Direct Tax

October 31, 2022	Commissioner of Income-tax v. MAC Public Charitable Trust	Madras High Court

High Court applies "lifting of corporate veil" to deny exemption u/s 11 of the Income Tax Act (The Act) to educational trust receiving capitation fees disguised as donations from sister trusts.

Facts of the Case

Sri Venkateswara Educational and Health Trust is an Assessee on the file of the Deputy Commissioner of Income Tax (Exemption), Chennai. They had registered themselves as Charitable Trust under Section 12A (a) of The Income Tax Act, 1961. They had filed their return of income admitting 'nil' income for the assessment year 2011-12 on 28.09.2011. On verification of return of income and other details during scrutiny, it unfolded that Rs.9,90,50,000/- was received by the Assessee as corpus donation from M/s. MAC Charities, M/s. MAC Public Charitable Trust and M/s. Spic Educational Foundation etc. This amount was received by the Assessee as donations from number of persons.

During the enquiry, it revealed that the said amount was paid to M/s.United Educational Foundation, in lieu of procuring seats in Sri Venkateswara College of Engineering located at Sriperumbudur, Kancheepuram District, which is a unit of the Assessee - Sri Venkateswara Educational and Health Trust. On further analysis, the Assessing Officer concluded that there was a nexus between M/s. United Educational Foundation, M/s. MAC Charities, M/s. MAC Public Charitable Trust and Sri Venkateswara College of Engineering. The Assessing Officer also concluded that the Assessee utilised M/s.United Educational Foundation, M/s. MAC Charities, M/s.MAC Public Charitable Trust as a tool for transfer of capitation fees received from the students and thereby virtually sold education for a price.

Such practice of receiving donation and/or capitation fee as a condition precedent for admitting a student is opposed to the provisions of the Tamil Nadu Educational Institutions (Prohibition of Collection of Capitation Fee) Act, 1992.

According to the Assessing Officer, the analysis of the fund transactions confirms that the Assessee made to appear that the contributors voluntarily paid the capitation fee, which was channelised through M/s. United Educational Foundation. Thus, the Assessee had purposefully and intentionally channelised the capitation fee in the name of donations back to themselves, thereby exempting the receipt of amount at both ends.

After a detailed analysis, the assessing officer issued a show cause notice calling upon the assessee to explain as to why the exemption under section 11 should not be denied for the income of Rs.3.60 crores as the said receipt was not a voluntary contribution. The assessee replied stating inter alia that the donations batch are voluntary only and the trust has not in any way secured admissions in Sri Venkateswara College of Engineering for the donors, who happen to be trusts only. Being dissatisfied with the reply filed by the assessee, the assessing officer concluded that the assessee trust was used as tool to transfer the fund from one trust to other trust under the guise of charity. While so, the assessing officer held that the amount of non-voluntary contribution i.e., capitation fees received of Rs.3,60,00,000/- was treated as income not eligible for exemption under section 11 and taxed protectively in the hands of the assessee at the rate applicable to an Association of Persons (AOP) and accordingly, passed the assessment order determining the taxable income at Rs.3,60,00,000/- and tax payable at Rs.1,65,27.680/- for the assessment year 2011-12. It was further observed that penalty proceedings against the Assessee under Section 27(1)(c) of the Act will be initiated separately.

Assessee Trust preferred an appeal before CIT(A) who contended that when there was no allegation by any of the donors that the amount was made to be tendered involuntarily, the entire investigation conducted by the Assessing Officer and the consequential orders of assessment were liable to be set aside.

Aggrieved by the orders so passed by the Appellate Authority the Revenue preferred the appeals before the Income Tax Appellate Tribunal.

The Tribunal rejected the contentions so made on the side of the Revenue by observing that the statements recorded from the donors revealed that they made the donations voluntarily to the charitable institutions. Further, the Assessing Officer did not examine the source of investment made by the donors. While so, it could be inferred that the Assessing Officer had coerced the individual donors and obtained the statements.

Judgment / Conclusion

There is no bar to apply the doctrine of lifting of corporate veil in the case of trusts. What is to be seen, is the existence of the systemised mechanism to collect the capitation fee as donation through other entities. The principles laid down in various decided cases while expounding the concept of lifting the corporate veil, especially in cases relating to tax evasion, and in cases where public interest and policy are sought to be defeated by fraud, are squarely applicable to the present appeals where while the Assessee Trusts are controlled by common trustees and are in indeed sister Trusts, this Court may be constrained to lift the veil to see the real beneficiaries and the object of the donations by relatives/friends of parents as quid pro quo for admissions into the Assessee educational institutions as well as the other Assessees who are not educational institutions.

On lifting the veil, it is clear as daylight that the modus operandi adopted by the Assessee Institutions and Trusts are with the twin objectives of circumventing/violating the provisions of the Capitation Fee Act of Tamil Nadu as well as evading tax while seeking tax exemption under the corporate veil of being different and distinct entities receiving funds from each other for purely charitable purposes.

