

S. 14A Disallowance cannot exceed

The expenditure for earning exempted income has to have a reasonable proportion to the income, so earned, going by the common financial prudence. Therefore, even if the Assessing Authority has to make an estimate of such an expenditure incurred to earn exempted income, it has to have a rational nexus with the amount of income earned itself. The disallowance under section 8D cannot exceed the expenses claimed by assessee under the Proviso to Rule 8D. The disallowance under section 14A cannot be a wild guesswork bereft of ground realities. It has to have a reasonable and close nexus with the factually incurred expenses. It is not deemed disallowance under section 14A of the Act but an enabling provision for assessing authority to compute the same on the given facts and figures in the regularly maintained Books of Accounts. The assessing authority also could not have called upon the Assessee himself to undertake the exercise of computing the disallowance under section 8D of the Rules. Such abdication of duty is not permissible in law PCIT v. Investor Ventures Ltd. [2021] 123 taxmann.com 378 (Madras)

S. 28(v), 44AD Partners remuneration, interest on capital

Section 28(v) has not been included in sub-section (2) of Section 44AD which deals with any interest, salary, bonus, commission or remuneration by whatever name called, due to or received by, a partner of a firm from such firm. Section 44AD, uses word 'total turnover' or 'gross receipts' and it pre-supposes that it pertains to a sales turnover and no other meaning can be given to the said words and if done so, the purpose of introducing Section 44AD would stand defeated. The legislature in its wisdom chose such remuneration and interest to be a part of profits from business or profession and that can never translate into gross receipts or turnover of a business of being partners in a firm. In view of this it was held that partner's remuneration and interest on capital received by the partner of the firm cannot be considered as income to be taxed under presumptive basis – Anandkumar v. ACIT [2020] 122 taxmann.com 252 (Madras)

S. 37(1) Disallowance of expenditure without considering material

Tribunal had upheld disallowance of commission payment under section 37(1) made by Assessing Officer on basis of order for preceding year. While doing so it has not considered material produced by assessee it was held that, order passed by Tribunal was cryptic and suffered from vice of non-application of mind B Fouress (P.) Ltd. v. DCIT [2021] 123 taxmann.com 431 (Karnataka)

S 40(a)(i) and (ia) Disallowance for non-deduction of tax applies to expenditure and not for allowance

The deduction under section 32 is not in respect of the amount paid or payable which is subjected to TDS; but is a statutory deduction on an asset which is otherwise eligible for deduction of depreciation. Section 40(a)(i) and (ia) of the Act provides for disallowance only in respect of expenditure, which is revenue in nature, therefore, the provision does not apply to a case of the assessee whose claim is for depreciation, which is not in the nature of expenditure but an allowance. The depreciation is not an outgoing expenditure and therefore, provisions of Section 40(a)(i) and (ia) of the Act are not applicable – PCIT v. Tally Solutions (P.) Ltd. [2021] 123 taxmann.com 21 (Karnataka)

S. 50C Raising tolerance margin

Once legislature very graciously accepts, by introducing the legal amendments in question, that there were lacunas in the provisions of Section 50 C in the sense that even in the cases of genuine variations between the stated consideration and the stamp duty valuation, anti-avoidance provisions

under section 50C could be pressed into service, and thus remedied the law, there is no escape from holding that these amendments are effective with effect from the date on which the related provision, *i.e.*, Section 50C, itself was introduced. These amendments are thus held to be retrospective in effect. Therefore, the provisions of the third proviso to Section 50C (1) which raises the tolerance margin from 5% to 10%, must be held to be effective with effect from 1st April 2003 - Maria Fernandes Cheryl v. ITO [2021] 123 taxmann.com 252 (Mumbai - Trib.)

S. 56(2)(vii), 160 Discretionary trust for benefit of Individuals to be assessed as individual

The assessee discretionary Trust is a representative assessee as it represents the beneficiaries who are identified individuals and therefore to be assessed as an "individual" only. Contribution to the trust by the employer for the benefit of employees, who are beneficiary of the trust is subject to tax under section 56(2) - CIT v. Shriram Ownership Trust [2020] 122 taxmann.com 155 (Madras)

S. 80P(2)(a)(i) Deduction by Co-operative Society

Section 80P of the IT Act, being a benevolent provision enacted by Parliament to encourage and promote the credit of the co-operative sector in general must be read liberally and reasonably, and if there is ambiguity, in favour of the assessee. A deduction that is given without any reference to any restriction or limitation cannot be restricted or limited by implication, as is sought to be done by the Revenue in the present case by adding the word "agriculture" into Section 80P(2)(a)(i) when it is not there. Further, section 80P(4) is to be read as a proviso, which proviso now specifically excludes co-operative banks which are co-operative societies engaged in banking business *i.e.* engaged in lending money to members of the public, which have a licence in this behalf from the RBI. Judged by this touchstone, it is clear that the impugned Full Bench judgment is wholly incorrect in its reading of *Citizen Cooperative Society Ltd.* [2017] 9 SCC 364. Clearly, therefore, once section 80P(4) is out of harm's way, all the assesseees in the present case are entitled to the benefit of the deduction contained in section 80P(2)(a)(i), notwithstanding that they may also be giving loans to their members which are not related to agriculture. Also, in case it is found that there are instances of loans being given to non-members, profits attributable to such loans obviously cannot be deducted. Further Considering the definition of 'member' under the Kerala Act, loans given to such 'nominal members' would qualify for the purpose of deduction under section 80P(2)(a)(i) - Mavilayi Service Co-operative Bank Ltd. v. CIT [2021] 123 taxmann.com 161 (SC)(FB)

S.246A Principles of natural Justice

Writ petition was filed raising a plea that assessment order was passed in violation of principles of natural justice. Each and every objection raised by assessee in his written representation had been considered by assessing authority. It had rejected same by giving reasons. Whether reasons for rejection given by authority was correct or not, could not be held to be violation of principles of natural justice and challenged under Writ. Only remedy available to assessee was to file statutory appeal under section 246A - M. Vivek v. DCIT [2020] 121 taxmann.com 366 (Madras)

S. 254 In absence of appellant appeal cannot be dismissed in limine

The order passed by the Tribunal thereby dismissing the appeals *in limine* for non-appearance of the appellant-assessee holding that the assessee is not interested in prosecuting the appeals is unsustainable. The Tribunal was duty bound to decide the appeals on merits after hearing the respondent - Revenue as per mandate of rule 24 of the Income-tax (Appellate Tribunal) Rules, 1963 - Daryapur Shetkari Sahakari Ginning and Pressing Factory v. ACIT [2021] 123 taxmann.com 127 (Bombay)