



ASC Times

All India Taxes Weekly Referencer

Vol: Jul 18 - Jul 24, 2016

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puzzle

Tax saving advice
across all the taxes



From the CEO's Desk



Dear Reader,

The monsoon session of parliament is in many ways an almost new look session. First, it has a new team from the government, most carefully chosen either with an eye on UP polls, or more importantly, to get key bills like GST Bill. It also comes with some humiliation for the BJP having lost face in Arunachal this week and Uttarakhand earlier. It also comes in the backdrop of ongoing turmoil in Kashmir and the brazen defiance by Pakistan. All this means it may not be a fair weather monsoon session for the government. Sources say however the Prime Minister is keen to walk the extra mile to ensure he sends out the message that the growth agenda of the government is intact. The bad press and corporate unhappiness over the Raghuram Rajan incident has worried the PM that this message may be lost. Sources say the PM has made it clear to his team that come what may, no matter how much extra mile it may have to walk, the passage of GST is crucial.

The Congress is caught in a bind. It wants to be difficult, wishing to pay back the government for attacks on the Gandhis over the Vadra land issue, Agusta and National Herald. Yet, after claiming that the GST was their brainchild. The Congress cannot be seen as resisting for long.

The Session is likely to be governed by 2 factors. One the upcoming UP elections which will decide new team of PM Modi. The other being parties like TMC, JDU, BSP and SP will run the House. The last session didn't end too badly with several bills being passed. But this time all eyes would be on whether the GST finally gets the nod.

Further, there being good news for readers, from the next volume onwards, we will publish articles on Model of GST Law. A separate section shall be created for the same. Herein mentioned basic model of GST.

GST stands for "Goods and Services Tax", and is proposed to be a comprehensive indirect tax levy on manufacture, sale and consumption of goods as well as services at the national level. It will replace many indirect taxes levied on goods and services by the Indian Central and State governments. GST is a destination based consumption tax.

Whatever hopes were there for GST Bill to be passed in the second half of the current session has vanished with politics taking centre stage. With the Constitution Amendment Bill to implement GST not listed till date, hopes on the passage of the GST Bill in this session have receded.

At present, the Constitution (122nd) Amendment Bill, 2014 for Goods and Services Tax (GST) passed in the Lower House on 6th May, 2015. Empowered Committee of State Finance Ministers introduced Model GST Law (containing Goods and Service Tax Act, 2016 and GST Valuation (Determination of Value of Supply of Goods and Services), Rule 2016) and Model IGST Law (called Integrated Goods and Service Tax Act, 2016) in June 2016 and further comments/feedback are invited by the Govt. at public domain on these draft models.

With publish of outline of the new law through model GST law, much state Govt. is notifying amendments and drifting towards more IT based system communication and return filing system. Introduction of MODVAT, its restructuring into CENVAT at Central level and VAT at state level shall be considered as preliminary steps for introduction of GST in the federal nation.

Planning and preparation are not only at Govt. level, but the industry and their mentors have also initiated to gear up. Undoubtedly, the reform will demand change in accounting and financial reporting system, update in IT System, change management and personnel training, compliance requirement, supply chain management & advocacy and activism. Further, these reorganisation along with statutory reform will impact the working capital requirement of each entity.

Alok Kumar Agarwal

CEO

ASC Group.

TAX CALENDER

Due Date	Description	Law
20 July	Deposit of Tax	Andhra Pradesh VAT, Goa VAT, Karnataka VAT, Manipur VAT, Punjab & Chandigarh VAT, Tamil Nadu VAT, Telangana VAT, Uttarakhand VAT
	Deposit of TDS	Tamil Nadu VAT,
	Filing of Return	Andhra Pradesh VAT, Karnataka VAT, Manipur VAT, Punjab & Chandigarh VAT, Tamil Nadu VAT, Telangana VAT
	Issue of TDS Certificate	Chhattisgarh VAT,
22 July	Deposit of Tax	Gujarat VAT, Tamil Nadu VAT
	Issue of TDS Certificate	Delhi VAT
	Return Filing	Tamil Nadu VAT

COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Occasion/Festival	Region
NA	NA	NA

INDEX GUIDE

TOPIC	PAGE NO.
Service Tax	4-5
Central Excise	5-6
Customs	7-7
Income Tax	8-9
State Taxes	9-10
Other Updates	10-10
Our Contacts	11

CENTRAL TAXES

SERVICE TAX

COURT DECISIONS

M/S VEDANT CLEARING AGENCY VERSUS COMMISSIONER, CUSTOMS AND CENTRAL EXCISE AND SERVICE AND ANR [ALLAHABAD HIGH COURT]

BRIEF: Condonation of delay of 352 days before the first appellate authority. It is apparently clear that under the garb of blaming someone else, the appellant is trying to invoke a sympathetic view of the Court to condone the delay. None of the active partner has the gumption to file a personal affidavit before this Court. Condonation denied.

OUR TAKE: The hon'ble ALLAHABAD HIGH COURT held that inconsistent stand has been taken by the appellant at every stage of the appeal. Three different stands have been taken; first before the First Appellate Authority, then before the Tribunal and now before this Court. It is apparently clear that under the garb of blaming someone else, the appellant is trying to invoke a sympathetic view of the Court to condone the delay. None of the active partner has the gumption to file a personal affidavit before this Court. Condonation denied. [Decided against the assessee]

M/S RK AND SONS VERSUS COMMISSIONER OF CENTRAL EXCISE, ROHTAK [CESTAT NEW DELHI]

BRIEF: Commission agent for ginned cotton. Scope of exemption, agricultural produce or not. Ginned cotton would be covered within the scope of "raw vegetable fibres such as cotton" and hence qualify to be called "agricultural produce"

OUR TAKE: The hon'ble CESTAT NEW DELHI held that cotton fibre obtained by ginning cotton plucked from cotton plants is nothing but raw cotton fibre because there cannot be "rawer" form of cotton fibre obtained from "cotton-with-seeds" plucked from cotton plants. The exclusionary part of the definition of agricultural produce which states that it "does not include manufactured products such as sugar, edible oils, processed food and processed tobacco" as also of the no-further-processing requirement contained in the said definition and are of the view that holistic, harmonious and fair construction of the definition of agricultural produce leads to the inescapable conclusion that while ginned cotton would be covered within the scope of "raw vegetable fibres such as cotton" and hence qualify to be called "agricultural produce", ginned cotton if subjected to any further

processes like carding etc. would get out of the purview of "agricultural produce". [Decided in favour of assessee]

K. RAM MOHAN [AUTHORITY FOR ADVANCE RULINGS, NEW DELHI]

BRIEF: Activities of street light maintenance cannot be equated with maintenance of road, bridge, tunnel etc. Exemption not available.

OUR TAKE: The hon'ble AAR NEW DELHI held that the word 'road' is clear and it cannot be substituted by the term street light support structure. The reliance on para 13(a) by the applicant is, therefore, of no consequence. The learned representative of the Department has also correctly argued that there would be no question of applicability of Paragraph 13(a) of the aforementioned Notification. In view of the specific language of the said Paragraph 13(a), we accept the arguments and hold that there will be no question of applicability of para 13(a) of the Notification. No exemption is available to assessee. [Decided against the assessee]

M/S INTAS PHARMACEUTICALS LTD. VERSUS COMMISSIONER OF SERVICE TAX, AHMEDABAD. [CESTAT AHMEDABAD]

BRIEF: Refund claim. Service tax was paid under reverse charge mechanism. Technical Testing and Analysis Service, service was not partly performed in India. Period of limitation, since service was taxable, refund allowed

OUR TAKE: The hon'ble CESTAT AHMEDABAD held that the proviso to Rule 3(1)(ii) of Taxation of Services Rules, 2006 will be applicable in a case the service is partly performed in India. In the present case, there is no dispute that the service was provided outside of India and therefore, they are not covered under the said proviso. - Adjudicating authority directed to allow the refund to the Appellant in accordance with law. [Decided in favour of assessee]

M/S. LEAR AUTOMOTIVE INDIA PVT. LIMITED VERSUS COMMISSIONER OF CENTRAL EXCISE & S.T., VADODARA [CESTAT AHMEDABAD]

BRIEF: Cenvat Credit. Eligible as Input Service or not. Courier Service used by the appellants used for the movement of finished goods after the place of removal. Credit not allowed.