Suffice it to say, nothing can be farther from the truth that cannot hide itself sufficiently behind the fig leaf of the legal cover sought to be taken by the Assessees under the guise of being charitable trusts and seeking exemption thereof.

November 4, 2022	**State Bank of India v. Assistant Commissioner of Income-tax**	**Supreme Court**

TDS deductible u/s 192 of the Income Tax Act, 1961 (The Act) on LTC paid for travel with a foreign leg, as exemption u/s 10(5) is not applicable for such travel.

Fact of the Case

The basic objective of the LTC scheme was to familiarise a civil servant or a Government employee to gain some perspective of Indian culture by traveling in this vast country. It is for this reason that the 6th Pay Commission rejected the demand of paying cash compensation in lieu of LTC and also rejected the demand of foreign travel.

Many of the employees of the appellants had undertaken travel to Port Blair via Malaysia, Singapore or Port Blair via Bangkok, Malaysia or Rameswaram via Mauritius or Madurai via Dubai, Thailand and Port Blair via Europe etc. It is very difficult to appreciate as to how the appellant who is the assessee-employer could have failed to take into account this aspect.

The obligation of deducting tax is distinct from payment of tax. The appellant cannot claim ignorance about the travel plans of its employees as during settlement of LTC Bills the complete facts are available before the assessee about the details of their employees' travels. Therefore, it cannot be a case of bonafide mistake, as all the relevant facts were before the Assessee employer and he was therefore fully in a position to calculate the 'estimated income' of its employees.

The contention of Shri K.V. Vishwanathan, learned senior advocate that there may be a bonafide mistake by the assessee-employer in calculating the 'estimated income' cannot be accepted since all the relevant documents and material were before the assessee- employer at the relevant time and the assessee employer therefore ought to have applied his mind and deducted tax at source as it was his statutory duty, under Section 192(1) of the Act.

Judgment / Conclusion

LTC u/s 10(5) of the Act read with Rule 2B of the Income Tax Rules, 1962 is for travel within India, from one place in India to another place in India. The contention of the Appellant (SBI) that there is no specific bar under Section 10(5) for a foreign travel and therefore a foreign journey can be availed as long as the starting and destination points remain within India is without merits. In view of the provisions of the Act, the moment employees undertake travel with a foreign leg, it is not a travel within India and hence not covered under the provisions of Section 10(5) of the Act. A foreign travel also frustrates the basic purpose of LTC.

January 31, 2023	**Pr. Commissioner of Income Tax (Exemptions) Delhi vs. Respondent: Servants of People Society**	**Supreme Court**

Supreme Court asks Assessing Officer to examine whether Servants of the People Society, set up by Lala Lajpat Rai, is charitable trust entitled to exemption of its income under the Income Tax Act, 1961 (The Act).

Fact of the Case:

The Assessee society was founded in the year 1921 by the legendary freedom fighter Lala Lajpat Rai during the freedom struggle for the nation building, general awareness and welfare of the people. In 1928 the famous freedom fighter of Odisha Shri Pt. Gopa Bandhu Dass made a will of his property and his printing press which is managing the Oriya newspaper "Samaj"-for people's welfare. The Assessee was enjoying exemption under section 11 of the Act but the same was denied during the A.Y. 1973-74 and later allowed by the ITAT and affirmed by the High Court. The assessee was also earlier allowed exemption for three years i.e. 1990-91 to 1992-93 under section 10(23C)(iv) of the Act. The Assessee has established and is running schools in the name of Balwant Rai Mehta Vidya Bhawan in Lajpat Nagar and in Greater Kailash in New Delhi and one Medical Centre in Lajpat Nagar and old age home in Dwarka in Delhi. The Assessee is also building a hospital in the name of Gopa Bandhu Medical Research Centre in Odisha. The Assessee was also allowed exemption under section 11(1) but the same has been denied during the A.Y. 2010-11 and 2011-12 invoking the proviso to section 2(15) on the ground that the assessee is involved in trade, commerce or business as it manages and runs a printing press and a newspaper. The assessee argued that it was primarily a non-profit institution involved in charitable activities and did not engage in any trade, commerce or business or any such activity and approached the Appellate Commissioner who allowed its plea and directed that the income earned by it ought to enjoy the benefit of exemption. The revenue carried the matter in appeal to the ITAT and the High Court, both unsuccessfully. As a consequence, it has approached the Supreme Court in appeal by the special leave.

Analysis and Findings: During the relevant assessment year, the Assessee society claimed exemption, inter alia, in respect of income from newspapers, which included advertisement revenue, to the extent of Rs. 9,52,57,869 and surplus of Rs. 2,16,50,901 from its activities in Delhi.

