

## **DIRECT TAX – RECENT JUDGMENT**

CA. Paras K. Savla, CA. Hemant R. Shah

### **Stay of Demand**

While grant stay Hon. ITAT has issued instructions for utilisation of sums. It order that any amount available to the assessee, as a result of this stay order and as a result of garnishee proceedings being lifted, will be first used for making payments of overdue and current wages payable to the labourer working with the assessee, and for making payment of overdue and current salaries to its employees. The amount available, after this exercise, will be used for the purpose of carrying out construction activity as necessary for providing quarantine facilities, as directed by the Collector. Any surplus amount thereafter will be used for construction activities of the business. The assessee will give an undertaking to this effect in writing. Hearing of stay of demand was held through video conference. Pandhes Infracon (P.) Ltd. V. ACIT [2020] 116 taxmann.com 376 (Mumbai - Trib.)

### **S.14A No disallowance if no exempt income earned**

No disallowance under section 14A could have been made when assessee has no earned any exempt income. DCIT v JSW Ltd. [2020] 116 taxmann.com 565 (Mumbai - Trib.)

### **S.28 Provision for diminution in closing stock**

The provision for diminution in value of stock-in-trade has been made out of the trading account or within the trading account. If such a provision is made outside the trading account (only while computation of income) then same may not be allowable. ACIT v. PNB Gilts Ltd. [2020] 116 taxmann.com 418 (Delhi - Trib.)

### **S. 32 Depreciation on cost of developing Golf Course**

Depreciation on cost of developing golf course on land was allowed, considering it as plant and machinery Landbase India Ltd.v. ACIT [2020] 116 taxmann.com 574 (Delhi - Trib.)

### **S. 43B Deduction of Leave Salary on payment basis constitutional valid**

To wit, the liability in lieu of tax, duty, cess, bonus, commission etc. also arise in the present as per the mercantile system, but assessee used to defer payment thereof despite claiming deductions there against under the guise of mercantile system of accounting. Resultantly, irrespective of the category of liability, such deductions were regulated by law under the aegis of Section 43B, keeping in mind the peculiar exigencies of fiscal affairs and underlying concerns of public revenue. A priori, merely because a certain liability has been declared to be a present liability by the Court as per the prevailing enactment, it does not follow that legislature is denuded of its power to correct the mischief with prospective effect, including to create a new liability, exempt an existing liability, create a deduction

or subject an existing deduction to new regulatory measures. Strictly speaking, the Court cannot venture into hypothetical spheres while adjudging constitutionality of a duly enacted provision and unfounded limitations cannot be read into the process of judicial review. A priori, the plea that clause (f) has been enacted with the sole purpose to defeat the judgment of this Court is misconceived - UOI v. Exide Industries Ltd. [2020] 116 taxmann.com 378 (SC)

### **S. 68 Cash Credit**

At the time of assessment, the assessee had failed to produce any explanation or evidence in support of the entries regarding purchases made from unregistered dealers. In the penalty proceedings, however, the assessee produced affidavits of 13 unregistered dealers out of whom 12 were examined by the Officer. The Officer recorded their statements and did not find any infirmity therein including about their credentials. The dealers stood by the assertion made by the assessee about the purchases on credit from them; and which explanation has been accepted by the appellate authority. Appellate Authority also recorded a clear finding of fact that there was no concealment of income or furnishing of any inaccurate particulars of income by the assessee. Accordingly the addition made by the Officer under Section 68 of the 1961 Act, towards cash credit amount shown against the names of concerned unregistered dealers was set aside. Basir Ahmed Sisodia V. ITO [2020] 116 taxmann.com 375 (SC)

### **Principles of Interpretation**

Indubitably, when the Court examines the validity of a provision, its primary concern is the literal text of the provision. It is so because the legislature speaks through the text and as long as it is not speaking in an equivocal manner, there is limited space for the Court to venture beyond the text. This constitutes the first test of interpretation, often termed as the literal interpretation. If the text of the provision is unambiguous, the legislative intent gets coalesced and is epitomised therefrom.

When the textual element of the provision reeks of ambiguity and is susceptible to multiple meanings, the Court enters into a proactive examination to find out the real meaning of the provision. This proactive examination by the Court offers multiple avenues and methods to achieve the ultimate purpose of interpretation. Adverting to the express objects and reasons may be useful for limited purpose to understand the surrounding circumstances at the time of enactment. The Court is not bound by such external elements. Therefore, the presence or absence of objects and reasons has no impact upon the constitutional validity of a provision as long as the literal features of the provision enable the Court to comprehend its true meaning with sufficient clarity. UOI v. Exide Industries Ltd. [2020] 116 taxmann.com 378 (SC)