

Important judgements and Updates

Update No 20`/2022 (Previous Colander Year 100/ 2021)

K.E.Gnanavel Raja Tata Capital Financial Services Limited Madras High Court In favour of assessee

Crl.O.P.Nos.24005 & 24012 of 2021 and Crl.M.P.Nos.13250, 13251, 13254 & 13257 of 2021

Issues discussed and addressed:

Issue No 1 Section 276C Mere omission and negligence, cannot be construed as offence. In order to attract the provisions of Section 276C of the Act, the prosecution has to establish that the accused willfully attempted in any manner to evade any tax, penalty or interest chargeable or imposable under the Act.

Facts of the case with respect to issue No 1:

Assessee-Individual was subjected to a search and seizure operation whereby it was found that the Assessee did not maintain proper and complete books of account and in the return of income filed by the Assessee in response to notice u/s 153A, the loss claimed by the Assessee was reduced from Rs.2.87 Cr to Rs.1.38 Cr. Revenue finalized the assessment determining the total income at Rs.1.14 Cr. and simultaneously initiated penalty proceedings u/s 271(1)(c), which was paid by Assessee upon confirmation by CIT(A). Subsequently, prosecution u/s 276C(1) and 277 was initiated against the Assessee before Additional Chief Metropolitan Magistrate Court against which the Assessee preferred Criminal Original Petitions.

Held by the Authorities with respect to Issue No 1:

Under Section 276C(1), it was necessary to establish that Assessee had willfully attempted in any manner to evade any tax, penalty or interest chargeable or imposable under the Act and elucidates that as per Section 277, the prosecution is required to establish that the accused made a statement in any verification under the Act, which he either knows or believes to be false, or does not believe to be true.

The presumption under Section 132(4)(a) of the Act is with regard to the books of account or the other documents found in possession of a person from whom it is seized. The same presumption shall not apply for offence, under Section 276(c) and 277 of the Act. In the present case, it is only wrong calculation of the loss sustained in his business, which is not supported by the books of account or other documents, opines that there is no act of concealment on the part of the Assessee. Moreover penalty was paid by the Assessee as early as in Apr'14 whereas the notices for initiation of prosecution were issued three years later, thus there was no intention to evade payment.

Judgments Relied upon by the Authorities with respect to Issue No 1:

- a. Prem Dass Versus Income Tax Officer reported in (1999) 5 SCC 24 Supreme Court of India

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Dipti Parikh ITA NO.3274/MUM/2019 Mumbai ITAT Against Assessee

Issues discussed and addressed:

Issue No 1 Section 54 Provisions of Section 54(1) were amended with an object to restrict the plurality to mean singularity by substituting the word 'a residential house' with 'one residential house' and further that the amendment was applicable prospectively from AY 2015-16 and observes, "“one residential house” used in section 54 is not ambiguous and is not subjected to different interpretation; therefore, the literal interpretation is required to be given to the word “one residential house.

Facts of the case with respect to issue No 1:

Assessee-Individual sold a residential flat in AY 2015-16 for Rs.8.5 Cr and claimed exemption under Section 54 by investing in two residential properties which was denied by the Revenue on the grounds that benefit under Section 54 could not be claimed for investment in two properties.

Held by the Authorities with respect to Issue No 1:

ITAT held based on allotment letters, two residential houses with two separate entrances and kitchens were purchased by the Assessee and remarks that “subsequent conversion of two houses or amalgamation of two residential houses into one residential house is immaterial”. In the present case, admittedly, as clear from the allotment letters, two residential houses with two separate entrances and Kitchens were purchased by the assessee respectively on 13.01.2015 and 24.01.2015 though were situated adjacent to each other.