1. **Chennai ITAT in P Srinivasan vs ITO[1] - Receipt of Gift from Uncle's son and daughter-in-law to the assessee can be said to be constructive gift from Uncle and accordingly not taxable in light of Section 56(2)(vii) in the hands of assessee:**

   An interesting issue has come up for consideration before Chennai ITAT. The assessee has received Rs 50 lakhs from his uncle (father's brother) as gift. However, the said amount was received from the bank account of uncle's son and daughter-in-law who are non-resident Indians. The AO has considered the amounts received from uncle's son and daughter-in-law and held that the same as taxable since the later are not considered as 'relative' as per the definition provided in Section 56(2)(vii). The Commissioner (Appeals) has also upheld the order of AO.

   When the matter reached Tribunal, it was held that the amounts transferred by son and daughter-in-law can be said to be transferred by uncle of the assessee and accordingly held that the said gift was constructive in nature. The confirmation provided by assessee's uncle in unequivocal terms was considered by Tribunal. The Tribunal further stated that the son and daughter-in-law cannot be said to be alien to uncle and it can be inferred that they have first given gift to uncle and thereafter, uncle has gifted to assessee.

   Our Comments:

   The Tribunal has rightly held that the said can be said to be constructively given by uncle to the assessee. It is advisable for the tax payers to concentrate on the documentation. On the other side, the tax authorities at least in case of individuals have to go based on the substance rather on the form.

2. **Karnataka High Court in Nitesh Housing Developers (P) Limited[2] - Premium paid for redemption of convertible debentures is a revenue expenditure:**

   This was the case where the assessee has claimed loss while filing the revised return. The said loss was arisen due to the fact that the assessee has claimed deduction of premium paid for redemption of debentures as revenue expenditure. The AO has rejected the loss stating that the premium paid for redemption is capital expenditure since the same was happening from the reserves and surplus account. CIT(A) allowed the expenditure as revenue but asked to spread it over three years. CIT(A) order was challenged by revenue before ITAT. The order of CIT(A) was rejected by ITAT. Aggrieved by this, the assessee has approached the High Court.

   The High Court stated that vide a second addendum entered by assessee, the debenture holder has got the option of converting the debentures to preferential shares, thereby the assessee could be put to redeem all debentures by September 20, 2012. The 62 lakh convertible debentures with face value of Rs 100/- have been issued by the assessee between September 25, 2009 and January 1, 2010. Since by the time of filing revised return, the assessee has got into obligation of redemption of debentures with premium, the assessee claimed the premium paid as revenue expenditure. The High Court rejected the stand of revenue that the premium payable is contingent liability by placing reliance on Bharath Earth Movers[3]. Further, following the decision of Asea Brown Boveri Limited[4] and Madras

[1] 2022 (11) TMI 665 – ITAT Chennai
[2] 2022 145 taxmann.com 30 (Karnataka)
[3] 2000 112 Taxmann 61
[4] 2009 316 ITR 450 (Kar)

Industrial Investment Corporation Limited[5], the High Court has held that premium payable quantified on redemption of debentures as revenue expenditure.

3. **Supreme Court in the case of Singapore Airlines Limited[6]: TDS liability under section 194H gets attracted not only for standard commission but also for supplementary commission in the airlines industry:**

The Honourable Supreme Court has given clarity on the definition of commission under Section 194H and on the establishment of principal-agent relationship between two parties. The assessee, being an airline carrier, had entered into a contract with travel agents to sell the flight tickets. Under the terms of the contract, the agent is bound to get a standard commission on the base fare. In addition to that, the difference between the price at which the ticket is sold by the agent and the net fare is retained by the agent himself which is termed as 'supplementary commission' as per the contract.

In this regard, a question has come into picture that 'whether the transaction, which accrues the agent the supplementary commission, had occurred under the purview of principal-agent relationship?' The Apex court has shed light on the provisions of Section 182 of Indian Contract Act,1872, where it was simply expounded that any person who does any act for, or represents another person is termed as agent of the latter. Also, despite the fact that there is no control to the air carrier on the sale price of the tickets to be sold by the agent, the said tickets were still the property of the air carrier and has a close nexus to the responsibilities that were entrusted to it by the principal air carrier clearly manifesting the existence of principal-agent relationship.

Question has also arisen on what would be included in the commission as termed in section 194H of IT Act. Attention has been drawn to explanation given in Section 194H which illuminates that commission may be received directly or indirectly by the agent. Mere receipt of the amount from the person other than the principal does not nullify the principal-agent relationship owing to the fact that the said amounts have been accrued to agent by the reason of existence of agency relation in the first place. Hence the Supreme Court had held that supplementary commission would come under the ambit of commission under section 194H of IT Act.