CENTRAL EXCISE

COURT DECISIONS

DEVANG PAPER MILLS PVT. LTD. VERSUS UNION OF INDIA. (GUJRAT HIGH COURT)

BRIEF: Adjustment of Payment of duty under the wrong code, whatever be the accounting difficulty, when undisputed fact is that the petitioner did pay a certain excise duty, merely mentioning wrong code in the process, cannot result into such harsh consequence of the entire payment not being recognized as valid, incurring further liability of repayment of the basic duty with interest and penalties.

OUR TAKE: The hon'ble GUJRAT HIGH COURT held that such amount was deposited by the petitioner with the Government of India and it was duly credited in the Government account. It is not even the case of the respondents that the petitioner had any other code by the number and for which there was separate manufacturing activity inviting separate duty liability. Indisputably, thus, the petitioner had singular duty liability for which the actual payment was also made. Under the circumstances, the impugned communication dated 05.05.2015 and notice dated 21.07.2015 are quashed. The respondents are directed to give credit of the duty paid by the petitioner. [Decided in favour of assessee]

THE COMMISSIONER OF CENTRAL EXCISE AND CUSTOMS, VALSAD VERSUS M/S ATUL LTD. [GUJRAT HIGH COURT]

BRIEF: Rectification of order. Power of the tribunal to re-appreciate the facts and reverse the findings recorded in the Final order. Tribunal was justified in entertaining contention which was raised by the assessee at the outset but not decided by the Tribunal while rendering its judgement on appeal

OUR TAKE: The hon'ble GUJRAT HIGH COURT held that it is well settled by series of decisions that a contention though taken but not decided by the Tribunal would give rise to the scope for rectification. Under the circumstances, the Tribunal was justified in entertaining contention which was raised by the assessee at the outset but not decided by the Tribunal while rendering its judgement on appeal. If that be so, the only question which remains to be decided is, whether while entertaining such a contention the Tribunal committed any legal error' Here also, we do not find any force in the contention of the Revenue. As asserted by the assessee and held by the Tribunal, the assessee had made all necessary declarations and, clearances were made with concurrence of the Department. There was no mis-

OUR TAKE: The hon'ble CESTAT AHMEDABAD held that after 01.04.2008, though the appellant would be eligible for CENVAT credit on the Courier Service used for sending/ receiving documents related to the business, or for movement of inputs and finished goods up to the place of removal, they would not be eligible for credit on Courier Services used in relation to movement of finished goods, after the place of removal. [Decided against the assessee]

OBEROI REALTY LTD VERSUS COMMISSIONER OF SERVICE TAX MUMBAI-II [CESTAT MUMBAI]

BRIEF: Claim of refund of service tax paid wrongly by the sub-contractor. The sub-contractor having not contested the classification, the appellant cannot come before the authority and say that the refund has to be granted as these services are in respect of construction of school building.

OUR TAKE: The hon'ble CESTAT MUMBAI held that the sub-contractor having not contested the classification, the appellant cannot come before the authority and say that the refund has to be granted as these services are in respect of construction of school building and in effect wants to make the classification under 'Commercial and Industrial Construction Service'. Refund was rightly denied. [Decided against the assessee]

M/S. S & S CONSTRUCTIONS VERSUS CCE & ST, PONDICHERRY [CESTAT CHENNAI]

BRIEF: Demand of Interest beyond the scope of Show Cause Notice. Appellant is required to pay the interest on the amount demanded in the show cause notice and confirmed by the adjudicating authority only.

