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1. Shri B.L.Shah Vs ACIT ITA No. 910 of 2007 dt 05.02.2016

- The assessee was an employee of Grasim Ltd for more than 33 years and retired on 31.03.2002.
- At the time of retirement, the assessee received retirement benefits of more than Rs. 95 lakhs from Grasim. A monthly pension of Rs. 3 lakhs per month for life, reimbursement of medical expenses for life etc.
- Besides, the assessee received an amount of Rs. 3.80 crores, which he claimed as non-compete fees, relying on the Agreement dt 31.03.2002.
- The assessing officer held that the agreement dt 31.03.2002 is a subterfuge to colour the amount received in lieu of salary as non-compete fees, so as to not pay tax.
- On appeal, the CIT(A) agreed with the assessing officer and held that the amount was received in instalments, prior to the agreement date 31.03.2002 and that the amount was in fact profits in lieu of salary and not non-compete fees.
- The Tribunal also confirmed the order of the CIT(A).
- On further appeal, the High Court dismissed the appeal of the assessee for the following reasons:
    - The assessee failed to explain the manner in which the compensation figure of Rs. 3.80 crores was arrived at/the break up of Rs. 3.80 crores, in spite of specific request by the income tax authorities.
    - The payment was made before the execution of the non-compete agreement dt 31.03.2002, without the terms being set out first.

- Grasim has deducted tax at source on the payment of Rs. 3.80 crores and the assessee has accepted it.
- The assessee is 81 years old and hence, unlikely to compete with his employer of more than 30 years. Moreover, the assessee was re-appointed the very next day ie: 01.04.2002 as an advisor to Grasim.
- Hence, the amount is not non-compete fees.

2. Kawasaki Heavy Industries Ltd Vs ACIT ITA No. 1321/Del/2015 dt 11.02.2016

- The assessee is engaged in diversified business of ship building, consumer product such as motor cycles and all terrain vehicles.
- The assessee has two subsidiaries in India by the name of Wipro Kawasaki Precision Machinery Pvt.Ltd. and India Kawasaki Motors Pvt.Ltd.
- The question before the Delhi Tribunal was whether the liaison office of the assessee constitutes a Permanent Establishment of the assessee in India.
- The Tribunal held that:
  - The assessee opened a liaison office in India with the prior permission from Reserve Bank of India
  - The power of attorney executed by the head office in favour of its employee in the liaison office in India is liaison office specific.
  - The AO's conclusion that the power of attorney granted unfettered powers to its liaison office employee to do all or any acts for and on behalf of the assessee is incorrect
  - The AO's finding that that the power of attorney is an open ended document, which is clearly outside the scope of initial permission granted by the RBI is also perverse.
  - While the AO has the power to investigate and see whether any income earning activity has been carried out by the liaison office,

it is beyond the jurisdiction of the AO to adjudicate and conclude that the assessee has filed false declarations before the RBI

- The RBI has not found any violation of conditions laid down by it while permitting the assessee to have a liaison office and hence, at best, the AO can bring his findings to the notice of the RBI which may consider the same in accordance with law.

3. PCIT Vs Tinna Finex Ltd ITA No.113/2016 dt 15.02.2016

- The assessee is engaged in the business of finance and export
- During the concerned year, there was no business activity except for the receipt of interest and some hire charges
- During assessment, the AO noted that an amount of Rs 5.64 crores shown as secured and unsecured loans in the balance sheet of assessee was reduced to Nil
- The assessee submitted that this was based upon a family settlement and that no trading transaction was involved in writing off the said loans
- The Delhi High Court held that:
    - The loan transactions were on the capital account and the writing off the loan was also on capital account and did not find place in the P&L A/c
    - It has been found as a matter of fact that the assessee had not got the benefit of any allowance or deduction in the assessment for any prior year in respect of loss, expenditure or trading liability incurred by it
    - Thus the cessation of the liability by itself would not lead to the attraction of the provisions of Sec 41(1) in the subsequent year when the liability ceased to exist.

4. CIT Vs Chaitanya Properties Pvt Ltd ITA No.205 OF 2015 dt 16.02.2016

- For the A.Y. 2005-06, an order of assessment u/s. 143(3) was passed.

