

Important judgements and Updates

Jay Chemical Industries Ltd R/Tax Appeal No. 62 of 2020 Gujarat High Court

Issues discussed and addressed:

Issue No 1	TDS u/s 195 on Commission	Issue No 3	Deduction u/s 80-IA(4)
Issue No 2	Disallowance u/s 36(1)(iii)	Issue No 4	Disallowance u/s 14A

Facts of the Case with respect to Issue No 1:

The assessee is engaged in the business of liquefied dyes. The Assessing Officer had disallowed the commission paid to the foreign agents taking the view that the income arising on account of the commission payable to the foreign agents could be deemed to have accrued or arose in India and accordingly would be taxable under the provisions of section 5(2)(b) read with section 9(1)(i) of the Act. The Assessing Officer took the view that the assessee has failed to comply with the provisions of section 195(2) of the Act. In such circumstances, the Assessing Officer disallowed the amount of Rs. 2,47,85,500/- for non-deduction of tax on the commission payable to the foreign agents.

Held by the Authorities with respect to Issue No 1:

Non-resident agents had rendered their services outside India and all agents had overseas offices and they were not having any permanent establishment in India, commission paid to them was not liable to tax in India.

Facts of the Case with respect to Issue No 2:

The Assessing Officer took notice of the fact that there was an increase in the fixed assets as well as the capital work in progress. The assessee had debited interest expenses in the profit and loss account and claimed that the interest cost was to be capitalized in accordance with the provisions of section 36(1)(iii) of the Act. The assessee had capitalized the interest cost of Rs. 32,64,147/- on the borrowings used to acquire the capital assets. The Assessing Officer rejected the submission of the assessee and worked out the total interest to be capitalized at Rs. 50,49,554/- and, after setting off the interest already capitalized by the assessee, further disallowed Rs. 17,85,407/-.

Held by the Authorities with respect to Issue No 2:

On a careful consideration of entire facts of the case, it is noted that the appellant had given detailed working of interest capitalisation for the year. It had given details of the opening capital work in progress and the monthly accretion therein month-wise during the year. Further it has also given details of capitalisation, Cumulative expenses, Cumulative capitalization and percentage of C WIP to CAPEX. It is noted that the first instalment of loan was received by the appellant in the month of August 2010 and it has

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bifurcated the interest by taking into account the percentage of CWIP to CAPEX. For example the percentage of capital work in progress to CAPEX was 69% in the month of August, the interest cost has been proportionately distributed in that ratio. It has been similarly done for other months as well. It is an accepted fact that the appellant has not borrowed money for specifically the assets and therefore, as per the guidelines issued by the ICAI, a copy of which has also been given by the appellant, the allocation of interest shall have to be made by taking into account by applying a capitalisation rate to the expenditure on that asset. The guidelines specifies that the capitalisation rate should be the weighted average of the borrowing cost applicable to the borrowing of the enterprise that is the outstanding during the period. The method of the AO by capitalising the total loan borrowed for CWIP as long as the Cumulative borrowings are less than the CWIP is not correct as there is no specific borrowing for a particular asset and the appellant has also invested its own money before purchase of assets which was subsequently financed. The method adopted by the appellant is as per the guidelines issued by the ICAI and has also been certified by the chartered accountant in the Audit Report.

In view of these facts, the submission and calculation given by the assessee is accepted. The disallowance made by the AO is therefore, directed to be deleted

Facts of the Case with respect to Issue No 3:

The assessee had claimed deduction of Rs. 32,51,080/- under section 80IA(4) of the Act. This claim was on account of the operation of the Captive Power Plant. The assessee showed income from sale of Power to the tune of Rs. 1,23,10,500/- and the sale of vapour of Rs. 6,59,77,170/-. The Assessing Officer took the view that "Vapour" would not fall within the meaning of "Power". The case of the assessee is that "steam" is also a form of "power".

Held by the Authorities with respect to Issue No 3:

The word "Power" should be understood in common parlance as "Energy". "Energy" can be in any form being mechanical, electricity, wind or thermal. In such circumstances, the "steam" produced by the assessee can be termed as power and would qualify for the benefits available under section 80IA(4) of the Act.

