FOUNDER EDITOR U.K. BHARGAVA

FDITOR

RAKESH BHARGAVA

HONY. COORDINATING EDITORS DR. VINOD K. SINGHANIA, VINAY JAIN AND NARAYAN JAIN

Taxman weekly comes in Eight volumes

Annual Subscription: Rs. 9500 for Eight volumes for the year 2018. Single copy is Rs. 300 only.

Back years' volume Rs. 1000 per volume for paper back and add Rs. 100 per volume for Hard case binding.

Taxman weekly is published on every Saturday. NON-RECEIPT OF PART MUST BE NOTIFIED WITHIN 60 DAYS OF THE DUE DATE.

Editor does not necessarily agree with the views expressed in magazine section of Taxman weekly.

Material published in this part is the exclusive copyrighted property of Taxman and cannot be reproduced or copied in any form or by any means without written permission of publisher.

This publication is sold with the understanding that authors/editors and publishers are not responsible for the result of any action taken on the basis of this work nor for any error or omission to any person, whether a purchaser of this publication or not. All disputes are subject to jurisdiction of the Delhi High Court.

Address your editorial and subscription correspondence to Taxmann Allied Services (P.) Ltd., 59/32, New Rohtak Road, New Delhi-110005

Printed and Published by Ansh Bhargava on behalf of Taxmann Allied Services (P.) Ltd. and Printed at Tan Prints (India) Pvt. Ltd., 44 Km. Mile Stone, National Highway, Rohtak Road, Village Rohad, Distt. Jhajjar (Haryana) and Published at 59/32, New Rohtak Road, New Delhi-110 005

Editor: Rakesh Bhargava Phone: 91-11-45562222 Email:sales@taxmann.com ISSN: 0972-8198

> MODE OF CITATION [2018] 259 Taxman...(...) TOTAL PAGES [124]

CONTENTS

STATUTES

□ NOTIFICATIONS

- Section 7 of the Prohibition of Benami Property Transactions Act, 1988 - Adjudicating authority -Appointment of an adjudicating authority at New Delhi to exercise jurisdiction, powers and authority conferred by or under the said Act - NOTIFICATION NO. SO 5675(E) [NO.79/2018 (F.NO.370149/194/2017-TPL)], DATED 12-11-2018 33
- Section 30 of the Prohibition of Benami Property Transactions Act, 1988 - Appellate Tribunal - Establishment of Appellate Tribunal - NOTIFICATION NO. S.O. 5677(E)[NO.81/2018 (F.NO.370149/194/2017-TPL)], DATED 12-11-2018 33
- Section 10 of the Prohibition of Benami Property Transactions Act, 1988 - Benches of adjudicating authority
 Constitution of - Specified Bench of adjudicating authority at New Delhi to exercise jurisdiction over whole of India except State of Jammu and Kashmir -NOTIFICATION NO. S.O. 5676(E) [NO.80/2018 (F.NO.370149/ 194/2017-TPL)], DATED 12-11-2018 34

□ RULES/AMENDMENT RULES

- Income-tax (Twelfth Amendment) Rules, 2018 Amendment in Rule 114, Forms 49A & 49AA NOTIFICATION NO. GSR 1128(E) [NO.82/2018 (F.NO.370142/40/2016-TPL (PART-I))], DATED 19-11-2018 35
- Senior Citizens' Welfare Fund (Amendment) Rules, 2018
 Amendment in rule 3 NOTIFICATION NO. G.S.R. 1091(E)
 [F.NO.13/20/2014-NS], DATED 5-11-2018 34

TAX REPORTS: TABLE OF CASES

- ◆ Alay Rakesh Shah v. DIT (Guj.) 189
- ◆ CIT v. Ajay Agarwal (HUF) (SC) 133
- ◆ CIT v. Clarity Gold (P.) Ltd. (SC) 137
- ◆ CIT v. Dedicated Healthcare Services (TPA) India (P.) Ltd. (Bom.) 192

