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DIRECT TAX: INCOME TAX

Important Case laws

In favor of Assessee

1. Payment of hire charges of trucks won't attract TDS in absence of any contract with truck owners. **[Dipendra Bahadur Singh v. Assistant Commissioner of Income-tax [2015] 38 ITR(T) 67 (Cuttack - Trib.)]** - Assessing Officer disallowed payment made by assessee for hiring of trucks under section 40(a)(ia) on ground that assessee had failed to deduct tax at source. It was found that assessee had hired trucks from open market as per its requirement and there were neither oral nor written contract between assessee and truck owners. It was decided, on facts that the assessee was not liable to deduct tax on freight charges paid to truck owners.	2. No sec. 14A disallowance during current year if major investments in securities were made in earlier years. **[Deputy Commissioner of Income-tax, Circle-12 (3), Bangalore v. Subramanya Constructions & Development Co. Ltd. [2015] 58 taxmann.com 219 (Bangalore - Trib.)]** - Assessee-builder made investment in shares of various companies. Assessing Officer taking a view that assessee had not adduced anything to show that investment was made from non-interest bearing funds, disallowed interest under rules 8D(2)(ii) and 8D(2)(iii). Commissioner (Appeals) took a view that major part of investments pertained to preceding years, and increase in investments during relevant year was negligible. Therefore, he deleted disallowance under rule 8D(2)(ii). It was held that where, once, assessee raised a plea that it had incurred no expense covered by section 14A for its investment portfolio, Assessing Officer had to make a verification especially when incremental investments was negligible and in absence of any such satisfaction recorded by authorities below, impugned disallowance was liable to be deleted.
3. Payment of front end fees for availing loan was allowable as revenue expenditure in year in which it was paid even though assessee had written off amount in its books over a period of time. **[Deputy Commissioner of Income-tax v. Jaipur Vidyut Vitran Nigam Ltd. [2015] 58 taxmann.com 163 (Jaipur - Trib.)]** - Assessee, an electricity company, availed loan	4. Sum received by land owner as per terms of development agreement wasn't cap gain as land was held as stock-in-trade. **[Fardeen Khan v. Assistant Commissioner of Income-tax-11 (1), Mumbai [2015] 169 TTJ 398 (Mumbai - Trib.)]** - Assessee was owner of piece of land. He received non-refundable deposit of Rs. 13.75 crore from a builder for development of residential villas on said land. In Assessee's

for improvement in transmission, network and infrastructure. It paid front end fees to HUDCO which was a precondition for sanction of loan. It was held that the said payment was allowable as revenue expenditure in its entirety in year in which it was paid even though assessee had written off amount in its books over a period of time.	case was that he held land as stock in trade and, therefore, provisions of section 2(47) were not applicable to transaction in question. Assessing Officer having rejected assessee's explanation, brought said amount to tax. It was held since assessee had carried out series of activities for commercially exploiting land, such as, taking approval from Local Development authority for conversion of land for non-agricultural purpose, appointment of architect and contractor, etc., mere fact that said piece of land was not shown as opening work-in-progress and closing work-in-progress in books of account would not change real character of land and therefore, land in question being in nature of stock-in-trade, provisions of section 2(47)(v) could not be applied to assessee's case.
5. LED video display boards are temporary structures; entitled to 100% depreciation. **[Deputy Commissioner of Income-tax v. Selvel Advertising (P.) Ltd. [2015] 37 ITR(T) 611 (Kolkata - Trib.)]** - Assessee-company claimed depreciation on LED video display boards. Assessing Officer disallowed said claim. Commissioner (Appeals) held that LED video display boards were purely temporary structures and therefore, assessee was entitled to 100 per cent depreciation. It was held that since structure could not be re-used and said structures were put on land not belonging to assessee, order of Commissioner (Appeals) could not be interfered with.	6. Six years for block assessment to be reckoned from the financial year in which seized docs were handed over to AO. **[Chain Roop Baid v. Assistant Commissioner of Income-tax, Circle-4, Guwahati [2015] 58 taxmann.com 261 (Guwahati - Trib.)]** - A search and seizure operation under section 132 was conducted at residential and business premises of assessee as well as in case of Singhi group during period 12-2-2009 to 8-4-2009. Consequent to search, entire seized documents including relating to assessee were handed over to Assessing Officer on 5-6-2009. Assessing Officer initiated proceedings under section 153C for assessment years 2003-04 to 2008-09 and assessments were made under section 144/153C. it was observed that documents having been handed over to Assessing Officer of assessee on 5-6-2009 relevant to assessment year being 2010-11, Assessing Officer could reopen assessment for six preceding assessment years, i.e., assessment years 2004-05 to 2009-10, and assessment for assessment year 2003-04 was barred by limitation.