Judgment / Conclusion

It is clarified that an assessee advancing general public utility cannot engage itself in any trade, commerce or business, or provide service in relation thereto for any consideration ("cess, or fee, or any other consideration"). However, in the course of achieving the object of general public utility, the concerned trust, society, or other such organization, can carry on trade, commerce or business or provide services in relation thereto for consideration, provided that

(i) the activities of trade, commerce or business are connected ("actual carrying out..." inserted w.e.f. 01.04.2016) to the achievement of its objects of GPU; and

(ii) the receipt from such business or commercial activity or service in relation thereto, does not exceed the quantified limit, as amended over the years (Rs. 10 lakhs w.e.f. 01.04.2009; then Rs. 25 lakhs w.e.f. 01.04.2012; and now 20% of total receipts of the previous year, w.e.f. 01.04.2016);

Generally, the charging of any amount towards consideration for such an activity (advancing general public utility), which is on cost-basis or nominally above cost, cannot be considered to be "trade, commerce, or business" or any services in relation thereto. It is only when the charges are markedly or significantly above the cost incurred by the assessee in question, that they would fall within the mischief of "cess, or fee, or any other consideration" towards "trade, commerce or business".

In the present case, the Appellate Commissioner, the ITAT and the High Court merely followed the judgment of the Delhi High Court in India Trade Promotion Organisation. However, the law with regard to interpretation of Section 2(15) has undergone a change, due to the decision in Ahmedabad Urban Development Authority (supra). As a result, this Court is of the opinion, that matter should be remitted for fresh consideration of the nature of receipts in the hands of the Assessee, in the present case. As a result, the matter requires to be re-examined, and the question as to whether the amounts received by the Assessee qualify for exemption, Under Section 2(15) or Section 11 needs to be gone into afresh.

In view of the foregoing discussion, the revenue's appeal succeeds in part. The AO shall examine the documents and relevant papers and render fresh findings on the issue whether Respondent is a charitable trust, entitled to exemption of its income. The AO shall complete the hearing and pass orders within four months. The appeal is allowed to the above extent.

February 3, 2023	**DCIT, Circle-1 vs. Shyam Kundandas Gyanchandani**	**ITAT Mumbai Bench**

Disallowance of purchases on ad-hoc basis does not tantamount to furnishing inaccurate particulars of income under the provisions of Section 271(1)(c) of the Income Tax Act, 1961 (The Act).

Fact of the Case:

The assessee is engaged in the business of reseller in chemicals & fuels. The assessee has filed the return of income for the A.Y. 2009-10 on 30.09.2009 disclosing a total income of Rs. 6,06,148. Subsequently the AO has received the information from Sales Tax Department, that the assessee has obtained bogus purchase bills from M/s. Neptune Corporation aggregating to Rs. 5,44,589. The Assessing Officer (AO) has reason to believe that the income has escaped assessment and issued notice u/s 148 of the Act, in compliance the assessee has filed the revised return of income disclosing total income of Rs. 6,06,148 further the notice u/s 143(2) and 142(1) of the Act are issued. In compliance, the Ld. AR of the assessee appeared from time to time and submitted the information and the case was discussed. Whereas, the AO has issued notice u/s 133(6) of the Act on the party to examine the genuineness of the purchases but there was no response. The assessee has filed detailed letters on 26.03.2015 & 27.03.2015 with the supporting evidences. But the AO was not satisfied with the explanations and the information and finally made an addition of Rs. 5,44,589 and assessed the total income of Rs. 11,50,740 and passed the order u/s 143(3) r.w.s. 147 of the Act dated 30.03.2015.

Subsequently, the AO has initiated the penalty proceedings u/s. 271(1)(c) of the Act. In the course of penalty proceedings it was brought to the knowledge of the Assessing officer that the assessee has filed an appeal with the CIT(A) on quantum addition of bogus purchases. Whereas, the CIT(A) has relied on the facts and judicial decisions and restricted the addition to the extent @ 25% of purchases and on further appeal the Honble Tribunal has restricted the addition to the extent of 12.5%. The A.O. has considered these facts and observed that none appeared on behalf of the assessee nor any explanations were filed in respect of penalty notice. The A.O. dealt on the facts and the findings of the scrutiny assessment and levied a penalty of Rs. 21,034 and passed the order u/s. 271(1)(c) of the Act dated 21.03.2018.

CIT (appeals) observed that no penalty can be levied on estimated income and directed the A.O. to delete the penalty and allowed the assessee's appeal. Aggrieved by the order of the CIT(A), the revenue has filed an appeal with the Hon'ble Tribunal.

Judgment / Conclusion

ITAT held that when the addition is on estimated basis, penalty u/s. 271(1)(c) of the Act cannot be levied on such ad hoc estimated income. The disallowance of purchases on ad-hoc basis does not tantamount to furnishing inaccurate particulars of income under the provisions of Section 271(1) (c) of the Act.

