

Important judgements and Updates

Update No 19 / 2021

Babuji Jacob TCA No. 39 of 2019 Madras High Court In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 271(1)(c) In absence of any allegation that there was any fraudulent act by the assessee or the assessee was guilty of wilfully or negligently concealing the income and that his agreement to the addition of the amount, by itself, will not establish fraud or wilful neglect without something more.

Facts of the case with respect to issue No 1:

The assessee explained that the sale proceeds of livestock and standing crops as source of cash deposits which did not find favour with the Assessing Officer, who held that it was not imaginable that the assessee sold livestock and standing crops worth Rs. 1.56 crores. Accordingly cash deposited in bank account was treated by Assessing Officer as unexplained cash deposit under section 68 of the Act and accordingly, a sum of Rs. 1,34,50,000/- was added to the total income of the assessee. The Assessee did not challenge dispute the Assessment Order and had remitted tax. Thereafter the AO levied the penalty which was subject matter of challenge.

Held by the Authorities with respect to Issue No 1:

If the Revenue does not agree with the explanation offered by the assessee as in the instant case, then the onus is on the Revenue to prove that there was concealment of particulars of income or furnishing of inaccurate particulars of income. This aspect being completely absent in the instant case, the imposition of penalty is held to be unjustified. Further there is not even a remote allegation that there was any fraudulent act by the assessee or the assessee was guilty of wilfully or negligently concealing the income and that his agreement to the addition of the amount, by itself, will not establish fraud or wilful neglect without something more.

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

- a. CIT v. S.I. Paripushpam [2001] 118 Taxman 844/249 ITR 550

Allied Perfumers (P.) Ltd IT APPEAL NOS. 380 AND 391 OF 2019 Delhi High Court In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 153C Merely because a satisfaction note has been recorded, cannot lead to reach to the conclusion that assessee has taken an accommodation entry especially when the Revenue has not laid any foundation to support their contention.

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Facts of the case with respect to issue No 1:

The assessee is one of the group companies of M/s Surya Vinayak Industries Ltd. On 21-3-2007, a search and seizure operation was conducted, under section 132 of the Act in respect of Surya Vinayak Group of cases. The Assessing Officer noticed that, the aforesaid group is headed by Sh. Sanjay Jain and his brother Sh. Rajiv Jain. The main allegation against this group was that they had taken a large number of accommodation entries in various group companies by paying cash to various entry operators. Thus, on 29-9-2008, after recording a satisfaction note, notice under section 153C. Thereafter, assessment orders were framed under section 153/143(3) of the Act, determining total incomes of Rs. 3,64,74,420/- and Rs. 2,28,13,060/- for AY 2001-02 and AY 2002-03 respectively.

Held by the Authorities with respect to Issue No 1:

It was noted that in the entire assessment order, the AO has not referred to any seized material or other material for the year under consideration having being found during the course of search in the case of assessee, leave alone the question of any incriminating material for the year under appeal.

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

- a. Sinhgad Technical Educational Society reported in (2017) 84 taxmann.com 290 (SC)
- b. Kabul Chawla reported (2016) 380 ITR 573 (Del.)

B. Nanji & Co. R/TA Nos.1625,1626 & 1628 of 2007 Gujarat High Court In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 36 Deduction couldn't be disallowed if nexus between interest payment and business is established

Facts of the case with respect to issue No 1:

The assessee is in the business of real estate. With the intention to expand the business of real estate, it created a housing arm in the name and style of International Housing Finance Corporation Limited [for short, 'IHFC']. The purpose to create such a housing finance company within the group was to make funds readily available when required for the development of a housing project or to fund any acquisition of real estate. The assessee subscribed 499950 equity shares constituting 99.99% in the total paid up capital of 500000 equity shares in the assessment year 1994-95. The IHFC Limited got registered with the National Housing Bank as an approved housing finance company. The representation of the assessee on the board of IHFC Limited was 100% through its partners who had been appointed as the Directors of the IHFC Limited. The

