



# LATEST JUDICIAL PRONOUNCEMENTS

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# REASSESSMENT

## ■ **Sabh Infrastructure Ltd [TS - 430 - HC -2017] (Delhi HC)**

### ➤ **Delhi HC quashes reopening beyond 4 years.**

- AO recorded the reason that 5 companies that subscribed to assesses share capital were paper companies.
- HC holds no new material as names and amounts fully disclosed by assessee during original proceedings.
- HC laid down 4 pts guideline for reopening.

## ■ **Gujarat Ambuja Exports Ltd vs Dy CIT [TS-406-HC-2017] (Gujrat HC)**

### ➤ **HC upholds reopening of assessment beyond 4 years**

- Fresh material unearthed by the IT Department through the investigation wing
- Indicated that purchases made by assessee from one supplier were bogus;
- HC noted that purchases from relevant supplier per se were admittedly not part of original proceedings.

# PENALTY PROCEEDINGS

- **CIT vs Dr Vandana Gupta [TS-72-HC-2018] ( Delhi HC)**

- **HC upholds penalty proceedings.**

- The assessee filed her return of income for declaring a total income of Rs 9.18 lakhs.
- Post survey u/s133A at the business premises of assessee, the assessee surrendered Rs 2 crores and filed a revised return.
- High Court observed the assessee merely made a voluntary surrender
- Had not offered any explanation as to the nature of income or its source.
- There was complete failure to furnish any details with respect to the nature of income
- The revised return was an afterthought, based on the subsequent event of disclosure of Rs 2 crores.

# UNDISCLOSED INCOME

- **Pavankumar Sanghvi vs ITO [TS-71-HC-2018] [Guj HC]**
  - **HC confirms addition under Section 68 despite confirmation from lender**
  - The assessee had received unsecured loans of Rs 10 lakhs each from two lenders.
  - Doubting the genuineness of the transaction, AO made an addition of Rs 20 lakhs as unexplained credits u/s 68 of the Act.
  - The assessee had also made interest payments against these loans which were also disallowed resultantly by the AO.
  - ITAT observed that bank account show low balance normally and immediately high balance before giving loan
  - Bank account does not inspire any faith in the proposition that the entity in question is a genuine business concern
  - One of the lender had shown a turnover of Rs 122.92 crore but there was no closing stock,/requisite expenses

# CAPITAL GAINS

- **PCIT vs Shri Shankar Lal Saini [TS-627-HC-2017](Raj HC)**
  - **HC allowed capital gains exemption u/s. 54B and Section 54F for investment beyond 139(1) due date**
  - Though he deposited NSC in CGAS beyond the due date of Section 139(1)
  - As deposit was within the due date of filing belated tax return u/s. 139(4)
- **CIT vs Dr Arvind Phake [TS-603-HC-2017] (Bombay HC)**
  - **HC considered date of transfer as date of possession and not date of development agreement**
  - Date of contract is relevant provided the terms of the contract indicate passing off or transferring of complete control over the property in favour of the developer.
  - the date of execution of the development agreement, full consideration was admittedly not paid
  - ITAT held date of possession as date of transfer – HC upheld the view

# CAPITAL GAINS

- **Balbir Singh Maini [TS-444-SC-2017] [Supreme Court]**
  - **SC held JDA registration absent -no transfer and hence affirms HC decision to delete capital gain tax addition**
  - Assessee (members of Co-op soc) owned a land and entered into JDA with the developer
  - Payment was agreed in 4 instalments and succeeded only upto 2 instalments
  - Necessary permissions for development not granted
  - AO taxed monetary consideration as well as FMV of built up area to be received
  - Under section 53A of TOPA there is no contract unless registered
  - Possession granted for specific purpose
  - Section 2(47)(vi) would not apply as no change in membership of society

# CAPITAL GAINS

## ■ Devendra Mehta [TS-27-ITAT-2017] (Rajkot ITAT)

- **ITAT held that agreement to sell date is irrelevant for stamp duty valuation u/s 50C due to absence of consideration**
- Agreement to sell in AY 2008-09 but assessee himself recognised the CG in AY 2011-12
- Relied on 53A of TOPA and registration & other related laws transfer
- 50C valuation would be considered in AY 2011-12.

## ■ Sachin Tendulkar [TS-31-ITAT-2017] (Mum ITAT)

- **Mumbai ITAT held that sale of shares and mutual funds taxable under the head Capital Gains and not business.**
- Investment with portfolio manager is only 4.8% of total investments.
- Assessee always disclosed shares invested under the head investment
- Initial choice of characterisation of shares with assessee
- Assessee followed the choice consistently.



# TDS DEFAULTS

- **Palam Gas Service Vs CIT [TS-170-SC-2017] (SC)**
  - **SC upheld the disallowance u/s 40(a)(ia)**
  - As per sec 194C, TDS on credit or payment
  - Held that the word payable in section 40(a)(ia) includes the situations where amounts are actually paid and liable for TDS
- **Tungbhadra Steel Products Ltd [TS-485-ITAT-2017] (Bangalore)**
  - **ITAT upheld the disallowance u/s 40(a)(ia)**
  - Routing management charges via holding company cannot absolve TDS liability u/s 194J.

## OTHER IMPORTANT DECISIONS

- **Sigma Corp India Ltd vs Dy CIT [TS-145-HC-2017] (Delhi HC)**
  - **HC allowed the professional remuneration to VP and deleted addition u/s 40A(2)**
  - AO disallowed remuneration to VP holding excessive u/s 40A(2)
  - The Vice President was responsible for multiple tasks for more than one concern
  - HC noted that AO nowhere benchmarked the concerned related party's expertise with any other consultant
  - wrong assumption that the related party could not have performed multiple tasks for more than one concern
  - more than one entity may engage or retain a single professional on the basis of his experience, learning and expertise
  - Without scrutiny/comparable addition made would suspect

## OTHER IMPORTANT DECISIONS

- **Google India P Ltd vs ACIT [TS-468-ITAT-2017] Bangalore ITAT**
  - **ITAT held that the payment for advertisement module is Royalty**
  - advertisement module is not merely an agreement to provide advertisement space
  - Display and publishing of an advertisement using Google's patented algorithm, tools and software.
  - Google Adwords uses person data and helps conversion to the ads of the advertisers.
  - Payments to Google Ireland are taxable as "royalty" and the assessee ought to have deducted TDS thereon u/s. 195
- **CIT vs Rajasthan and Gujarati Charitable trust Foundation [TS-596-SC-2017] (SC)**
  - **Held that depreciation is allowed even though asset purchase treated as application of income**
  - Income of the Trust is required to be computed u/s. 11 on commercial principles
  - After providing for allowance for normal depreciation from Trust's gross income,
  - despite full expenditure allowed in the year of acquisition of assets.

## OTHER IMPORTANT DECISIONS

- **ACIT vs Vireet Investments P Ltd [TS-272-ITAT-2017] (Del ITAT)**
  - **Special bench holds contrary view to HC rulings, holds Sec 14A expense disallowance not applicable under MAT**
  
- **Danisco India Pvt Ltd vs UOI [TS-63-HC-2018] (Delhi HC)**
  - **HC held tax treaty rate overrides TDS rate u/s 206AA of Act**
  
- **Flipkart India Pvt Ltd vs ACIT [TS-209-ITAT-2018] (Bangalore ITAT)**
  - **ITAT allowed discounts as revenue expenses**
  
- **Berger Paints India Ltd vs CIT [TS-120-SC-2017] (SC)**
  - **Held u/s 35D capital employed does not include premium on shares**



THANK YOU