**UPDATES IN DIRECT TAXES**

**Charitable Trust**

The Cochin Bench has in DCIT v. Adi Sankara Trust (2012) 143 TTJ (Coch) 234 taken the view that where the entire cost of assets was allowed by way of application of income under section 11, depreciation was not allowable in respect of such assets.

**Chargeable Income**

In DCIT v. Sandvik Asia Ltd. (2011) 133 ITD 126 (Pune) (TM), the Pune Bench (Third Member Bench) has held that where the assessee-company received interest on refund of income tax and also paid interest for delayed payment of tax, the gross interest received by the assessee from the Income Tax Department was chargeable to tax in its hands.

**Depreciation**

The assessee was not entitled to depreciation on leasehold rights over the land treating it as an intangible asset under section 32(1)(ii) opined the Pune ‘B’ Bench in Drilbits International (P) Ltd. v. DCIT (2011) 142 TTJ (Pune) 86.

**Interest on Borrowed Capital**

In P.D. Warehousing Corporation v. ACIT (2011) 141 TTJ (Mum) 415 where the partners of the assessee-firm paid the retiring partners an agreed amount for safeguarding the interests of the

ﬁrm out of funds borrowed by the ﬁrm and funds available with the firm, the interest paid on loans borrowed therefor is deductible under section 36(1)(iii) since the payments made to the retiring partners were based o n commercial expediency, held the Mumbai ‘C’ Bench.

**Bad Debts**

Where the assessee-company wrote off bad debts through the provision for bad and doubtful debts account, the bad debts so written off were deductible since the assessee had written back the provisions in the earlier years, opined the Mumbai ‘G’ Bench in DCIT v. Warner Lambert (India) (P) Ltd. (2012) 143 TTJ (Mum) 571.

**Section 40(a)(ia)**

In ITO v. Parag Mahasukhlal Shah (2012) 143 TTJ (Ahd) 606 where the assessee paid interest for delayed payment of purchase price to the supplier of goods, the Ahmedabad ‘A’ Bench expressed the view that such interest did not fall within the deﬁnition of ‘interest’ under section

2(28A) since it did not have any nexus with a deposit, loan or borrowing, that the assessee was not liable to deduct tax at source under section 194A thereon and consequently, the said interest could not be disallowed under section 40(a)(ia).

**Method of Accounting**

Where the Department had accepted the project completion method of accounting followed by the assessee, it could not adopt percentage completion method for one year on selective basis, held the Delhi ‘E’ Bench in DCIT v. Manish Buildwell (P) Ltd. (2011) 142 TTJ (Del) 749.

**Capital Gains**

In ITO v. Pashu Mohammed Zainuddin (2011) 142 TTJ (Pune) (UO) 17 where the land sold by the assessee was acquired by his ancestors free of cost as Inami land as Choli Bangdi for maintenance of a Dargah, the Pune ‘A’ Bench took the view that there was no cost of acquisition for the land and, therefore, no capital gain arose on its sale.

**Deemed Dividend**

The Agra Bench has in DCIT v. Atul Engineering Udyog ( 2011 ) 133 ITD 1 (Agra) taken the view that section 2(22) (e) will not apply if a person is a registered shareholder but not a beneﬁcial shareholder and vice versa as the expression ‘shareholder being a person who is beneﬁcial owner of shares’ referred to therein refers to both a registered shareholder and beneﬁcial shareholder.

**Income from other Sources**

In ACIT v. Ratan Industries (P) Ltd. (2012) 143 TTJ (Agra) (TM) 24 where the assessee surrendered a sum of Rs.22,00,000 in respect of excess stock found during survey which was added under section 69 but could not prove the nature and source of investment made in the inventory, the Agra Bench (Third Member Bench) ruled that the income was assessable as income from other sources and not as business income.

**Carry Forward of Loss**

Where the assessee ﬁled the original return of income under section 139(1) declaring an income of Rs.94,09,046 and a revised return under section 139(5) declaring long-term capital loss of Rs.1,82,27,039,he was entitled to carry forward the longterm capital loss, held the Mumbai ‘D’ Bench in Ramesh R. Shah v. ACIT (2012) 143 TTJ (Mum) 166.

**Reassessment**

In Priya Ltd. v. ITO (2011) 133 ITD 38 (Mum), the Mumbai ‘A’ Bench has opined that if the manner of computation of income done by the assessee is incorrect but that does not reduce the total income or the ultimate tax liability, it cannot be a case of income escaping assessment covered under section 147.

**Appeal**

A Circular issued by the Central Board of Direct Taxes cannot be treated as additional evidence in an appeal before the Commissioner (Appeals), held the Jodhpur Bench in ACIT v. Minpro Industries (2012) 143 TTJ (Jd) 331.

**Interest under Section 234D**

The Visakhapatnam Bench has in Dredging Corporation of India Ltd. v. ACIT (2011) 142 TTJ (Vis) 252 taken the view that interest under section 234D cannot be levied in a reassessment made under section 147 after completion of assessment under section 143(3) since such interest is leviable only where the refund allowed to the assessee under section 143(1) becomes collectible in a regular assessment and such reassessment cannot be termed as regular assessment.

**Interest under Section 201(1A)**

In Madhya Gujarat Vij Co. Ltd. v. ITO (2011) 142 TTJ (Ahd) 704, the Ahmedabad ‘D’ Bench has held that section 192(3) would not save the employer from the liability to pay interest under section 201(1A) if the employer had taken the deduction of tax from salary casually during the earlier months of the ﬁnancial year by not deducting tax correctly as required by section 192(1) but had resorted to lump sum deduction of tax at the end of the ﬁnancial year.

**Precedent**

The Mumbai ‘C’ Bench has in G.D.Metsteel (P) Ltd. v. ACIT (2011) 142 TTJ (Mum) 641 expressed the view that the ruling given by the Authority for Advance Rulings, though deserves the highest respect and consideration, is not a binding judicial precedent.

***Source: SIRC NEWSLETTER***