OUR TAKE: The hon'ble CESTAT CHENNAI held that the interest cannot be demanded beyond the demand proposed in the show cause notice ie. 2,40,780/- and submits that the order demanding interest travels beyond the show cause notice - Held that:- It is seen that the recovery of interest of the entire service tax amount of 5,10,895/- was not covered in the SCN issued. The adjudicating authority has travelled beyond the SCN. Since he has appropriated the entire of amount of service tax, recovery of interest on the entire amount of service tax of 5,10,89/- is not covered under Section 73 (2) of the Finance Act, 1994. Hence, the appellant is required to pay the interest on the amount demanded in the show cause notice and confirmed by the adjudicating authority. Accordingly, the appeal is allowed. [Decided in favour of assessee]

declaration or a wilful misstatement with a view to avoiding duty. The invocation of extended period of limitation, therefore, was rightly held not permissible. Tax Appeal is therefore, dismissed. **[Decided against the revenue]**

SUNIL FORGING AND STEEL IND., SHRI BENU RAMESH AGARWAL VERSUS COMMISSIONER OF CENTRAL EXCISE, BELAPUR. (CESTAT MUMBAI)

BRIEF: Extended period of limitation. It was the duty of the audit party to consider whether the classification was correct and the appellant had availed the benefit of Notification correctly or otherwise. Demand set aside.

OUR TAKE: The hon'ble CESTAT MUMBAI held that The audit report which has been produced before us indicate that this issue was not raked by the audit team would mean that it was accepted by the audit team that the classification of products is under Notification 72.14. On limitation the appeal succeeds and the demand for the period 01.03.2004 to 31.10.2004 is blatantly hit by limitation and the show-cause notice invoking the period of limitation under the provisions of Section 11A(1) is not correct. The impugned order is liable to be set aside on limitation only. **[Decided in favour of assessee]**

RAKO MERCANTILE TRADERS VERSUS COMMISSIONER OF CENTRAL EXCISE, LUCKNOW [CESTAT ALLAHABAD]

BRIEF: Valuation. The law does not require charging of duty on freight for technical lapse of not indicating the freight charges separately on the excise invoice.

OUR TAKE: The hon'ble CESTAT ALLAHABAD held that commercial invoice indicates the value and freight amount separately. We find all these documents tallying in respect of a particular consignment. Only because the freight amount was not indicated separately in the excise invoice, although it is clearly reflected in the commercial invoice and GR, is not sufficient ground to deny the substantive benefit. The law does not require charging of duty on freight for technical lapse of not indicating the freight charges separately on the excise invoice. Impugned order is set aside. **[Decided in favour of assessee]**

SUJANA METAL PRODUCTS LTD., ENDEAVOUR INDUSTRIES LTD., OMNICON BIO-GENESIS INDUSTRIES LTD., VICTORIA STEEL ENTERPRISES LTD., FUTURE TECH INDUSTRIES LTD. AND COMMISSIONER OF CENTRAL EXCISE, CHENNAI-II VERSUS THE COMMISSIONER OF CENTRAL EXCISE, CHENNAI-II AND M/S. SUJANA METAL PRODUCTS LTD. [CESTAT CHENNAI]

BRIEF: Levy of penalty on dealers who issues Bogus Invoices - Cenvat Credit - Bogus credit - levy of penalty confirmed, though reduced

OUR TAKE: The hon'ble CESTAT CHENNAI held that though the appellants have created the documents by way of issuing documents and subsequently taking the credit without receipt of the goods, the appellants at the first instance have paid the duty by debiting the Cenvat account which was again taken back by above paper transaction. Therefore, we do not find any infirmity in the order of adjudicating authority in so far as regularizing the credit and dropping of recovery of credit. Accordingly, the Revenue's appeal is rejected. **[Decided against Revenue]**

THE GREAT OASIS ENTERPRISES PVT LTD VERSUS COMMISSIONER OF CENTRAL EXCISE, MUMBAI-IV [CESTAT MUMBAI]

BRIEF: During the process of manufacture some wastage of packaging material occurs which is not useful and rejected. This being only charge against the appellant and there being no 'manufacture' we hold that the demand is not sustainable.

