Cooner Institute of Health Care and Research Centre Pvt. Ltd W.P.(C) 430/2020 Delhi High Court

Facts of the case:

Case of the Petitioner company was selected for limited scrutiny u/s 143(2) vide notice dated 22nd September, 2019. Subsequently, the 'Centralised Processing Centre' processed the return of income vide order dated 12th November, 2019 under Section 143(1) of the Act which resulted in refund of Rs.1,57,83,688/-. However, since the said refund was not granted and it was withheld u/s 241A only due to the reason that case of the petitioner has been selected for scrutiny for AY 2018-19, under Section 143(2).

Held by Authority:

The power of the AO has been outlined and defined in terms of the Section 241A and he must proceed giving due regard to the fact that the refund has been determined. The fact that notice under section 143(2) has been issued, would obviously be a relevant factor, but that cannot be used to ritualistically deny refunds. The AO is required to apply its mind and evaluate all the relevant factors before deciding the request for refund of tax. Such an exercise cannot be treated to be an empty formality and requires the AO to take into consideration all the relevant factors. The relevant factors, to state a few would be the prima facie view on the grounds for the issuance of notice under section 143(2); the amount of tax liability that the scrutiny assessment may eventually result in vis-a-vis the amount of tax refund due to the assessee; the creditworthiness or financial standing of the assessee, and all factors which address the concern of recovery of revenue in doubtful cases.

Thus this exercise withholding of return being not in consonance with the legislative intent and mandate of the aforesaid provision, the communication / withholding the refnund was se set aside with a direction to the respondents to re-consider the aspect in three weeks time whether the amount found due to be refunded, or any part thereof, is liable to be withheld under Section 241A in line with the decisions of this court as noted above.

Judgments Relied Upon by the Authority :

a. Maple Logistics Private Limited v Principal Commissioner of Income Tax 2019 SCC OnLine Del 10961
b. Ericsson India Private Limited v Assistant Commissioner of Income Tax MANU/DE/0763/2020

Paramount Impex IT Appeal No. 1097 (CHD.) Of 2016

Issues discussed and addressed:

Issue 1 Rejection of Books of Account

Issue 2 Method of Valuation of Closing Stock

Facts of the case with respect to Issue No 1 and 2:

Assessing Officer (A.O) on noticing that the assessee did not maintain any stock register and on noting defect in the method of valuation of stock adopted by the assessee, had resorted to rejection of books of accounts maintained by the assessee under section 145(3) of the Act and had thereafter proceeded to apply the Gross Profit Rate(GPR) of 18% to the turnover of the assessee for estimating the profit earned during the year.

Held by Authority With respect to Issue No 1 :

Undeniably the power to reject books of accounts is to be exercised only when the books are found incorrect or incomplete for determining the true and correct profits earned by the assessee. This power is implied in the Income-tax Officers power to inquire into the total income of the assessee. In the present case, undisputedly the only basis for rejecting the books of accounts is non maintenance of stock register and the incorrect method of valuation of stock adopted by the assessee. No other defect has been pointed out by the Revenue authorities for rejecting the books of accounts. As for the non maintenance of stock register the assessee has explained the non feasibility of maintaining it considering the fact that it was dealing in a large number of small items. It was also explained that the assessee was consistently following the method of physically verifying its stock at the end of the year. Considering the above facts, we are not in agreement with the Revenue that the non maintenance of stock register was sufficient for exercising the power of rejecting the books of the assessee.

Held by Authority With respect to Issue No 2 :

Admittedly the assessee has been applying the Gross Profit Rate of the year to the stock for determining the value. We agree with the Revenue that this is not a correct method of valuation of stock which ideally should be valued at cost of market price whichever is less. But merely because of adoption of an incorrect method of valuation or merely on account of non compliance with the prescribed accounting standard, the books of accounts cannot be rejected. In fact in such cases the correct accounting standard or the correct method of accounting should be applied by the Revenue and the true and correct profits determined. Such defects, relating to method of valuation of stock, do not render the books of accounts unreliable, incorrect or incomplete, in which circumstances alone the Books of accounts can be rejected.

Singhal Sunrise Steels (P) Ltd. ITA No. 3103/Del/2015 Against Assessee

Issues discussed and addressed:

Addition u/s 68 with respect to Share Application Money

Facts of the Case :

Assessee is a closely held Private Limited Company engaged in the business of trading of Iron & Steels. During the course of assessment proceedings assessee was enquired to furnish complete details of share application money shown at Rs. 85,00,000. In response to the query, the assessee could not furnish any convincing evidence to substantiate the genuineness of said transactions.Notices under section 133(6) of the Income Tax Act, 1961 were issued by the assessing officer to the aforesaid parties and officials of the revenue were deputed to get confirmation of the transaction shown by the assessee. However, the aforesaid parties were not found at their respective addresses provided by the assessee. It is reported by the officials that none of the companies found at the given addresses and notices issued under section 133(6) were returned un-served. It is also reported that these companies have never been existent at the addresses provided by the assessee.

