

## DIRECT TAX – RECENT JUDGMENT

CA. Paras Savla, CA. Ketan Vajani

### S. 10(26AAA) to a Sikkimese woman who marries a non-Sikkimese, is unconstitutional

Proviso to Section 10(26AAA) inasmuch as it excludes from the provision of exemption a Sikkimese woman merely because she marries a non-Sikkimese after 01.04.2008 is totally discriminatory and violative of Articles 14, 15 and 21 of the Constitution of India, which requires to be struck down - *Association of Old Settlers of Sikkim v. Union of India* [2023] 146 taxmann.com 271 (SC)

### S. 148A (New Regime) Availability of alternative remedy cannot be reason for dismissing writ

High Court Order where in it was held that writ petition would not be maintainable in view of the alternative remedy, is set aside. The provisions of reopening under the Income Tax Act, 1961 have undergone an amendment by the Finance Act, 2021, and consequently the matter would require a deeper and in depth consideration keeping in view the earlier decisions of Supreme Court- *Red Chilli International Sales v. ITO* [2023] 146 taxmann.com 224 (SC)

### S. 158BC Interest for late filing of Return in absence of issue of notice

The assessee – persons other than searched persons shall be liable to pay the interest on late filing of the return under Section 158BC even in absence of a notice under Section 158BC of the Income Tax Act and even for the period prior to 01.06.1999 - *K.L. Swamy v. CIT* [2023] 146 taxmann.com 268 (SC)

### S. 24 Benami Act – Opportunity of Cross examination is not required while recording prima facie opinion

In the absence of any provision of law as well as the compelling circumstances warranting the respondent authorities to provide an opportunity of cross examination of witnesses, whose statements have been relied on by the respondent authorities to the appellant at the stage of Section 24 proceedings i.e. a recording of prima facie opinion as to benami nature of transaction *V.S.J. Dinakaran v. DCIT (Benami Prohibition)* [2023] 146 taxmann.com 7 (Madras)

### S. 28(i) Diminution in the value of investments not deductible

Assessee Company made investments in two unlisted companies. They are classified as investments and not 'Stock-in-Trade'. Deductions are to be strictly in compliance with the provisions of the Income Tax Act, 1961. Loss in the value of investment will arise only when such shares are sold by the assessee. The assessee is therefore not entitled for deduction on account of alleged "diminution in the value of investment" due to the purported loss suffered by the said company on such investment of the appellant - *Ashok Leyland Finance Ltd. v. DCIT* [2023] 146 taxmann.com 340 (Madras)

### S. 28 Deduction of expenses

The invoices issued by the "LINKED IN" towards advertisement expenses in June 2014 were admitted as liability and crystallized for payment in the financial year 2015-16 under consideration owing to the fact that the "LINKED IN" being non-resident had furnished the necessary documents in the such as TRC under Section 90(4) of the Act read with Rule 21 AB of the Rules and no PE certificate etc. only in the assessment year under consideration. Further the tribunal noted it is not the case where these expenses were charged as deduction in the preceding year more importantly, the tribunal noted that there is no revenue implication and no prejudice is caused to the revenue since the tax rate applicable to the assessee during the assessment year 2015-2016 to which invoices relates and the tax rates applicable for the assessment year 2016-2017 in which the invoices were accounted and paid were the same. *PCIT v. Britannia Industries Ltd.* [2022] 145 taxmann.com 618 (Calcutta)

### S. 148 (old Regime) Reopening of assessment which was completed under scrutiny assessment

Assessment for AY 2013-14 completed u/s 143(3). It is therefore, apparent that there is change of opinion by the Assessing Officer to reopen the assessment for the Assessment Year 2013-2014, more particularly, when the issues raised in the reopening assessment were already considered during the assessment proceedings under section 143(3) of the Act, 1961. The Assessing Officer cannot have any jurisdiction to issue the notice under section 148 of the Act, 1961 for reopening the assessment for the year under consideration more particularly, when the assessment is sought to be reopened beyond a period of four years *Shahlon Silk Industries (P.) Ltd. v. ACIT* [2023] 146 taxmann.com 194 (Gujarat)

### S. 148 Re-opening based on same material available during the course of original assessment was not maintainable

Reassessment under old regime was not maintainable as no fresh tangible material distinct from what was made available with the revenue during the assessment proceedings is emerging and reopening was based on mere change of opinion. *Ball Aerosol Packaging India (P.) Ltd. v ACIT [2023] 146 taxmann.com 193 (Gujarat)*

### **S. 220 Stay of the Demand**

The assessment for the assessment years 1998-99, 1999-2000, 2000-01, 2001-02 and 2002-03 have been made resulting in demand of Rs. 67,72,869/- for all the five years put together. Assessee apprehends that there is threat of coercive steps to recover/set off the refund due towards the liability for the assessment years 1998-99, 1999-2000, 2000-01, 2001-02 and 2002-03, which is the subject matter of challenge in appeal. In view of this it is always open to the Petitioner to approach the appropriate authority under section 220(6) of the Income-tax Act, 1961 by filing stay application pending appeal. *Noorul Islam Educational Trust v. CIT [2023] 146 taxmann.com 208 (Madras)*

### **S. 279 Compounding application can be filed even after limitation period mentioned in the Compounding Circular**

The orders, instructions or directions issued by the CBDT under Section 119 of the Act or pursuant to the power given under the Explanation will not limit the powers of the authorities specified under Section 279(2) in considering such an compounding application, much less place fetters on the powers of such authorities in the form of a period of limitation. Accordingly it was held that the guidelines contained in the CBDT Guidelines dated 14th June 2019 could not curtail the power vested in Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General under the provisions of Section 279(2) of the Income Tax Act. As long as a proceeding, as referred to in sub-section (1), is pending, an application for compounding of offence would be maintainable under sub-section (2) of Section 279 and will have to be dealt with by the authorities on its own merits - *Footcandles Film (P.) Ltd. v. ITO [2023] 146 taxmann.com 304 (Bombay)*

### **S. 47(xiiib) Recording of Goodwill post conversion of Company into LLP does not violate of provisions**

Post conversion of Company into LLP, Goodwill was valued and amount credited into the partners capital account. The partners of the assessee LLP and the erstwhile shareholders of considered to have obtained any benefit directly or indirectly only if the same fits into the specific conditions prescribed. The accumulated profits did not include the amount of Goodwill in the books of the predecessor company. Therefore, there is no violation of clause (f) of the proviso below section 47(xiiib) of the Act – *ITO v. Brizeal Realtors and Developers LLP [2023] 146 taxmann.com 109 (Mumbai - Trib.)*