

Legal Decisions



LD/70/111 [Bombay High Court: ITA No 41/2019] Prin. Commissioner of Income Tax Vs. Goldline Pharmaceuticals Pvt. Ltd 14/01/2021

Disallowance deleted by ITAT in case of assessee a pharma company regarding tour and travel expenses incurred for medical practitioners, upheld by the Bombay High Court; Circular No. 5/2012 held to be applicable prospectively and not retrospectively; By Circular No. 5/2012, claim of any expense incurred in providing freebies in violation of the provisions is inadmissible under Section 37(1) and disallowance would be made in the hands of the pharmaceutical companies providing such freebies and claiming the expenditure as deductible against its income; Relevant expense incurred by assessee-pharma-company for AY 2010-11 thus allowed.

LD/70/112 [ITAT Hyderabad: ITA No 1568/Hyd/2019] Autozilla Solutions Pvt Ltd. Vs. The Income Tax Officer 12/01/2021

ITAT held that once addition of share capital u/s 56(2)(viib) is set aside, sustaining any addition u/s 68 not tenable and once addition was made under one provision the same addition could not be made under another section; Revenue made an addition of Rs.79.91 lakh under Section 68 and alternatively, applying provisions of Section 56(2)(viib) addition of Rs.79.72 lakh was also made; ITAT observed that Revenue disallowed the share premium raised by the Assessee u/s 56(2)(viib) which was also added to Assessee's income under Section 68; ITAT observed that CIT(A) deleted the addition u/s 56(2)(viib) holding that the DCF method adopted by the Assessee was correct; ITAT thus directed the AO to allow the differential between the addition made u/s 68 for Rs.79.91 lakhs and under Section 56(2)(viib) for Rs. 79.72 lakh.

LD/70/113 [ITAT Mumbai: ITA No 28/Mum/2020] The Dy. Commissioner of Income Tax Vs. Omni Active Health Technologies Ltd. 07/01/2021

ITAT held that expenditure incurred by the Assessee for defending and settling a patent infringement suit is an allowable revenue expenditure; Assessee had claimed Rs. 8.73 Cr as revenue expenditure for AY 2011-12 which included Rs.6.39 Cr. paid to a US-based law firm for defending the Assessee in a patent infringement suit and Rs.1.32 Cr for its settlement; As per the Revenue this was a capital expenditure; ITAT held that any expenditure incurred by the Assessee company for protection of IPR rights and for normal maintenance of its intellectual property are revenue expenditure.

LD/70/114 [ITAT Bangalore: ITA No 1922/Bang/2018] HP India Sales Pvt. Ltd. Vs. The Jt. Commissioner of Income Tax 06/01/2021

ITAT restricts the addition made over difference in the value of turnover as in the VAT return vis-a-vis income tax return to the extent of failure to furnish evidence supporting the difference; Assessee was required to reconcile the turnover reported for indirect tax with that reported in the income-tax return whereby assessee deducted Rs.167.58 Cr from the sales turnover in the VAT return to arrive at the sales turnover as per books of account; ITAT noted that before the CIT(A) assessee furnished details for Rs.159.56 Cr despite which, the CIT(A) confirmed the entire disallowance; ITAT opines that the disallowance should be restricted to Rs.9.88 Cr. i.e. to the extent to which information was not furnished; Separately ITAT deleted separate disallowance of 88.01 Crores and thus partly ruled the matter in favor of assessee.

LD/70/115 [Bombay High Court: W.P. No 2115 of 2009] Trent Ltd. Vs. The Dy. Commissioner of Income Tax 06/01/2021

Bombay High Court quashed reassessment proceedings and the order disposing of objections holding that there was no application of mind in the reasons recorded for reopening of assessment; Notice u/s 148 was issued by the Revenue whereby Revenue sought to disallow the 'store launching expenses' of assessee's brand 'Westside', incurred

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by the Assessee during AY 2004-05 on the grounds that the expenditure was of capital nature; A query as to change in accounting policy of store launching expenses with effect from Apr 1, 2003 was raised by the Revenue and was duly answered by the Assessee in the course of original assessment; As per High Court, once a query has been raised during the original assessment proceedings and replied to by the assessee, it amounts to subject of consideration of Revenue and no new or fresh information or fact had come to the notice of the Revenue to initiate proceedings u/s 148.

LD/70/116 ITAT Hyderabad: ITA No 1500/Hyd/2019] The Income Tax Officer. Vs. Hajeebu Venkata Seeta Rama Chandra
05/01/2021

ITAT held that holds loan received from a company which is struck off in a later AY, not taxable under Section 56(2)(vi); received interest free loan of Rs. 2.84 Cr from a company for AY 2009-10, which was added by the Revenue under Section 56(2)(vi) on the grounds that since the company was struck off, there would be no repayment; ITAT notes that Revenue did not invoke Section 68 to treat the impugned amount as unexplained cash credit whereas invoked the provision under Section 56(2)(vi); ITAT observed that Revenue itself had accepted that the company had given an interest free loan to assessee, who was the Director's son and opines that a loan accepted as correct in principle; Further loan transaction was for AY 09-10 and company was struck off in 2012.