Held by Authority :

We find that the assessee has miserably failed to give the basic details like the correct address of the applicant companies to the assessing officer. The addresses given initially and subsequently have been found to be bogus. The assessee has submitted documentation like ITR of the share applicant companies, the confirmations, the ROC record, P&L and balance sheet of the share applicant companies, copies of the application of the equity shares which cannot be primarily taken as sacrosanct when weighed against the concrete evidences collected and confronted by the revenue to the assessee before making the addition. The addresses have been proved wrong, the notices under section 133(6) of the Act have come back un-served, correct address of the Directors was not provided.

Further, the turnover and profits of the share applicant company do not give any credence to the investments done with the assessee company while the revenue has brought on record all the evidences to prove that these share applicant entities are in fact shell companies. In view of the entire facts and circumstances of the case, it is hereby held that the assessee has failed to discharge the primary onus to prove identity, creditworthiness and genuineness of transactions. Hence, relying on the facts enumerated above and judgments relied upon by the revenue, the addition made by the revenue under section 68 of the Act is hereby confirmed.

Thomson Press India Ltd I.T.A. No. 2561 /Del/2017

Issues discussed and addressed:

Allwability of Education Cess as Deduction u/s 40

Facts of the Case:

Assessee is a company which is stated to be engaged in the business of commercial printing and photo typesetting. In the present case the assessment framed u/s 143(3) r.w.s 148 by making disallowance of expenditure on account of cess on income tax of Rs.14,21,208/-, which according to AO was not allowable u/s 40(a)(ii) of the Act and provision for doubtful debt The CIT Appeals have granted relief with respect to provision of Bad Debts which was not challenged by revenue before ITAT.

Held by Authority :

Relying on the decision of Hon'ble Bombay High Court in the case of Sesa Goa hold that the AO was not justified in disallowing the amount of cess paid on income tax. We therefore, direct its deletion. Thus, ground of appeal of the assessee is allowed.

Judgments Relied Upon by the Authority :

Judgments Relied Upon with respect to Allowability of Cess as Deduction

Sesa Goa Ltd vs JCIT Tax Appeal No 17 and 18 of 2013, Order Dated Feb 28, 2020

De Diamond Electric India Pvt Ltd ITA No. 7167/Del/ 2019,

Issues discussed and addressed:

Disallowance of Expense u/s 40A(2)(b)

Facts of the Case:

The assessee company was engaged in business of manufacturing and trading of ignition coils for motor vehicle engines. The scrutiny assessment was completed on 20/12/2018 under section 143(3) of the Act, after making certain additions/disallowances. One of the disallowance made is of Rs 3,66,82,337/- under section 40A(2)(b) of the Act on account of the excessive royalty payment made to related party.

Held by Authority:

The one of the ground taken by the AO for invoking section 40A(2)(b) is the agreement between the parties has not been registered. In our opinion, an unregistered agreement cannot be a ground for invoking provisions of section 40A(2)(b) of the Act in absence of requirement of law. If the expenses are not incurred wholly and exclusively for the purpose of the business, then disallowance could be made under section 37(1) of the Act.

For invoking the provision of section 40A(2)(b) of the Act, the Assessing Officer has to form an opinion of expenses more than the fair market value or not according to the legitimate needs of the business or no benefit derived. In the instant case the Assessing Officer has only compared royalty expenses of the preceding assessment year and no efforts have been made for identifying the fair market value of such expenses during relevant period, which is one of the requirement for invoking the provisions of section 40A(2)(b) of the Act. Under transfer pricing provisions the arm's-length price is compared with similar transactions. Though the provisions of section 40A(2)(b) of the Act are general provision as compared to the specific provisions of the transfer pricing, the Assessing Officer was required to compare the royalty expenses paid in case of the similar product by other companies during the relevant period. The Assessing Officer has not done any such exercise and only made basis of expenses paid in earlier years. In view of the above discussion, the disallowance made out of royalty expenses amounting to Rs 3,66,82,337/-is deleted.

Judgments Relied Upon by the Authority :

Judgments Relied Upon with respect to payment to related parties

Coronation Flour Mills Vs. ACIT [(2009) 314 ITR 1 (Guj.)

