

DIRECT TAX – RECENT JUDGMENT

CA. Paras Savla, CA. Ketan Vajani

S. 54F Deduction available in case investment in residential house made in the name of legal heir

The assessee has invested the sale consideration on transfer of Capital Asset in purchasing a new residential property in the name of a married widowed dependent daughter of the assessee and also legal heir of the assessee. It was held that exemption u/s. 54F of the Act on the amount invested in purchase of residential house in his daughter's name is allowable. *Krishnappa Jayaramaiah v. ITO* [2021] 125 taxmann.com 110 (Bangalore - Trib.)

S. 80IB(10) Deduction can be allowed on the basis of Completion Certificate issued by Registered Architech

Deduction u/s 80-IB was allowed where completion certificate was issued by registered architect as per State Municipal Corporation Act and it also held that deduction could not be denied merely because completion certificate was not issued by local authority PCIT *Majestic Developers* [2020] 122 taxmann.com 123 (Karnataka). SLP against the said decision has been dismissed by Supreme Court *CIT v. Majestic Developers* [2021] 125 taxmann.com 82 (SC)

S. 147 Reassessment based on information contained in financial statements is change of opinion

It is clear from the reasons that there is no reference to any new tangible material, but the reference is only to the financial statement of the Petitioner itself. Therefore, there is not only no failure to disclose any material facts, there is no mention in the reasons that there has been a failure to disclose. A specific query was raised regarding the implications of Shareholders account, which dealt with by the Assessing Officer in the assessment order and what is sought to be done by the Assessing Officer in the impugned notice and order is a mere change of opinion, which is not permissible. *Bajaj Allianz Life Insurance Company Ltd. v. DCIT* [2020] 113 taxmann.com 238 (Bombay). Supreme Court dismissed the SLP *DCIT v. Bajaj Allianz Life Insurance Company Ltd* [2021] 125 taxmann.com 71 (SC)

S. 150 Time limit for issue of notice for reassessment

Just because partnership firm failed to file its return of income for relevant year, by itself, will not confer jurisdiction upon authority concerned to issue notice against individual partners of firm with respect to their individual return of income for relevant year in consideration. As per section 150(2), the Appellate Authority could give directions for the re-assessment only in respect of an assessment year, which was within the limitation stipulated under section 148 in respect of which re-assessment proceedings could be initiated on the date of passing of order under appeal. *Nisharahemad Vajirkhan Pathan v. ITO* [2021] 123 taxmann.com 448 (Gujarat)

S. 271(1)(c), 274 Not striking off irrelevant matter would vitiate penalty proceedings

The assessment proceedings, prima facie or otherwise forms an opinion to launch penalty proceedings against the assessee. But that translates into action only through the statutory notice under section 271(1)(c), read with section 274 of IT Act. True, the assessment proceedings form the basis for the penalty proceedings, but they are not composite proceedings to draw strength from each other. Nor can each cure the other's defect. A penalty proceeding is a corollary; nevertheless, it must stand on its own. These proceedings culminate under a different statutory scheme that remains distinct from the assessment proceedings. Therefore, the assessee must be informed of the grounds of the penalty proceedings only through statutory notice. An omnibus notice suffers from the vice of vagueness. Not striking off irrelevant matter would vitiate penalty proceedings - *Mohd. Farhan A. Shaikh v. DCIT* [2021] 125 taxmann.com 253 (Bombay)[FB]

S. 276, 277 Prosecution

High Court has held that-

- i. The delayed payment of Income Tax would not amount to evasion of tax.
- ii. There is no straight-jacket formula which could be laid down as to determine what is a misstatement and what is not. It would be required for the Court and/or the Assessing Officer or the Appellate Authority to determine the same on the facts of the case liberally in favour of the assessee.

- iii. For an offence to be said to be committed under section 277 of the Income-tax Act, the misstatement is required to be willful made with a malafide or dishonest intention in order to prosecute the assessee.
- iv. All the Directors of the Company cannot be automatically prosecuted for any violation of the Income-tax Act. There has to be specific allegations made against each of the Directors who is intended to be prosecuted and such allegation would have to amount to an offence and satisfy the requirement of that particular provision under which the prosecution is sought to be initiated, more so when the prosecution is initiated by the Income-tax department who has all the requisite material in its possession, and a preliminary investigation has been concluded by the Income-tax department before filing of the criminal complaint.
- v. At the time of taking Cognisance and issuance of process, the Court taking Cognisance is required to pass a sufficiently detailed order to support the conclusion to take Cognisance and issue process, in terms of the discussion above. The judicious application of mind to the law and facts of the matter, should be apparent on the ex-facie reading of the order of Cognisance.
- vi. Before issuing Summons to an accused residing outside the Jurisdiction, there has to be an application of mind by the Court issuing Summons and after conducting an enquiry under section 202 (2) of Cr.P.C. the Court issuing Summons has to come to a conclusion that such Summons are required to be issued to an accused residing outside its jurisdiction.

Confident Projects (india) (P.) Ltd. v Income-tax Department [2021] 124 taxmann.com 36 (Karnataka)

S. 276C Prosecution

The demand raised by the Department is not crystallized as the appeal preferred by the petitioner is pending adjudication on merits. Considering the aforesaid factual scenario and since the petitioner has already deposited a substantial part of the demand raised by the Department, it was held that the continuation of the prosecution against the petitioner for the same allegations could not be permitted. Hemal Manubhai Patel v. State of Gujarat [2021] 123 taxmann.com 400 (Gujarat)