

## Important judgements and Updates

Update No 50/ 2021

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### Peter Vaz Tax Appeal Nos 19 to 30 of 2017 Karnataka High Court In favour of Assessee

#### Issues discussed and addressed:

Issue No 1      Rule 27 of ITAT Rules      Respondent assessee is permitted to raise additional jurisdictional ground before ITAT even if, the cross objections are not filed.

#### Facts of the case with respect to issue No 1:

A jurisdictional issue was not permitted to be raised before the ITAT, inter alia on the ground that there was a necessity of filing cross-objections expressly raising such a jurisdictional issue and because there was no sufficient cause shown for condoning the delay of 248 days in raising such jurisdictional issue by filing cross-objections.

#### Held by the Authorities with respect to Issue No 1:

The Revenue in this case had appealed to the ITAT against the orders made by the CIT (Appeals). Therefore, the issue is, whether the assessee could have raised the issue of non-compliance with jurisdictional parameters set out under section 153C of the IT Act, before the ITAT, even without filing any cross-objections before the ITAT.

Since ITAT in captioned order had come to conclusion that issues raised in cross objection were legal issues, ITAT should not have stopped assessee from raising issue in appeals instituted by revenue, without necessity of filing any cross objections.

### Sogefi Engine Systems India Private Limited Bangalore ITAT Against Assessee

ITA Nos.1696 to 1698/Bang/2019, 2089/Bang/2019 & 757/Bang/2016

#### Issues discussed and addressed:

Issue No 1      Principle of Consistency      Bench can draw different conclusion if there is adequate justification to depart from the earlier view i.e., where subsequently new or more facts come to light. Tribunal is entitled to take a different view of the matter on a closer and more intelligent analysis

#### Facts of the case with respect to issue No 1:

Assessee-Company, manufacturer of different types of filters primarily for automotive industry, had incurred certain R&D expenditure and followed an accounting practice of capitalising 70% of the expenditure and claiming 30% as revenue expenditure. The AO finalised the assessment by treating entire expenditure as Capital Expenditure. The case of the assessee, inter alia was that the expenditure was allowed as revenue

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expenditure in AYs 2010-11 and 2011-12 and same shall be followed as per the principle of consistency laid down by SC in Radhasoami Satsang.

### Held by the Authorities with respect to Issue No 1:

The decision taken by the AO in one assessment year do not constitute binding precedent in any subsequent assessment year. At the same time, if it is only a case of different opinion being held on the same facts, material and aspects already considered, the subsequent AO should not proceed on his own to take a contrary decision and instead, he shall take the same decision. However it is neither required nor applicable as a rule to take the same decision when there is qualitative difference of facts, events and material considered between the earlier AO and the subsequent AO. In other words, the subsequent AO is entitled to take a different view of the matter if there is ample justification. Therefore, if while deciding the issue, if the first AO did not have particular material before him or did not take into consideration particular facts and if the second AO is satisfied that if this material facts had been taken into consideration, decision of the first AO would have been different which would justify the second AO in not adhering to the decision of the first AO. On applying the said legal principle to the facts of the present case, it was found that the first AO in earlier AYs 2010-11 & 2011-12 taken a decision in a routine manner, without going into the facts of the case properly, examining the nature of expenditure incurred by assessee with reference to the accounting policies disclosed by assessee and in a mechanical manner he has taken the decision, though it was wrong, it was not scrutinized by the higher forum.

### Judgments Relied upon by the Authorities with respect to Issue No 1:

- a. [Raja Bahadur Visheshwara Singh v. CIT [1961] 41 ITR 685 (SC)
- b. CIT v. Brij Lal Lohia Mahabir Prasad Khemka [1972] 84 ITR 273 (SC)
- c. Namdang Tea Co. Ltd. v. CIT [1982] 138 ITR 326 (Cal)
- d. CIT V. Manaklal Porwal [1986] 160 ITR 243 (Raj.)
- e. Dwarkadas Kesardeo Morarka v. CIT [1962] 44 ITR 529 (SC)
- f. CIT v. Mohanlal Ranchodas [1993] 203 ITR 304 (Guj.)
- g. CIT v. Kalpetta Estates Ltd. [1995] 211 ITR 635 (Ker.)

