

## Important judgements and Updates

Update No 73/2021

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**Aafreen Fatima Fazal Abbas Sayed Bombay High Court In favour of Assessee**

**Writ Petition (L) No. 6096 of 2021**

### Issues discussed and addressed:

Issue No 1      Section 264      Assessee had not filed appeal against order under section 143(1) under section 246A and time of 30 days to file the same had also admittedly expired. Once such an option had been exercised, a plain reading of the section suggests that it would not then be necessary for assessee to waive such right. That waiver would have been necessary if time to file the appeal would not have expired. Accordingly, Pr.CIT was directed to decide application filed by assessee under section 264 afresh on merits.

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

Assessee, in his return of income had erroneously offered to tax gains arising on sale of shares as short-term capital gains, instead of same being offered as long-term capital gains exempt from tax. Assessee filed rectification application under section 154 which was rejected. Thereafter, assessee filed revision application under section 264, which was rejected on the ground that application was not maintainable as alternate effective remedy of appeal was available and there was no waiver of appeal by the assessee.

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

In clause (a) of section 264 (4), in the language between filing of an appeal and expiry of such period and waiver of assessee to his right of appeal there is an 'or', thereby meaning that there is an option, i.e., either the assessee should not have filed an appeal and the period of filing the same should have expired or he should have waived such right. Hence, there are two situations which are contemplated in said sub-section (4)(a) of section 264. The section cannot be interpreted to mean that for Pr. CIT to exercise his powers of revision under section 264 not only that time for filing the appeal should have expired but also that assessee should have waived his right of appeal. That is not how the section can be read. In the facts of case, assessee had not filed appeal against order under section 143 (1) under section 246A and time of 30 days to file the same had also admittedly expired. Once such an option had been exercised, a plain reading of the section suggests that it would not then be necessary for assessee to waive such right. That waiver would have been necessary if time to file the appeal would not have expired. Accordingly, Pr.CIT was directed to decide application filed by assessee under section 264 afresh on merits.

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Update No 73/ 2021

**Bombay Chamber of Commerce & Mackinnon Mackenzie Building Mumbai ITAT In favour of Assessee**

**ITA No. 5832/Mum/2019**

### Issues discussed and addressed:

Issue No 1      Section 11      Assessee ought to be regarded as established for charitable purpose as its primary or dominant objects are inter alia to promote and protect the trade, commerce and manufacturers of India and in particular trade, commerce and manufacturers of the Bombay presidency and hence is entitled to exemption under section 11 of the Act.

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

Assessee-Company registered u/s 12A and incorporated under section 25 of the Companies Act, 1956 was incorporated for promoting and protecting the trade, commerce and manufacturers of India; Assessee was assessed u/s 143(3) for AY 2009-10 and was denied exemption u/s 11.

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

From the reading of the object clauses, it is clear that the members of the assessee chamber do not stand to gain personally since no portion of the income or property is paid or transferred directly or indirectly by way of dividend or bonus or otherwise. Further, even on winding up, the members cannot claim any share in the surplus assets. These facts highlight the fundamental fact that the assessee by and large strives to promote and protect the trade, commerce and manufacturers of India without seeking to make profits for its members. From a perusal of the FM's speech it is apparent that the intent behind the amendment was that only such entities which are carrying on regular trade, commerce or business would not fall within the definition of the term 'charitable purpose. It was never intended to affect genuine charitable organizations in any way. The theory or dominant or primary object of the trust has, therefore, been treated to be the determining factor, even in regard to the fourth head of charity, viz the advancement of any other object of general public utility, so as to make the carrying on of business activity merely ancillary or incidental to the main object. The activities carried out by the assessee chamber continue to be charitable in nature even under the amended definition under section 2(15) of the Act and assessee is entitled for exemption under section 11 of the Act. We direct the AO accordingly.

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

- a. ACIT v. Surat Art Silk Cloth Manufacturers Association (121 ITR 1) (SC)
- b. CIT v. Federation of Indian Chambers of Commerce & Industries (130 ITR 186) (SC)
- c. India Trade Promotion Organization V. DGIT(E) (371 ITR 333) (Del)

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**Deloitte Haskins & Sells** ITA No. 2970/Ahd/2017 Ahmedabad ITAT In favour of Assessee

### Issues discussed and addressed:

Issue No 1      Section 40(a)(ia)      Business disallowance under section 40(a)(ia) is not justified in case of short deduction of tax.

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

AO made disallowance under section 40(a)(ia) on the ground that assessee was liable to deduct TDS under section 194-I with respect to the Banquet charges at the rate of 10%, whereas assessee deducted TDS at the rate of 2% prescribed under section 194-C.

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

Section 40(a)(ia) refers only to the duty to deduct tax and pay to government account. If there is any shortfall due to any difference of opinion as to the taxability of any item or the nature of payments falling under various TDS provisions, assessee can be declared to be an assessee-in-default under section 201 and no disallowance can be made by invoking section 40(a)(ia). Therefore, disallowance could not be sustained.

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

- a. CIT v. S.K. Tekriwal (2014) 361 ITR 432 (Cal) : 2013 TaxPub(DT) 0240 (Cal-HC)
- b. CIT v. Vegetable Products Ltd. (1973) 88 ITR 192 (SC) : 1973 TaxPub(DT) 0421 (SC)

### Important Updates

- a. 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.
- b. 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