M/s. Ananda Social and Educational Trust vs. CIT (SC) [07.03.2020]

ISSUE INVOLVED: ***Can registration be applied for by a newly registered trust, which has not carried out any actual charitable activity?***

DECISION TAKEN: ***There is no stipulation that the trust should have already been in existence and should have undertaken any activities before making the application for registration. The term 'activities' in s. 12AA includes 'proposed activities'. The CIT must consider whether the objects of the Trust are genuinely charitable in nature and whether the activities which the Trust proposed to carry on are genuine in the sense that they are in line with the objects of the Trust. However, he cannot refuse registration on the ground that no activities are carried out***

CIT vs. Chetak Enterprises Pvt. Ltd (S/C) [07.03.2020]

ISSUE INVOLVED: ***A partnership firm was awarded contract for constructions of road by Government of Rajasthan. Before completion of contract, the said firm got converted into a private limited company. Post such conversion, the company started collecting 'toll'. On this income, the assessee company claimed deduction under section 80IA, which was denied by the Assessing Officer. Assessing Officer relied on provisions of section 80IA(4), which allows such deduction only to a company. According to the AO, since***

assessee was a firm when the contract was awarded, the deduction was not allowable.

***DECISION TAKEN**: As per s. 575 of the Companies Act, the conversion of a partnership firm into a company under Part IX causes a statutory vesting of all assets of the firm into the company without the need for a conveyance.*

The business of the firm is carried on by the company. Question of allowing deduction arises when the income is earned. Since the income in the form of toll was earned when the assessee was a company, the entity is eligible for the benefits of s. 80-IA.

New Delhi Television Limited vs. DCIT (S/C) [03.04.2020]

***ISSUE INVOLVED**: The Assessee [NDTV] step-¬up coupon bonds amounting to US$100 million. The Assessing Officer sought to reopen the assessment stating that the investors of the bonds were non-genuine parties and therefore, the entire transaction was a bogus or a sham.*

The assessee challenged reassessment proceedings stating that the proceedings were sought to be reopened beyond 4 years and since original proceedings were completed under section 143(3) of the Act, the Assessing Officer had to justify how there was non-disclosure of material facts by the assessee.

Since AO had not conducted this exercise, the assesse challenged validity of the proceedings.

The AO rejected the objections stating that since the investor was a foreign entity and the asset was situated outside India, extended limitation period of 16 years was applicable;

Whether reassessment proceedings were valid?

DECISION TAKEN: *S/C held that:*

(i) Merely because the original assessment is a detailed one, the powers of the AO to reopen u/s 147 is not affected,

(ii) Information which comes to the notice of the AO During proceedings for subsequent AYs can definitely form tangible material to reopen the assessment,

(iii) As regards "full & true disclosure of material facts", the assessee has the duty to disclose the "primary facts". It is not required to disclose the "secondary facts". The assessee is also not required to give any assistance to the AO by disclosure of other facts. It is for the AO to decide what inference should be drawn from the facts,

(iv) If the AO intends to rely upon the second Proviso to s. 148 for the extended period of 16 years limitation, the same should be stated either in the notice or in the reasons in support of the notice. It cannot be done in the order rejecting the objections or at a later stage;

PILCOM vs. CIT (S/C) [29.04.2020]

ISSUE INVOLVED: *Where a lower rate of tax is prescribed under Double Taxation Avoidance Agreement [DTAA],should the deductor withhold tax in accordance with rate prescribed under section 194E (20%), or at rate prescribed under DTAA?*

***DECISION TAKEN**: As the payments to the Non-Resident Sports Associations represented their income which accrued or arose in India u/s 115BBA, the assessee was liable to deduct Tax at Source u/s 194E. The obligation to deduct Tax at Source u/s 194E is not affected by the DTAA. In case the exigibility to tax is disputed by the recipient, the benefit of DTAA can be pleaded and the amount in question will be refunded with interest. But, that by itself, cannot absolve the liability to deduct TDS u/s 194E of the Act*

Vodafone Idea Limited vs. ACIT (Supreme Court)[30.04.2020]

***ISSUE INVOLVED**: Can Assessing Officer withhold refund even though processing of return is completed under Section 143(1)?*

***DECISION TAKEN**: Till AY 2016-17, if a scrutiny notice u/s 143(2) is ISSUE INVOLVED, the return is not required to be processed u/s 143(1) for grant of refund to the assessee. From AY 2017-18 & onwards, a different regime is prescribed by Parliament.241-A requires separate recording of satisfaction on part of the AO that having regard to the ISSUE INVOLVED of notice u/s 143(2), the grant of refund is likely to adversely affect the revenue. The withholding of refund requires the previous approval of the PCIT with reasons to be recorded in writing.*

UOI vs. UAE Exchange Centre LLC (S/C) [25.04.2020]

***ISSUE INVOLVED**: Taxability of Liaison Offices under DTAAs*

***DECISION TAKEN**: The activities carried on by the liaison office of the non-resident in India as permitted by the RBI, demonstrate that the liaison office must steer away from engaging in any primary business activity and in establishing business connection as such. It can carry on activities of preparatory or auxiliary nature only. A liaison office which is only carrying on such activity of a "preparatory or auxiliary" character is not a PE in terms of Article 5 of the DTAA.*