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minimum capital requirement to keep the housing finance company registered with the National Housing Bank was increased to Rs. 2 crore, and thereafter to Rs. 5 crore. In such circumstances, it became necessary for the IHFC Limited to expand its capital. As almost 100% of the capital was with the assessee, with the consent of the partners of the assessee, it was decided to tap the funds from public by way of public issue. As per the public issue guidelines issued by the SEBI, the minimum of 40% of the post public issue capital was required to be brought in by the promoters. Accordingly, to comply with the SEBI guidelines, it was decided that the assessee and its group company M/s. B. Nanji Construction Pvt. Ltd. would bring in the minimum share capital so as to reach 40% of the post issue share capital. With this object, the assessee and M/s. B. Nanji Construction Pvt Ltd borrowed funds and then subscribed the share capital of the IHFC Limited. The interest paid on the said borrowed capital by the appellant came to be disputed by the Revenue.

Held by the Authorities with respect to Issue No 1:

Where the borrowings are made for the purchase of shares, a question that would often arise is whether the interest paid should be allowed as deduction under section 36(1)(iii) or under section 57(iii). At this stage, it is worthwhile to mention that the income by way of dividends on shares, whether held on investment portfolio or as stock-in-trade, is specifically assessable, under section 56(2)(i), as the "Income from other sources". Although the shares are held, on the investment portfolio, as an integral part of the business, yet the interest on such borrowings is allowable under section 36(1)(iii). Thus, the qualifying factor in this case is to ascertain whether the borrowings for purchasing shares is an integral part of the business of the assessee.

Jitendra Sharma ITA Nos. 500, 501 & 502 (IND) of 2018 Indore ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 271C Benefit of Section 273B is available if intention to evade tax doesn't appear at any stage of proceeding.

Facts of the case with respect to issue No 1:

The Assessee deducted TDS on purchase of immovable property from NRI u/s 194 IA in place of Section 195 however subsequently when proceedings were carried out u/s 201(1)/201(1A) r.w.s. 195 of the Act and respective assessee(s) were brought to the notice that the seller is a Non Resident Indian assessee bonafidely deducted the TDS @20.6% (Tax + surcharge) of Rs. 5,15,000/- each on the payment of Rs. 25 lakhs and also paid interest at Rs. 1,03,000/- for the delay and in total he deposited Rs. 6,18,000/- each before the conclusion of the proceedings and thus no demand was payable. However A levied penalty u/s 271C for short deduction of tax which was subject matter of appeal.

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Held by the Authorities with respect to Issue No 1:

In the instant case all the three assessee(s) individually were paying the consideration of Rs. 25 lakhs only (which is less than Rs. 50 lakhs) as mentioned in Section 194IA) of the Act but still being at a safer side they deducted tax at source @1% of the purchase consideration and deposited it.

In the case of the assessee(s) also when the transactions took place there was only copy of PAN card issued by Income-tax Department having no address. Seller came to India for registration. Seller has not provided any documentary evidence to show that he is a Non Resident Indian. Having local address in USA cannot be a sufficient evidence to show that the person is a Non Resident Indian. The assessee(s) prudently deducted tax @1% u/s 194 (1A) of the Act. Subsequently when it was brought to their notice that the seller is a Non Resident Indian they as law abiding citizens immediately deposited the correct amount of TDS @20.6% applicable on the said transaction u/s 195 of the Act along with interest in addition to 1% already deposited. Mens rea to evade tax is not appearing at any stage of the proceedings on the part of the assessee. It would have made no difference for them to deduct tax @1% or 20.6% since it was to be withheld from the purchase consideration. There cannot be any other mal intention for deduction of TDS at lower or wrong rate.

in the given facts and circumstances of the case the assessee(s) are duly eligible to get the benefit of the provisions of Section 273B of the Act as they have proved beyond doubt that in a *bonafide* belief they deposited tax @1% u/s 194IA of the Act considering the seller as Resident Indian and later on before conclusion of the proceedings before the Ld. A.O have deposited correct amount of tax @20.6% and applicable interest.

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

- a. Dy. CIT v. Sms India Ltd. [2006] 7 SOT 424 (Mum.)