A-10 *Contents*

- ◆ CIT v. Vaibhav Gems Ltd. (SC) 130
- ◆ DIT v. TVS Motors Co. Ltd. (Mad.) 140
- ♦ Karan Luthra v. ITO (Delhi) 209
- ◆ Madhav Govind Dhulshete v. ITO (Bom.) 149
- ◆ Nu-Tech Corporate Services Ltd. v. ITO (Bom.) 183
- ◆ Pr. CIT v. Adamine Construction (P.) Ltd. (SC) 131
- ◆ Pr. CIT v. Green Delhi BQS Ltd. (Delhi) 153
- ◆ Pr. CIT v. Vinita Chaurasia (SC) 129
- ◆ Renault Nissan Automotive India (P.) Ltd. v. Secretary (Mad.) 174
- ◆ Sahir Sami Khatib v. ITO (Bom.) 160
- ◆ T.V. Ramanathan (HUF) v. Asstt. CIT (Mad.) 179
- ♦ Vodafone Idea Ltd. v. Dy. CIT (Bom.) 168

SUBJECT INDEX

BUSINESS DISALLOWANCE

■ Cash payments exceeding prescribed limits

- Illustrations - Where assessee, engaged in business of sale of Kerosene, purchased it from notified dealer by making payment in cash on ground that said payment was made as per guidance of District Civil Supply Officer, in view of fact that District Supply Officer's order did not mandate any mode of payment either in cash or by cheque, and, moreover, there were banking channels available even when supplies had been effected, impugned disallowance was rightly made by authorities below under section 40A(3) - Madhav Govind Dhulshete v. ITO (Bom.) 149

BUSINESS EXPENDITURE

■ Allowability of

- Bank guarantee - Where pursuant to agreement entered into with DTC for developing, maintaining and operating of Bus-Q-Shelters, assessee furnished bank guarantee as performance security, in view of fact that due to assessee's failure to perform its part of concessionaire agreement, DTC encashed bank guarantee, amount so paid was to be regarded as revenue in nature allowable under section 37(1) - Pr. CIT v. Green Delhi BQS Ltd. (Delhi) 153

CASH CREDITS

- Burden of proof - Where High Court confirmed Tribunal's order deleting addition made to assessee's income under section 68 on ground that assessee had discharged initial burden cast upon it by providing necessary details, SLP filed against said decision of High Court was to be dismissed - Pr. CIT v. Adamine Construction (P.) Ltd. (SC) 131

CIRCULARS AND NOTIFICATIONS

- CBDT Circular No. 8, dated 24-11-2009 193

DEDUCTION OF TAX AT SOURCE

■ Fee for professional or technical services

 TPAs - Revenue cannot be permitted to raise same question as to whether TPAs are liable to deduct TDS under section 194J when it had been earlier dealt with in Division Bench Contents A-11

judgments of High Court - CIT v. Dedicated Healthcare Services (TPA) India (P.) Ltd. (Bom.) 192

DEEMED DIVIDEND

Loans or advances to shareholders - Where assessee was holding more than 10 per cent of
equity shares of lending company and also having substantial interest in borrowing
company, amount of loan given by lender company to borrower company was rightly
added to assessee's taxable income as deemed dividend - Sahir Sami Khatib v. ITO (Bom.)
160

FREE TRADE ZONE

Development of software - Where High Court held that since assessee after receiving basic engine from non-eligible unit, developed software at its eligible unit and thus exemption claimed by it under section 10A was to be allowed, SLP filed against said order was to be dismissed - CIT v. Ajay Agarwal (HUF) (SC) 133

INCOME

■ Deemed to accrue or arise in India

Royalty/Fees for technical services - Where assessee-company developed basic engine and sent same to a non-resident company of Austria to design a new 3-valve cylinder head for improvement of fuel efficiency, performance and meeting Indian emission standard, payment made to Austrian company would not constitute royalty - DIT v. TVS Motors Co. Ltd. (Mad.) 140