The Assessing officer has not doubted the sales and made disallowance of bogus purchases. Further the assessing officer made an addition based on the information received from Sales tax department Maharashtra since the said information could not conclusively be proved. Accordingly, ITAT are not inclined to interfere with the order of the Ld. CIT(A) and upheld the same and dismiss the grounds of appeal of the revenue.

February 24, 2023	**Principal Commissioner of Income- tax vs. Durgapur Projects Ltd.**	**High Court - Calcutta**

Section 50C of the Income Tax Act, 1961 'the Act' would not be made applicable to determine capital gains on compulsory acquisition of land by National Highways Authority of India (NHAI) as question of payment of stamp duty for effecting such transfer would not arise.

Fact of the Case:

The respondent filed its original return of income on 28.09.2015 declaring loss of 591,64,96,295. Subsequently revised return was filed on 16.01.2017 declaring loss of 581,04,07,134. The case was selected for scrutiny and notices under Section 143(2) and 142(1) of the Act were issued and the respondent assessee was heard and the assessing officer completed the assessment under Section 143(3) of the Act by order dated 30.12.2017. The assessing officer added a sum of Rs. 5,48,43,584 to the total income being capital gain on transfer of land to the National Highways Authority of India (NHAI) and also initiated penalty proceedings under Section 271(1)(c) of the Act.

The assessee preferred appeal before the Commissioner of Income Tax (Appeals). The CIT(A) held that the assessing officer was not justified in invoking Section 50C of the Act on the land which was compulsorily acquired for NHAI and directed to re-compute the capital gains without applying Section 50C of the said Act. The matter goes before ITAT and thereafter to the High Court.

Contention of High Court:

Section 50C was inserted by the Finance Act 2002 with effect from 01.04.2003 for the purpose of taking the value adopted or assessed by the stamp valuation authority as the deemed full value of consideration received or accruing as the result of transfer of a capital asset being land or building or both, in case the consideration received or accruing as a result of transfer is less than such value.

For the purpose of deciding as to whether Section 50C is applicable in case of compulsory acquisition of capital asset, it would be relevant to take note of the provisions of Section 50C(1) which runs as follows:

Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed [or assessable] by any authority of a State Government (hereafter in this section referred to as the “stamp valuation authority”) for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed [or assessable] shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer. (emphasis by the Court).

In case of a transfer by way of compulsory acquisition, the capital asset being land or building or both vests upon the government by operation of the provisions of the relevant statute governing such acquisition proceeding and subject to the terms and conditions laid down in the said statute being followed. In case of compulsory acquisition the transfer of property takes place by operation of law and the provisions of the Transfer of Property Act or the Indian Registration Act do not have any manner of application to such transfers. The question of payment of stamp duty also does not arise in such cases.

Judgment / Conclusion

This Court accordingly holds that in case of compulsory acquisition of a capital asset being land or building or both, the provisions of Section 50C cannot be applied as the question of payment of stamp duty for effecting such transfer does not arise.

In the instant case, the property was acquired under the provisions of the National Highways Act 1956. The property vests by operation of the said statute and there is no requirement for payment of stamp duty in such vesting of property. As such there was no necessity for an assessment of the valuation of the property by the stamp valuation authority in the case on hand.

March 31, 2023	**Assistant Commissioner of Income-tax, Circle-3(2) v. Vishnu Export**	**ITAT Ahmedabad**

In the absence of any specific provision under section 10AA to file return of income within provisions of section 139(1), assessee could not be deprived of claim on grounds that claim was not filed under original return within specified time limit as per section 139(1) of the Income tax Act, 1961 “the Act”.

Facts of the Case:

Assessee in the present case is a partnership firm and engaged in the manufacturing business of Pan

Masala with and without Ghutka. The factory of the assessee is located at Kandla Special Economic Zone, Gandhidham Kachh. The assessee in the revised return of income has claimed the deduction of Rs. 1,49,72,275 under the provisions of section 10AA of the Act. But the same was disallowed by the AO on the ground that claim was not filed under original return with in specified time limit as per section 139(1) of the Income tax Act, 1961. Aggrieved, assessee preferred an appeal before the Ld.CIT(A) who had given decision in favour of assessee. Being aggrieved by the order of the Ld. CIT(A), the Revenue is in appeal before ITAT.

Judgment / Conclusion

Since there was no specific provision under section 10AA to file return of income within provisions of section 139(1), assessee could not be deprived of claim made under revised return. [In favour of assessee]

July 6, 2023	Pr. Commissioner of Income Tax vs Micro and Small Enterprise	Delhi High Court

The provisions of the Income Tax Act, 1961, prevail over the Micro, Small, and Medium Enterprises Development Act, 2006 (MSMED Act) relating to fees payable to CA firms for Special Audits directed under Section 142(2A) of the Income Tax Act.

