

- 1. Amendment to section 68 by insertion of proviso vide Finance Act, 2012 which casts onus on closely held company to explain source of share capital is clarificatory and, hence, applicable with retrospective effect.** It is settled rule of construction that every statute is *prima facie* prospective unless it is expressly or by necessary implication made to have retrospective operation. Ordinarily the courts are required to gather the intention of the legislature from the overt language of the provision as to whether it has been made prospective or retrospective, and if retrospective, then from which date. However, some times what happens is that the substantive provision, as originally enacted or later amended, fails to clarify the intention of the legislature. In such a situation if subsequently some amendment is carried out to clarify the real intent, such amendment has to be considered as retrospective from the date when the earlier provision was made effective. Such clarificatory or explanatory amendment is declaratory. As the later amendment clarifies the real intent and declares the position as was originally intended, it takes retroactive effect from the date when the original provision was made effective. Normally such clarificatory amendment is made retrospectively effective from the earlier date. It may also happen that the clarificatory or explanatory provision introduced later to depict the real intention of the legislature is not specifically made retrospective by the statute. Notwithstanding the fact that such amendment to the substantive provision has been given prospective effect, the judicial or quasi-judicial authorities, on a challenge made to it, can justifiably hold such amendment to be retrospective. The justification behind giving retrospective effect to such amendment is to apply the real intention of the legislature from the date such provision was initially introduced. The intention of the legislature while introducing the provision is gathered, *inter alia*, from the Finance Bill, Memorandum explaining the provision of the Finance Bill etc. Any amendment to the substantive provision which is aimed at clarifying the existing position or removing unintended consequences to make the provision workable has to be treated as retrospective notwithstanding the fact that the amendment has been given effect prospectively. The border line between a substantive provision having retrospective or prospective effect, is quite prominent. One needs to appreciate the nature of the original provision in conjunction with the amendment. Once a provision has been given retrospective effect by the legislature, it shall continue to be retrospective. If on the other hand, the statute does not amend it retrospectively, then one has to dig out the intention of the Parliament at the time when the original provision was incorporated and also the new amendment. If the later amendment simply clarifies the intention of the original provision, then it will always be considered as retrospective. **Subhlakshmi Vanijya (P.) Ltd. v. Commissioner of Income-tax-I, Kolkata [2015] 172 TTJ 721 (Kolkata –Trib).**
- 2. Where assessee-institute having received loan from group companies, converted same into corpus donation, since lender companies were not doing any business and thus were not in a position to give huge amount of loan, addition made by Assessing Officer regarding loan amount as well as penalty order passed on basis of same was to be upheld.** The facts on the record do speak themselves, the alleged argument of the assessee that money was received through account payee cheques. The assessee has filed confirmation from those companies and also produced their directors, therefore, it discharged its onus of proving the identity, genuineness of the transaction and creditworthiness of the donors, on papers, the assessee might have fulfilled the proforma but on reality check, all these companies are apparently bogus. One could appreciate the contention of the counsel that some donation was flowing to the assessee from a very renowned Medical

College or a big industrial house. The unknown private limited companies not doing any business, do not have asset of more than Rs. 1 lakh, all of a sudden gave a donation of Rs. 33 crores is quite unbelievable. These are the hard facts flowing from the accounts of 5 companies. They do not require corroborative support from the statement of 'K'. **KPC Medical College & Hospital v. Deputy Commissioner of Income-tax, [2015] 172 TTJ 204 (Kolkata –Trib).**