years from end of relevant assessment year without there being any failure on part of assessee to disclose fully and truly all material facts necessary for his assessment and thus, assumption of jurisdiction on part of Assessing Officer under section 147 was without authority of law - Further, sanction under section 151 also had been granted in a mechanical manner without due application of mind - Whether by way of ad-interim relief, in view of submissions of assessee, further proceedings pursuant to impugned notice seeking to reopen assessment in case of assessee were to be stayed - Held, yes [Para 10] [In favour of assessee]

○○

Merely because recipient of donation had offered unaccounted money to tax would not mean that same was undisclosed income of donor that had escaped assessment when bank withdrawals substantiate donation made

**[2017] 82 taxmann.com 35 (Delhi)
HIGH COURT OF DELHI
Shamshad Khan**

v.

Assistant Commissioner of Income-tax*

**S. MURALIDHAR AND NAJMI WAZIRI, JJ.
WP (C) NO. 11504 OF 2016
APRIL 11, 2017**

Section 69A, read with sections 147 and 151, of the Income-tax Act, 1961 - Unexplained moneys (Donations) - Assessment year 2010-11 - Assessee-donor made donation to educational institution and such donation amount was duly accounted and disclosed in its return - After four years, revenue issued impugned notice to reopen



assessment on ground that recipient of donation had also offered this unaccounted money for taxation meaning that assessee too had undisclosed income that had escaped assessment - Whether since, Assessing Officer had not examined return filed by assessee-donor, which, if he had examined, would reveal that assessee had sufficient opening balance in bank account as also sufficient withdrawals therefrom substantiating donation made, impugned notice for reassessment was without application of mind - Held, yes [Para 10] [In favour of assessee]

Words & Phrase: Term 'reasons to believe' as occurring in section 147 of the Income-tax Act, 1961

○○

[2012] 20 taxmann.com 797 (Delhi)
HIGH COURT OF DELHI
Signature Hotels (P.) Ltd.

v.

Income-tax Officer*

DIPAK MISRA, C.J.
AND SANJIV KHANNA, J.
WP(C) NO. 8067 OF 2010
[ASSESSMENT YEAR 2003-04]
JULY 21, 2011

Section 147 of the Income-tax Act, 1961 - Income escaping assessment - General - Assessment year 2003-04 - Information given by Director of Income-tax (Investigation), that amount received by assessee from other company was nothing but accommodation entry and assessee was beneficiary, was not sufficient to reopen assessment when Assessing Officer did not apply his, own mind to that information [In favour of assessee]

○○

[2018] 99 taxmann.com 457 (Delhi)
HIGH COURT OF DELHI
Yum! Restaurants Asia Pte Ltd.

v.

Deputy Director of Income-tax (No. 2)*

DR. S. MURALIDHAR AND MS. PRATHIBA M. SINGH, JJ.
W.P. (C) NO. 614 OF 2014
AUGUST 31, 2017

Section 151 of the Income-tax Act, 1961 - Income escaping assessment - Sanction for issue of notice - Assessment year 2006-07 - Where both Additional Director of Income-tax and Director of Income-tax appeared to have concurred with reasons for reopening assessment but without applying their minds to fact that return originally filed was only processed under section 143(1) and not under section 143(3), impugned notice for reassessment was liable to be quashed [In favour of assessee]

Section 151(1) requires an officer of the rank of the Joint Commissioner to oversee the decision of the Assessing Officer where the return originally filed was assessed under section 143(3). Further, where the reopening of an assessment is sought to be made after the expiry of four years from the end of the relevant assessment year, a further check by the further superior officer is contemplated. Where both Additional Director of Income-tax and the Director of Income-tax appear to have concurred with the reasons for reopening the assessment but without applying their minds to the fact that the return originally filed was only processed under section 143(1) and not under section 143(3), impugned notice for reassessment was liable to be quashed.

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“

Honest disagreement is often a good sign of progress.”

Mahatma Gandhi



Landmark
Judgments
of Income Tax

**Decisions related to
Objections raised and not
disposed off by
Assessing Officer**

—————

It is obligatory on part of Assessing Officer to dispose of assessee's objections before invoking re-assessment proceedings

**[2017] 80 taxmann.com 77 (Karnataka)
HIGH COURT OF KARNATAKA
Deepak Extrusions (P.) Ltd.**

v.

**Deputy Commissioner of Income-tax, Central Circle 1(4),
Bangalore***

**JAYANT PATEL AND N. K. SUDHINDRARAO, JJ.
WRIT APPEAL NO. 1725 OF 2017 (T-IT)†
MARCH 15, 2017**

Section 147 of the Income-tax Act, 1961 - Income escaping assessment - Non-disclosure of primary facts (Objections of assessee) - Assessment year 2007-08 - Whether it is obligatory on part of Assessing Officer to dispose of assessee's objections before invoking re-assessment proceedings - Held, yes [Para 11] [In favour of assessee]

○○

“

Partition is bad. But whatever is past is past. We have only to look to the future.

