Dipesh Ramesh Vardhan I.T.A. No.7648/Mum/2019 Mumbai ITAT

Issues discussed and addressed:

Penny Stock

Facts of the Case:

The record would show that an assessment was framed for year under consideration u/s 143(3) r.w.s. 153A of the Act on 21/12/2016 wherein the income of the assessee was determined at Rs.303.50 Lacs after certain additions of unexplained income as against returned income of Rs.3.74 Lacs filed by the assessee on 25/09/2014. The LTCG earned by the assessee was treated as its unaccounted income and Ld.AO had estimated commission income against these transactions @2%.

The transactions took place through banking channels. The investments were duly reflected by the assessee in financial statements of respective years. The copies of financial statements of M/s STL for FYs 2009-10 & 2010-11 which led to investment by the assessee in that entity was also furnished during the course of assessment proceedings. Subsequently, M/s STL got merged with another entity viz. M/s SAL pursuant to scheme of amalgamation u/s 391 to 394 of The Companies Act, 1956. The Scheme was duly approved by Hon'ble Bombay High Court. Consequently, the shares of M/s STL held by the assessee got swapped with the shares of M/s SAL The assessee has sold these shares through its stock broker namely M/s Unique Stockbro Private Limited in online platform of the recognised stock exchange during the month of March, 2014. The selling price was in the range of Rs.489/- to Rs.491/- per share. The transactions took place. through online mechanism after complying with all the formalities and procedure including payment of STT. The delivery of the shares was through clearing mechanism of the stock exchange and sale consideration was received through banking channels.

Held by the Authorities:

The primary material to make additions in the hands of assessee is the statement of Shri Vipul Bhat and the outcome of search proceedings on his associated entities including M/s SAL. However, there is nothing on record to establish vital link between the assessee group and Shri Vipul Bhat or any of his group entities. The assessee, all along, denied having known Shri Vipul Bhat or any of his group entities. The opportunity to cross-examine Shri Vipul Bhat was never provided to the assessee. It is trite law that additions merely on the basis of suspicious, conjectures or surmises could not be sustained in the eyes of law. The suspicion however strong could not partake the character of legal evidence.

Judgments Relied upon by the Authorities:

1. M/s Andaman Timber Industries V/s CCE (CA No.4228 of 2006)
2. Omar Salay Mohamed Sait V/s CIT (1959 37 ITR 151)
3. Umacharan Shaw & Bros. V/s CIT (1959 37 ITR 271)
4. Anraj Hiralal Shah (HUF) V/s ITO (ITA No. 4514/Mum/2018 dated 16/07/2019)

Smt. Rekha Shetty IT Appeal No.2777 Of 2019 Chennai ITAT

Issues discussed and addressed:

Exemption u/s 54

Facts of the Case:

Smt. S. Rekha Shetty, the assessee, an individual and a senior citizen, received her share from the sale of an immovable property, sold on 19-10-2015. In her return of income filed for assessment year 2016-17, she claimed deduction, inter alia, at Rs. 4,33,00,000/- under section 54, being the amount utilized towards a new house purchased on 26-8-2016. During the assessment proceedings, the A.O. found that the due date for filing the return under section 139(1) was on 5-8-2016, but, the assessee had deposited the amount in Capital Gains Accounts Scheme (CGAS) on 18-8-2016 only and finally utilized it in purchasing the new house on 26-8-2016. Since the amount was not deposited in CGAS within the due date of filing of return under section 139(1) of the Act, the Assessing Officer did not allow the assessee's claim of deduction.

Held by the Authorities:

For seeking benefit of deduction under section 54 of the Act, the assessee should have substantially complied with section 54(1). In this case, the assessee should have purchased the residential house within two years from 19-10-2015, ie the date of transfer. She has utilized such sum towards purchase of the new house on 26-8-2016 itself. Further, she had explained the reasons for not-depositing the amount in Capital Gains Accounts Scheme which is also not disputed. Since the assessee has substantially complied with section 54(1), therefore, a mere non-compliance of a procedural requirement under section 54(2) itself cannot stand in the way of the assessee in getting the benefit under section 54.

Judgments Relied upon by the Authorities:

Venkata Dilip Kumar v. CIT [2019] 419 ITR 298 (Mad.)

Saregama India Ltd I.T.A. Nos. 309, 310 & 312/Kol/2017

Issues discussed and addressed:

Capital vs Revenue Expenditure

Facts of the Case:

Assessee engaged in manufacturing and sale of music cassettes, compact discs (CDs) etc. entered into agreements with various producers etc. for purchasing right to reproduce film-music on payment of minimum guarantee royalty. AO held that assessee has acquired absolute right of production and sale of cassettes, compact disc etc. and minimum guarantee royalty was of capital in nature because this payment was one time contractual expenditure incurred for the purpose of acquiring absolute/monopoly right.

Held by the Authorities:

Whether a particular expenditure is capital or revenue must be decided in the larger context of business necessity or expediency. Since assessee's business itself consisted of reproducing and selling recorded music, royalty payment for purchase of original music, which formed the raw material, was an expenditure incurred out of business necessity just as a sugar manufacturer would require sugarcane as its raw material. The payment was so related to the conduct of assessee's business that it had to be regarded as integral part of profit earning process and not for acquisition of any asset or any right of a permanent character whatever the mode of payment might be. Accordingly, minimum guarantee royalty was allowable as revenue expenditure.

Other Important updates

a. The Central Board of Direct Taxes (CBDT) has revised the 'E-assessment Scheme, 2019' notified on September 12, 2019. Now, e-assessment scheme shall be called Faceless Assessment. Now, the National e-Assessment Centre shall intimate the assessee for conduct of faceless assessment in case wherein notice has been issued by AO. The Board has also extended its scope to cover best judgment assessments.

b. The Prime Minister of India, Shri Narendra Modi has launched platform for 'Transparent Taxation – Honoring the Honest' to carry forward the journey of direct tax reforms. The PM has unveiled Faceless assessments, Faceless appeals & Taxpayers Charter. The event has been witnessed by

various Chambers of Commerce, Trade Associations, Chartered Accountant's associations and also eminent taxpayers, apart from the officers and officials of Income-tax Department.

c. The Central Board of Direct Taxes (CBDT) has directed that all the assessment shall be passed by the National e-Assessment Centre through the Faceless Assessment Scheme, 2019. However, the board has provided two exception as well. Assessment orders in cases assigned to Central Charges & International Tax Charges.

d. Jurisdiction of income-tax authorities have been defined under section 120 of the Income-tax Act, 1961. Following the implementation of faceless assessment to all taxpayer as announced by the PM Shri Narendra Modi, the Central Board of Direct Taxes (CBDT) has amended jurisdiction of various designation of the Income-tax Authorities.