Facts of the Case:

The Petitioner, the Principal Commissioner of Income Tax, Central-1, has filed the writ petitions challenging the directions for reference to arbitration passed by the Respondent No. 1, the Micro & Small Enterprise Facilitation Council ('MSEFC') – an authority established u/s. 20 of the MSMED Act. Respondent No. 2, M/s SBG & Co. is a partnership firm of Chartered Accountants (CA Firm) of which Mr. S.B. Gupta is a Partner. The said CA Firm is also registered as a `Micro Enterprise' under the provisions of the MSMED Act. The CA Firm, being on the panel of the Income Tax Department (IT Department), was nominated as a Special Auditor by the IT Department in four cases for carrying out Special Audit in terms of Section 142(2A) of the IT Act. After the completion of the said Special Audit assignments and the submission of the final audit reports, the CA Firm raised four invoices in respect of the said audits. The grievance of the Special Auditor-CA Firm is that qua the invoices raised, the full payment has not been made. Further, in respect of one of the assignments the payment has not been received at all. Under such circumstances, the CA Firm invoked the provisions of the MSMED Act and approached the MSEFC by way of references under Section 18 of the Act.

Pursuant to the said references, the matter was thereafter referred to the Delhi International Arbitration Centre (hereinafter 'DIAC') by the MSEFC.

Judgment / Conclusion:

The Income Tax Department has preferred the present two writ petitions, challenging the impugned reference orders passed by the MSEFC on the ground that the MSEFC under the MSMED Act lacks jurisdiction to deal with claims raised by Special Auditors under Section 142(2A) in respect of the fee payable in terms of Section 142(2D) of the IT Act.

July 27, 2023	Hiranandani Healthcare Private limited v/s CIT(A)/ National Faceless Appeal Centre, Delhi	ITAT Mumbai 'H' Bench

Facts of the Case:

The assessee is engaged in providing health care services. The shareholders of the assessee company are M/s. Fortis Healthcare Limited (FHL) and M/s. Fortis Healthcare Holdings Pvt. Limited (FHHPL). Both the above said shareholders were holding 40% and 60% of shares respectively. During the year ending, the assessee issued 30 Lakhs equity shares having face value at Rs.10/- each with a premium of Rs.90/- per share (totaling to Rs.100/- per share) to FHL. As a result, there was a change in share holding pattern between both the shareholders, i.e., the holding of FHL increased to 85%, while holding of FHHPL got reduced to 15%. It is pertinent to note that the assessee was having accumulated losses remaining to be set off.

The Assessing Officer took the view that the above said change in shareholding pattern between two shareholders, referred above, would be hit by provisions of section 79 of the Act, which bars carry forward of losses, if any, if there is a change in shareholding pattern as mentioned in section 79 of the Act. Accordingly, the Assessing Officer held that the assessee is not entitled to carry forward and set off of accumulated loss available with the assessee as on 31.3.2011. Accordingly, he rejected the claim for set off of brought forward losses. The learned CIT(A) also confirmed the same.

Judgment / Conclusion

In the instant case, we noticed that there are only two shareholders, viz., FHL and FHHPL. Both the above said shareholders, as a group, has beneficially held 51% of the voting power in both the years, i.e., the year in which loss was incurred and the year in which the loss was sought to be set off, meaning thereby, there is no change in the shareholding pattern of the group. We further noticed that the FHHPL is holding company of FHL. Hence, the increase in shareholding of FHL in the assessee company, in any case, would not result in the change in the voting power of the shareholders. Accordingly, we find merit in the contentions of the learned AR that the provisions of section 79 will not be applicable in the facts of the present case. Accordingly, we set aside the order passed by the learned CIT(A) on this issue and direct the Assessing Officer to allow set off brought forward losses.

August 03, 2023	Vishranti Gruh vs. Commissioner of Income Tax Officer	ITAT Pune

ITAT Orders Re-Adjudication of Trust's 12AB Registration Cancellation for Failure to Prove Activity Genuineness.

Facts of the Case:

The appellant assessee is a trust which has made an application under clause (iii) of section 12(1)(ac) of the Income tax Act, 1961 "the Act" thereby seeking regular/final registration u/s 12AB of the Act. After perusal of said application the Ld. CIT(E) called upon the appellant to produce certain key information so as to enable him to verify the genuineness of its activities. This notice however remained unattended by the assessee. For the reasons, the application by the impugned order is rejected by the registering authority Ld. CIT(E) for his failure to arrive at positive satisfaction about the genuineness of activities of the appellant trust in the absence of persuasive evidences. The appellant trust shall not seek any unreasoned adjournment and shall co-operate with the Ld. CIT(E) in this remand proceedings.

Judgment / Conclusion

Since the appellant has undertaken to adduce necessary and requisite evidences in support of its claim so as to enable the Ld. CIT(E) to form a reasonable conclusion in accordance with the application law, ITAT direct the Ld. registering authority to dispose of the appeal after according not more than two effective hearings to the appellant trust.

The Tribunal noted that the objective behind provisions like section 12AB and recognition under section 80G is to facilitate the flow of benefits to society through charitable trusts. These provisions stem from the Directive Principles of State Policy in the Constitution of India, aiming to foster socio-economic welfare.