Mahatma Gandhi



[2012] 27 taxmann.com 163 (Bombay)
HIGH COURT OF BOMBAY
Rabo India Finance Ltd.

v.

Deputy Commissioner of Income-tax*

DR. D.Y. CHANDRACHUD AND M.S. SANKLECHA, JJ.
WRIT PETITION NO. 371 OF 2012
[ASSESSMENT YEAR 2004-05]
MARCH 2, 2012

Section 147 of the Income-tax Act, 1961 - Income escaping assessment - General - Assessment year 2004-05 - Order of reassessment passed without disposing of objections of assessee would be invalid [In favour of assessee]

Where the Assessing Officer passed an order of reassessment without hearing objections of assessee, it was held that the Assessing Officer had acted arbitrarily and in a manner clearly contrary to law in passing an order without disposing of the objections of the assessee and such order was liable to be set aside.

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“

It is not non-violence if we merely love those that love us. It is non-violence only when we love those that hate us. I know how difficult it is to follow this grand law of love. But are not all great and good things difficult to do?"

Mahatma Gandhi



Landmark,
Judgments
of Income Tax

**Decisions related to
Order passed within four weeks
of objection disposal is invalid**

■



Where Assessing Officer passed assessment order within period of four weeks from date of rejection of assessee's objections to reopening of assessment, order so passed being invalid, deserved to be set aside

[2015] 59 taxmann.com 333 (Bombay)

HIGH COURT OF BOMBAY

Bharat Jayantilal Patel

v.

Union of India*

S.C. DHARMADHIKARI AND A.K. MENON, JJ.

WRIT PETITION (L) NO. 1044 OF 2015

MAY 5, 2015

Section 147 of the Income-tax Act, 1961 - Income escaping assessment - General (Validity of reassessment order) - Assessment year 2007-08 - Whether where Assessing Officer passed assessment order within period of four weeks from date of rejection of assessee's objections to reopening of assessment, order so passed being invalid, same deserved to be set aside - Held, yes [Para 23] [In favour of assessee]

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“

Let everyone try and find that as a result of daily prayer he adds something new to his life, something with which nothing can be compared.”

Mahatma Gandhi

**[2002] 125 Taxman963 (SC)
SUPREME COURT OF INDIA
GKN Driveshafts (India) Ltd.**

v.

Income-tax Officer*

**SYED SHAH MOHAMMED QUADRI AND ARIJIT PASAYAT, JJ.
CIVIL APPEAL NOS. 7731 TO 7737 OF 2002
NOVEMBER 25, 2002**

Section 148, read with section 143, of the Income-tax Act, 1961 - Income escaping assessment - Issue of notice for - Assessment years 1992-93 to 1994-95, 1997-98 and 1998-99 - Whether when a notice is issued under section 148, proper course of action for noticee is to file return and if he so desires, to seek reasons for issuing notice and on receipt thereof to file objections to issuance of notice - Held, yes - Whether where notices were issued under sections 143(2) and 148 and all that assessee was agitating could be submitted by filing reply to said notices, assessee was unjustified in invoking extraordinary writ jurisdiction at notice stage itself - Held, yes

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**[2009] 308 ITR 195 (Bombay)
HIGH COURT OF BOMBAY
Asian Paints Ltd.**

v.

Deputy Commissioner of Income-tax*

**D.K. DESHMUKH AND V.C. DAGA, JJ.
W.P. NO. 1351 OF 2008
JULY 10, 2008**

Section 147 of the Income-tax Act, 1961 - Income escaping assessment - General

In a situation where according to Assessing Officer he failed to apply his mind to relevant material in making assessment order, he cannot take advantage of his own wrong and reopen assessment by taking recourse to provisions of section 147 [Assessment year 2003-04] [In favour of assessee]



“The assessee specifically invited the attention of the Assessing Officer to the directions to the effect that if the Assessing Officer does not accept the objections to the reopening of the assessment or the reasons recorded, he shall not proceed further in the matter within a period of four weeks from the date of receipt or service of the said order on the assessee. Since the order dated 5-3-2015 is stated to be rejecting the objections, then, the assessee prayed that for a period of four weeks from that order, no steps should be taken. [Para 22].”

○○

Where Assessing Officer having rejected assessee’s objections seeking to reopen assessment, passed assessment order within four weeks from date of rejection of objections, order so passed being invalid, was to be set aside

[2015] 56 taxmann.com 199 (Mumbai - Trib.)

IN THE ITAT MUMBAI BENCH ‘H’

Hirachand Kanuga

v.

