

## DIRECT TAX – RECENT JUDGMENT

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

### TRIBUNAL DECISIONS

#### **Allotment of share at high premium for Cash/Gift/lifting of corporate veil section 56(2)(viiia)**

##### **Vaani Estates Pvt. Ltd. Vs The ITO (ITAT Chennai)**

**[Appeal No.I.T.A. No.1352/Chny/2018, Date of Order: 27/08/2018, Assessment Year 2014-15]**

Provisions of Section 56(2)(viib) of the Act, cannot be invoked in the case of the assessee company because by virtue of cash being brought into the assessee company by Mrs. Sasikala Raghupathy for allotment of equity shares with unrealistic premium the benefit has only passed on to her daughter Mrs. Vani Raghupathy and there is no scope in the Act to tax when cash or asset is transferred by a mother to her daughter. Hence we hereby direct the Ld.AO to delete the addition made by invoking the provisions of Section 56(2)(viib) of the Act in the case of the assessee company.

#### **Addition U/s 68 of the Income Tax Act, 1961 is unsustainable, merely for deposit of business receipts of spouse in the joint bank account:**

##### **Shri Rajesh Jain Vs ITO (ITAT Indore)**

**[Appeal Number : ITA No. 602/Ind/2019, Date of Order : 03/06/2020, Assessment Year:2013-14]**

The issue under consideration is whether the addition made by the A.O. U/s 68 in respect of the deposit of business of wife in their joint bank account is justified in law?

In the present case, the assessee maintains a joint bank account with his wife to deposit the rental income of the assessee and his wife. During the year, he deposited business income of wife in that account. The AO treated the deposit of cash in Vijaya Bank Account, as undisclosed income under section 68 of the Income Tax Act, 1961.

ITAT states that, the assessee submitted copy of service tax registration relating to Coaching Institute. The assessee also submitted that his wife is a taxpayer having source of income from Coaching Institute, rental income and bank interest and regularly files Income Tax Return. Copy of ITR, Balance sheet and profit and loss account was also filed. The assessee also explained that rental income of the assessee and his wife is deposited in this saving account and his wife is at liberty to withdraw or deposit from her bank as per her requirement. On consideration of these facts and circumstances, ITAT states that it is wrong to assume that the assessee is sole owner of funds in the said bank account. Therefore, ITAT directed the AO to delete the addition made U/s 68. Hence, appeal filed by the assessee is allowed.

#### **Other important amendments/developments**

#### **Goods Purchased & Sold outside India are liable for GST: [Authority for Advance Ruling (AAR)]**

##### **Sterlite Technologies Ltd. (GST AAR Gujarat)**

**[Appeal Number: Advance Ruling No. GUJ/GAAR/R/04/2020, Date of Order : 17/03/2020]**

The Gujarat Bench of Authority for Advance Ruling recently passed a Ruling in case of M/s Sterlite Technologies Ltd. (the Applicant) which brought a sense of ambiguity in the minds of taxpayers. The Applicant sought Advance Ruling on two transactions which it propose to undertake. However, only one has been discussed here as the relevant question on GST laws. The applicant sought advance ruling on applicability of GST on supply of goods which were purchased outside India and then sold outside India without being brought into India.