

## Important judgements and Updates

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### **A.Chandrasekaran W.P. NO. 37894 OF 2015 Madras High Court Against Assessee**

#### **Issues discussed and addressed:**

Section 292BB– Service of Notice – Notice to an ARs of an assessee is a notice to the assessee.

#### **Facts of the Case:**

The petitioner has filed the present writ petition against the order passed u/s 147 on the ground that the notice invoking section 148 of the Income-tax Act, 1961, was not served on petitioner.

#### **Held by the Court:**

As per section 292BB of Income-tax Act, 1961, it shall be deemed that any notice under any provision of this Act, which is required to be served upon the assessee, has been duly served upon the assessee in time in accordance with the provisions of this Act and such assessee shall be precluded from taking any objection in any proceeding or inquiry under this Act. Notice to an authorised representatives of an assessee is a notice to the assessee.

### **Kaveri Associates ITA No. 375 of 2013 Karnataka High Court In favour of Assessee**

#### **Issues discussed and addressed:**

Section 274 - The order of penalty passed based on the notice which is bad in law, is without jurisdiction.

#### **Facts of the Case:**

The assessee did not commence any business since its inception till the end of 31-3-1999 and filed return of income declaring NIL Income which was assessed with substantial additions which were confirmed by Honourable High Court and SLP filed against the same were rejected by Honourable Supreme Court of India. The Assessing Officer, thereafter passed order under section 271(1)(c) of the Act for the A Y 1999-2000 which was confirmed by CIT Appeals and Tribunal.

#### **Held by the Court:**

The assessee since, its inception till the end of previous year i.e., 31-3-1999 did not commence any business. The notice under section 274 read with Section 271(1)(c) was issued for Assessment year 2002-03 and not for the Assessment year in question that is 1999-00. Besides this, it is noteworthy that there was no mention in the notice that the assessee has concealed the income or furnished inaccurate particulars of income. Therefore, the notice is per se bad in law and the order of penalty passed on the basis of the aforesaid notice is without jurisdiction.

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**Rameshbhai Jivraj Desai R/TAX APPEAL NO. 195 OF 2020 Gujarat High Court In favour of Assessee**

### Issues discussed and addressed:

Section 153A – Notice as well as proceedings under section 153A(1) were wholly illegally and unlawful in view of no incriminating material found in respect of this year during course of search.

### Facts of the Case:

A search action under section 132 of the Act, 1961 was undertaken in the group cases of M Group. The Assessing Officer concluded the assessment u/s 153A by disallowing the bad debts claimed by the assessee on the ground that the auditors have qualified their report.

### Held by the Court:

The Tribunal has committed no error in holding that notice as well as proceedings under section 153A(1) were wholly illegally and unlawful as in absence of any incriminating material related to the given assessment year found during search, assessment u/s. 153A of the Act cannot be made for that assessment year for which assessment has been concluded on the date of search and not abated.

### Judgments Relied Upon by the Court:

Pr. CIT v. Saumya Construction (P.) Ltd. [2017] 81 taxmann.com 292/[2016] 387 ITR 529