

Important judgements and Updates

Update No 18 / 2021

Andaleeb Sehgal SLP (CIVIL) DIARY No(s).15798 of 2020 Supreme Court of India In favour of Assessee

SLP Filed against Decision of Delhi High Court is dismissed

Issues discussed and addressed:

Issue No 1 Section 147 Reassessment by placing mere reliance on investigation by Enforcement Directorate was unjustified

Facts of the case with respect to issue No 1:

Assessee was a partner in M/s Hamdaan Export, New Delhi engaged in export of various commodities like food grains, medicine etc. It is stated that exports were primarily made to Russia and UK after procuring commodities locally from India. The Enforcement Directorate (ED) conducted searches in the premises of M/s Hamdaan Exports in the course of which several incriminating documents showing the involvement of the Assessee in the UNOF programme were found. These documents showed that he had executed two Oil contracts with the SOMO of Iraq.

According to the ED a reference had been received from the Investigation Wing that a sum of Rs. US\$ 62,000/- was paid by M/s Masefield AG to the account of the Assessee on 5th March, 2001 in the Jordan National Bank on account of commission for sale of Iraqi Oil to Masefield A.G. On the basis that this amount of 62,000 US\$ was not disclosed by the Assessee in his return of income and notice was issued to him under section 148.

Held by the Authorities with respect to Issue No 1:

The Delhi High Court held that the crucial element of explaining how, on the basis of such record, the AO formed the reason to believe that income had escaped assessment is missing. As pointed out by the ITAT in para 17 "the entire case is based upon borrowed investigation stated to have been conducted by Enforcement Directorate and no evidence has been brought on record to connect assessee with the amount of US \$ 62,000, rather it is a case of zero investigation."

It is one thing to state that the above documents were available but an entirely different thing to state that on examining those documents the AO found the live link for forming the reason to believe that the sum added had escaped assessment. It must be recalled that these were re-assessment proceedings and not at the stage where it was enough to form a *prima facie* view for re-opening the assessment. In the re-assessment proceedings the AO was expected to undertake a full-fledged inquiry into the documents produced before him to come to the conclusion that the addition sought to be made was justified.

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Share Aids (P.) Ltd TCA No.381 of 2009 High Court of Madras In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 41(2) The assessee is entitled to invoke Section 41(2) of the Income-tax Act, 1961 to calculate the loss on sale of asset and claim the same as the business loss incurred.

Facts of the case with respect to issue No 1:

Assessee company in this case was acting as share transfer agents and registrars. Assessee Company sold some of its depreciable assets and suffered losses thereon as same were sold below written down value of those assets in books of account. Assessee claimed that such loss should be allowed as business loss under section 41(2).

Held by the Authorities with respect to Issue No 1:

Section 41(2) falls under Part D of Chapter IV which provides for 'Computation of Total Income'. The provisions under section 28 to 44DB of the Act are relating to 'Computation of Profits and Gains of Business or Profession'. Part D of the said Chapter deals with Capital Gains and sections 45 to 55A deals with 'Capital Gains'. Though both these provisions talk of only deemed income and deemed Capital Gains where depreciable assets are sold by the Assessee, they do not clearly spell out the treatment of loss occurring at the stage of sale of such depreciated assets. Hence even if these provisions talk only of taxability on the excess received by the Assessee over the written down value of the assets, it cannot exclude or ignore the minus figure or loss occurring on such sale transactions.

Since the sale of those Assets of the Block of Assets, not being immovable property of the Assessee, were sold during the regular course of business, before it was wound up during the relevant previous year, the loss occurring on such sale at a figure less than the written down value of the assets should be treated as "Business Loss" under section 41(2) of the Act, quoted above.

Bejan Singh Eye Hospital (P) Ltd. High Court of Madras In favour of Assessee

Crl. O.P. (MD) No. 13383 of 2019 and Crl. M.P. (MD) Nos. 8303 and 8304 of 2019

Issues discussed and addressed:

Issue No 1 Section 276C Continuation of prosecution in cases where taxes have been paid tantamount to abuse of legal process.

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Facts of the case with respect to issue No 1:

Assessee had filed their income-tax return in time admitting their liability. But, then the tax was not remitted in time. There was delay. The question that arose for consideration was whether this would amount to a willful evasion attracting the penal provisions and offence under section 276C(2).

Held by the Authorities with respect to Issue No 1:

It was admitted in the counter affidavit itself that the assessee had cleared the dues and as on date, no tax dues were payable in respect of previous financial years. Inasmuch as the tax has been subsequently paid, continuance of the impugned prosecution would only amount to an abuse of legal process. Following the judgment in *M/s. Vyalikaval House Building Co-operative Society Ltd. 2019 TaxPub(DT) 5379 (Karn-HC)* the impugned proceedings were quashed.