18.06.2024	**Kiran Reddy Gangidi v. Income-tax Officer**	**ITAT Hyderabad**

No addition could be made towards LTCG just because joint development agreement was entered into during that year

Facts of the Case:

The assessee, an individual, has not filed return of income for the assessment year 2012-13. As per the information available with the department, the AO noticed that the assessee, along with other family members, had entered into a joint development agreement on 11.11.2011 with M/s. Rami Reddy Constructions to develop the land into residential flats in 45:55 ratio, and the commercial portion of the property was shared in the ratio of 50:50. Subsequently, the supplementary agreement was also entered into on 30.05.2014, and thereby the shares of the builder and the landlord have been reduced to 38:62 and the market value of the property as of the date of registration was at Rs. 7,44,20,000. On the basis of the information, the notice under section 148 of the Act was issued on the ground that income chargeable to tax under the head income from capital gain has escaped the assessment. The case was selected for scrutiny, and during the course of assessment proceedings, the Assessing Officer called upon the assessee to file additional evidence why the capital gain should not be computed in pursuance to the joint development agreement. Since no response from the assessee, the AO has taken into account the share of the assessee's father late Shri G. Sukhender Reddy, has calculated long-term capital gains by taking into account 1/4th share of the total land area and made addition towards long-term capital gain at Rs. 22,76,146.

Being aggrieved by the assessment order, the assessee appeared before the ld.CIT(A) and challenged the reopening of the assessment on the ground that the property belonged to the HUF, and thus, the question of capital gain is not assessable in the hands of the assessee. The assessee has also challenged the computation of long-term capital gains on the ground that as per the joint development agreement, the capital gain arises in the assessment year 2015-16, but not for the assessment year 2012-13, because the developer has not carried out any activities up to the financial year 2014-15, which is evident from the plan issued by the local authorities. The assessee further contended that he has paid relevant taxes applicable on capital gain from the very transfer of capital asset in pursuance to the joint development agreement. However, he has not filed return of income because of limitation for filing return under Section 139(1)/139(4) of the Act. The ld.CIT(A) after considering the submissions of the assessee and also taking into account the relevant facts, rejected the arguments of the assessee and upheld the addition made in pursuance to the joint development agreement. Aggrieved by the order of ld.CIT(A), the assessee is in appeal before ITAT.

Judgment / Conclusion

Just because joint development agreement is entered, it cannot be said that the transfer takes place unless the parties to the agreement acted upon in pursuance of the terms and conditions of agreement. It cannot be said that event of taxation arises only on signing the agreement. Since the developer has obtained sanction plan from the concerned authorities for A.Y. 2014-15 relevant to A.Y. 201516, the assessee has rightly computed capital gain for A.Y. 2015-16 and paid taxes. Since the tax has already been subjected in respect of joint development agreement, therefore, set aside the order of the Ld.CIT(A) and direct the Assessing Officer to delete the addition towards computation of long term capital gain for the A.Y. 2012-13.

20.06.2024	**Sant Sadguru Siddha Digamber Ganesh Maharaj Samadhi Mandir Trust v. CIT (Exemption) Pune**	**ITAT Pune**

Trust Registration u/s 12AB

Facts of the Case:

The appellant is a Trust which filed application in Form No.10AB seeking registration u/s.12A(1)(ac)(iii) of the Income Tax Act, 1961 'the Act'. The Id. CIT, Exemption, in order to verify the genuineness of activities of the appellant trust, issued notice(s) calling upon the appellant to file certain information/clarification. However, the appellant could not comply with the said notices. The Id. CIT (Exemption) drew inference that the he is unable to draw any satisfactory conclusion about genuineness of activities of the appellant trust, thus chose to reject the application filed denying registration u/s.12AB of the Act.

Being aggrieved, an appeal was filed before the Tribunal with a delay of 227 days. The appellant trust filed an affidavit praying for condonation of delay stating that the notices as well as the impugned order were issued on 'kunjalwaje@gmailcom' whereas the email ID provided by the appellant trust for communication was 'nagpuresn64@gmail.com and therefore was unaware of the notices/passing of the impugned order. It is, therefore, prayed for remand of the matter to the CIT, Exemption condoning the delay.

Judgment / Conclusion

The appellant had explained the reasons for delay in filing appeal stating that the appellant trust had neither received hearing notices nor impugned order as the Department issued the notice(s) of hearing on different e-mail ID. The above averments made in the affidavit filed for seeking condonation of delay remain uncontroverted. There is no material on record to disbelieve the averments made by the appellant trust. We therefore condone the delay of 227 days in filing the appeal. The matter requires remission to the file of CIT, Exemption for denovo disposal of the application in accordance with law after affording an opportunity of being heard to the appellant trust.

