

Legal Decisions



Income Tax

LD/69/54, [Madras High Court: Tax Case Appeal No.32 /2019], Sutherland Global Services Vs. The Commissioner of Income Tax, 23/09/2020

High Court held that ITAT had no jurisdiction to direct the AO by virtually reopening the proceedings concluded under section 201 of the Act pursuant to the order passed by the CIT(A) in assessee's favour. The issue had attained finality pursuant to favorable order of CIT(A) against TDS order under section 201, which was not contested by the Revenue. Tribunal misdirected itself by observing that it has got all powers to examine full facts as it is the final fact finding Authority and thus ITAT exceeded its jurisdiction in remanding the issue.

LD/69/55, [Madras High Court: T.C.A.No.670 of 2019], The Commissioner of Income Tax Vs. VVA Hotels Private Limited, 21/09/2020

Addition under section 56(2)(viib) deleted by the High Court with respect to shares issued at premium by assessee-company by accepting Discounted Cash Flow (DCF) method under Rule 11UA to substantiate the share valuation. AO had noted that assessee's actual revenue varied from the projected revenue for four years, HC holds that a 'projected value' is an 'estimate' and in any case, the variation in the estimate in the present case, was marginal. DCF method as stipulated under Rule 11UA does provide for an estimation and merely because the AO is of the view that NAV method alone has to be adopted is not a ground to reject the DCF method.

LD/69/56, [ITAT Mumbai: ITA NO. 3295/MUM/2019], The Asst. Commissioner of Income Tax Vs. Ehara Engineering P. Ltd., 21/09/2020

No penalty to be levied under section 271(1)(c) where addition is made merely on estimation basis. While framing the assessment order under section

143(3) r.e. Section 147, an addition on account of bogus purchases was made by the AO to the extent of 12.5% of the total bogus purchases and thereafter AO initiated penalty proceedings under section 271(1)(c) for the same. There has to be a positive act of concealment on the part of the assessee and onus to prove this is on the Department. It is a well settled legal position that no penalty can be levied on estimated additions.

LD/69/57; ITAT Mumbai: ITA NO. ITA No. 852/Mum/2019, The Dy. Commissioner of Income Tax Vs. HDFC Sales Private Limited, 18/09/2020

Disallowance under section 37 for AY 2015-16 towards provision for expenses in 31 different expense heads made on 31.03.2015 was deleted by the CIT(A) in the case of HDFC Sales P. Ltd. ITAT affirmed CIT(A)'s order. Assessee had made year-end provision of ₹ 10.24 crore based on estimation of previous month's expenditure and ultimately made expenses of ₹ 10.46 crore. ITAT rejected Revenue's contention that there was no scientific basis for making provision of the expenses and the estimation projected was misleading. ITAT also rejected revenue's contention that if there was certain liability, the assessee should have made TDS and in absence of TDS the provision was liable to be disallowed under section 40(a)(ia). ITAT upheld CIT(A)'s observation that no disallowance can be made in the context of Section 40(a)(ia) as no payment was exactly identified or quantified.

LD/69/58, Karnataka High Court: I.T.A. NO.171 OF 2011, The Director of Income Tax, International Taxation Vs. Texas Instruments Incorporated, 14/09/2020

Pursuant to Section 195 application made by the Indian subsidiary of assessee (which was the payer to the assessee), AO had held that 20% of the IT support service receipts was chargeable to tax. However, during the assessment proceedings of assessee it was held that 15% of various other components included in the IT support service such as salary, equipment and maintenance was

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also taxable as royalty. AO thus raised a demand and also levied interest under section 234B. ITAT held that in respect of non-residents, Section 195 puts an obligation on the payer to deduct income-tax at source and thus the entire tax is to be deducted at source which is payable on such payments made by the payer to the non-resident and thus the question of payment of advance tax by non-resident-assessee would not arise. ITAT had thus held that interest under section 234B was not leviable. High Court upheld ITAT's order.

Transfer Pricing

LD/69/59, ITAT Delhi: ITA No. 161/Del/2017, BhartiAirtel Services Limited Vs. The Dy. Commissioner of Income Tax, 06/10/2020

Delhi ITAT held that outstanding receivables is a separate international transaction of the assessee since payment was not made within the period of 15 days as stated by the service agreement between assessee and its AE which has certain benefit of extended credit to the AEs. ITAT noted that as per agreement, if the payment is beyond 15 days, it does not include the cost of service for withholding the payment beyond 15 days by the associated enterprises. This shows that in the service cost, the cost of outstanding which remains overdue is not factored. ITAT held that outstanding debtors beyond an agreed period is a separate international transaction of providing funds to its associated enterprise for which the assessee must have been compensated in the form of interest at LIBOR + 300 BPS as held by CIT(A).

LD/69/60, [ITAT Delhi: ITA No. 5165/Del/2016], Global One India Private Limited Vs. The Dy. Commissioner of Income Tax, 30/09/2020

CIT(A) refused admission of additional evidence by assessee in the form of audited financial statements filed for the first time during the appellate proceedings for AY 2004-05. Delhi ITAT rejected such refusal of CIT(A) and directed the AO to make de-novo assessment after duly considering the evidence. ITAT noted that due to some changes in the management, assessee could not file audited financial statements along with audit report and other statutory documents during the assessment proceedings owing to which AO made an adjustment by way of an ad-hoc 12%

mark-up on total cost of providing services by the company to its parent company. As per ITAT, an earlier inability to lead evidence should not be held against the assessee unless it is known to be incorrect or suggested to be incorrect or there was evidence to suspect that the evidence was fabricated as mentioned in CBDT Instruction No.14 (XL-35) dated 11th April, 1955. ITAT directed AO to make the assessment after duly considering the evidence and after giving proper opportunity to the assessee.



