

Important judgements and Updates

Update No 80/ 2021

Himalaya Drug Company I.T.A.No.441/2014 Karnataka High Court In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 153C Notice issued without jurisdiction is a substantive illegality and not a procedural violation of a nature adverted to in Section 292B and 292 BB.

Facts of the case with respect to issue No 1:

Assessee-Firm (M/s Himalaya Drug Company) preferred appeals against ITAT order over assessments made u/s 153C for AYs 2003-04 to 2008-09 and raised an additional substantial question of law on the validity of notice issued u/s 153C which would render the subsequent assessments void ab initio.

Held by the Authorities with respect to Issue No 1:

The notice u/s 153C was issued on May 11, 2009 by DCIT Central Circle 1(1), Bangalore whereas the Assessee's case was transferred to the said officer by CIT's order u/s 127(2) dt. Jul 20, 2009 and date of transfer of files was found to be Aug 19, 2009.

HC referring to Bombay High Court ruling held that only AO has to serve notice upon the assessee calling upon him to furnish a return and where such notice is not issued by the AO having jurisdiction, all the subsequent proceedings are without authority of law.

Kind Attention:

As per Section 124(3)(c) (c), restricts right to challenge territorial jurisdiction of AO after expiry of one month from date of Service of notice u/s 153A /153C or after completion of assessment which ever is earlier. This amendment is effective from AY 2016-17.

Poonam Hareesh Budhrani ITA No.1040/Mum/2019 Mumbai ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 54EC Assessee entitled for claim of exemption u/s 54EC where delay in investment in NHAI Bonds beyond prescribed six months was not attributable to the Assessee.

Facts of the case with respect to issue No 1:

Assessee-Individual sold a residential property on Apr 25, 2013 for Rs.58.50 lacs and with an intention to claim exemption u/s 54EC, issued a cheque dated Oct 24, 2013 for Rs. 50 lacs along with an application for investment in NHAI to a broker which was duly acknowledged but the cheque was handed over to NHAI on

Important judgements and Updates

Update No 80/ 2021

Nov 06, 2013 and was encashed on Nov 07, 2013; Revenue held that the Assessee to be ineligible for exemption u/s 54EC as the investment was made beyond the period of six months from transfer of asset

Held by the Authorities with respect to Issue No 1:

ITAT observed that the cheque was handed over to the broker within time and holds that Assessee cannot be penalised for the delay caused by the broker since it was beyond Assessee's control. ITAT on perusal of the Assessee's bank statement finds that Assessee had pre-closed his fixed deposits in order to facilitate the investment within the stipulated period and holds that this proves the Assessee's intention to make the investment within the prescribed time.

Vocational Education Foundation Delhi ITAT In favour of Assessee

ITA. Nos. 165 TO 168/Del/2018 AND ITA. No. 6051/Del/2017

Issues discussed and addressed:

Issue No 1 Section 11 Nowhere it had been held that the charging of fees for carrying out charitable activity would be regarded as not charitable. If the primary purpose of a trust is charitable, then any other object which by itself is not charitable but ancillary to this purpose will also be valid charity.

Facts of the case with respect to issue No 1:

The case of revenue was that the Assessee cannot be said to be engaged in charitable activities, and the same were tainted with profit motive on the ground that Assessee is charging fees from students and had received corpus donation and thus made additions for the various years.

Held by the Authorities with respect to Issue No 1:

ITAT held that without charging fees, imparting of education cannot be carried out as fees collected from the students itself feeds the charity, unless some other considerations are received for profiteering and personal gains of trustees or members of the society and finds that the fact that surplus was ploughed back for educational purposes was not controverted by the Revenue. ITAT further held that nowhere it had been held that the charging of fees for carrying out charitable activity would be regarded as not charitable and further if the primary purpose of a trust is charitable, then any other object which by itself is not charitable but ancillary to this purpose will also be valid charity as the primary test which is to be applied is whether the main or primary object of the trust is charitable or not. In view of the ITAT held that Assessee is entitled for deduction under Sections 11 and 12 as Assessee exists for educational purposes which are covered as charitable purposes u/s 2(15).

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Update No 80/ 2021

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

- a. CIT v. Surat Art Silk Cloth Mfrs. Association [1980] 121 ITR 1 (SC).
- b. Adarsh public school versus joint Commissioner of income tax 2018 (2) TMI 1692 - ITAT DELHI No.- I.T.A. No.3782/DEL/2017

Important Updates

- a. The Central Government has notified the Special Courts for the State of Manipur, North Goa, South Goa, and Karnataka for the purposes of section 280A(1) of the Income-tax Act, 1961 and section 84 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015
- b. The Govt has notified PM CARES for Children Scheme, 2021 effective from 06-10-2021. The upfront lumpsum consideration in the account shall become Rs. 10 lakh when the accountant holder attains the age of 18 years.
- c. In a matter before the Supreme Court, Additional Solicitor General submitted that department is having a second look on Faceless Appeal Scheme, 2020 and sought a period of three months as it may require change of law