



# Weekly Browser

*A Complete Guide to Statutory & Judicial Happenings in the field of Direct Tax Laws*

## INCOME TAX ACT



### SECTION 10B

#### EXPORT ORIENTED UNDERTAKING

***Splitting up or reconstruction:*** Where assessee-company, a hundred per cent export-oriented undertaking, for purpose of producing computer software had taken on lease from its sister concern 'STPL' 66.66 per cent of site, plant and machinery used by 'STPL' and further 'STPL' was also a hundred per cent export-oriented undertaking engaged in producing computer software, assessee was not entitled to benefit under section 10B(2) - ***Stabilix Solutions (P.) Ltd. v. Income-tax Officer, Range-1, Trivandrum [2019] 107 taxmann.com 442 (Kerala)***



### SECTION 28(i)

#### BUSINESS INCOME - CHARGEABLE AS

***Income from house property vs. Business income/Rental income:*** Where assessee leased out shops in a mall alongwith various other facilities and amenities, in view of fact that it was not a case of giving shops on rent simpliciter rather assessee desired to enter into a business of renting out commercial space to interested individuals and business houses, amount received by assessee from said activity was to be brought to tax as business income - ***Principal Commissioner of Income-tax-6, Pune v. Krome Planet Interiors (P.) Ltd. [2019] 107 taxmann.com 443 (Bombay)***



### SECTION 45

#### CAPITAL GAINS - CHARGEABLE AS

***Business income v. Capital gains - Dealings in land:*** Where AO held that profit arising from sale of land was business income of assessee because he had divided said land into plots after providing space for infrastructural facilities, in view of that Assessing Officer had not brought on record any permission by assessee from Municipal Authorities or any of Government Authorities to act

as a colonizer and, moreover, mere development of infrastructural facilities to make land saleable would not change intention of assessee in absence of any other material contrary to facts, impugned order was to be set aside and profit in question was to be taxed as capital gain - **Commissioner of Income-tax, Alwar v. Hazarilal Goyal** [2019] 108 taxmann.com 224 (Rajasthan)

## SECTION 69

### UNEXPLAINED INVESTMENT

**Finding of facts:** Where High Court upheld Tribunal's order deleting addition made on account of unaccounted investment to assessee's income by taking a view that material on record did not justify any such addition, SLP filed against said order was to be dismissed - **Commissioner of Income-tax, Gandhinagar v. Suvas Hitendra Barot** [2019] 108 taxmann.com 59 (SC)

## SECTION 147

### INCOME ESCAPING ASSESSMENT - NON-DISCLOSURE OF PRIMARY FACTS

Where assessment of assessee-company was reopened on basis of information received from Dy. Director (Inv.) that unsecured loans taken by assessee were availed from five shell companies and during investigation, it was found that all companies had no credentials to carry out transaction of huge amounts as per their income profile and these companies are indulged in providing accommodation entries in form of unsecured loans, it cannot be said that there is total non-application of mind on part of Assessing Officer while recording reasons for reopening of assessment and his conclusion was merely based on the observations and information received from the Investigation Wing and Assessing Officer could be said to have applied his mind to same and, thus, no case is made out by the assessee for quashing impugned section 148 notice - **Hemjay Construction Co. (P.) Ltd. v. Income-tax Officer** [2019] 109 taxmann.com 59 (Gujarat)

## SECTION 220

### COLLECTION AND RECOVERY OF TAX - WHEN TAX PAYABLE AND WHEN ASSESSEE DEEMED IN DEFAULT

**Stay of demand:** Requirement of depositing disputed tax dues to enable assessee to enjoy stay during pendency of appeals before Commissioner (Appeals) was to be reduced to 10 per cent from 20 per cent as total tax demand was quite high and issues were at first appeal stage and even 20 per cent of tax dues would run into lakhs of rupees - **Dalpatsinh Ukabhai Vasava v. Principal Commissioner of Income-tax** [2019] 108 taxmann.com 265 (Gujarat)