OUR TAKE: The hon'ble CESTAT MUMBAI held during the process of manufacture some wastage of packaging material occurs which is not useful and rejected. This being only charge against the appellant and there being no 'manufacture' we hold that the demand is not sustainable. **[Demand set aside]**

GOYAL M.G. GASES PVT. LTD. VERSUS COMMISSIONER OF C. EX. & S.T., CHANDIGARH (CESTAT NEW DELHI)

BRIEF: Gas filing activity. Whether the activity undertaken by the appellant amounts to manufacture? Gas is already marketable in its original form and the activity undertaken by the appellant does not render the gas marketable, which is already marketable. Demand of duty set aside.

OUR TAKE: The hon'ble CESTAT NEW DELHI held that the gas is already marketable in its original form and the activity undertaken by the appellant does not render the gas marketable, which is already marketable. Therefore, we hold that the activity undertaken by the appellant does not amount to manufacture. Consequently, the appellant are not liable to pay duty. **[Decided in favour of assessee]**

CUSTOMS

NOTIFICATIONS & CIRCULARS

The Govt. vide Notification No. 42/2016-Cus dated 11th July 2016, amend notification No. 12/2012-Customs, dated 17th March 2012.

OUR TAKE: Readers are requested to read the said Notification. It is self-explanatory.

COURT DECISIONS

COMMR. OF CUS. & C. EX., TIRUCHIRAPPALLI VERSUS HINDUSTAN LEVER LTD. [SUPREME COURT]

BRIEF: Valuation of import of soda ash light - declared price was lower than invoice price since the market price was down drastically. The provisions of sub-section (1) of Section 14 are clearly attracted and there was no necessity of invoking the rules.

OUR TAKE: The hon'ble **SUPREME COURT** held that It is clear from the above that in the show cause notice itself, the Department had accepted the fact that there was slump in the international market insofar as import of soda ash light is concerned. The documents clearly show the prevailing market rate of the goods in question in international market at the relevant period. On that basis, if the value of the goods was declared at USD 120 per M.T. by the respondent/importer, this was perfectly justified and in consonance with the provisions of the Section 14(1) of the Act. **[Decided in favour of assessee]**

C.C.E., MANGALORE VERSUS MANGALORE REFINERY & PETROCHEMICALS LTD. [SUPREME COURT]

BRIEF: Valuation of imported goods. The demurrage charges are admittedly incurred after the goods reached at Indian ports and, therefore, it is a post-importation event. Such charges, therefore, cannot form part of the transaction value.

OUR TAKE: The hon'ble **SUPREME COURT** held that it is not even necessary to go into the various nuances of the matter as we are of the opinion that these appeals are bound to fail on one simple ground. The demurrage charges are admittedly incurred after the goods reached at Indian ports

and, therefore, it is a post-importation event. Such charges, therefore, cannot form part of the transaction value. Issue in this behalf is settled by this very Bench in the case of Commissioner of Customs, Ahmadabad v. M/s. Essar Steel Ltd., [2015, SUPREME COURT]. **[Decided against the revenue]**

M/S. PRACHI SILKS, M/S. NUPUR IMPEX, M/S. MAHALAXMI SILK TRADING, RADHEY SHYAM RANDEK, M/S. MAHALAXMI SILK TRADING CO., BANGALORE, M/S. GOYAL ENTERPRISES, HEMANTH KUMAR, M/S. MAHARAJA IMPEX, BANGALORE VERSUS THE COMMISSIONER OF CUSTOMS & THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI [MADRAS HIGH COURT]

BRIEF: Waiver of pre-deposit - undue hardship. There is no specific pleading to the effect that the compliance of the pre-deposit condition would cause undue hardship to the appellants. The appellants cannot even contend that they have a prima facie case. No relief in stay.

