Biocon Ltd ITA No. 653 of 2013 Karnataka High Court In favour of Assessee

Issues discussed and addressed:

Section 37 – Discount on ESOP - It being an ascertained liability allowed as deduction.

Facts of the Case:

The assessee company, engaged in the business of manufacture of Enzymes and Pharmaceuticals Ingredients had floated a scheme viz., Employees Stock Option Plans (ESOP) and under the scheme had constituted the Trust. The shares of the company were transferred to the trust at the face value and the employees of the assessee were allowed to exercise the option to buy the shares within the time prescribed under the scheme subject to terms and conditions mentioned therein. The assessee claimed the difference of market price and allotment price as a discount and claimed the same as an expenditure under section 37 of the Act which was rejected by AO on the ground that the assessee had not incurred any expenditure and the expenditure was contingent in nature .

Held by the Court:

It is well settled in law that if a business liability has arisen in the accounting year, the same is permissible as deduction, even though, liability may have to quantify and discharged at a future date. On exercise of option by an employee, the actual amount of benefit has to be determined is only a quantification of liability, which takes place at a future date. The tribunal has therefore, rightly allowed the claim of the assessee placing reliance on decisions of the Supreme Court in Bharat Movers . [2000] 112 Taxman 61/245 ITR 428 (SC) and Rotork Controls India P. Ltd [2009]180 Taxman 422/314 ITR 62 (SC) and has recorded a finding that discount on issue of ESOPs is not a contingent liability but is an ascertained liability.

Judgments Relied Upon by the Court:

Bharat Movers . [2000] 112 Taxman 61/ (SC) and Rotork Controls India P. Ltd [2009]180 Taxman 422 (SC)

M. Vivek W.P. (MD) N os. 9877, 9878, 10120, 10140, 10147, 10150 AND 10156 of 2020 & Oths.

Madras High Court Against Assessee

Issues discussed and addressed:

Writ Challenging the Order Passed u/s 153A – The loose sheets picked up during search under Section 132 have evidentiary value. The writ is not maintainable as order was rightly passed u/s 153A after giving sufficient opportunity and disposing the objections raised by petitioner.

Facts of the Case:

According to the petitioner, the statements obtained from the petitioner's late father under intimidating circumstances cannot be used against the petitioner for passing any orders against him. The sworn statement recorded by the search party from the petitioner's late father in typed format lacked any legal sanctity and is non-est in law, as according to him, it was obtained through coercion. According to him, without affording adequate opportunity of hearing, the AO had passed the impugned assessment orders under Section 153A resulting into violation of Principle of Natural Justice consequently the petitioner filed writ petition.

Held by the Court:

Concept of Principle of Natural Justice

Principles of natural justice is a very old concept. Natural justice is an expression of English Common Law and involves a procedural requirement of fairness. The principles of natural justice originated from Common Law in England and it is based on two *latin maxims* and they are (*a*) *Nemo Judex in causa sua or Nemo debet esse judex in propria causa* or Rule against bias (No man shall be a judge in his own cause) and (*b*) *Audi Alteram parterm* or the rule of fair hearing (hear the other side). In the case on hand, the petitioner has raised the second ground, namely, no fair hearing was given to him by the Assessing Officer.

Judgment with respect to passing order without giving opportunity of being heard

As seen from the impugned assessment orders, each and every objection raised by the petitioner in his written representation, dated 08.11.2019, has been considered by the respondent (AO), who has rejected the same by giving reasons. Whether the reasons for rejection given by the respondent is correct or not cannot be held to be violations of principles of natural justice. If the petitioner is aggrieved, his only remedy is to file the statutory appeal. Therefore, the respondent has adhered to the principles of natural justice by providing a fair hearing and by giving the petitioner sufficient opportunity to raise all the contentions and the respondent has also given reasons for rejecting the objections raised by the petitioner under the impugned assessment orders.

Judgment with respect to recorded statement being in typed format

Insofar as the contention of the petitioner that all the statements recorded by the respondent from his father are in typed format and have been prepared by the respondent to their whims and fancies is concerned, it cannot be a ground for filing these Writ Petitions, as the said objections were not raised by the

petitioner during the course of the assessment proceedings. Even if such a plea is taken, this Court under Article 226 of Constitution of India, cannot decide the said plea and it is only the statutory appellate authority concerned to decide the same based on the material and evidence available on record.