Our Comments:

The definition of commission under Section 194H is rather expansive one and covers any transaction falling under the ambit of principal-agent relationship. The transactions that were occurred under the ambit of an agency contract cannot be broken down into parts and interpreted separately for convenience. A contradictory ruling that has been passed by Bombay High court in the case of Qatar Airways[7] had been set aside by the Apex Court in the present ruling.

[5] 255 ITR 802
[6] 2022 LiveLaw (SC) 959
[7] 2009 SCC OnLine Bom 2179

4. **Chennai Tribunal in the case of Lifecell International Private Limited[8] : The proceedings which were deemed to have been withdrawn under section 4(1) of DTVSVS Act, 2020 shall be deemed to be revived under section 4(6) of the Act once the assessee violates any of the conditions referred to in this Act:**

In this case, the revenue has contended that the appeal filed by the assessee cannot hold good in the eyes of law since a declaration has been filed by the assessee under section 4(1) of DTVSVS Act, 2020 and Form No.3 has been issued by the Designated Authority ('DA') as per the section 5(1) of the DTVSVS Act, 2020 causing any proceedings of the assessee pending before any Tribunal be deemed to have been withdrawn. The revenue also contends that the Tribunal has no authority to proceed for deciding the appeal filed by the assessee owing to section 4(7) of the VSVS Act which restrains the appellate forums to proceed to decide on any issue on which certificate under section 5(1) has been issued by DA.

The revenue has placed reliance on the FAQs issued through the circulars[9] which provides that once the appeal has been deemed to have been withdrawn by virtue of declaration given under section 4(1), there is no question of pursuing the appeal by the assessee again. But what if the declaration given by the assessee under section 4(1) itself becomes faulty? Whether the proceedings still considered to be withdrawn? The Chennai Tribunal answered these questions.

The Tribunal, by drawing attention to section 4(6) of the Act, has held that irrespective of the fact that the DA had issued certificate under section 5(1) of the Act, the moment the assessee violates any of the conditions referred to in this Act including non-payment of the tax determined by the DA within stipulated period, all the proceedings and claims which were withdrawn shall be deemed to have been revived. Accordingly, the arguments made by the revenue have been rejected.

Our Comments:

The Tribunal has rightly interpreted the provisions of DTVSVS Act. Section 4(6) clearly states that when assessee violates any of the conditions, declaration filed in Form 1 and Form 2 shall be presumed never to have been made. Consequently, the appeal gets the life back.

5. **Delhi High Court in the case of M/s PGF Ltd[10]: No additions can be made in the assessment under section 153A in the absence of any incriminating material found during the search of the Assessment Years for which assessment has already completed:**

Pursuant to a search carried out at the premises of the assessee, the Delhi Tribunal and CIT(A) had quashed the assessment order passed under Section 153A of IT Act and have returned concurrent findings of fact that no incriminating material has been found during the search warranting an assessment under Section 153A of the IT Act. The revenue filed an appeal contending that there is no need of incriminating material to be found during search to make additions/disallowances under section 153A even where the original assessments have attained finality and have not abated.

[8] TS-871-ITAT-2022(CHNY)
[9] Circular No. 9/2020 dated 22nd April, 2020
[10] TS-881-HC-2022(DEL)

The assessee had contended that the incriminating material may not be required for original assessment proceedings that are being abated under Section 153A. However, in the present case, there is no pending assessment before the assessing officer and hence, the question of abatement does not arise. Hence, the AO should have some corroborative evidence for making additions in the assessment made under section 153A.

The court had interpreted the provisions of section 153A and clarified that although there is no strict rule that additions should be made on the basis of evidence found in the course of search or post-search material, it does not mean that the assessment can be arbitrary or made without any nexus with the seized material. The court had relied on the ruling in Kabul Chawla's[11] case as per which the addition could not be made without any incriminating evidence found during search in respect of assessment year which is not pending before the assessing officer at the time of initiation of search proceedings.

The court, by relying on the case of Harjeev Agarwal[12], has also made it clear that statement referred under section 132(4) recorded during the course of search also requires to have nexus to any material discovered during the search, otherwise the AO would not be empowered to make any additions in the assessment. Accordingly, the appeal of the revenue is dismissed.

Our Comments:

In this case, the Supreme Court has held that, without obtaining incriminating material against the assessee during the search, addition cannot be made in the assessment made under Section 153A. However, a contradictory ruling in the case of Dayawanti[13] was brought into light before this court as per which a statement recorded under Section 132(4) during the search operation can be treated as incriminating material based on which an addition can be made in the assessment. In this regard, the Supreme Court has clarified that this ruling had been given under peculiar facts that are different from the aforesaid case and does not dilute the Kabul Chawla's ratio.

[11] CIT v. Kabul Chawla 380 ITR 573 CIT
[12] [2016] 229 DLT 33
[13] [2017] 390 ITR 496