

Legal Update

accurately document in case of assessee engaged in transportation business; Assessee had incurred Rs.1.23 Cr. towards diesel, petrol and oil expenses and Rs.5.31 Cr. towards freight expenses in cash for AY 2014-15; Revenue disallowed ad-hoc 1% of these expenses for want of verification which was upheld by the CIT(A) against which Assessee preferred the instant appeal; W.r.t. issue of disallowance of salary paid to Directors u/s 40(a)(ia), ITAT noted that recipients offered such salary income to tax in their returns and also that Assessee submitted certificate in Form 26A and therefore remanded the matter for fresh consideration.

LD/70/151 [ITAT Visakhapatnam: ITA 26/ VIZ/2021] The Income Tax Officer Vs. Vishal Varma Siruvuri; 31/03/2021

Claim of cost of acquisition pertaining to part of the property which was demolished prior to its transfer denied by the ITAT; CIT(A) directed the Revenue to include the cost of acquisition for the demolished floor based on corroborative evidence in the form of electricity bills issued for both floors; As per ITAT, disallowance of cost of acquisition pertained to first floor of a property which was demolished by the Assessee before registration of the property; Asset which was not in existence on the date of transfer cannot be sold and thus the cost of construction of the first floor which in effect was not part of transfer of property shall not be considered for computing capital gains.

LD/70/152 [ITAT Delhi: 7354/Del/2018] Sagar Ratna Restaurants Pvt. Ltd Vs. The Asst. Commissioner of Income tax; 31/03/2022

ITAT ruled in favor of Revenue and disallowed depreciation on non-compete fees; Assessee had treated the payment made towards non-compete fee paid to the transferor as capital expenditure; ITAT referred to Delhi High Court ruling in Sharp Business wherein it was held that non-compete fee though is an intangible asset, however, it is not similar to know how, patent, copy right, or any other business or commercial right of similar nature; Unlike the rights mentioned in Section 32(1)(ii) which an owner can exercise against the world at large and can be traded or transferred, in case of non-compete fee, the advantage is restricted only against the seller.

LD/70/153 [ITAT Mumbai: I.T.A No. 312/ Mum/2021] Yatra Online Private Limited Vs. Prin. Commissioner of Income tax; 29/03/2021

ITAT held that advances made in regular course of business which eventually became irrecoverable

shall be treated as business loss allowable under Section 28; As per prevailing business practices in the airline industry, the online ticket booking entities are requested to make an advance deposit to the airlines which is adjusted towards issue of air tickets over a period of time; Assessee made deposits with Kingfisher Airlines, etc which declared bankruptcy and the assessee thereafter did the write-off of such advances by treating it as irrecoverable; Revenue's contention that since Assessee did not offer any income corresponding to the advances in earlier years in terms of section 36(2), the claim of bad debts is not allowable under section 36(1)(vii); was rejected by ITAT.

LD/70/154 [ITAT Mumbai: 6739/MUM/2019] Royal Accord Realtors P. Ltd Vs. The Dy. Commissioner of Income tax; 04/03/2022

ITAT confirms addition of Rs. 48.75 laks resultant of shares issued at a round figure closest to the FMV determined in terms of Section 56(2)(viib); Revenue noted that FMV of the shares was determined at Rs.3560.77 per share as per Rule 11UA, but the shares were issued at Rs.3600 per share and made addition of Rs.48.75 lakh based on differential of Rs.39 per share under Section 56(2)(viib); ITAT held that the provisions of section 56(2)(viib) or Rule 11UA are plain, clear and unambiguous and nowhere provide for rounding off to nearest rupee or multiple of ten or hundred; If the Legislature indented to provide rounding off it would be specifically provided under Section 56(2)(viib).



GST

LD/70/155 [2022-TIOL-409-HC-MUM-ST] Reliance Transport and Travel Pvt Ltd vs UOI and Ors; 24/03/2022

When the Petitioner has paid certain amounts under protest in the course of the investigation and even after furnishing detailed replies and personal hearing, the show cause notices were not adjudicated by the department for a long period, the court directed to refund the said amounts recovered from the petitioner during the course of the investigation with interest at the rate of 12% per annum.

LD/70/156 [2022-TIOL-376-HC-MAD-GST] PUSHMAM REALTY and Ors vs State Tax Officer and Ors.; 10/03/2022

The court sets aside the assessment order uploaded on the portal stating that unless the proper conformation that notices and impugned orders which were uploaded in the web portal of the State

Government in tngst.cid.tn.gov.in are auto-populated is received it cannot be said that the order has been properly communicated in terms of section 169 of the CGST Act. The court issued a direction that the department can continue the service of notice through registered post or speed post or courier with acknowledgment until the web-portal problems are resolved.

LD/70/157 [2022-TIOL-715-HC-AHM-GST] M/s Ayana Pharma Ltd vs UOI; 13-01-2022

High Court held that Rule 97A permits the assessee to file the application for refund manually and hence manual refund application is also a valid refund application and cannot be dismissed on the ground that it is not filed through an online portal.

LD/70/158 [2022-TIOL-678-HC-ALL-GST] M/s UP Pipe Fitting Supplier vs Goods and Services Tax and 3 Others; 26/04/2022

High Court directed the GST Council to circulate the Registration Advisory No.07/2022, dated 23.3.2022 amongst officers under the GST Act as well as amongst associations of traders and industries and amongst Tax Bar Associations. The said Advisory has put in place a suitable mechanism in the form of functionality in the name of "Restoration of Cancelled Registration" to facilitate the jurisdictional Range Officers to restore the registration in pursuance of judicial/apellate orders and necessary permission to operate this functionality has been enabled for the jurisdictional Range Officers. Earlier in terms of Advisory dtd, 16.06.2021 this could have been done only through the back-end and the necessary rights were available only with the DG-Systems, Chennai.

Disciplinary Case



Issuance of false certificate along with refund application by correlating goods imported with sale invoices – Plea of inadvertent factual errors, validity of -Held, by certification, a professional undertakes full responsibility of the facts stated therein irrespective of the fact whether any monetary loss caused or not -Respondent is guilty under Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act 1949.

Held:

In the instant case, charge in brief, against the Respondent was that Respondent had issued false certificate along with the refund application to M/s X (hereinafter referred to as the "Firm") correlating goods imported with sale invoices and certified that all goods imported had been completely sold. The Respondent, in defence, submitted that he verified all the required physical documents and arrived at the refund amount correctly. The Respondent

pleaded that after the physical verification of the documents he had given the same to his staff for preparation of correlation statement and it was his staff that had committed an unintentional error by listing wrong invoices instead of the actual invoices pertaining to the corresponding import. Inadvertently, the error went un-noticed by his staff. The Respondent submitted that the said error was purely unintentional and he had no intention to certify erroneous claim of refund from CBEC Department. The goods imported were actually sold vide distinct VAT invoices in subsequent months and VAT on such sales had also been remitted. The Committee observed that a certificate is a statement of accuracy of facts mentioned therein and a factual mistake committed in such certification loses its objectivity. The Committee further noted that irrespective of the fact as to whether any monetary loss had occurred to the Complainant Department or not, it could not be denied that on certification of any fact a professional (Chartered Accountant) undertook full responsibility of the facts stated therein. The Committee found that the Respondent failed to exercise due diligence while performing attesting functions. Accordingly, the Respondent is held guilty of professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

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