OUR TAKE: The hon'ble **MADRAS HIGH COURT** held that Tribunal decided the cases into two categories namely (i) those, in which, a duty was levied together with penalty and (ii) those where only a penalty was imposed. It is in cases where what was imposed was only penalty that the Tribunal has given some waiver. In cases where a duty is levied together with penalty, the Tribunal has rounded off the duty amount to the next higher or lower figure and directed the said amount to be deposited. Therefore, we see no reason to interfere with the order of the Tribunal. Accordingly, all the civil miscellaneous appeals are dismissed. **[Decided against the appellants]**

RAYMOND LTD. VERSUS COMMISSIONER OF CUSTOMS (APPEALS) , MUMBAI-I [CESTAT MUMBAI]

BRIEF: Claim of Refund - Valuation - the refund claim cannot be claimed unless the legal remedy of challenging the respective assessment order by filing appeal is exhausted.

OUR TAKE: The hon'ble **CESTAT MUMBAI** held that the bill of entry has been assessed by the proper officer and the duty is paid on the basis of assessment and in view of this, the refund claim cannot be claimed unless the legal remedy of challenging the respective assessment order by filing appeal is exhausted. **[Decided against the appellants]**

INCOME TAX

COURT DECISIONS

COMMISSIONER OF INCOME TAX (TDS) VERSUS HERAMEC LTD [ANDHRA PRADESH HIGH COURT]

BRIEF: : TDS u/s 194J - procurement of ready study data by the parent company, from another foreign company, and supplying it to the assessee amounts - Non deduction of TDS on technical services rendered to a resident. No TDS required

OUR TAKE: The hon'ble **ANDHRA PRADESH HIGH COURT** held that revenue has also not been able to show how procurement of ready study data by the parent company, from another foreign company, and supplying it to the assessee amounts to services rendered to a resident attracting Section 194-J of the Act. The Tribunal is the final court of facts and, as the finding recorded by it is on the basis of the material on record, the order under appeal cannot be said to be perverse. [**Decided in favour of assessee**]

SURESH KUMAR HOODA VERSUS THE COMMISSIONER OF INCOME TAX, ROHTAK AND ANOTHER [PUNJAB & HARYANA HIGH COURT]

BRIEF: Service of an independent contractor. Whether would be taxable as salary contrary to the contract of service - Whether it is professional or skilled work; nature of establishment and the right to reject, are also required to be scanned before arriving at the conclusion of the employer-employee relations.

OUR TAKE: The hon'ble **PUNJAB & HARYANA HIGH COURT** held that The control test and the organization test are not the only factors whereas several other factors viz. who is the appointing authority; who is pay master; who can dismiss; how long alternative service lasts; the extent of control and supervision; the nature of the job e.g. Whether it is professional or skilled work; nature of establishment and the right to reject, are also required to be scanned before arriving at the conclusion of the employer-employee relations - matter is remanded to the Tribunal to decide the same afresh keeping in view the principles.

YUM RESTAURANTS (INDIA) PRIVATE LIMITED AND COMMISSIONER OF INCOME TAX-09 VERSUS INCOME TAX OFFICER AND YUM RESTAURANTS (INDIA) PRIVATE LIMITED [DELHI HIGH COURT]

BRIEF: Carry forward accumulated business losses - change in shareholding. The question of 'piercing the veil' at the

instance of Yum India does not arise. - in terms of Section 79 of the Act, Yum India cannot be permitted to set off the carry forward accumulated business losses of the earlier years.

OUR TAKE: The hon'ble **DELHI HIGH COURT** held that the As there was indeed a change of ownership of 100% shares of Yum India from Yum Asia to Yum Singapore, both of which were distinct entities. Although they might be AEs of Yum USA, there is nothing to show that there was any agreement or arrangement that the beneficial owner of such shares would be the holding company, Yum USA. The question of 'piercing the veil' at the instance of Yum India does not arise. In the circumstances, it was rightly concluded by the ITAT that in terms of Section 79 of the Act, Yum India cannot be permitted to set off the carry forward accumulated business losses of the earlier years.