- Proceeding u/s. 147 were sought to be initiated after a period of four years from the end of the relevant assessment year.
- The Karnataka High Court held that:
    - From the reasons recorded by the AO, it is apparent that the reasons recorded are facts which were well within the knowledge of the AO while completing the original assessment proceedings u/s.143(3) of the Act
    - The joint development agreement between the Assessee and PEPL was taken note by the AO in the order passed u/s.143(3)
    - The AO has noted that the assessee held the Whitefield property as investment and converted the same as stock-in-trade of business
    - The AO did not think it fit to invoke provisions of Sec.45(2) either because he overlooked the applicability of those provisions or because he thought that the point of time at which tax is to be levied u/s.45(2) had not occurred during the previous year
    - All facts were available before the AO when he completed the original assessment proceedings u/s. 143(3). There is no tangible material which has come to the possession of the AO justifying initiation of reassessment proceedings.
    - The reasons recorded by the AO do not spell out that escapement of income was due to the assessee not fully and truly disclosing all material facts necessary for completion of assessment for the relevant assessment year.
    - The reopening is therefore on the basis of change of opinion and hence invalid.

5. Troikaa Pharmaceuticals Ltd Vs Union of India Special Civil Application No.18383 of 2015 dt 23.02.2016

- The assessee in engaged in the business of manufacturing and selling pharmaceutical products. It regularly files its Return of Income.

- The Revenue issued a notice to the assessee deeming it to be an 'assessee-in-default' as per Sec 201(1) as the assessee did not deduct tax at source in respect of payments made to certain domestic parties for AY 2009-10.
- The petitioner contends that the notice issued by the Revenue is beyond the period of two years as contemplated under section 201(3)(i) of the Act for passing orders under section 201 of the Act.
- The High Court held that:
    - The case relates to FY 2008-09. The petitioner had filed statements as required under Sec 200 of the Act.
    - The limitation for initiating proceedings under Sec 201(1) of the Act would, therefore, be governed by section 201(3)(i) of the Act as it stood at the relevant time, which provided for a period of limitation of two years from the end of the financial year in which statement was filed in a case where the statement referred to in Sec 200 has been filed
    - The limitation for initiating action under Sec 201(1) of the Act, therefore, elapsed on 31st March, 2012 whereas the amendment in Sec 201 of the Act as amended by Finance Act No.2 of 2014 came into force with effect from 28th May, 2012
    - Then notice is therefore barred by limitation and cannot be sustained.

6. HDFC Bank Ltd Vs DCIT WP No. 1753 of 2016 dt 25.02.2016

- The assessee filed this writ petition stating that the Tribunal did not follow the binding decision of the Hon'ble High Court in the assessee's own case for an earlier year in CIT Vs HDFC Bank Ltd 366 ITR 505.
- The assessee contended that this was against the Doctrine of Precedent and Jurisprudence/Hierarchical structure of the judicial system, both of which are established practices in our judicial system.
- The High Court held that:

- The Tribunal erred in stating that there was a conflict between Godrej & Boyce and HDFC Bank Ltd, as the two cases are on different issues
- The test to decide whether two decisions are in conflict with each other is to first determine the ratio of both the cases and if the ratios laid down are in conflict with each other, only then can it be said that the judgments are in conflict with each other
- The Tribunal has made an observation that there is no such thing as estoppel in law and thereby gives itself a licence to decide the issue and ignore the binding precedent in the petitioner's own case.
- However, once there is a decision of the High Court, it is binding on all authorities within the state till such time it is stayed or set aside by the Supreme Court or the High Court itself or a larger bench takes a different view on an identical factual matrix.
- If a party is aggrieved with the decision of the High Court, it can take it up to the Supreme Court or where the same issue arises in a subsequent case, the issue may be re-urged to impress upon it that the decision rendered earlier requires reconsideration.
- It is simply not open to the Tribunal to sit in appeal and not follow the judgment of the High Court.
- The Doctrine of Precedent has to be strictly followed.

