

the assessee stating that the RR value was inclusive of value of land and appellant never parted with the share of land appurtenant to the built-up area; As per assessee, full value of consideration was needed to be arrived at by adopting value of money received plus cost of construction of saleable area to be received; As per ITAT, AO is not empowered to substitute the agreed consideration by Fair Market Value except in situations envisaged u/s 50C of the Act; Reliance was placed on High Court decision in the case of Nirman Grover [223 ITR 572]

LD/70/33; ITAT Delhi: I.T.A. No 5909/Del/2017 The Asst. Commissioner of Income Tax Vs. Nilkanth Concast Pvt. Ltd 06th July 2021, Income Tax

Assessee claimed deduction of interest on capital borrowed for acquisition of plant, pertaining to the period from installation of the plant up to the commencement of commercial production; AO disallowed the interest pertaining to period prior to date of commercial production; ITAT referred to certain judicial pronouncements and noted that setting up means ready to commence while actual commencement is when the business activity actually commences, and expenses incurred during the gap between set up and commencement are allowable deductions; ITAT also referred ICDS-IX related to Borrowing Costs, and ruled in favour of assessee.

LD/70/34; ITAT Mumbai: ITA NO.5752/ MUM/2019 Stalwart Impex Pvt. Ltd Vs. The Income Tax Officer 02nd July 2021, Income Tax

ITAT held that proviso to section 43CA prescribing tolerance band of 5% and its subsequent enhancement to 10% to be made applicable retrospectively from April 2014; Assessee engaged in construction of commercial and residential housing projects, entered into transaction for three flats with the stamp duty value of Rs.1.09 Cr against agreed value of Rs.97.11 Lacs and contended that difference was less than 10%; CIT(A) had upheld the additions made by the AO however ITAT ruled in favour of assessee holding that said amendment in section 43CA relates back to the date on which the said section was made effective i.e. 01/04/2014.

LD/70/35; ITAT Jaipur: ITA No. 533/JP/2019 Dholumal Alias Dholan Das Khatwani. Ltd Vs. The Income Tax Officer 30th June 2021, Income Tax

Assessee, a broker was subjected to reassessment proceedings on the basis of statement of a third party u/s 132(4) wherein the party accepted loan of Rs. 8 lacs was given to the assessee in cash and the

AO therefore noted violation of section 269SS for the assessee; ITAT noted that no valid addition can be made on the basis of the material found from the custody of 'Third Party'; ITAT held that copies of the alleged 'Prints Outs' received from the Investigation Wing, Ahmedabad and forwarded to the assessee subsequently in the assessment proceedings were 'deaf and dumb document' for all the purposes and carried no evidentiary value in absence of the 'corroborative evidences'; ITAT ruled in favour of assessee.

LD/70/36; Karnataka High Court: I.T.A. No 92 of 2015 The Commissioner of Income Tax Vs. Shri N.S. Narendra 29th June 2021, Income Tax

Assessee, being a shareholder of a company, had received an advance from his company for purchasing an apartment on individual name, in recognition of his contribution to the company's business; AO made an addition of Rs. 5.39 Cr u/s 2(22)(e) as deemed dividend; Assessee had provided his personal property as collateral to Banks and personal guarantee for the credit facility of over 200 Cr. availed by the company and thus the company had derived benefit from the Assessee and therefore granted the loan/ advance to Assessee; High Court held that such advance was not deemed dividend and ruled in favour of assessee.



GST

LD/70/37 [2021-TIOL-1703-HC-MUM-GST] FINE EXIME PVT LTD Vs UNION OF INDIA 10-08-2021

The powers to provisionally attach the bank account can be exercised only if the proceedings mentioned u/s 83 of the CGST Act are pending. In the absence of proceedings under the relevant provisions of the law, if any provisional attachment order is made, the same shall be held as null and void. Further, once the said proceedings are taken to their logical conclusion and adjudication orders are issued, and the assessee takes recourse to the appeal mechanism by making necessary pre-deposit in terms of section 107 of the CGST Act, the order of provisional attachment is deserved to be set aside.

LD/70/38 [2021-TIOL-1597-HC-TRIPURA-GST] EAST INDIA INFOTECH PVT. LTD. Vs State of Tripura and Ors 8-07-2021

Where the ambulance vans purchased by a petitioner for its own use were seized and detained by the department in the absence of e-way bills, Hon'ble High court ordered the provisional release

of the same after noting that the petitioner is not a registered dealer nor is he dealing in purchase and sale of vehicles and the ambulances have been purchased by the petitioner only for its own use and purpose since the petitioner wants to start a business of providing ambulance service and that even otherwise, the GST authorities have power to provisionally release the goods.

LD/70/39 [2021-TIOL-1654-HC-TELANGANA-GST] M/s DEEM DISTRIBUTORS PVT. LTD. Vs UOI 03-08-2021

The department cannot coerce the assessee to pay tax demands or issue threatening advice and no tax demand can be issued or raised when the investigation is still in progress. Such action would be wholly arbitrary and without jurisdiction. The department cannot be allowed to put the cart before the horse and collect any tax, interest or penalty

before they determine, in an inquiry, after putting the petitioner/assessee of notice. The Court ordered the department to refund the entire amount deposited by the petitioner during inquiry with 7% interest.

LD/70/40 [2021-TIOL-442-CESTAT-MAD] M/s CENTRAL WAREHOUSING CORPORATION Vs COMMISSIONER OF CENTRAL TAXES AND CENTRAL EXCISE 20-07-2021

Where the assessee reversed the CENVAT credit treating the outward supply as exempt supply and subsequently paid tax on such supply along with interest and also suo-motu reclaimed the CENVAT Credit to the extent it was reversed treating the taxable supply as exempt supply, the Tribunal held that there is no impediment in taking suo-motu credit if it is otherwise eligible. Relying upon the decision of M/s. ICMC Corporation Ltd., the appeal is allowed.

Disciplinary Case



Issuance of net worth certificate -- Computation of net worth -- Inclusion of share application money (pending allotment of shares) while computing net worth -- Share application money since not created out of profits of the Company, same cannot be considered as free reserves nor it forms part of paid up capital pending share allotment -- Held, Respondent is guilty of professional misconduct within the Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act 1949.

Held

The charge in the extant matter was that Respondent was negligent in certifying the net worth certificate of the Company on which the Complainant relied upon and admitted the Company as member of the Complainant Exchange and earmarked an incorrect limit based on the said net worth

certificate resulting in default by the Company. The Committee noted that out of total value of Rs. 8,22,17,748/- net worth certified by the Respondent as on 31.03.2011, the share application money was of Rs.6,00,00,000/-. In view of definition of the term 'networth' as given in Sec 2(29A) of the Companies Act, 1956, it was noted that in extant case, the share application money was not created out of profits of the Company, so, it could not be considered as free reserves and that it was also not a part of paid up capital pending share allotment. Accordingly, as on the date of issuing net worth certificate, inclusion of share application money pending allotment for the purpose of computation of net worth was against the provisions of Companies Act, 1956. It was, accordingly, viewed that the Respondent had certified a networth certificate wherein the paid up capital was materially misstated. In view of above noted facts, the Committee held that Respondent is grossly negligent in performing his duty and did not exercise his due diligence while issuing net worth certificate is GUILTY of professional misconduct falling within the meaning Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949(as amended).

Sh. Niraj Sharma Vice President NSEL Vs CA.Vikas Kumar Khaitan PR/219/2014-DD/237/2014/DC/569/2017