

## Direct Taxes

1. **Amendment made to section 143(1A) by Finance Act 1993, has retrospective effect from 1-4-1989** : Section 143(1A) can be invoked only where it is found on facts that the lesser amount stated in the return filed by the assessee is a result of an attempt to evade tax lawfully payable by the assessee. The burden of proving that the assessee has so attempted to evade tax is on the revenue which may be discharged by the revenue by establishing facts and circumstances from which a reasonable inference can be drawn that the assessee has, in fact, attempted to evade tax lawfully payable by it. Subject to the aforesaid construction of Section 143 (1A), we uphold the retrospective clarificatory amendment of the said Section and allow the appeals. **(Commissioner of Income-tax, Gauhati v. Sati Oil Udyog Ltd [2015] 372 ITR 746 (SC)/[2015] 276 CTR 14).**
2. **Where a surplus made by educational institution ploughed back for educational purposes, said institution was to be held to be existed solely for Charitable purpose u/s 2(15).** The Uttarakhand High Court has erred by quoting a non-existent passage from an applicable judgment, namely, Aditanar and quoting a portion of a property tax judgment which expressly stated that rulings arising out of the Income Tax Act would not be applicable. Quite apart from this, it also went on to further quote from a portion of the said property tax judgment which was rendered in the context of whether an educational society is supported wholly or in part by voluntary contributions, something which is completely foreign to section 10(23C) (iiiad). The final conclusion that if a surplus is made by an educational society and ploughed back to construct its own premises would fall foul of section 10(23C) is to ignore the language of the Section and to ignore the tests laid down in the *Surat Art Silk Cloth Mfrs. Association* [1980] 121 ITR 1/[1979] 2 *Taxman* 501 (SC), *Aditanar Educational Institution (supra)* and the *American Hotel and Lodging* case. It is clear that when a surplus is made by an educational society and same is ploughed back for educational purposes, the educational institution is to be held to be existed solely for educational purposes and not for purposes of profit. **(Queen's Educational Society v. Commissioner of Income-tax (SC) / [2015] 372 ITR 699 (SC)/[2015] 275 CTR 449 (SC))**
3. **In case of loss in export business, deduction u/s 80HHC would be Nil** : It stands settled, on the co-joint reading of *IPCA Laboratory Ltd (supra)* and *A.M. Moosa (supra)* that where there are losses in the export of one type of goods (for example self-manufactured goods) and profits from the export of other type of goods (for example trading goods) then both are to be clubbed together to arrive at net-profits or losses for the purpose of applying the provisions of Section 80HHC of the Act. If the net result was loss from the export business, then the deduction under the aforesaid Act is not permissible. As a fortiori, if there is net profit from the export business, after adjusting the losses from one type of export business from other type of export business, the benefit of the said provision would be granted. **Jeyar Consultant & Investment (P.) Ltd. v. Commissioner of Income-tax, Madras [2015] 373 ITR 87 (SC).**

4. **An amendment was made to provisions of section 40A(3) with effect from 1-4-1996 and as such not applicable to period earlier to 01.04,1996, falling within block period for entire** Provisions of section 40A(3) were amended with effect from 1-4-1996. With this amendment, in cases where the cash payment is made in excess of Rs.20,000, disallowance is limited to 20 per cent of the expenditure. Since the date of the amendment falls within the aforesaid block period, the assessee wants the benefit of this amendment for the entire block period of ten years, *i.e.*, 1-4-1986 to 31-3-1996. Such a plea is unacceptable on the face of it. It is clear that amendment is substantive in nature, which is so mentioned in the explanatory notes of amendments as well. **M.G. Pictures (Madras) Ltd. v. Assistant Commissioner of Income-tax, Chennai [2015] 373 ITR 87 (SC)**