

DIRECT TAX – RECENT JUDGMENT

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

SUPREME COURT DECISIONS:

1) Pawan Hans Limited & Others Vs. Aviation Karmachari Sanghatana (Supreme Court)

Contractual employees are entitled to Employee Provident Fund benefits

Appeal No.: 353 of 2020, Date of Order:17/01/2020,

Members of the Respondent Union have been in continuous employment with the Company for long periods of time. They have been receiving wages/salary directly from the Company without the involvement of any contractor since the date of their engagement. The work being of a perennial and continuous nature, the employment cannot be termed to be 'contractual' in nature.

In the considered view of Hon.Supreme Court, Clause 2.5 of the PF Trust Regulations would undoubtedly cover all contractual employees who have been engaged by the Company, and draw their wages/salary directly or indirectly from the Company.

As per Section 2(f) of the EPF Act, the definition of an 'employee' is an inclusive definition, and is widely worded to include "any person" engaged either directly or indirectly in connection with the work of an establishment, and is paid wages.

In view of the above discussion, the Apex Court found that the members of the Respondent Union and all other similarly situated contractual employees, are entitled to the benefit of provident fund under the PF Trust Regulations or the EPF Act. Since the PF Trust Regulations are in force and are applicable to all employees of the Company, it would be preferable to direct that the members of the Respondent Union and other similarly situated contractual employees are granted the benefit of provident fund under the PF Trust Regulations so that there is uniformity in the service conditions of all the employees of the Company.

139(5) in view of order of the NCLT revised return can be filed after due date

The predecessor companies/transferor companies have been succeeded by the Appellants/transferee companies who have taken over their business along with all assets, liabilities, profits and losses etc. In view of the provisions of Section 170(1) of the Income Tax Act, the Department is required to assess the income of the Appellants after taking into account the revised Returns filed after amalgamation of the companies. The Appointed Date of the Schemes was 01.01.2015, and would come into effect from 30.10.2018. The revised

Returns were filed after the due date for filing revised Returns of Income u/s. 139(5) for the Assessment Year 2016-2017 since the NCLT passed the final Order on 01.05.2018. Consequentially, it was an impossibility to file the revised Returns before the prescribed due date of 31.03.2018. Revenue was to be directed to receive revised Returns of Income for assessment year 2016 - 17 filed by appellants on 27-11-2018, and complete assessment after taking into account the Schemes of Arrangement and Amalgamation as sanctioned by NCLT - **Dalmia Power Ltd. V. ACIT [2019] 112 taxmann.com 252 (SC)**

Dismissal of SLP by non-speaking order

The dismissal of an SLP against an order or judgment of a lower forum is not an affirmation of the same. If such an order of Supreme Court is non-speaking, it does not constitute a declaration of law under Article 141 of the Constitution, or attract the doctrine of merger - **P. Singaravelan & Ors v. The District Collector, Tiruppu Civil Appeal No(s). 9533-9537 OF 2019 order dt. 18-12-2019**

Retrospective applicability of Benami Act

Applying the definition of benami property and benami transaction the Central government could not, on the basis of the 2016 amendment allege contravention and start the prosecution in respect of a transaction in 2011 - **Ganpati Dealcom (P.) Ltd. – UOI [2019] 112 taxmann.com 367 (Calcutta)**

S. 4 Diversion of income by overriding title

Holding company provided capital and quasi-capital to SPV and stand guarantor to the funds borrowed by SPV. Holding company took the commercial risk also related to delay in completion of project, drop in sales and financial crunch and in lieu thereof holding company took 25% of the revenue out of the sale proceeds of the project. It was held that the revenue sharing agreement entered with the holding company and SPV is diversion of income by overriding title. Further, the revenue's contention that the entire transaction is sham and aimed at only to divert the income to holding cannot be said to be correct based on the facts- **Emmar MGF Construction (P.) Ltd. V. ACIT [2020] 113 taxmann.com 275 (Delhi - Trib.)**

S. 24 Deduction available to the Trust

The assessee trust is entitled to deduction u/s. 24 in computation of income from house property - **Shantaram Bhat Charitable Trust v. CIT [2020] 113 taxmann.com 262 (Mumbai - Trib.)**

S. 24 Determination of ALV

Assessee submitted valuation certificate form the Municipal Authorities stating ALV of a property. Assessing Officer did not accepted without stating any reasons and considered ALV of some other properties rented in nearby locality. It was held that Assessing Officer cannot reject ALV without providing valid and cogent reasons **Sanjay Brahmdev Kapoor v. ACIT [2020] 113 taxmann.com 320 (Mumbai - Trib.)**

S. 45 Transfer of sole proprietor business

Assessee transferred its business to private company and received consideration partly in shares and partly in cash. It was held that the value of the assets taken over by the company should be considered as the full value of consideration for the purpose of computation of capital gains. The full consideration and cost of the assets take over were same. As the cost of acquisition and the full value of consideration received on sale are the same figure, no capital gains has accrued or was received by the assessee. It was also held that while computing income under the head "capital gains", the provisions of Section 56(2)(vii)(c) of the Act, cannot be invoked - **Ravi Jalan v. ITO [2020] 113 taxmann.com 414 (Kolkata - Trib.)**

S. 64(1)(iv) Clubbing of losses

Assessee has granted a gift to his spouse, who has invested in F&O and incurred losses.

Considering explanation 3 read in conjunction with section 64(1)(iv) it was held that the entire amount of loss resulting from the business of F&O started by her spouse with the gifts received from the assessee is liable to be clubbed in the hands of the assessee **Uday Gopal Bhaskarwar v. ACIT [2020] 113 taxmann.com 378 (Pune - Trib.)**

S. 263 invocation of jurisdiction by CIT held unjustified

Explanation (2) inserted u/s. 263 cannot override the main section i.e. sec. 263(1) of the Act. The Ld. Pr. CIT can exercise his revisional jurisdiction in the event the assessment order is erroneous as well as prejudicial to the interest of the Revenue and not otherwise. Assessee provided for the expenses on the fair, equitable and scientific basis. It was held that such provision of expenses ascertain liability and not unascertained liability and impugned invocation of jurisdiction under section 263 was unjustified **Khetawat Properties Ltd. V. Pr. CIT [2020] 113 taxmann.com 8 (Kolkata - Trib.)**