7. No denial of sec. 11 relief just because trust didn't furnish details as to how accumulated income would be spent. **[Director of Income-tax, Exemptions, Bangalore v. Envisions [2015] 58 taxmann.com 184 (Karnataka)]** - As long as objects of assessee-trust, are charitable in character and purposes mentioned in Form 10 are for achieving objects of trust, merely because more than one purpose have been specified and details about plan of such expenditure has not been given, same would not be sufficient to deny benefit under section 11(2) to assessee.	8. Petty cash received from relatives couldn't be held as unexplained. **[Radha Raman Agrawal v. Income-tax Officer [2015] 371 ITR 435 (Allahabad)]** - Cash was recovered from possession of assessee, while travelling from Bareilly to Delhi. Assessee submitted that said sum was given by his relatives for purchasing a flat in Delhi, a deal did not materialize. He had established identity of creditors and produced slips given by each creditor, relative in this respect. Even all relatives/creditors had shown entries of sum given to assessee in their books. Moreover no attempt was made by department to verify/examine creditors. Held, since amount was petty and had been shown in books of account, then there was no occasion to make addition under section 68.

In favor of Revenue

1. Signature of CIT on show cause notice revealed that he had obtained satisfaction for making revision under sec. 263. **[Zigma Commodities (P.) Ltd. v. Income-tax Officer [2015] 370 ITR 318 (Calcutta)]** - On a writ petition assessee prayed for cancellation of show-cause notice issued under section 263. Single Judge held that it was discernible from facts narrated in show-cause notice that order of Assessing Officer was erroneous and prejudice was caused to revenue, making show-cause notice legal and valid. It was held that since Commissioner had complied with provisions contained in section 263 by signing approval of draft notice, issuance of show-cause notice was sustainable.	2. Mere establishing identity of share applicants isn't sufficient to discharge onus under sec. 68. **[Riddhi Promoters (P.) Ltd. v. Commissioner of Income-tax-7 [2015] 58 taxmann.com 367 (Delhi)]** - Establishing identity of share applicant or creditor is not sufficient for assessee to discharge onus under section 68; assessee has to further satisfy revenue as to genuineness of transaction and creditworthiness of share applicant or individual who is advancing amounts. Creditworthiness of share applicants has to be seen in context of assertion made by them or materials presented before Assessing Officer at relevant time.
3. CIT (A) rightly refused to admit appeal as assessee failed to pay taxes on income shown in tax return. **[Bichitra Pegu v. Assistant Commissioner of Income-tax, Circle-1, Guwahati [2015] 58 taxmann.com 260 (Guwahati - Trib.)]** - As assessee had failed to pay tax due on income returned at time of filing return or even before filing of appeal or even at time when appeal was heard by Commissioner	

(Appeals), Commissioner (Appeals) refused to admit assessee's appeal as per provisions of section 249(4). Though assessee had filed application along with return of income praying to adjust cash and other valuables standing in her name and/or admitted in return of income against her admitted tax liability, there was no truth in said application inasmuch as during course of search no cash and other valuables were seized belonging to assessee. Held, Commissioner (Appeals) had correctly refused to admit appeal of assessee as per provisions of section 249(4).	