Judgment with respect to evidentiary value of loose sheets picked up during search under Section 132

A Division Bench of the Madras High Court, in the case of *Commissioner of Income Tax* v. *Rangroopchand Chordia*, reported in 2016 SCC Online Mad 4297, while dealing with Section 132 of the Income Tax Act, , has held that loose sheets picked up during search under Section 132 of the Income Tax Act, falls within the definition of "document", mentioned in Section 132(4) of the Income Tax Act and therefore, it has got evidentiary value. Therefore, the contention raised by the learned Counsel for the petitioner that loose sheets seized during the search under Section 132 of the Income Tax Act does not have any evidentiary value, is rejected by this Court.

Judgment with respect to Passing Order without Authority of Law

As per Section 153A (1)(*b*) of the Income Tax Act, it is clear that the Assessing Officer shall pass order of assessment for six assessment years, immediately preceding the assessment years relevant to the previous year, in which search is conducted and of the relevant assessment year. In the case on hand, the search was conducted on 10.08.2017 and the relevant six assessment years immediately preceding the assessment year relevant to the previous year, in which search was conducted, are 2012-13, 2013-14, 2014-15, 2015-16, 2016-17, 2017-18 and relevant assessment year for the date of the search is 2018-19. Therefore, the contention of the learned Counsel for the petitioner that the assessment orders have been passed by the respondent for the year 2018-19 without authority under Law under Section 153A of the Income Tax Act, is rejected by this Court.

Carmel Educational and Charitable Trust TCA No. 770 of 2019 Madras High Court

Against Assessee

Issues discussed and addressed:

Section 12AA - Registration – CIT was well justified in granting registration from Second application.

Facts of the Case:

The assessee has been granted registration under section 12A(*a*) of the Act with effect from 1-4-2011 *i.e* for the assessment year 2012-13. Thus, the appeal was on the limited issue that the assessee should have been granted registration with effect from 11-3-2009 *i.e* from the date of first application.

Held by the Court:

The assessee did not take any steps from 2009 to 2011 to get their first application disposed of. There are varieties of remedies available to the assessee and a petition under Article 226 of The Constitution of India also could have been maintainable. However, the assessee would submit that they went by the advice rendered by the Department and filed the second application dated 28-6-2011 on 30-6-2011. Both the applications find a place in the typed set of papers. The first application is dated 11-3-2009 in Form 10A in accordance with Rule 17A of the Income-tax Rules, 1962. The second application dated 28-6-2011 is also in Form 10A and on going by the form of application, it is clear that it is a fresh application and it is not a letter in continuation of the earlier application. Thus, the assessee is deemed to have abandoned or waived their claim made in the first application dated 11-3-2009 owing to the fact that they made the second application dated 28-6-2011, which is a fresh application.

TVS Shriram Growth Fund Madras High Court In favour of Assessee

TCA Nos. 735, 736, 890 & 916 of 2018, 473, 474, 480, 481, 569 & 570 of 2019

Issues discussed and addressed:

Section 161(1) - Determinative Trust – Once the benefits are to be shared by the beneficiaries in proportion to the investment made, any person with reasonable prudence would reach to the conclusion that the shares are determinable.

Facts of the Case:

The case of the revenue was that as per Explanation 1(ii) to Section 164 of the Act, for a Trust to be determinate, both the beneficiary and their individual shares need to be expressly stated in the instrument of a Trust itself and be identifiable/ascertainable as on the date of the instrument however in the case under appeal since the beneficiary were totally unknown and were identified only by a contribution agreement according to revenue the trust was not eligible to be treated as determinate Trust.

Held by the Court:

The real test is whether shares are determinable even when even or after the Trust is formed or may be in future when the Trust is in existence. In the facts of the present case, even the assessing authority found that the beneficiaries are to share the benefit as per their investment made or to say in other words, in proportion to the investment made. Once the benefits are to be shared by the beneficiaries in proportion to the investment made, any person with reasonable prudence would reach to the conclusion that the shares are determinable. Once the shares are determinable amongst the beneficiaries, it would meet with the

requirement of the law, to come out from the applicability of Section 164 of the Act. Once the shares of the beneficiaries are found to be determinable, the income is to be taxed of that respective sharer or the beneficiaries in the hands of the beneficiary and not in the hands of the Trustees.