Deputy Commissioner of Income-tax*

VIJAY PAL RAO, JUDICIAL MEMBER

AND N.K. BILLAIYA, ACCOUNTANT MEMBER

IT APPEAL NOS. 4261 & 4262 (MUM.) OF 2012

[ASSESSMENT YEAR 2003-04]

FEBRUARY 27, 2015

Section 148 of the Income-tax Act, 1961 - Income escaping assessment - Issue of notice for (Assessee’s objections) - Assessment year 2003-04 - Whether where Assessing Officer having rejected assessee’s objections seeking to reopen assessment, passed assessment order within four weeks from date of rejection of objections, order so passed being invalid, was to be set aside - Held, yes [Para 14] [In favour of assessee]

“Where Assessing Officer having rejected assessee’s objections seeking to reopen assessment, passed assessment order within four weeks from date of rejection of objections, order so passed being invalid, was to be set aside.”

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Landmark
Judgments
of Income Tax

**Decisions related to
Penalty u/s 271(1)(C)**

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Where there was no record of satisfaction by Assessing Officer in relation to any concealment of income or furnishing of inaccurate particulars by assessee in notice issued for initiation of penalty proceedings under section 271(1)(c), same being sine qua non for initiation of such proceedings, Tribunal had rightly ordered to drop penalty proceedings

[2020] 113 taxmann.com 574 (Bombay)

HIGH COURT OF BOMBAY

Principal Commissioner of Income-tax (Central), Bengaluru

v.

Goa Coastal Resorts and Recreation (P.) Ltd.*

M.S. SONAK AND NUTAN D. SARDESSAI, JJ.

TAX APPEAL NO. 24 OF 2019

NOVEMBER 11, 2019

Section 271(1)(c) of the Income-tax Act, 1961 - Penalty - For concealment of income (AO's satisfaction) - Whether where there was no record of satisfaction by Assessing Officer in relation to any concealment of income or furnishing of inaccurate particulars by assessee in notice issued for initiation of penalty proceedings under section 271(1)(c), same being sine qua non for initiation of such proceedings, Tribunal had rightly ordered to drop penalty proceedings - Held, yes [Paras 5 and 8] [In favour of assessee]

○○

“

You must be the change you wish to see in the world.”

Mahatma Gandhi

[2010] 189 Taxman 322 (SC)
SUPREME COURT OF INDIA
Commissioner of Income-tax, Ahmedabad

v.

Reliance Petroproducts (P.) Ltd.*

V.S. SIRPURKAR AND DR. MUKUNDAKAM SHARMA, JJ.
CIVIL APPEAL NO. 2463 OF 2010
MARCH 17, 2010

Section 271(1)(c) of the Income-tax Act, 1961 - Penalty - For concealment of income - Assessment year 2001-02 - Whether merely because assessee had claimed expenditure, which claim was not accepted or was not acceptable to revenue, that by itself would not attract penalty under section 271(1)(c) - Held, yes

○○

[2017] 88 taxmann.com 413 (Bombay)
HIGH COURT OF BOMBAY
Commissioner of Income-tax

v.

Samson Perinchery*
M.S. SANKLECHA

AND A.K. MENON, JJ.
IT APPEAL NOS. 953, 1097, 1154 & 1226 OF 2014†
JANUARY 5, 2017

Section 271(1)(c) of the Income-tax Act, 1961 - Penalty - For concealment of income (General principle) - Assessment years 2003-04 to 2006-07 - Order imposing penalty has to be made only on ground of which penalty proceedings has been initiated, and it cannot be on a fresh ground of which assessee has no notice [In favour of assessee]

Concealment of income and furnishing of inaccurate particulars of income in section 271(1)(c) carry different meanings/connotations



and, therefore, the satisfaction of the Assessing Officer with regard to only one of the two breaches mentioned under section 271(1)(c) for initiation of penalty proceedings will not warrant/permit penalty being imposed for the other. The order imposing penalty has to be made only on the ground of which the penalty proceedings has been initiated, and it cannot be on a fresh ground of which the assessee has no notice. Therefore, where the Assessing Officer initiated penalty proceedings under section 271(1)(c) for furnishing inaccurate particulars of income, the order imposing penalty for concealment of income was not valid.

○○

Merely because books of account of assessee were rejected or estimated addition was made, no penalty is leviable under section 271(1)(c)

[2014] 44 taxmann.com 9 (Rajasthan)

HIGH COURT OF RAJASTHAN

Commissioner of Income-tax

v.

Krishi Tyre Retreading & Rubber Industries*

NARENDRA KUMAR JAIN AND J.K. RANKA, JJ.

