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Tax Digest

- Recent case laws

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Direct Tax Updates

NEWS FEED

- ***Reassessment notice issued on or after 01-04-21 should comply with new procedure prescribed u/s 148A: HC :***

Calcutta HC quashes reassessment notices for past years issued on or after 1-4-2021 for not complying with new provisions applicable wef 1-4-2021

- *Decisions followed:*

(1) *Mon Mohan Kohli v. Assistant Commissioner of Income-tax [2021] 133 taxmann.com 166 (Delhi)*

(2) *Ashok Kumar Agarwal v. Union of India [2021] 131 taxmann.com 22 (Allahabad)*

(3) *Bpip Infra (P.) Ltd. v. Income Tax Officer, Ward 4(1), Jaipur [2021] 133 taxmann.com 48 (Rajasthan)*

Link to the Judgment:
https://d78ydx8s015io.cloudfront.net/10101000000319097/manoj 487204.pdf?fm=pdf

1. It cannot be held that Long Term Capital gain was earned through bogus company stocks when the assessee had discharged his onus by placing all the relevant details and some of the shares also remained in the account of the assessee after earning of the long term capital gain

In the instant case[1], the assessee, being an individual, claimed long term capital gains arising out of sale of shares as exemption under section 10(38) of the Act. The Assessing officer denied the exemption and made certain additions into assessee's income on grounds that said gains were earned through bogus penny stock transactions and companies to whom sold shares belonged were bogus in nature. On appeal, the CIT(Appeals) confirmed the addition.

The assessee submitted that he had a demat account maintained with ICICI Securities Ltd and also furnished the details of such bank transactions with regard to the purchase of the shares. He discharged his onus of establishing that the long term capital gains arising out of sale of different shares was fair and transparent by submitting records of purchase bills, sale bills, demat statements etc., i.e. the same not being earned from bogus companies and therefore eligible for exemption under section 10(38).

All the relevant details with regard to such transactions were furnished before the Hon'ble Tribunal. The ITAT took notice of the fact that some of the shares also remained in the account of the assessee. It also noted that neither any statement on the basis of which such notice alleging bogus gains was furnished to the assessee, nor any cross examination was allowed.

On those grounds, the ITAT deleted the addition.

Aggrieved, the Revenue preferred an appeal before the High Court, wherein it was held that the Tribunal had recorded the finding of fact that the assessee discharged his onus of establishing that the transactions were fair and transparent. In the overall view of the matter, the Court held that the proposed question cannot be termed as a substantial question of law for the purpose of maintaining the appeal under Section 260A of the Act, and hence the appeal of the Revenue was dismissed.

2. Section 147 :

No reassessment without recording reason as to how search action on third party had any connection with assessee

In the instant case[2], the assessee company filed its return of income for the assessment year under consideration on 28th September, 2012. It subsequently filed a revised return on 28th March, 2014. The return was processed under section 143(1) of the Act and an assessment order under section 143(3) read with section 153A of the Act was passed by the Assessing Officer on 30th December, 2016. Thereafter, a notice u/s 148 was issued to reopen the assessment.

Reassessment was initiated on the basis of information received from Deputy Director that a

[1] **Principal Commissioner of Income Tax - 1 v. Parasben Kasturchand Kochar (High Court of Gujarat) [2021]**

[2] **Peninsula Land Ltd. v. Assistant Commissioner of Income-tax, Central Circle-1(3), Mum (High Court Of Bombay) [2021]**

search and survey action under section 132 had been carried out in case of a company wherein it was unearthed that the assessee had lent cash loan of Rs. 30 lakh to said company and thus the said sum had escaped assessment within meaning of section 147 in hands of the assessee.

The assessee challenged the impugned notice on the ground that the reasons recorded in support of the impugned notice did not indicate the manner in which the Assessing Officer came to the conclusion that income chargeable to tax had escaped assessment.

The assessee also stated that in the reasons for re-opening, there is not even a whisper as to what was the tangible material in the hands of the Assessing Officer which made him believe that income chargeable to tax has escaped assessment and because notice was issued four years after the assessment order, and hence the AO had to mention the material fact that was not fully and truly disclosed.

Also, in the reasons recorded by the AO, he failed to establish as to how the mentioned names in the report of the Investigation Wing was connected to the assessee.

The Hon'ble Court observed and held that it is a well settled law that the AO has no power to review an assessment which has been concluded. If a period of four years has lapsed from the end of the relevant year, the AO has to mention what was the tangible material to come to the conclusion that there is an escapement of income from assessment and that there has been a failure to fully and truly disclose material fact. After a period of four years, even if the AO has some tangible material to come to the conclusion that there is an escapement of income from assessment, he cannot exercise the power to reopen unless he discloses what was the material fact which was not truly and fully disclosed by the assessee.

In the reasons recorded, no connection was established with the assessee. Further, the timing of the search action initiated, i.e. whether it was before the completion of assessment u/s 143(3) or after, was not disclosed. The reasons were silent on the above. In the aforesaid circumstances, it was held that the impugned order u/s 147 of the Act was without jurisdiction and was liable to be set aside.