INDIRECT TAX: INCOME TAX

Important Case laws

In favor of Assessee

1. No need to reverse Cenvat credit when waste/scrap arising at end of job-worker isn't received back in factory. **[Mukand Ltd. v. Commissioner of Central Excise, Belapur [2015] 58 taxmann.com 161 (Mumbai - CESTAT)]** - Assessee sent semi-processed inputs to job-workers and received back processed goods from them. Department argued that quantity received back from job-workers was less than quantity sent to them and therefore, assessee must reverse credit of inputs contained in waste/scrap not received back from job-worker. HELD : Waste and scrap are not manufactured goods whether generated at premises of principal manufacturer or at premises of job-worker. Legislature has consciously not made any provisions for reversal of any credit taken on duty paid inputs in case of clearance of waste and scrap and/or their non-return from job worker's premises - Therefore, demand was set aside.	2. Exemption granted under old Sales Tax Law couldn't be continued under new VAT Law. **[Krishnapatnam Port Company Ltd. v. Govt. of AP, Hyderabad [2015] 80 VST 26 (Andhra Pradesh)] -** Where State Government of Andhra Pradesh, under a concession agreement dated 17-9-2004, had granted exemption to assessee, a works contractor, from payment of sales tax under Andhra Pradesh General Sales Tax Act, 1957 for a period of 50 years and in meantime Andhra Pradesh Value Added Tax Act, 2005 came into force from 1-4-2005. Since VAT Act unlike 1957 Act did not confer any power on Government to grant exemption, assessee was statutorily obligated to deduct tax at source from running account bills of its sub-contractor.

3. Difference of amount in invoices raised and payment received isn't a ground to deny refund on export of services. **[Commissioner of Service Tax, Mumbai v. Monetization Software (P.) Ltd. [2015] 38 STR 149 (Mumbai - CESTAT)]** - Assessee, an exporter of services, filed refund claim of Cenvat Credit. Department denied refund claim on ground that amounts received did not tally with invoices raised, as shown in ST-3 returns. Assessee explained that there is always time-gap between raising of invoices and receipt of consideration and at times, receipts are settled at a discounted value, which cause said difference. Commissioner (Appeals) found assessee's stand to be valid and allowed refund. Department argued assessee has to prove nexus of input services without exported services - HELD : Revenue was unable to dispute findings of lower appellate authority and also points urged by assessee. Ground of 'nexus' between input services and output services was not a ground of rejection of refund, hence, same cannot be raised at this stage. Hence, refund could not be denied on these counts.	

In favor of Revenue

1. Importer having knowledge of misdeclaration of goods in bill of landing/import manifest is liable to penalty. **[Commissioner of Customs (Exports) v. Royal Impex [2015] 58 taxmann.com 242 (Madras)]** - When conduct of assessee is to evade payment of duty, provisions of section 111(f) and 111(i) get attracted even prior to filing of Bill of Entry. Filing of Bill of Entry may be a condition to proceed under section 111(d) but same is not a precondition for proceeding against an importer under section 111(f) and 111(i). Since goods were attempted to be improperly imported and importer did not make a proper declaration only with an intent to evade duty, penalty under section 112 was also leviable.	2. Disclosure of more quantity of goods in declaration form than shown in return would invite reassessment. **[Balani Enterprises v. State of Assam [2015] 59 taxmann.com 7 (Gauhati)** - Subsequent to assessment order passed on assessee, Assessing Authority issued on it a notice under section 40 for reassessment on ground that there had been an escape of assessment on basis of contents of Form 65A submitted by it at check-post. Quantity of goods shown in Form 65A was found to be higher than one shown in return for relevant assessment year 2005-06. Further he passed a reassessment order on assessee. Held, since declaration Form 65A furnished by assessee itself disclosed that quantity and value of goods were more than what were furnished in return

	for relevant assessment year, it was to be held that reassessment order was based on valid material which was found subsequent to assessment.
3. Cost of mandatory inspection of goods will form part of their excisable value. **[Commissioner of Central Excise, Raipur v. Surya Alloys Industries (P.) Ltd. [2015] 58 taxmann.com 346 (New Delhi - CESTAT)]** - Assessee was supplying 'inserts' to railways and other parties on behalf of railways. Before supplying said goods, assessee had to get them inspected by RITES. Assessee was paying inspection charges to RITES and recovering same from their customers. Department argued that said charges were includible in value. Assessee argued that secondary/ optional/ additional inspect carried out at request of buyer and at cost of buyer, cannot form part of assessee's value. HELD : Inspection by RITES was a necessary condition of sale. It was not in nature of secondary or optional inspection. Said goods could not be sold without inspection by RITES and therefore, cost of inspection is clearly includible in assessable value.	

Important

MCA e forms MGT-7, AOC 4 and AOC 4 XBRL shall be available for filing latest by 30.09.2015 and eform AOC 4 CFS (For consolidated A/c) will be available by October, 2015.

Additional fees of MGT-7, AOC 4 and AOC 4 XBRL relaxed upto 31.10.2015.

Additional fees of AOC 4 CFS for companies on which XBRL is not applicable relaxed upto 30.11.2015.

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Disclaimer:

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