21.06.2024	**Aditya Institute of Technology and Management v. State of Andhra Pradesh**	**High Court - Andhra Pradesh**

Where assessee-education institute deducted TDS but deposited same belatedly, since 90% of students admitted by assessee were on fee reimbursement scheme and due to delay in grant of fee reimbursement by State Government, assessee failed to remit TDS within time, in view of fact that assessee established reasonable cause in view of section 278AA, criminal prosecution against assessee was not warranted.

Facts of the Case:

During the assessment years 2014-15, 2015-16 and 2016-17, the Accused has TDS on contract payments, but the same were not credited into Central Government's account within time. Accused deducted amounts under various sections on different dates and the same were deposited belatedly. Late payment interest for above assessment years respectively have also been paid under Section 201(1)(a) of the Income Tax Act.

The Accused has not deposited the tax deducted at source within the stipulated time. As such, show-cause notice was issued calling upon the Accused to furnish the information. Despite receiving the said notice, Accused had not chosen to appear before Respondent No.2. Respondent No.2 had given final show-cause notice to the Accused. Despite several opportunities, the Accused had not shown sufficient cause for not depositing the amounts. As such, Respondent No.2 filed three private complaints on the file of the Court of IV Additional District Judge-cum-Special Economic Offences Court, Visakhapatnam against the Petitioners/ Accused Nos.1 to 3 and the same were taken on file and numbered as C.C.Nos.31, 32 and 33 of 2018 respectively.

Judgment / Conclusion

Taking a decision to prosecute any person for violation of the provisions under Section 276B, is subject to Section 278AA of Income Tax Act, and when the Petitioners are able to establish the reasonable cause for the delay in remittance of the amount to the Central Government Account though deducted the tax at the source. It is a case of appreciation of a point on factual aspect as to the satisfaction of the Authorities on the point of reasonable cause. In the present case, learned Commissioner for Income Tax conveniently ignored the material placed by the Petitioners to establish that there was a reasonable cause for their failure to remit the amount within a stipulated time.

Accordingly, the reason provided by the Petitioner for the delay in remitting the amount to the Central Government is sufficient to constitute "reasonable cause" in view of Section 278AA of the Income Tax Act and hence criminal prosecution against the Petitioners is not warranted.

21.06.2024	**Deloitte Haskins and Sells LLP v. National E Assessment Centre, Assistant Commissioner of Income-tax**	**ITAT Mumbai**

Where there was difference of turnover/gross receipts between income tax return (ITR) and service tax return filed by assessee, since assessee was following cash system of accounting, and therefore, only fees which was received during year could be considered as income whereas service tax as well as GST were based on invoices issued and not on basis of fees collected which gave rise to a difference, difference between gross receipts/turnover as per ITR and service tax added by Assessing Officer was to be deleted

Facts of the Case:

The National Faceless Appeal Centre ["NFAC"]/ the Commissioner of Income-tax (Appeals) ["CIT (A)"] has erred in confirming the addition of Rs. 147,22,44,468 being the alleged difference between the turnover/ receipts as per the ITR Form/ Financial Statements and the service tax/ GST returns even though the Assessing Officer has analysed and found the explanation provided by the Appellant satisfactory.

The Appellant submits that it has furnished detailed explanation including the reconciliation between the receipts as per the ITR Form/ Financial Statements and the service tax/ GST returns and hence considering the facts and circumstances of its case, no addition in respect thereof is called for and NFAC/ CIT(A) ought to have held as such. The Appellant submits that the NFAC/ CIT(A) has passed the impugned Order merely on the basis of a selective reading of the statement of facts and has merely confirmed the position of the Assessing Officer without even realising that the facts of the case were misinterpreted/ misunderstood by the Assessing Officer.

The Appellant submits that the Assessing Officer be directed to delete the addition so made by him and to re-compute its total income and tax thereon accordingly.

Judgment / Conclusion

Assessee follows cash method of accounting and only the fees which is received during the year is considered as income whereas for the purpose of service tax and GST, the gross receipts/turnover is based on invoices issued and not on the basis of fees collected. Considering all these facts on record supported by documentary evidences, we find the reconciliation furnished by the assessee is justified. Accordingly, the difference between the gross receipts/turnover as per the ITR and service tax added by the Id. Assessing Officer is deleted

21.06.2024	**Ashok Tower "D" Co Op Housing Society Ltd. v. ITO Ward 20(1)(2)**	**ITAT Mumbai**

Assessee co-operative housing society was eligible for deduction under section 80P(2)(d) in respect of interest income earned by it from a co-operative bank

Facts of the Case:

Assessee is a cooperative housing society, filed its return of income on 29.9.2015 at total income of Rs nil. The assessee claimed deduction of Rs. 50,000 under section 80P of the Income Tax Act, 1961 'the Act'. The return was processed under section 143(1) of the Act, subsequently selected for scrutiny by issue of notice under section 143 (2) of the Act.