INDIRECT TAXES

GST

LD/69/61, [2020-TIOL-1599-MAD-GST], Transtonnelstroy Afcons Joint Venture and Ors vs. Union of India and Ors, 21/09/2020

Section 54(3)(ii) of the CGST Act is held to be constitutionally valid. Rule 89 (5) of the CGST Rules, limiting the ITC only in respect of Inputs and not in respect of input services is held to be intra-vires Section 54(3)(ii) of the CGST Act.

LD/69/62, [2020-TIOL-1695-HC MUM-GST], Royal Chains Pvt Ltd. Vs. Union of India and Ors 08/10/2020

High Court took note of retrospective application of the amendment to Section 50(1) and directions issued by CBIC to the field formations that in respect of the period 1st July, 2017 to 31st August, 2020, interest should be recovered only on Net liability (i.e. after deduction from eligible ITC).

Sales Tax/VAT

LD/69/63, [Madras High Court: W.P. 7014 of 2015], M/s Inpired Foods Vs. The Commercial Tax Officer, 14/09/2020

Revenue passed an order whereby it brought the assessee which was a hotel of non-star category into a Star-hotel category under section 7(1)(a). As per Revenue, assessee had claimed ITC as contrary to the provisions of the Act. High Court quashed the said order of Revenue stating that even assuming that the assessee had wrongly claimed ITC, the only option available to the Revenue would be to reverse the ITC as provided under section 27(2) of the TNVAT Act.

Excise

LD/69/64, [Madras High Court: C.M.A.No.2 of 2020], The Commissioner of GST & Central Excise Vs. JSW Steel Limited, 09/09/2020

CESTAT held that assessee could not be attributed with any suppression of relevant facts in regard to valuation in respect of Steel Bars, Rods, etc. transferred for self-consumption for use in the construction work to their Sister Concerns. Revenue appealed against this order of CESTAT which appeal was dismissed by the High Court. High Court noted that assessee followed their advice/suggestion which was based on the Audit objection and changed its valuation method from Rule 4 (transactional value with unrelated parties) of the Central Excise (Valuation) Rules 2000, to Rule 8 (i.e. 110% of cost of transfer of goods). High Court held that assessee cannot be blamed for suppression of facts.

Customs

LD/69/65, CESTAT Delhi: W.P. 7014 of 2015, Aureole Atelier Pvt. Limited Vs. The Commissioner of Customs (Preventive), 11/02/2020

Revenue ordered for confiscation of imported goods of assessee i.e., Sunglasses having proper accreditation and alleging customs duties evasion and also enhanced its value by taking a declaration from assessee's CEO that the differential duty shall be paid by it if required and also imposed penalty on whose payment the goods would be redeemed. CESTAT noted that no reasons recorded for rejection of transaction value before taking the exercise of revaluation and enhancement of transaction value. CESTAT quashed the enhancement of declared value, redemption fine and penalty and held that assessee shall be entitled to consequential benefits including refund of differential duty deposited along with interest under section 129 EE of the Central Excise Act.

Disciplinary Case



Systematic embezzlement of money of an educational institution by Respondent while working as its Accountant - Conviction of Respondent by foreign Court with five years of imprisonment and monetary fine for siphoning off the money

Held:

In the instant case, the charge against the Respondent is that while working as an accountant with the Complainant college, he has systematically embezzled the money of the college by manipulations, dishonestly committed series of fraudulent acts in order to cause wrongful gain to himself and loss to College. Total recovery of ₹ 40,76,23,196/- against him is recoverable comprising of the principal amount due along with interest. The Committee noted the order of Dubai Court dated 26th November, 2012 against

the Respondent in case no. 2058/2012 wherein he had been held guilty and was sentenced to five years of imprisonment alongwith a monetary fine of AED15,773,946. The Committee also took note of the report of Special auditor M/s Moore Stephens dated 17.01.2013 wherein it was clearly mentioned that the Respondent adopted the fraudulent means to siphon off the money of the Complainant college. The Committee on perusal of the documents available on record was of the view that the conduct of the Respondent shows that he was actively involved in misappropriation of funds of the Complainant college. The Committee also noted that the Respondent has not produced any written submission at any stage i.e., neither at prima facie stage nor at the time of hearing despite notice being duly served upon him. Further, the Committee also perused the membership file of the Respondent wherein it was found that the Respondent was regular in depositing his membership fee with the Regional office and there was no change in his professional address in ICAI's record indicating that the Respondent was trying to deliberately avoid the submissions/ clarification/ appearing before it. In view of above noted facts, the Committee was of the opinion that the Respondent is guilty of professional and other misconduct falling within the meaning Clause (2) of Part IV of First Schedule and Clause (4) of Part II and Clause (1) of Part III of the Second Schedule to the Chartered Accountants Act, 1949.