

DIRECT TAX – RECENT JUDGMENT

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

HIGH COURT DECISIONS

Jindal ITF Ltd. Vs. Union of India (Delhi High Court)

[Appeal Number:WP (C) No.2949 of 2020, Date of Order : 08/04/2020]

It is seen that the entities M/s Glebe Trading Pvt. Ltd. and M/s Danta Enterprises Pvt. Ltd. have been used as conduits in availing unsecured loans covered U/s 68 of the Act. The identity and creditworthiness of the above companies and genuineness of the transactions of unsecured loans received from them is not established. Based on initial submissions of the assessee on the issue, independent field enquiries were caused to be carried out and the findings were confronted to the assessee. The assessee in response, has failed to discharge its onus regarding establishing the identity and creditworthiness of the entities and the genuineness of the transaction of unsecured loans in the given case.

Undoubtedly, as held by the Supreme Court in LG Electronics (India) Pvt. Ltd., it is open to the statutory authorities to grant relief to deposit an amount lesser than twenty per cent if the facts of the case so warrant. However, on the facts of the present case, as determined by the Assessing Officer, a prima facie case is not made out and such a relief is not warranted.

ACIT Vs Alfran Construction Pvt. Ltd. (Bombay at Goa High Court)

There can not be any disallowance U/s 40(a)(ia) where there is no applicability of TDS provisions:

[Appeal No.Tax Appeal No.13 of 2012, Date of Judgement/Order : 02/12/2019]

The Assessee, vide two separate agreements, had agreed with the owners, to undertake the projects of construction of Mount Mary's Complex and M/s Alfran Plaza. The terms of these agreements do not indicate that the Assessee was appointed as merely a contractor to construct these projects. Rather, the Assessee was to be allotted premises/area in the said project. The Assessee was given the full liberty to thereafter sell, transfer and convey these areas in favour of third party. Accordingly, it is not correct to say that the original status of the Assessee was that of a contractor and, consequently, the Assessee was incapable of assigning any rights better than that of a contractor of M/s Prabhu Construction.

The provisions of Section 194C of the IT Act can not be said to be attracted. Section 194 C of the IT Act deals with deduction of tax at source when it comes to payment to contractors. In the present case, since neither the Assessee nor M/s Prabhu Construction can be styled as contractors, it is obvious that the provisions of Section 194C of the IT Act were not attracted and consequently provisions of section 40(a)(ia) would also not be applicable. Accordingly, both the substantial questions of law are liable to be answered against the Revenue and in favour of the Assessee.