3. Section 43B:

Employees contribution to provident fund / ESI, when it was deposited before the due date of filing of the return of income but beyond the due date prescribed Under the respective laws was allowable.

In the instant case[3], the assessee is a private limited company and is engaged in the business of providing the call centre services, back office processing activities, telemarketing and direct marketing, mailing activities for different clients. The assessee filed its return of income for the A.Y. 2018-19 on 11.09.2018 declaring NIL Income. The above return was revised on 13.03.2019 after receiving notice under section 143(1)(a) of I.T. Act for a proposed adjustment of Rs.45,93,409/- comprising of disallowance of late payments made on account of employees' ESI/EPF and payments covered under section 43B of the I.T. Act, 1961. Subsequently, a notice under section 143(1)(a) of I.T. Act was issued on 22.07.2019 for proposed set off of Rs.8,37,846/- being disallowance of late payments of ESI/EPF with claim of brought forward/carried forward loss

[3] **Adama Solution P. Ltd. vs ADIT (ITAT Delhi) [2021]**

claimed in the return. The assessee filed response to the above notice by disagreeing the above proposed adjustment.

Thereafter, the CPC Bangalore, processed the revised return of income and intimation was issued under section 143(1) making the above adjustment of Rs.8,37,846/- under section 36(1)(va) of the I.T. Act, 1961. The assessee filed rectification request and the rectification processing order was issued under section 154 of I.T. Act, 1961 wherein the above disallowance Rs.8,37,846/- on account of late deposit of employees' contribution to ESI/EPF was made and demand of Rs.2,15,747/- was raised and adjusted with refund amount of Rs.20,69,950/-.

Aggrieved, the assessee preferred an appeal before the CIT(Appeals), who confirmed the addition. As a result, the assessee preferred an appeal before the Hpn'ble ITAT.

It submitted that it had deposited the employees' contribution to PF & ESI before the due date of filing of the income tax return. Relying on the decision of the Hon'ble Delhi High Court in the case of CIT vs., AIMIL Ltd., [2010] 321 ITR 508 (Del.) and various other decisions, the Tribunal was of the view that employees' contribution to PF & ESI, if paid before the due date of filing of the income tax return under section 139(1), is an allowable deduction and no disallowance can be made.

4. Where revenue authorities did not record a specific finding that debt had been written off in books of account, impugned order allowing assessee's claim was to be set aside and, matter was to be remanded back for dispose afresh

In the instant case[4], that assessee, engaged in the business of manufacture of field instrumentation, filed the return declaring loss of Rs.7,40,96,877/- which was processed under Section 143(1) of the Act.

Thereafter, a notice under Section 143(2) of the Act along with notices under Section 143(2) and 142(1) were issued. The assessing officer by an order *inter alia* held that the assessee was a promoter of M/s Gujarat Instruments Ltd., and was an associate Company. It was further held that the assessee had not furnished any details of investment / finance provided to M/s Gujarat Instruments Ltd., from time to time and had also not explained the circumstances, which led to liquidation of the said company and how the funds provided by the assessee were utilized. It was also held that no details were furnished by the assessee of its business interest in M/s Gujarat Instruments Ltd., therefore, the loss suffered by the assessee to the tune of Rs.3,50,81,381/- had to be treated in the nature of capital loss. The assessing officer also disallowed a sum of Rs.32,25,000/- i.e., the provision made for diminution in the value of investment in M/s Gujarat Instruments Ltd., on the ground that no particulars were furnished.

Being aggrieved, the assessee filed an appeal. The Commissioner of Income Tax (Appeals) by an order upheld the disallowance in respect of writing off the debts. It was further held that investment made for equity shares of M/s Gujarat Instruments Ltd., could not be written off as a revenue loss and the same was a dead loss and therefore, was not allowable.

[4] **Commissioner of Income-tax vs ABB Ltd. (High Court Of Karnataka) [2020]**

Being aggrieved, the assessee preferred an appeal before the Court.

It was also submitted that any loss incurred in setting up of a business / company of a sister concern was a capital expenditure and therefore, the same had to be treated as capital loss. It was also pointed out that the assessee had failed to explain the commercial expediency. It was also urged that bad debt should occur during the course of business to claim benefit under Section 36 of the Act. It was also submitted that even though the Tribunal remanded the matter to the assessing officer, yet it erred in recording a finding that assessee was entitled to capital loss on the ground that the assessee had invested in equity shares, even though, neither nature of investment was disclosed nor any particulars were furnished. It was further submitted that the Tribunal should not have remitted the matter to the Assessing Officer by holding that assessee was entitled to avail of the benefit of capital loss.

Learned counsel for the assessee submitted that the burden to prove that the debt is a bad debt had been removed with effect from 01.04.1989. It was further submitted that it was sufficient if the debt was written off as bad debt in the accounts of the assessee. It was further submitted that the AO's remand report was called for and after 01.04.1989, there was no need to establish the aspect of irrecoverability of debt.

In view of preceding analysis, the impugned order passed by the Income Tax Appellate Tribunal was modified and the finding that the assessee was entitled to the benefit of capital loss was set aside.