

## Important judgements and Updates

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### Cyber Park Development & Construction Ltd ITA No. 115 of 2012 Karnataka High Court In favour of Assessee

#### Issues discussed and addressed:

Section 263 –Revision in case of inadequacy of inquiry or insufficiency of material – Not justified when the claim is allowed on meticulous appreciation of evidence on record.

#### Facts of the Case:

Assessee was engaged in the business of developing, operating and maintaining infrastructure facilities for software and related sectors. The Order passed by the AO u/s 143(3) allowing the assessee's claim of depreciation at 25% on the right to lease hold land, which was classified as an intangible asset by the assessee was subject matter of proceedings u/s 263 on the ground of inadequacy of inquiry by AO.

#### Held by the Court:

The tribunal has committed no error in holding that mere inadequacy of an enquiry or insufficiency of material on record cannot be a ground to invoke powers under section 263 of the Act when AO on meticulous appreciation of evidence on record had allowed depreciation on intangible assets.

#### Judgments Relied Upon by the Court:

- a. Malabar Industrial Co. Ltd. [\[2000\] 109 Taxman 66](#) (SC)
- b. Max India Ltd.' [\[2008\] 166 Taxman 188/\[2007\] 295 ITR 282](#)
- c. Ultratech Cement Ltd. v. State of Rajasthan [\[2020\] 117 taxmann.com 807](#) (SC)

### Divine Shiksha Samiti IT APPEAL NO. 64 OF 2019 Madhya Pradesh High Court In favour of Assessee

#### Issues discussed and addressed:

Registration u/s 12AA - No need to examine whether income is being spent for charitable purpose while granting sec. 12AA registration

#### Facts of the Case:

The assessee Society applied for registration under section 12AA of the Act before the CIT, Bhopal which was rejected mainly on the ground that the payment of the rent of the premises to related parties is not on *pro rata* basis though the premises are adjoining and the rent was being paid only to the office bearers of the Society. The rent agreement with the office bearers of the assessee Society do not provide for expenses on maintenance and taxes to be borne by the assessee Society, though the assessee Society had incurred the

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expenses amounting to Rs. 7,89,850/- for the year 2014-15 and, therefore, it could be said that the funds of the assessee were being diverted for personal purpose of office bearers and families. On the aforesaid premises, the CIT, Bhopal came to the conclusion that the assessee Society is for the purpose of profit of the office bearers and not for charitable purposes.

### Held by the Court:

The tribunal has committed no error in holding that the issue regarding payment of rent to the members could be examined at the time of the assessment proceedings. Section 12AA of the Act nowhere provides that CIT (Exemption) while considering the application for registration is also required to examine whether the income derived by the Trust is being spent for charitable purposes or the Trust is earning profit.

### Judgments Relied Upon by the Court:

- a. D.P.R. Charitable Trust [2011] 61 DTR 410 (MP),
- b. Vidyadayani Shiksha Samiti [IT Appeal No. 309 (Delhi) of 2016, dated 14-12-2017],
- c. Venkatesh Education Society [2012] 82 CCH 309 (Kar.)
- d. Fifth Generation Education Society [1991] 54 Taxman 237/[1990] 185 ITR 634 (All)

**Manjit Singh Malhi** ITA No. 2070/Kol/2019 Kolkata ITAT In favour of Assessee / Matter Remanded

### Issues discussed and addressed:

Head of Income i.e PGDP vs IFOS – Interest on FDR - interest earned from FDR's being inextricably linked with business/contract and since have direct nexus with the business of contract, therefore, should be characterized as contract receipt.

### Facts of the Case:

Assessee had received interest from different FDRs. AO noted that the assessee received an amount as interest from FDRs and tax was deducted at source under section 194A. According to AO, assessee had not reflected this amount of interest income in his ITR. According to AO this receipt came under the fold of income from 'Other Sources'. However, according to assessee, since the FDRs were solely made for the purpose of doing his business and FDRs were offered as collateral securities to bank and/or as tender money i.e. E/money, Security Deposit and so on to different contractees, this interest earned should partake the colour of the business income and not from "Other Sources".

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### Held by the ITAT:

FDR was used as security for obtaining the contract and was essential condition for bagging the contract, however, assessee had not bothered to give any material/evidence to show that interest accrued on the FDRs/deposit was incidental and that main purpose of FDR's was it was a condition for getting the contract or to avail the bank guarantee/security deposit/E-money/tender money etc. It was noted that assessee only made these contentions, but failed to produce any material to substantiate his contention that interest accrued from FDR should be treated as income from business. Therefore, matter was remanded back to AO with a direction to examine the matter afresh regarding the characterization/nature of receipt and assessee was at liberty to produce necessary evidences to substantiate its claim

### Judgments Relied Upon by the ITAT:

- a. Govinda Choudhury & Sons (1993) 203 ITR 881 (SC),
- b. Chinna Nachimuthu Constructions (2008) 297 ITR 70 (Karn),
- c. M/s. Britannia Engineering Ltd. [ITA No. 475/Ko1/2013 dt. 6-4-20 16] (Kol-Trib),
- d. Sri B. Diwakar [ITA No. 761/Bang/ 2009 dtd. 31-3-2010] (Bang-Trib),
- e. Saroj Dassani [ITA No. 5360/Del/2004 dt. 2.12.2005] (Del-Trib)