During the course of assessment proceedings it was found that the assessee has earned interest income of Rs. 1,472,930 from its investment with cooperative banks which has not been offered for tax under the head income from other sources. The claim of the assessee is that same interest income is eligible for deduction under section 80P(2)(d) of The Income Tax Act. The learned assessing officer issued show cause notice to the assessee that why the interest income of Rs. 1,472,931 should not be disallowed and added back to the total income of the assessee as the investment is made in cooperative banks and they do not qualify as a cooperative society. Accordingly, non-receipt of satisfactory reply, assessing officer disallowed the above deduction and computed the total income they assessee at a loss of Rs. 623,480 as per assessment order passed under section 143 (3) of the act. Assessee aggrieved with the assessment order preferred appeal before the learned CIT. CIT confirmed the action of the AO.

Judgment / Conclusion

Though the assessee has referred to several judicial precedents, even after considering those precedents, which also holds the same view, we do not have any hesitation to hold that the amount of investment made by the assessee with cooperative banks in Maharashtra are also investment made in cooperative society. Thus, on plain reading of the sections of the income tax act it is clear that if assessee has made an investment in fixed deposit receipts or in savings bank account, interest earned thereon is eligible for deduction under section 80 P (2) (d) of the act. The words of the statute are plain and clear and there is no room for applying any of the principles of interpretation. We are supposed to interpret them as they stand. It is not the claim of the revenue that assessee is not a cooperative society.

In the result, the orders of the lower authorities are reversed and the learned AO is directed to grant deduction to the assessee on interest income earned from cooperative banks u/s 80 P (2) (d) of the Act.

01.07.2024	Shobha Tomar *v.* Deputy Commissioner of Income-tax	ITAT Jaipur

Where, assessee-medical practitioner, deposited cash in bank from her professional income which was already reflecting in return and same was supported by entries passed in books and by patient register containing all required details, merely because assessee had deposited said sourced income in form of SBNs during demonetization, same could not be considered as unexplained in hands of assessee.

Facts of the Case:

The assessee is a Gynecologist by profession and had also income from investment activity. The assessee e-filed her return of income declaring total income at Rs. 1,74,96,020 for the AY 2017-18. The case of the assessee was selected manually for scrutiny for cash deposit during the demonetization and notice u/s 143(2) was issued to the assessee. The assessee complied the notices and questionnaire and submitted the details called for.

AO noted that the assessee has not mentioned any narration regarding the patients from whom consultation fees has been furnished. The assessee has also not explained the sudden spike in the cash deposits post demonetization. The Assessee stated that the deposit of cash for an amount of Rs. 99,96,000 is nothing but out of the professional income being a medical practitioner and cash balance available to her in the beginning of the year. The ld. AO rejected the contention of the assessee and considered Rs. 99,96,000 as income as per provision of section 68 of the Act. Assessee preferred an appeal before the ld. CIT(A).

Judgment / Conclusion

CIT(A) Judgement: Considering the cash in hand with the appellant as on 1 April 2016 and as on 31 March 2018, it is derived that the appellant was habitually maintaining a cash in hand of roundly 19 lakhs with her. In view of the totality of the facts of the case of the appellant, the reasonable conclusion to be drawn is that on the date of the announcement of the demonetisation also the appellant was actually maintaining this cash balance and the cash over and above this 19 lakhs, as deposited in the bank during the period of demonetisation remains unexplained and is upheld as the income of the appellant and the action of the learned assessing officer in this regard is upheld to this extent. Accordingly, addition of 80,96,000 is hereby upheld. Aggrieved from the order of the ld. CIT(A), the assessee has preferred the present appeal before ITAT.

ITAT Judgement: When the demonetization announced the assessee has no option to carry the cash on hand but must deposit into the bank account. The source of that cash is duly explained and supported by the clear and cogent evidence placed on record. It has been held in a number of cases that it is trite law that suspicion howsoever strong cannot take place of a legal proof.

Money deposited is from the professional income which is supported in the entries passed in the books supported by the patient register containing all the required details. Both that records were placed on record and no defects was observed in those record so it would be far starching that merely the assessee has deposited the cash available with her in SBN is deposited in bank account cannot be considered as unexplained money in the hands of the assessee. The ld. AR of the assessee demonstrated that the income has not abnormal trend with that of with the last year month to month. The income is slightly higher, and it cannot be said sudden or irregular hike. Based on that finding so recorded herein above we hold that the cash deposited into the bank account of the assessee cannot be considered as unexplained considering the month wise receipt and income slightly more than last year cannot warrant the cash deposited into the bank account as unexplained cash which is proved as such and even taxed without rejecting the books of account. In the light of the discussion so recorded here in above we note that the cash so deposited by the assessee is explained to be emerges out of her professional income and revenue has not proved that the assessee has any other source for the income which is already reflected in her books of account. Thus, addition so made by the ld. AO and sustained by the ld. CIT(A) is directed to be deleted.