THE COMMISSIONER OF INCOME TAX, PANCHKULA VERSUS M/S GYMKHANA CLUB, PANCHKULA [PUNJAB & HARYANA HIGH COURT]

BRIEF: Principle of mutuality. Whether the ITAT was right in law in treating the charges received from non-member/guests as not liable to tax? Matter remanded back for ascertaining facts.

OUR TAKE: The hon'ble **PUNJAB & HARYANA HIGH COURT** held that tribunal had not recorded any definite finding of fact on the basis of legal enunciations on the issue. Therefore, in such a situation, the issue being considered to be primarily a question of fact relating to applicability of doctrine of mutuality, it would be appropriate to set aside the order of the Tribunal and remand the case back to the Tribunal to adjudicate the same and pass a speaking order after hearing both the sides.

MONSANTO INDIA LTD VERSUS ADDL COMMISSIONER OF INCOME TAX [ITAT MUMBAI]

BRIEF: Allow ability of exemption u/s 10(1). For earning agricultural income, it is not necessary that the assessee must own the land and it is enough if it is established that the agricultural organizations have been actually carried on by the assessee.

OUR TAKE: The hon'ble **ITAT MUMBAI** held that for earning agricultural income, it is not necessary that the assessee must own the land and it is enough if it is established that the agricultural organizations have been actually carried on by the assessee. In view of the finding of the fact recorded - Decided in favour of assessee. [**Decided in favour of assessee**]

**SMT. MINALBEN DIPAKBHAI MEHTA VERSUS ITO, WARD-3
(3) SUAT. [ITAT AHMEDABAD]**

BRIEF: Addition u/s 68 - cash credit - the alleged surplus cash accumulated in the cash book out of the withdrawals from the bank is to be considered as source of re-deposit.

OUR TAKE: The hon'ble ITAT AHMEDABAD held that assessee claimed that sum of amount has been received from her son and daughter - the assessee has produced prima facie evidence about the source of amount. The AO, except disbelieving the version of the assessee, failed to bring any evidence contrary to the one submitted by the assessee. Thus, the addition to this extent, source proved, would be deleted. The assessee has explained the sources. Therefore, in our opinion, the alleged surplus cash accumulated in the cash book out of the withdrawals from the bank is to be considered as source of re-deposit. **[Decided in favour of assessee in part]**

**KANTI AUTO FABRICATION PVT LTD VERSUS ASSISTANT
COMMISSIONER OF INCOME TAX [GUJARAT HIGH COURT]**

BRIEF: Reopening of assessment. Mere accounting entry or even if there was some defect in indicating such amount in the accounts presented by the assessee, as long as income chargeable to tax had not escaped assessment, reopening of the assessment would not be permissible.

OUR TAKE: The hon'ble GUJARAT HIGH COURT held that mere accounting entry or even if there were some defect in indicating such amount in the accounts presented by the assessee, as long as income chargeable to tax had not escaped assessment, reopening of the assessment would not be permissible. **Decided in favour of the assessee]**

**M/S FORUM PROJECTS PVT. LTD. VERSUS DCIT, CENTRAL
CIRCLE-II, KOLKATA. [ITAT KOLKATTA]**

BRIEF: Disallowance u/s 14A. The action of the AO in directly embarking on Rule 8D (2) Of the Rules is not appreciated and hence no disallowance u/s 14A could be made in the facts of the instant case.

OUR TAKE: The hon'ble ITAT KOLKATTA held that action of the Learned AO in directly embarking on Rule 8D (2) of the Rules is not appreciated and hence no disallowance u/s 14A of the Act could be made in the facts of the instant case. **[Decided in favour of the assessee]**

STATE TAXES

ALL INDIA VAT

ANDHRA PRADESH

The Govt. vides Notification No. G.O.MS.No. 307 dated 12th July 2016 amends Schedule-IV appended to the said Act, in entry 39, for sub-entry (15)

OUR TAKE: Readers are requested to read the said Notification. It is self-explanatory.