Pranava Electronics (P.) Ltd ITA No 147 of 2016 High Court of Karnataka In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 36(1) Writing off of irrecoverable loan in books of account sufficient to claim deduction for bad debts under section 36(1)(vii).

Facts of the case with respect to issue No 1:

The Assessing Officer *inter alia* held that the assessee was neither a bank nor a money lender and therefore, is not entitled to written off the outstanding amount given as Loan in the course of money lending business and claim deduction under section 36(2) or under section 37(1) of the Act.

Held by the Authorities with respect to Issue No 1:

From perusal of clause 13 of the memorandum of Association, it is evident that one of the object's of the assessee is to lend money and the assessee has been engaged in money lending business since its inception from financial year 2004-05. The schedule of loans and advances is a continuing feature in all the past years and has been accepted by the department as part of business by taxing the income under the head 'income from business'. However, the fact that assessee has been carrying on the money lending business and it has been taxed so under the head business for past 9 years has been over looked. It is pertinent to mention here that holding of money lending licence is not a prerequisite for allowing a claim of bad debts as is held by Supreme Court in TRF Ltd. and it is enough if the irrecoverable debt is written off in the books of accounts. It is also pertinent to note that non charging of interest is not fatal to the claim for deduction. However, the aforesaid aspect of the matter has not been appreciated by the tribunal. Alternatively, the claim of the assessee under section 37(1) of the Act has also not been examined.

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Dr. Ranjan Pai ITA No. 501 of 2016 High Court of Karnataka In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 56(2)(vii)(c) S. 56(2)(vii)(c) are not applicable in case of issue of bonus shares.

Facts of the case with respect to issue No 1:

The Assessing Officer *inter alia* held that the assessee had received 1,00,00,000/- bonus shares issued by M/s Manipal Education and Medical Group (India) Pvt. Ltd. The Assessing Officer invoked Section 56(2)(vii) of the Act and treated the receipt of bonus shares as income from other sources and assessed the fair market value of the bonus shares at Rs. 12,49,00,000/-.

Held by the Authorities with respect to Issue No 1:

A careful scrutiny of section 56(2)(vii) of the Act contemplates two contingencies firstly, where the property is received without consideration and secondly, where it is received for consideration less than the fair market value. The issue of bonus shares by capitalization of reserves is merely a reallocation of the companies funds. There is no inflow of fresh funds or increase in the capital employed, which remains the same. The total funds available with the company remains the same and issue of bonus shares does not result in any change in respect of capital structure of the company. Thus, there is no addition or alteration to the profit making apparatus and the total funds available with the company remain the same. In substance, when a shareholder gets a bonus shares, the value of the original share held by him goes down and the market value as well as intrinsic value of two shares put together will be the same or nearly the same as per the value of original share before the issue of bonus shares. Thus, any profit derived by the assessee on account of receipt of bonus shares is adjusted by depreciation in the value of equity shares held by him. Hence the provisions of section under section 56(2)(vii)(c) of the Act are not attracted.

Norton Lifelock Inc. IT A No.2452/PUN/2017 Pune ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 9 Receipts from sales of copyrighted software made through distributors/re-sellers, does not constitutes business income or royalty income.

Facts of the case with respect to issue No 1:

Assessee, a US resident, was selling its copyrighted software in India through its Indian arm and through distribution agreements entered into with distributors and retailers. It was the case of the revenue that this distribution brought forward royalty income on the sale of the software licences and thus subjected assessee to tax in India. On higher appeal, DRP upheld the views of the AO bereft the case of the assessee in earlier

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assessment years before ITAT which held that the said distribution was simply a sale of a product akin to a copyrighted article thus outside the scope of royalty. It was, however, canvassed by revenue that in the earlier years there was no distribution through distributors and retailers so the facts were different in the year of appeal. On higher appeal by the assessee.

Held by the Authorities with respect to Issue No 1:

The agreements with the distributors and retailers did not confer any use of licences or royalties and it was held to be sale of simple copyrighted article which was the software. So, there was no reason to read the verdict of the assessee's own decision of the earlier years just because the distribution network was done through distributors or retailers as the sum and substance of the agreement remained the same, viz. sale of a copyrighted article. Therefore, the income earned by the assessee from sale of software, either directly to the customers in India or through Distributors or Resellers constitute its business income, and not the Royalty income. As admittedly, the assessee did not have any Permanent Establishment in India, such income would not magnetize Indian taxation.