7. ACIT Vs Perfect Colourants and Plastics Pvt Ltd Tax Appeal No. 221 of 2007 dt 29.02.2016

- The question before the High Court was whether section 80IA(9) disentitles an assessee from claiming deduction u/s 80HHC to the extent deduction is already claimed and allowed for certain profit or gain of an undertaking or enterprise u/s 80IA
- The High Court relies on CIT Vs Atul Intermediates 373 ITR 638 Guj and held that:

- Subsection (9) of section 80IA disentitles an assessee from claiming deduction under any other provision of subchapter C to the extent deduction is already claimed and allowed for certain profit or gain of an undertaking or enterprise under section 80IA
- The provision would have to be applied at the very stage when the assessee's claim for deduction under section 80HHC of the Act is considered
- Different formulae have been provided for manufacturing exporter and trader and in case of an assessee whose exports comprise of both the sources. It is, therefore, at the stage of subsection (3) of section 80HHC effect of subsection (9) of section 80IA would apply
- Giving effect to subsection (9) of section 80IA does not tinker with the formula for computation of eligible profit for deduction under section 80HHC

8. Akkineni Annapurna Charitable Trust Vs DIT(E) ITA No. 1871/Hyd/2012 dt 01.03.2016

- The assessee trust was created to promote social, cultural and educational activities and encourage artistic pursuits.
- The assessee had filed an application seeking registration u/s 12AA of the Act.
- The DIT(E) observed that though the main object of the trust was to promote social, cultural and educational activities, it also intends to provide coaching to candidates for the purpose of appearing in competitive exams and hence, it cannot be treated as being 'charitable' in nature.
- The assessee contended that the families of poor students approached the trustees for financial assistance for education and after due verification, some students were selected for assistance. This granting of

financial assistance is as per its objects, ie: to promote educational activity.

- The DIT(E) observed that the trust deed only mentions establishment and maintenance of educational institutions and providing financial assistance to destitute actors, artists etc. However, donations to students and coaching students for competitive exams are not covered by its objects clause.
- On appeal before the Tribunal, the assessee held that the word 'education' should not be given a narrow meaning. The intention of the assessee was to promote education and help the poor and needy.
- The assessee placed before the Tribunal an amended trust deed as it felt that a genuine trust should not suffer on account of ambiguity in the main trust deed, which did not reflect the true intention of the settlor/trustee.
- The Tribunal held that the DIT(E) should not have proceeded simply on the ground that conducting coaching classes would not come under 'education'.
- The Tribunal remanded the case to the DIT(E) to consider it afresh in the light of the law and the amended deed placed by the assessee.

9. ITO Vs Dr. Dhruman Desai ITA No. 4066/Mum/2013 dt 01.03.2016

- The assessee, a consultant cardiologist, filed his Return of Income within the due date prescribed u/s 139(1).
- The assessee had entered into some F&O transactions, funded by the capital gains arising on sale of shares received as a gift from his father.
- During the course of assessment, the assessee filed a revised Computation of Income in which he claimed Rs. 1.49 crores from F&O transactions as his business loss and declared Nil income.
- Further, the assessee claimed that the loss, to the extent not set off by the current year's income, should be carried forward.

- The question before the Tribunal was whether claims raised otherwise than by filing revised return of income can be entertained.
- The Tribunal held that:
    - The assessee had omitted to disclose the loss arising on account of F&O transactions in the original return of income filed u/s 139(1)
    - Upon discovery of the omission, the assessee ought to have filed a revised return of income within the time limit prescribed u/s 139(5)
    - The assessee cannot make good his omission to file revised return of income by filing revised computation of income. Further, the revised computation was filed beyond the time limit prescribed for filing the revised return.
    - Therefore, the claim of loss and the subsequent carry forward of unabsorbed loss cannot be entertained.

10. EAL Consulting India Pvt Ltd Vs ITO ITA No. 2359/Del/2012 dt 01.03.2016

- The assessee company is a wholly owned subsidiary of EAL India Holdings Ltd, Hongkong.
- The assessee company was incorporated in May 2007 and its operation is for the accounting period starting from 04.05.2007. The assessee is engaged in the business of rendering HR services including manpower on contractual basis, executive search, recruitment, placement etc.
- One of the issues in this case was that the depreciation on trademark registration was not allowed u/s 32. The assessee claimed that if it was not allowed u/s 32, it should be allowed u/s 37.
- The Commissioner dismissed the ground as the plea was raised for the first time before him and was not taken before the assessing officer.
- On further appeal, the Tribunal held that the issue has to be remanded to the assessing officer for him to examine the claim afresh.