

Important judgements and Updates

Update No 1/2021

Sterling Tree Magnum India Ltd TCA No.1377 of 2008 Madras High Court In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 147 – Reopening based on audit objection after four years is not valid.

Facts of the case with respect to Issue No 1:

The assessee had furnished all the details of income in the profit and loss account and it was considered by the assessing officer u/s. 143(3) in the scrutiny assessment. There is no failure on the part of the assessee to disclose fully and truly all material facts for the purpose of assessment for this assessment year. The Case of the Assessee had been reopened by the AO merely based on audit objection after expiry of four years from the end of Assessment Years.

Held by the Authorities with respect to Issue No 1:

Where there was no failure on part of assessee and it had disclosed relevant facts, merely on basis of audit objection or change of opinion, reassessment could not be made beyond period of four years from end of relevant assessment year.

Judgments Relied Upon by the Authorities with respect to issue No 1:

CIT & ANR v. Saipem Spa (2008) (1 DTR 21) High Court of Uttarakhand

Abhay Kantilal Shah ITA No. 1561/Mum/2019 Mumbai ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1 Bogus Purchases - When Sales is not doubted and assessee submitted relevant documents evidencing purchase, without making any inquiry AO can not make 100% disallowance.

Facts of the case with respect to Issue No 1:

AO received information that assessee made bogus purchases from hawala parties. Assessee filed before the AO, copies of bank statements evidencing payments made to those parties, ledger account of all the parties, purchase invoices from those parties and sale invoices as issued against the purchases made. However, the AO was not convinced with such explanation /reply of the assessee for the reason that no direct evidence like stock register, journal, etc., and indirect evidence such as delivery challans, lorry receipts, quantity tally, etc., was produced. Accordingly, he made addition of entire purchases considering them as bogus. However, CIT(A) restricted such addition by directing the AO to estimate profit @12.5% on the disputed purchases. Aggrieved, Revenue was in appeal.

Important judgements and Updates

Update No 1/2021

Held by the Authorities with respect to Issue No 1:

Assessee filed before AO, copies of bank statements evidencing payments made to those parties, ledger account of all the parties, purchase invoices from those parties and sale invoices as issued against the purchases made. Therefore, the AO could have made further verifications /enquiries. However, without making any verification /enquiry, the AO made addition of entire purchases. Further, as the sales made by the assessee was not disputed, the entire purchases could not be added considering them as bogus and only profit embedded in such purchases was required to be added. Further, the purchases might have been made from bogus parties; nevertheless, the purchases themselves were not bogus. Accordingly, the CIT (A) was justified in directing the AO to estimate profit @12.5% on the disputed purchases.

Judgments Relied Upon by the Authorities with respect to issue No 1:

CIT v. Bholanath Poly Fab Pvt Ltd. (2013) 355 ITR 290 (Guj.)

Asus India (P) Ltd. ITA Nos. 942 & 943/Mum./2020 Mumbai ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 194C – Conditional Rebate / Discount given by assessee to its distributors does not attract TDS u/s 194C./194H

Facts of the case with respect to Issue No 1:

Assessee, company, engaged in importing and trading in electronic goods, such as, notebooks, tablets and mobile phones, etc., provided conditional rebate/discount of Rs. 42 crores to 229 distributors/dealers to whom various products, such as, notebooks, zenphones, tablets, zenpads, ecebooks, accessories, etc., were sold. AO disallowed rebate/discount given under section 40(a)(ia) on the reasoning that such payments come within the purview of section 194C.

Held by the Authorities with respect to Issue No 1:

A reading of section 194C would suggest that in respect of any payment made to a contractor/sub-contractor for carrying out any work, including supply of labour, would be subject to deduction of tax at source at the appropriate rate. In the instant case, assessee had entered into a sale contract, simpliciter, for sale of its products to dealers/distributors. Certainly, transaction between assessee and the dealers/distributors could not be termed as a contract for work. Assessee simply sold its products to dealers/distributors who, in turn, sold them to the end users. Accordingly, there was no element of work as

Important judgements and Updates

Update No 1/2021

defined under clause (iv) of Explanation to section 194C. Therefore, under no circumstances, section 194C would be applicable to the discount/rebate.

Undisputedly, in the facts of the present case, the dealers/distributors were not providing any service to the assessee in the course of buying or selling of goods. The assessee was simply selling its products to dealers/distributors who in turn used to sell them to end users. There was no contract of sale between the assessee and end users so as to conclude that the dealers/distributors act as intermediary between the assessee and the end users to facilitate sale of products. At least, the Department has not brought on record any material to establish the fact that the dealers/distributors were simply acting as intermediaries to facilitate sale of products to end users so as to infer a principal-agent relationship. In view of the aforesaid factual position, the rebate/discount given to the dealers/distributors would not attract the provisions of section 194H of the Act.

Judgments Relied Upon by the Authorities with respect to issue No 1:

Ahmedabad Stemp Vendor Association v. Union of India, (2002) 257 ITR 202 (Guj)