### **AISECT Limited** ITA No.945 & 946/Ind/2019 Indore ITAT In favour of Assessee

#### Issues discussed and addressed:

Issue No 1	Validity of Addition based on Statement recorded during survey	In absence of any incriminating material found during the course of survey, addition of income based on statement made during survey and retracted shortly invalid.
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### Facts of the case with respect to issue No 1:

Assessee-Company, engaged in the trading of computer hardware/software, management services, general supplies, selling of educational books, insurance and coaching, was subjected to survey during which the managing director gave statement that purchases of books were duly recorded and was paid for via banking channels but being concerned about proving its genuineness to the satisfaction of the Revenue voluntarily surrendered Rs.23 Cr. for AY 2015-16.

### Held by the Authorities with respect to Issue No 1:

If the AO fails to corroborate the disclosures made in the statement given during the course of survey with the incriminating material gathered during the course of such survey, additions cannot be made purely on the basis of statement. ITAT observed that AO was not able to pinpoint any irregularity in the purchases made by the Assessee during the year, or find any contrary material to those filed by the Assessee, and remarks that when the AO had accepted the sales, he ought to have given credit of purchases. Further in absence of any incriminating material found during the course of survey, addition of income based on statement made during survey and retracted shortly invalid.

### S. Seethalakshmi ITA Nos. 3071 & 3072 (Chny) of 2019 Chennai ITAT In favour of Assessee

#### Issues discussed and addressed:

Issue No 1	Section 10(2A)	Income of a firm is to be taxed in the hands of the firm only and the same can under no circumstances be taxed in the hands of its partners. Accordingly, the entire profit credited to the partners' accounts in the firm would be exempt from tax in the hands of such partners, even if the income chargeable to tax becomes NIL in the hands of the firm on account of any exemption or deduction as per the provisions of the Act.
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### Facts of the case with respect to issue No 1:

Assessee was a partner in a firm with 50 per cent share. During year, net profit as per profit and loss account of firm was Rs. 1.47 crores out of which, assessee's share amounting to Rs. 73.93 lakhs was claimed as exempt income under section 10(2A). This was credited into partner's current account in firm. While working out taxable income as per Act in computation statement, profit was determined at Rs. 1.31 crores and assessee's share as per computation came to Rs. 65.67 lakhs. Assessing Officer concluded that assessee was eligible for exemption under section 10(2A) only for an amount of Rs. 65.67 lakhs against claim of Rs. 73.93 lakhs which was credited into current account of firm and, accordingly, difference of Rs. 8.26 lakhs was assessed as income of assessee from other sources and brought same to tax

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### Held by the Authorities with respect to Issue No 1:

The CBDT itself has vide Circular No. 8/2014 dated 31-3-2014 accepted the proposition that the share income from the firm received by the partners is exempt under section 10(2A) of the Act and under no circumstances can be taxed in the hands of the partners hence the addition made by AO is not acceptable.

### Important Updates

- a. In view of difficulties faced by taxpayers in electronic filing of Forms 15CA/15CB on [www.incometax.gov.in](http://www.incometax.gov.in), the CBDT has decided that taxpayers can submit the aforesaid Forms in manual format to the authorized dealers till June 30, 2021. Said date was extended to July 15, 2021. Now, the board has given further relaxation and allowed manual filing of Forms till August 15, 2021.
- b. The Central Board of Direct Taxes (CBDT) has notified M/s Patanjali Research Foundation Trust, Haridwar under the category "Research Association" for Scientific Research for the purposes of section 35(1)(ii) of the Income-tax Act, 1961.
- c. The Govt. has announced issue price of Sovereign Gold Bond Scheme 2021-22- Series IV. The issue price of the Bond during the subscription period shall be Rs. 4,807/- per gram. The Government has also decided to allow discount of Rs 50 per gram from the issue price to those investors who apply online and the payment is made through digital mode.
- d. The Central Board of Direct Taxes (CBDT) has notified a new Rule 8AC which prescribes the manner for computation of short-term capital gains and written down value under section 50 if depreciation has been obtained by assessee.
- e. The Central Board of Direct Taxes (CBDT) has notified a new Rule 8AB to the Income-tax Rules, 1962 to prescribe manner to compute attribution of income taxable under section 45(4) to the capital assets remaining with the specified entity for the purpose of section 48(iii). Specified entities are also required to furnish the details in Form no. 5C.