Judgments Relied Upon by the Authorities:

West Cost Paper Mills (P.) Ltd. v. CIT, [2014] 52 taxmann.com 268

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Facts of the Case with respect to Issue No 4:

The Assessing Officer noticed that the assessee had made investment in the shares of its subsidiary companies. The Assessing Officer further noticed that the assessee had not earned any exempt income under section 10 of the Act on the investment but, at the same time, was of the view that the possibility of earning such tax free income could not be ruled out. Accordingly, the Assessing Officer computed the disallowance under section 14A read with Rule 8D to the tune of Rs. 19,09,880/- and added to the total income of the assessee.

Held by the Authorities with respect to Issue No 3:

No disallowance can be made if no exemption from the income has been claimed.

Judgments Relied Upon by the Authorities:

CIT v. Corrttech Energy (P.) Ltd. [2014] 45 taxmann.com 116/223 Taxman 130/372 ITR 97

ACE Designers Ltd IT Appeal No 184 Of 2013 Karnataka high Court

Issues discussed and addressed:

Allowability of Claim of Investment written off - Section 37

Facts of the Case:

The assessee along with the return also filed a detailed note in respect of claim of investment written off towards its solely owned foreign subsidiary viz., ACE International Inc. for a sum of Rs. 3,41,23,200/- The assessing officer determined the total income of the assessee at Rs. 18,01,52,340/- by disallowing the claim of business loss of Rs. 3,41,23,200/- and concluded the assessment. CIT Appeals and ITAT concurred with the order of AO.

Held by the Authorities:

From the perusal of the note annexed to the income filed before the assessing officer, it is evident that assessee had set up an establishment in USA during Financial Year 1992-93 for the exclusive purpose of marketing assessee's products and for promoting its business in US and Latin America. It has further been stated in the note that looking to the stringent norms of product liability in US market, the assessee decided to have a separate Wholly Owned Entity in the US having limited liability. The approval for aforesaid purpose was obtained from the Reserve Bank of India. The assessee therefore, invested funds in equity for meeting the revenue expenses of Wholly Owned Subsidiary Company's balance sheet. However, WOS could not perform upto company's expectations and therefore, it was decided to wind up WOS operations in USA.

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While granting approval for closure of WOS, RBI permitted the company to write off the whole of investment made in WOS and unrealized export receivables. The assessee therefore, made a claim to write off the loss of Rs. 3,41,23,200/- as revenue expenses allowable under the provisions of the Act.

Judgments Relied Upon by the Authorities:

- a. CIT v. Colgate Palmolive (India) Ltd. [2015] 59 taxmann.com 139/370 ITR 728 (Bom.)
- b. Cosmos Industries Ltd. v. Dy. CIT [IT Appeal No. 3730 (Delhi) of 2015, dated 31-12-2018]

California Software Co. Ltd TCA Nos. 206 & 207 of 2009 Madras High Court Madras High Court

Issues discussed and addressed:

Eligibility deduction under section 10-A/10-B with respect to of Income offered to tax u/s 41

Facts of the Case:

The Assessee Company had offered stock option scheme to its employees in the preceding assessment years and following the SEBI guidelines and standard accounting practices, the said amount was debited to the Profit and Loss Account of the Assessee Company. The option given to the employees to convert the said stock option into equity shares of the company was not exercised by the employees in subsequent years, as the rates of such stocks went down and therefore, the company reversed the said entries and the differential amount was treated as income to the Assessee under section 41 of the Income-tax Act. According to AO the same was therefore entitled to deduction under section 10-A/10-B of the Act.

Held by the Authorities:

The income brought to tax under section 41 of the Act by reversal of the entry with regard to the stock option given to the employees is also in the nature of 'export income' and therefore, the Assessee is entitled to exemption/deduction under section 10-A/10-B of the Act and the view taken by the learned Tribunal is not sustainable.

Judgments Relied Upon by the Authorities:

- a. Camiceria Apparels India (P.) Ltd. v. Asstt. CIT" [2019] 103 taxmann.com 238 (Mad.)
- b. CIT v. Hewlett Packard Global Soft Ltd." [2017] 87 taxmann.com 182/[2018] 403 ITR 453 (Kar.) (FB)