INCOME-TAX ACT, 1961

- Section 2(22) 160
- Section 9 140
- Section 10A 134
- Section 37(1) 153
- Section 40A(3) **149**
- Section 68 132
- Section 92C 130, 174
- Section 132 189
- Section 139 168
- Section 145 137
- Section 153C 129
- Section 156 **183**
- Section 194J 192
- Section 237 **180**
- Section 276CC **209**

METHOD OF ACCOUNTING

Estimation of income - Where in course of proceedings initiated pursuant to survey, High Court opined that since average gross profit (GP) rate in assessee's industry was 12 per cent, wherever profit of assessee was more than 12 per cent, same would not be refunded to assessee but where it was less than 12 per cent, income would be assessed on basis of 12 per cent GP, SLP filed against aforesaid order of High Court was to be granted - CIT v. Clarity Gold (P.) Ltd. (SC) 137

A-12 *Contents*

NOTICE OF DEMAND

Service of notice - Where assessee's claim for refund was rejected on ground that amount of refund had been adjusted against tax demand relating to subsequent assessment years, in view of fact that notice of demand under section 156 for subsequent years was never served on assessee, impugned order was to be set aside and a direction was to be issued to grant refund to assessee along with applicable rate of interest - Nu-Tech Corporate Services Ltd. v. ITO (Bom.) 183

OFFENCE AND PROSECUTION

■ Failure to furnish return of income

- Applicability of - Where prosecution under section 276CC was launched against assessee on account of his failure to furnish return of income in response to notice issued under section 142(1), since offence under section 276CC, prima facie, stood constituted upon failure on part of assessee to furnish return of income for assessment year in question within period prescribed in law, mere fact that he had subsequently furnished return of income for assessment year in question and no amount of tax was due, would not exempt him from liability to be prosecuted - Karan Luthra v. ITO (Delhi) 209

REFUND

■ General

- Computation of - Where assessee's application for refund of excess tax paid in assessment year 2015-16 was rejected on ground that amount of refund had been adjusted against tax arrears of assessment year 2002-03, in view of fact that AO had not taken into consideration amount of advance tax paid by assessee in said year while computing amount of tax arrears, impugned order was to be set aside and, matter was to be remanded back for disposal afresh - T.V. Ramanathan (HUF) v. Asstt. CIT (Mad.) 179

RETURN OF INCOME

Processing of return - Where return filed by assessee had been forwarded to CPC by
Assessing Officer but it could not be understood as to why Assessing Officer, in-charge of
making and framing assessment, forwarded return to this CPC for computation in such
circumstances, CPC should take a decision as regards computation in 4 weeks - Vodafone
Idea Ltd. v. Dy. CIT (Bom.) 168

SEARCH AND SEIZURE

 Others - Where karta of HUF had initiated litigation against alleged illegal search action of department on HUF at relevant time, a member of HUF individually could not restart same litigation long many years after cause of action had arisen - Alay Rakesh Shah v. DIT (Guj.) 189

■ Assessment of any other person

Illustrations - SLP dismissed against High Court ruling that where addition was made to assessee's income by invoking provisions of section 153C on basis of document seized in course of search carried out in case of 'L' and later 'L' retracted his statement that said document belonged to assessee and, moreover, there were various internal inconsistencies and contradictions in document in question, impugned addition was to be set aside - Pr. CIT v. Vinita Chaurasia (SC) 129

Contents A-13

TRANSFER PRICING

■ Computation of arm's length price

- *Adjustment-Interest* SLP dismissed against High Court ruling that where assessee extended loan to its AE, adjustment should be made at average LIBOR rate existing at that time, *i.e.*, at 0.79 per cent, instead of LIBOR +2 per cent *CITv. Vaibhav Gems Ltd.*(**SC**) 130
- Reasoned order Order passed by DRP under section 144C(5) must contain discussion of facts and independent findings on those facts by DRP; mere extraction of rival contentions will not satisfy requirement of consideration Renault Nissan Automotive India (P.) Ltd. v. Secretary (Mad.) 174

MAGAZINE: FEATURES

- ◆ Analysis of section 37 vis-à-vis foreign educational expenditure incurred on related parties // S. Krishnan 31
- ♦ Your Queries 39