LD/70/117 [ITAT Mumbai: ITA No 5566/M/2018] The Asst. Commissioner of Income Tax Vs. Shri Niranjan Bhadang
05/01/2021

ITAT held that for exemption u/s 54F date to be considered is the date of agreement to sell and not the date of receipt of final instalment of the consideration; Assessee had sold two flats and invested the capital gains in a new flat, thus claimed exemption from capital gains u/s 54F; Revenue found that the last and final instalment from sale of the second flat was received beyond the period of one year thus, rejected Assessee's claim for exemption to Rs.2.15 Cr; It was noted that the date of transfer of the under-construction property was 22.07.2014 and flats were sold under a decree of the High Court whereby the purchaser paid 56% of the consideration within one year but delayed in making the balance payment which was made on 24.11.2014; New flat was acquired on 31.10.2013.

LD/70/118 [ITAT Patna: ITA No 115/Pat/2020] The Dy. Commissioner of Income Tax Vs. Dina Mahabir Re-Rollers Pvt. Ltd
05/01/2021

ITAT dismissed Revenue's appeal against CIT(A)'s order setting aside the assessment order passed without passing a draft order; Assessee-Company was subjected to a final assessment u/s 144C without passing a draft assessment order for AY 2015-16; The final assessment order was appealed against by the Assessee which was allowed and was also subjected to revision u/s 263 by the PCIT; ITAT holds that final order is bad in law and the defect of not passing a draft order is not a curable one; Considering the fact that AO's final order itself was held to be non-existent, ITAT denied applicability of revisionary powers u/s 263 over such an order.

LD/70/119 [ITAT Mumbai: ITA No 616/Mum/2020] Ketan Sureshcnadra Shah Vs. The Income Tax officer
03/01/2021

ITAT held that income received by assessee individual from coaching institute taxable under business and profession after allowing 50% claim for expenditure; Assessee had received Rs.4.56 lakhs for AY 2004-05 for his services and claimed Rs.2.45 lakhs in computing his income, whereas in the course of assessment of the Coaching Institute, Director of the Institute submitted that all material pertaining to coaching was provided by the Institute and the professors were not required to incur any expenditure; Revenue held that income received by the Assessee was in the nature of salary and disallowed the expenditure claimed by the Assessee; As per ITAT, assessee's case resulted in profit rate of 100% from the profession which was totally unreasonable since CIT(A) had accepted that income was assessed under business and profession;

LD/70/120 [Karnataka High Court: W.P. No 19933 of 2021] Marvell India P. Ltd Vs. The Income Tax officer
15/12/2021

High Court quashed final assessment order for being violative of the procedure u/s 144C issued along with consequent demand notice for AY 2017-18; Assessee had filed objections both before AO and DRP on 16.03.2021 but despite complying with the provisions u/s 144C(2)(b), AO passed the impugned assessment order without waiting for DRP's directions, thus, contravened the mandatory procedure stipulated u/s 144C(5) to 144C(13); High Court remitted the matter back to DRP for fresh consideration and directed to consider objections filed by the Assessee;

Disciplinary Case



Allotment of shares worth Rs 50 lakhs without verifying the documents as to receipt of consideration -- Respondent is guilty of Professional Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

Held:

The Complainant alleged that the Respondent along with his relatives paid Rs 43 Lakhs to the Company against a loan transaction, while, on the other hand, the Company in collusion with the Respondent allotted him & his relatives the shares in the said Company amounting to Rs 50 Lakhs. It is further alleged that the Respondent neither checked the relevant documents in relation with share allotment nor did he check the actual receipt of money in the company. The Complainant submitted that when he has not paid the balance of Rs. 7 lakhs, how the share worth Rs.50 lakhs be allotted to him. The Complainant alleged that the Respondent is hand in glove with the Company. The Committee noted the submissions of the Respondent that he has not verified documents like bank statement

for receipt of money, shareholders register, minutes etc. which are primarily required for the purpose of certification and relied upon only Board resolution for the purpose of certification and nothing more. The Committee observed that as a chartered accountant, the Respondent should have employed due diligence and conducted an in-depth enquiry on the matter related to allotment of shares worth Rs.50 lakhs for which a sum of Rs.43 lakhs only was received by the company. The Committee further observed that the Respondent had not verified the relevant documentary evidences like scrutiny of shareholders' Register, inflow of money equivalent to the amount of share capital issued or any other document in this regard to substantiate if this was a transaction for issue of capital only. Considering the facts and admissions, the Committee held the Respondent is guilty of Professional Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(Shri Vinayak Bardolia vs CA. Nitin Madhusudanji Mantri [PR/60/19-DD/90/19-DC/1326/20])