

## Important judgements and Updates

Update No 22/ 2021

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**Bajaj Allianz Life Insurance Company Ltd SLP (Civil) Diary Nos. 17857 of 2020 Supreme Court of India**

**SLP Filed against Order passed by the Bombay High Court was dismissed. In favour of Assessee**

### Issues discussed and addressed:

**Issue No 1** Section 147 Since in reasons recorded there was no reference to any new tangible material, but reference was only to financial statement of assessee itself, impugned proceedings so initiated merely on basis of change of opinion, deserved to be quashed.

### Facts of the case with respect to issue No 1:

The Petitioner was a company engaged in business of Life Insurance. The Petitioner submitted documents as called for during original assessment. On 7 December, 2015 Transfer Pricing Officer passed an order accepting the Arm's Length price reported by the Petitioner. Therefore, on 8 March, 2016 an assessment order was passed under Section 143(3) r/w Section 92CA(4) of the Act. On 29 March, 2019 the Assessing Officer issued a notice under Section 148 of the Act.

### Held by the Authorities with respect to Issue No 1:

In the reasons there is not even an averment that there is a failure on the part of the Petitioner - assessee to truly and fully disclose all material facts necessary for the assessment. It is clear from the Reasons that there is no reference to any new tangible material, but the reference is only to the financial statement of the Petitioner itself. Therefore, there is not only no failure to disclose any material facts, there is no mention in the reasons that there has been a failure to disclose. A specific query was raised regarding the implications of Shareholders account, which dealt with by the Assessing Officer in the assessment order and what is sought to be done by the Assessing Officer in the impugned notice and order is a mere change of opinion, which is not permissible.

**Anand Kumar Jain (HUF) Delhi High Court In favour of Assessee**

### Issues discussed and addressed:

**Issue No 1** Section 153A The evidences found during search at the premises of entry provider cannot be the basis for making additions in assessment completed u/S. 153A in the case of beneficiary.

### Facts of the case with respect to issue No 1:

A search was conducted u/s. 132 on 18th November, 2015 at the premises of the Assessee {being Anand Kumar Jain (HUF), its coparceners and relatives} as well as at the premises of one Pradeep Kumar Jindal.

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During the search, statement of Pradeep Kumar Jindal was recorded on oath u/s. 132(4) on the same date, wherein he admitted to providing accommodation entries to Anand Kumar Jain (HUF) and his family members through their Chartered Accountant. The assessing officer framed the assessment order detailing the modus operandi as to how the cash is provided to accommodation entry operator in lieu of allotment of shares of a private company. Thereafter when the matter was carried up in appeal before the CIT(A), the findings of AO were affirmed. However, in further appeal before the ITAT, the said findings were set aside

### Held by the Authorities with respect to Issue No 1:

S. 153A, 153C search assessments: (i) A statement recorded u/s 132(4) has evidentiary value but cannot justify the additions in the absence of corroborative material. (ii) The statement also cannot, on a standalone basis, constitute 'incriminating material' so as to empower the AO to frame a block assessment u/s 153A (iii) If the statement was recorded in the course of search conducted in the case of a third party, and assuming the statement is construed as 'incriminating material belonging to or pertaining to a person other than person searched', the only legal recourse available to the department is to proceed in terms of S. 153C of the Act by handing over the same to the AO who has jurisdiction over such person. An assessment framed u/s 153A on the basis of alleged incriminating material (being the statement recorded under 132(4) of the Act) is not valid.

### Judgments Relied upon by the Authorities with respect to Issue No 1:

Best Infrastructure (India) P. Ltd Delhi High Court