Other Updates for July 2020

a. **Vide Notification Dated 24th July 2020** the CBDT has amended Rule 31AA and annexure to Form 27EQ to incorporate necessary changes related to new TCS provisions. The Finance Act, 2020 has substantially expanded the provisions related to tax collected at source (TCS). Sub-section 1(G) and 1(H) was added to section 206C for collection of tax on overseas tour travel package, remittance of Forex under LRS and sale of goods in excess of Rs. 50 lakh. Now, the CBDT has amended Rule 31AA and annexure to Form 27EQ to incorporate necessary changes related to new TCS provisions.

b. **Vide Press Release Dated 21-07-2020,** it is informed that the CBDT and CBIC have signed an MoU for data exchange. This MoU supersedes the MoU signed between CBDT and CBEC in year 2015. In addition to regular exchange of data, both wings of Ministry of Finance would exchange with each other, on request and spontaneous basis, any information available in their respective databases which may have utility for the other.

c. **Vide Press Release Dated 20-07-2020,** it is informed that a formal Memorandum of Understanding (MOU) was signed between the Central Board of Direct Taxes (CBDT) and the Ministry of Micro, Small and Medium Enterprises, Government of India (MoMSME) for sharing of data. The MoU will facilitate seamless sharing of certain Income-tax Return (ITR) related information to MoMSME

d. **Circular no. 14/2020 Dated 20th July 2020.** Section 194N of the Act as inserted by Finance (No.2) Act 2019 provided for deduction of tax at source on payment made by a banking company, a cooperative society engaged in the business of banking or post office, in cash to a recipient exceeding Rs. I crore in aggregate during a financial year from one or more account maintained by such recipient. Clause (v) of proviso to the said section had empowered the Central Government, in consultation with the Reserve Bank of India (RBI), to exempt by way of notification in Official Gazette, persons or class of persons so that payments made to such persons or class of persons shall not be subjected to TDS under this section. Accordingly, in exercise of the said power, Central Government has issued three notifications.

   a. Notification exempting Cash Replenishment Agencies (CRAs) and franchise agents of White Label Automated Teller Machine Operators (WLATMOs) for the purpose of replenishing cash in ATM

b. Notification exempting Commission agent or trader operating under Agriculture Produce market Committee (APMC) and registered under any law relating to Agriculture Produce Market of the concerned State

c. Notification exempting the authorized dealer and its franchise agent and sub-agent and Full Fledged Money Changer (FFMC) licensed by the Reserve Bank of India and its franchise agent

Section 194N of the Act was amended by the Finance Act, 2020 (the FA, 2020) in order to make the provisions of the said section more stringent for non ITR filers. It is to note that the clause (v) of the proviso to section 194N prior to its amendment has now become fourth proviso to the said section.

The matter has been examined by the Board and it is hereby clarified that the above mentioned three notifications shall be deemed to be issued under fourth proviso to section 194N as amended by the FA, 2020. It is further reiterated that the exemption allowed under the said notifications shall be subject to the conditions laid down therein.

e. **Vide Press Release Dated 18-07-2020**, the CBDT has said that the new Form 26AS is the faceless hand-holding of the taxpayers to e-file their income tax returns quickly and correctly. Information received by the Income-tax Dept. from Statement of Financial Transactions (SFTs) will be shown under Part E of Form 26AS. It will facilitate voluntary compliance, tax accountability and ease of e-filing of ITR.

f. **Vide press Release Dated 17-07-2020,** it has been informed that the Central Board of Direct Taxes (CBDT) has issued refunds worth Rs. 71,229 crore in more than 21.24 lakh cases upto 11th July, 2020, to help taxpayers with liquidity in Covid-19 pandemic days. It is further emphasized that all the refund related cleaning up of the tax demands are being taken up on priority and is likely to be completed by 31st August, 2020.

g. **Honourable Chairman of CBDT Shree P.C. Mody vide letter Date 9th July 2020** directs all CIT (Appeal) that appeals are required to be disposed of through e-appeal proceedings by sending the communication through the e-filing portal and or through emails only. it directs that All pending appeals filed on or before 31.03.2016 to be taken up immediately and all smaller appeals with tax effect up to Rs. 10 Lakhs can be taken up subsequenty. CBDT directs that At least 80 appeals per month should be disposed of by each CIT(A). All appeals which were filed manually, and which are

not entered in the system must be uploaded by 31-08-2020. Further instructions have been given that no submission should be received in paper form. Paper submissions in pending appeals must be scanned and uploaded on the appeal module.

h. **Vide Circular No 13/2020 Dated 13th July 2020**, the CBDT has granted one-time relaxation to verify Income-tax returns, filed for the Assessment Years 2015-16 to 2019-20, which are pending with Dept. for want of valid ITR-V form. Taxpayers are allowed to verify such returns either by sending signed copy of physical ITR-V form or through prescribed EVC/OTP modes by 30-09-2020.

i. **Press Release Dated 12th july 2020**. The Central Board of Direct Taxes (CBDT) has facilitated a new functionality for Banks and Post offices through which they can ascertain the TDS applicability rates under section 194N on cash withdrawal. The Board has said that more than 53,000 verification requests have been executed successfully on this facility so far.

j. **Vide Order u/s 119 Dated 10th July 2020**, the Central Board of Direct Taxes (CBDT) has relaxed the time framed prescribed under second proviso to Section 143(1) to provide that all validly filed Income-tax returns up to Assessment Year 2017-18 with refund claims can be processed, with prior approval of Pr. CCIT/CCIT, by October 31, 2020. The board has also specified returns where such relaxation shall not be available.