CHHATTISGARH

The Govt. vides Notification No. F-10-33/2016/CT/V (66) dated 11th July 2016, notifies that time limit for filling Form 18 FY 2014-15 has been extended to 30th Nov 2016.

OUR TAKE: Readers are requested to read the said Notification. It is self-explanatory.

RAJASTHAN

The Govt. vides Notification No. F.12(79)FD/TAX/2014-29 dated 11th July 2016, amends form VAT-10A.

OUR TAKE: Readers are requested to read the said Notification. It is self-explanatory.

TAMIL NADU

The Govt. vides Notification No. G.O.MS.No. 101 dated 11th July 2016, amends rules 12-A

OUR TAKE: Readers are requested to read the said Notification. It is self-explanatory.

COURT DECISIONS

M/S. JMASSH DOORS AND WINDOWS PRIVATE LIMITED VERSUS THE COMMERCIAL TAX OFFICER AND THE STATE OF KERALA (KERALA HIGH COURT)

BRIEF: The petitioner having chosen not to produce his books of accounts for perusal, cannot be heard to complain of a violation of the Rules of Natural Justice. Value Added Tax - VAT and CST.

OUR TAKE: The hon'ble **KERALA HIGH COURT** held that order of the 1st respondent cannot be faulted on the ground that it was passed in violation of Rules of Natural Justice. The petitioner having chosen not to produce his books of accounts for perusal by the 1st respondent before the assessment cannot be heard to complain of a violation of the Rules of Natural Justice while passing Ext.P8 order. The writ petition in its challenge against Ext.P8 order therefore fails and is accordingly dismissed.

SRI LAKSHMI TEXTILES VERSUS THE COMMISSIONER OF COMMERCIAL TAXES AND OTHERS [MADRAS HIGH COURT]

BRIEF: Reversal of Input Tax credit, when admittedly the petitioner firm has paid the tax, he cannot be made liable for the failure on the part of the seller to report the same to the respondent.

OUR TAKE: The hon'ble **MADRAS HIGH COURT** held that the reason assigned in the impugned order is that the petitioner firm is denied Input Tax Credit just because the dealer/seller has failed to report the same before the respondents. The reason adduced by the respondent is unacceptable for the reason that when admittedly the petitioner firm has paid the tax, he cannot be made liable for the failure on the part of the seller to report the same to the respondent. **[Decided in favour of assessee]**

OTHER UPDATES

FEMA

The **RBI vide Press Release 2015-16/1677 dated 15th July 2016**, releases data on India's International Trade in Services.

The **Reserve Bank of India, in consultation with the Government of India vide press release 2015-16/1663 dated 15th July 2016**, has decided to issue second tranche of Sovereign Gold Bonds. Applications for the bond will be accepted from January 18, 2016 to January 22, 2016.

ALLIED LAW

COURT DECISIONS

MOHAN LAL VERSUS JASWINDERA PAL SINGH [PUNJAB & HARYANA HIGH COURT]

BRIEF: Rebuttal of presumption. Complaint u/s 138 of the Negotiable Instruments Act. Cheque Bounce due to payment stopped by drawer. Discharge of liability. The defense version given by the accused is probable and rebuts the presumption under Section 139 of the Negotiable Instruments Act

OUR TAKE: The hon'ble **PUNJAB & HARYANA HIGH COURT** held during the cross-examination, the complainant has not given reply on so many material questions to know whether complainant was knowing the accused or not. Again, complainant is the resident of Sri Muktsar Sahib whereas the accused is resident of Sri Ganganagar. The defence version given by the accused is probable and rebuts the presumption under Section 139 of the Negotiable Instruments Act. - The judgment dated 25.05.2015 passed by learned JMJC, Sri Muktsar Sahib, is correct, as per law and evidence - accused-respondent was acquitted. **[Decided against the complainant / appellant]**

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