

### **S.14A, R 14D – Disallowance cannot exceed exempt income**

The disallowance of expenditure incurred to earn exempted income has to be a smaller part of such income and should have a reasonable proportion to the exempted income earned by the Assessee in that year, which can be computed as per Rule 8D only after recording the satisfaction by the Assessing Authority that the apportionment of such disallowable expenditure under section 14A made by the Assessee or his claim that no expenditure was incurred is validly rejected by the Assessing Authority by recording reasonable and cogent reasons conveyed to Assessee and after giving opportunity of hearing to the Assessee in this regard - Marg Ltd. v. CIT [2020] 120 taxmann.com 84 (Madras)

### **S. 32. Depreciation on FSI Rights**

Additional FSI is not a business or commercial right falling within the realm and scope of intangible asset within the meaning of section 32(1)(ii) of the Act. FSI only related to giving of the right to construct additional floor to the assessee which enhances the value or cost of the existing asset/building. It strictly pertains to addition to the building and therefore depreciation allowable would be at the rate applicable to the building and not for some kind of intangible right under section 32(1) (ii). PCIT v. V. Hotels Ltd. [2020] 119 taxmann.com 487 (Bombay)

### **S.50C(1) – Newly inserted proviso to be applied retrospectively**

The proviso to Section 50C(1) of the Act deals with cases where the date of the agreement, fixing the amount of consideration and the date of registration for the transfer of the capital assets are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer. Thus an amendment by insertion of proviso w.e.f. 1-4-2017 seeks to relieve the assessee from undue hardship and held to be retrospective in operation – CIT v. Vummudi Amarendran [2020] 120 taxmann.com 171 (Madras)

### **S. 56(2)(x), R.11UA Issue of shares**

The Assessing Officer has erred in considering the actuals of revenue and profits declared in the future years as a basis to dispute the projections. At the time of valuing the shares as on 16-4-2012, the actual results of the later years would not be available. What is required for arriving at the fair market value by following the DCF method are the expected and projected revenues. Accordingly the valuation is on the basis of estimates of future income contemplated at the point of time when the valuation was made - Valencia Nutrition Ltd. v. DCIT [2020] 120 taxmann.com 238 (Bangalore - Trib.)

### **S. 147 Reopening of assessment**

A reopening notice dated 10-6-2011 was issued for relevant assessment year 2000-01 so as to bring such capital gains to tax. By deciding the question of limitation of AY 2000-01 against Revenue, and by holding that there was no tax liability for AY 2003-04 and AY 2004-05, these two sets of orders passed by learned Income-tax Appellate Authority have resulted in a serious miscarriage of justice, which cannot be permitted by High Court. Accordingly, High Court has restored the matter back to the Assessing Authority to re-examine the whole issue of taxability of the Capital Gains de novo, including the question of levy of capital gains Tax on sale of flats, the year of taxability and computation of Fair Market Value for computing such tax liability. It did not fix any particular Assessment Year of

taxability or the question of Fair Market Value, but directed that the Assessing Authority will be free to impose the appropriate 'Capital Gain Tax Liability' by undertaking the fresh reassessment proceedings under section 150(1) of the Act in pursuance to it's directions, in terms of Section 150(1) of the Act, for all the three Assessment Years AY 2001-02, AY 2003-04 and AY 2004-05, de novo – CIT v. Emgeeyar Pictures (P.) Ltd. [2020] 120 taxmann.com 105 (Madras)

### **S. 263 Revision by Commissioner is not valid**

The only reason for setting aside the scrutiny assessment was on the ground that the guide line value of the property, at the relevant time, was higher than the sale consideration reflected in the registered document. The question would be as to what is the effect of the guideline value fixed by the State Government. There are long line of decisions of the Hon'ble Supreme Court holding that guideline value is only an indicator and the same is fixed by the State Government for the purposes of calculating stamp duty on a deal of conveyance. Therefore, merely because the guideline was higher than the sale consideration shown in the deed of conveyance, cannot be the sole reason for holding that the assessment is erroneous and prejudicial to the interest of revenue – CIT v. Padmavathi [2020] 120 taxmann.com 187 (Madras)