



IMPORTANT JUDGEMENTS

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GST Important Judgements Updates:-



Important Judgement:

1. **Smt. Anuradha Agarwal, 103, Rajendra Marg, Bhilwara- (Raj)- 311001 Versus Income Tax Officer, Ward-3, Income Tax Office, Bilwara (Raj) –**

Date of Pronouncement: 25.05.2018

Merely because the loan was sanctioned for housing purpose, it cannot be said that the Assessee cannot use it for advancing loans to others for earning interest. It may amount to the violation of terms and conditions of the agreement so entered with the bank while sanctioning of the loan, but there is no contravention under the Income Tax Act for advancing such funds for earning interest income.

Orders of the Id. CIT(A) Ajmer dated 05/10/2017 for the A.Y. 2013-14 in the matter of order u/s 143(3) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act', for short]. In all these appeals, a common issue has been taken, therefore, all the appeals are being heard together and the Bench decided to dispose of all these appeals by a consolidated order. At the time of hearing, none appeared on behalf of the Assessee. Even though, the Assessee filed adjournment petition but nobody was there to prosecute the adjournment petition. Accordingly, the Bench decided to dispose of the appeals after hearing the Id Departmental Representative.

In all these appeals, the common issue involved is against confirming the disallowance on interest payment claimed U/s 57 of the Act.

2. **Shri Kallepu Sharath Chander Vs. ACIT, Hyderabad**

Date of pronouncement: 30.05.2018

Where the land is shown in revenue record as agricultural land, it is immaterial whether any agricultural income is shown in the return or not, the gains from sale are exempt from taxation. Therefore, the reason given by the AO for

not accepting the assessee's contention is not sustainable and that the land sold by the Assessee being agricultural land, no capital gain is taxable on the profit from sale of such land.

3. **M/s A Daga Royal Arts Vs. ITO, Jaipur**

Date of Pronouncement: 15.05.2018

Rule 6DD is not exhaustive. The fact that the transaction does not fall with Rule 6DD does not mean that a disallowance has to be per force made. Further, the second proviso to section 40A(3) refers to "the nature and extent of banking facility, consideration of business expediency and other relevant factors" which means that the object of the legislature is not to make disallowance of cash payments which have to be compulsory made by the assessee on account of business expediency.

4. **Abicor and BinzelTechnoweld Pvt. Ltd. Versus The Union of India** Lack of access to online profile on the Goods and Service Tax Network - petitioner unable to generate e-way bills - Held that - The special sessions of Parliament or special or extraordinary meetings of Council would mean nothing to the assessee unless they obtain easy access to the website and portals. The regime is not tax friendly.

Abicor hearing update 6.03.2018 Bombay High Court

1) Court has taken minutes of meeting between GSTPAM and Commissioners on record and directed the Council and Commissioners to resolve the problems pointed out by GSTPAM. This meeting was held as per directions of the Court on 27.02.2018.

2) Counsel for Petitioner pointed out that the Economic Survey of India 2017-18 shows 98 Lakhs registrations till December 2017. However Government Affidavit shows only 38 lakh ppl have filed GSTR 1. Govt Affidavit further shows that composition taxpayers are only 17.41 lakhs as on date. This means that around 50 lakh registered persons have not filed the returns. It cannot be said that 50 lakh taxpayers are deliberately defaulting in filing of returns. Only reasonable inference is that the system is preventing large swathes of taxpayers from compiling with the statute.

3) Similarly Counsel for Petitioners pointed out that Government Affidavit shows 64 lakh taxpayers are migrated registrants as on date. But TRAN-01 was filed only by 9 lakh taxpayers. Even adjusting for composition taxpayers this means that only 15% of the total migrated taxpayers have filed FORM TRAN-01. It cannot be said that all of the other 85% migrated taxpayers were ineligible for TRAN-01 or deliberately gave up their rights. It is clear that many ppl have been unable to file TRAN-01 due to system errors.

4) Court has made adverse observations during hearing on the blockage of returns due to non-payment of late fees and enquired with the Additional Solicitor General whether there is a provision for such blockage.

5) Till the issue of validity of blockage of returns for nonpayment of late fees is decided, as an interim measure Petitioner was allowed to file returns for past many months which were stuck due to nonpayment of late fees. Undertaking taken from Government to refund late fees within 7 days or auto direct the late fees to "tax" head within 7 days from date of payment.

6) Court has asked the Council and the Commissioners to streamline the system so that it works in accordance with the provisions of law and not outside it.

7) Court has set a deadline of 24 April 2017 to resolve various issues pointed out by GSTPAM. Failure to do so would compel the Court to pass directions against the Government and the GST Network.

5. In **Mohit Minerals Pvt Ltd. Vs Union of India (Gujarat High Court)** Special Civil Application No. 726 of 2018 dated 09/02/2018 being filled for challenged vires of and Entry 10 of the . The petitioner is an importer of non-cooking coal and on such imports, the petitioner pays Custom duty, the value of which includes Ocean Freight. On the same valuation, the petitioner also pays tax under the ["IGST Act" for short]. The petitioner's grievance is that under the impugned Notifications, the petitioner is asked to pay tax at the prescribed rate all over again on the ocean freight. The petitioner's challenge has principally three elements viz. [a] having paid the tax under IGST Act on the entire value of imports; inclusive of the ocean freight, the petitioner cannot be asked to pay tax on the ocean freight all over again under a different notification; [b] In case of CIF contracts, the service provider and service recipient both are outside the territory of India. No tax on such service can be collected even on reverse charge mechanism, and [c] In case of High Sea sales, the burden is cast on the petitioner as an importer whereas, the petitioner is not the recipient of the service at all. It is the petitioner's seller of goods on high sea basis who has received the services from the exporter/ transporter. th The decision is pending and interim relief till 9 March 2018 granted.