D.B. ITA NO. 542 OF 2008

SEPTEMBER 19, 2013

Section 271(1)(c) of the Income-tax Act, 1961 - Penalty - For concealment of income (In case of addition on estimate basis) - Assessment year 1996-97 - Whether where addition had been sustained purely on estimate basis and no positive fact or finding had been found so as to even make said addition, no penalty was leviable under section 271(1)(c) - Held, yes [In favour of assessee]

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IN THE ITAT MUMBAI BENCH 'E'
M/s Tanna Financial Services Pvt. Ltd.
v.
Assistant Commissioner of Income-tax*

HON'BLE SHRI R. C. SHARMA, ACCOUNTANT MEMBER
HON'BLE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
IT APPEAL NOS. 206/MUM/2011
[ASSESSMENT YEAR 2006-07]
AUGUST 06, 2018

“It is observed that while issuing the notice under section 274 r/w section 271 in the standard format, the Assessing Officer should delete the inappropriate words or paragraphs, otherwise, it may indicate that the Assessing Officer himself was not sure as to whether he had proceeded on the basis that the assessee had concealed his income or had furnished inaccurate particulars of income. Held yes [In favour of Assessee]

○○

“

Education in the understanding of citizenship is a short-term affair if we are honest and earnest.”

Mahatma Gandhi



Landmark
Judgments
of Income Tax

**Decisions related to
Validity of Addition which was
not the basis for selection
under CASS**

—————

**IN THE ITAT PUNE BENCH 'SMC'
Gandhiraj Mazoor Sahakari Sanstha Ltd**

v.

I.T.O Ward-1, Jalna*

**MS SUSHMA CHOWLA, JUDICIAL MEMBER
IT APPEAL NOS. 10/PUN/2019
[ASSESSMENT YEAR 2015-16]
JUNE 24, 2019**

“The term used in the notice u/s 143(2) was “Complete Scrutiny” but it was mentioned in the reasons that case was selected for “low profits shown by the assessee”. During the course of assessment proceedings, the A.O. accepted the contentions made by the assessee & therefore no addition was made on the said ground. However, the A.O. verified the claim of deduction u/s 80P(2)(a)(vi) & came to conclusion that the assessee is not entitled to the same.”

ITAT after verifying facts & relevant CBDT Instructions on the Subject & upon going through the Judicial Precedents came to the conclusion that in the absence of any permission received from the Principal Commissioner or the Commissioner, I find no merit in the order of Assessing Officer in making the aforesaid addition on an issue which was not the basis for selection case under CASS.

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“

Truth is by nature self-evident. As soon as you remove the cobwebs of ignorance that surround it, it shines clear.”

Mahatma Gandhi



IN THE ITAT PUNE BENCH 'SMC'
Nazare Vikas Karyakari Seva Sahakari Society Ltd
v.
I.T.O Ward-1, Solapur*

SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER
SHRI PARTHA SARATHI CHAUDHRY, JUDICIAL MEMBER
IT APPEAL NOS. 1518/PUN/2018
[ASSESSMENT YEAR 2014-15]
FEBRUARY 8, 2019

In the cases, selected under CASS, the additions on the non-CASS issues can only be made after obtaining due permission from the superior authorities and the said approval of the superior authorities in writing should be available on records. Held Yes [In favour of assessee]

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“

Always aim at complete harmony of thought and word and deed. Always aim at purifying your thoughts and everything will be well.”

Mahatma Gandhi



Landmark
Judgments
of Income Tax

**Decisions related to
Cash deposited during
Demonitisation**

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**IN THE ITAT VISHAKHAPATNAM BENCH
M/s Hirapanna Jewellers**

v.

ACIT, Central Circle-1, Vishakhapatnam*

**BEFORE HON'BLE SHRI N. K. CHOUDHRY,
JUDICIAL MEMBER**

**HON'BLE SHRI D. S. SUNDER SINGH,
ACCOUNTANT MEMBER**

**IT APPEAL NOS. 253/VIZ/2020
[ASSESSMENT YEAR 2017-18]**

MAY 12, 2021

Assessee was in the business of jewellery trading and had deposited Rs 5.72 Crores into the bank on 8/11/2016, the day demonetisation was announced as cash sales and cash advances. The assessee had duly explained the source as sales, produced the sale bills, and admitted the same as revenue receipt and the movement of stock. AO during the survey proceedings, noticed that the cash deposit was not in line with the regular cash deposits in the regular course of business and the names of the parties to whom sales were made, their addresses, etc. were not available. So the AO added the cash deposit as unexplained cash credit. Assessee pointed out that the AO had accepted the sales and the books of accounts of the assessee and so this is a case of double taxation- sales as well as unexplained credit.

“Once the AO accepts the books of accounts, no addition can be made in this case. In spite of the survey, the AO did not notice any defect in sale and stock and so, routine observation of suspicious nature such as making sales of 270 bills in the span of 4 hours, non-availability of KYC documents for sales, non-writing of tag of the jewellery to the sale bills, non-availability of CCTV footage for huge rush of public etc. are not a cause for any suspicion. Appeal of the revenue was dismissed.”

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Landmark
Judgments
of Income Tax