Judgments Relied Upon by the Court:

a. CIT v. P. Sekar Trust [2009] 180 Taxman 277/[2010] 321 ITR 305 (Mad.)
b. CIT v. India Advantage Fund-VII [2017] 78 taxmann.com 301/246 Taxman 149/392 ITR 209 (Kar.)

Vijay Kumar Jain ITA No. 1115/JP/2018 Jaipur ITAT In favour of Assessee

Issues discussed and addressed:

Penalty u/s 271A and 271B – Not justified in case of debatable issue being reasonable cause as per S 273B

Facts of the Case:

The AO had taken the turnover in respect of derivative transaction in shares and securities by considering the total amount which according to him was Rs 47.86 Crorer instead of considering the positive and negative outcome of the derivative transactions which was only Rs. 53,54,967. Consequently he imposed penalty u/s 271A and 271 B. CIT Appeals Deleted the penalty u/s 271 B confirmed the penalty u/s 271A.

Held by the ITAT:

When the turnover in respect of derivative transactions has to be computed by taking the total sum of positive and negative outcome of the transactions instead of the total amount of transaction, the turnover of the assessee is wrongly considered by the assessing officer while levying the penalty under section 271A of the Act. Even otherwise, when the issue of turnover in case of Derivative Transactions is a debatable issue, then the assessee cannot be penalized for not maintaining the books of account as the case would definitely fall under the provisions of section 273B of the Income Tax Act which contemplates that no penalty shall be imposable on a person or the assessee for any failure inter alia attracting the provisions of section 271A if he proves that there was a reasonable cause for the said failure. The showing of the turnover by the assessee from a derivative transaction is a bona fide explanation. Accordingly, the penalty levied under section 271A of Rs. 25,000 is deleted.

Judgments Relied Upon by the ITAT:

a. Santosh Kumar v. ITO in ITA No. 1093/JP/2019
b. Shri Rajjak Ahmed Khan v. ITO in ITA No. 1181/JP/2019
c. Shri Sanjay Prakash v. ITO in ITA No. 1052 to 1054/JP/2019

Shree Anil Dev ITA No. 1040/Bang/2018 Bangalore ITAT In favour of Assessee

Issues discussed and addressed:

Section 54F – in purchase deed, name of assessee was also there along with name was wife however since purchase consideration of second residential property was paid by wife out of her sources hence assessee cannot be said to be owning the house for Section 54F

Facts of the Case:

Assessee claimed deduction under section 54F. AO denied deduction on the ground that assessee on the date of transfer held more than one residential property one fully owned by assessee. AO and other jointly owned by assessee along with his wife. Assessee's case was that purchase was by wife of assessee, although in purchase deed, name of assessee was also there along with name was wife and purchase consideration of second residential property was paid by her out of joint/her individual bank account.

Held by the ITAT:

For triggering to say that a property is purchased by a person, mere inclusion of his or her name in purchase deed is not enough because this may happen for various reasons including this reason also that other person who is really purchasing the property wanted to include name of his relative in the purchase deed for some emotional issues. In the proviso (ii) to section 54F(1), pre-requirement is this that assessee has purchased one more residential house other than new asset within one year after the date of transfer of original asset and this is not enough that some ownership right is acquired by him in such property within such time which has not accrued to him on account of purchase. Hence, it has to be the case that there is such purchase by the assessee and mere acquisition of some right is not enough. In the instant case both assessee and his wife stated that purchase was by wife of assessee although in purchase deed, name of assessee was also there along with name was wife and purchase consideration of second residential property was paid by her out of joint/her individual bank account. Further, assessee's wife was having sufficient own funds in that joint bank account received as her share in sale proceeds of shares. Accordingly, disallowance of assessee's claim for deduction under section 54F was not justified.

Judgments Relied Upon by the ITAT:

a. DIT v. Jennifer Bhide 2011(9) TMI 161 : 2011 TaxPub(DT) 1950 (Karn-HC),