S. 37(1) Discount on issue of ESOP

Assessee is entitled to claim deduction under section 37(1) if the expenditure has been incurred. The expression 'expenditure' will also include a loss and therefore, issuance of shares at a discount where the assessee absorbs the difference between the price at which it is issued and the market value of the shares would also be expenditure incurred for the purposes of section 37(1) of the Act. The primary object of the aforesaid exercise is not to waste capital but to earn profits by securing consistent services of the employees and therefore, the same cannot be construed as short receipt of capital. The deduction of discount on ESOP over the vesting period is in accordance with the accounting in the books of account, which has been prepared in accordance with applicable regulations. CIT v. Biocon Ltd. [2020] 121 taxmann.com 351 (Karnataka)

S.28(1) Deductibility on Write Off of investment in wholly owned subsidiary

The assessee made investment in the shares of Wholly Owned Subsidiary (WOS) for the business purpose *i.e.,* for the enhancement of business activity of the assessee in global market which primarily related to business operation of the assessee. The WOS suffered losses and therefore the assessee wrote off the investment as business loss. The investment was made for the purpose of extension of business activity and not with a view to creating capital asset in the form of holding shares. It is also pertinent to note that the assessee never acquired any capital asset or expenditure of enduring benefits to WOS and there is no relinquishment or transfer of capital asset to any third party. While granting approval for closure of WOS, RBI permitted the company to write off the whole of investment made in WOS and unrealized export receivables. The assessee therefore, made a claim to write off the loss as revenue expenses and same is allowable under the provisions of the Act - ACE Designers Ltd. v. ACIT [2020] 120 taxmann.com 321 (Karnataka)

S. 32 Depreciation on intangible upon succession of firm into company

The assessee succeeded to the business of the partnership firm, which had trademarks registered in its name. Therefore, the assessee under section 32(1) of the Act was entitled for depreciation. Under section 47 of the Act, any transfer of capital asset or a intangible asset by a firm to a company as are result of succession of the firm by a company is a recognized mode of transfer. The assessee and the erstwhile partnership firm are different entities and there was transfer of intangible assets by the partnership firm to the assessee for a valuable consideration that is by way of allotment of shares. Thus, the aforesaid transaction is squarely covered under section 47(*xiii*) of the Act and therefore, the assessee under section 32(1) of the Act was entitled for depreciation with reference to actual cost incurred by it with reference to intangible assets.

The prerequisite for invoking *Explanation 3* to Section 43(1) of the Act is that the Assessing Officer has to establish that the main purpose of the transfer of such asset was reduction of liability to income tax by claiming extra depreciation on enhanced cost. In order to establish aforesaid fact, it has to be established that apart from claiming additional depreciation on enhanced cost there is no other main purpose for acquiring the asset in question and the Assessing Officer has to obtain the previous approval of the joint commissioner to disregard the enhanced price. The Assessing Officer, in the instant case, in the order of assessment has neither complied with the aforesaid conditions nor has recorded any finding in this regard. The Commissioner of Income-tax (Appeals) however, failed to appreciate the aforesaid aspect. Therefore, the Tribunal committed an error of law in upholding the order of Commissioner of Income-tax (Appeals) in invoking *Explanation 3* to section 43(1) of the Act. **Padmini Products (P.) Ltd. v. DCIT [2020] 121 taxmann.com 237 (Karnataka)**

S. 45(3), 56(2)(viia) Contribution of shares in firm as capital contribution

The value of the shares were recorded by way of credit to the partners capital account in the form of capital contribution in terms of Section 45(3) of the Act. The provisions of Section 45(3) of the Act are applicable for levy of capital gains in the hands of the transferor *i.e.* partner in the instant case, the consideration fixed thereon cannot be different in the hands of transferee *i.e.* the assessee firm as the same is emanating from the same transaction. The provisions of Section 45(3) is a special provision and a specific provision, whereas, the provisions of Section 56(2)(viia) is a general provision. It is the accepted rule of construction that special provisions would prevail over general provisions as per the famous latin maxim "Generalia Specialibus Non Derogant". The transfer of asset by a partner to the firm as the capital contribution, no doubt constitutes a transfer in the hands of the partner, but the value recorded in the books of the firm by way of credit to the partners capital account would be conclusive proof of consideration received in the hands of the partner towards transfer of capital asset. The provision of Section 56(2)(viia) of the Act could not be made applicable at all in the case of capital contribution made by a partner in the form in kind ITO v. **Shrilekha Business Consultancy (P.) Ltd. [2020] 121 taxmann.com 150 (Hyderabad - Trib.)**

115BBC – Anonymous donation

If a particular receipt turns out to be anonymous donations, the same gets caught within the mischief of section 115BBC and hence bars the exemption of income to that extent notwithstanding that the assessee applied 85% of such anonymous donations for the objects of the trust. Section 13(7) clearly provides that nothing contained in section 11 or section 12 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof, any anonymous donation referred to in section 115BBC on which tax is payable in accordance with the provisions of that section - **Shriram Bahuuddeshiya Sevabhavi Sanstha v. ITO(E) [2020] 119 taxmann.com 203 (Pune - Trib.)**

Taxability of NPA collection by ARC

Assessee-trust set up by Asset Reconstruction Co. (India) in pursuance to SARFAESI Act and RBI Guidelines for purpose of liquidating/recovering NPAs acquired from banks. At the initial stage, even before the money flows to the assessee, it was always intended to be passed on to and only to the beneficiaries, i.e. the SR holders in proportion to their interest in the corpus of the assessee trust as per the trust deed and offer documents. The claim of the A.O that as the amounts are first realized/received in the books of the assessee trust, and then passed on to the SR holders, is not acceptable. The principle of diversion of income at the source by overriding title is attracted, therefore, the receivable of NPAs were the income of the SR holders, irrespective of the fact that the same had flowed through the books of accounts of the assessee trust. ITO v. Scheme A1 of ARCIL CPS 002 XI Trust [2020] 119 taxmann.com 216 (Mumbai - Trib.)

Jurisdiction of High Court

The mere physical location of an inter-state Tribunal cannot be determinative of the High Court's jurisdiction for an aggrieved party to challenge that Tribunal's order. The Assessee is located in Karnataka, so are the Income-tax authorities. The primary order, too, emanated from Karnataka; so was the first appellate order. But revenue and assessee against order of appellate authority, Karnataka, approached Tribunal, Panaji Bench who held in favour of assessee and revenue filed appeal before Bombay High Court. All challenges, including the appeal before the Tribunal, were in continuation of that primary adjudication or consideration before the Assessment Officer at Belgaum, Karnataka – CIT v. **MD Waddar & Co. [2020] 121 taxmann.com 164 (Bombay)**