

Important judgements and Updates

Update No 44/ 2021

Shreno Ltd R/TANos. 302 & 311 of 2020 Gujarat High Court In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 36(1) Where assessee-company wrote off outstanding interest on advances paid to its subsidiary as irrecoverable when net worth of subsidiary eroded, assessee's claim of bad debt was to be allowed without expecting assessee to prove that debts had actually become bad.

Facts of the case with respect to issue No 1:

Assessee-company had provided advances to its subsidiary. In relevant assessment year also, assessee provided advance to its subsidiary. Up to assessment year 2011-12, assessee showed interest income on loans and advances given to subsidiary in its books of account. However, net worth of subsidiary eroded and balance interest outstanding in books of assessee was written off during relevant assessment year as irrecoverable. Assessee claimed bad debts under section 36(1)(vii). Assessing Officer disallowed claim of assessee on ground that fresh loans were advanced during relevant year and, therefore, it could not be said that recovery of interest had become bad.

Held by the Authorities with respect to Issue No 1:

Once debts were written off in books, it was to be allowed without expecting assessee to prove that debts had actually become bad. It was altogether irrelevant, whether subsidiary actually paid tax or not; if a liability had ceased, then it would be added back in taxable income of subsidiary and if subsidiary was unable to pay tax as it was suffering huge losses, same could not be reason to disallow assessee's claim of bad debt.

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

- a. TRF Ltd. v. CIT [2010] 190 Taxman 391 Supreme Court
- b. CIT v. Tiruchirapalli District Central Co-operative Bank Ltd. [2020] 121 taxmann.com 140/275 Taxman 628. Madras High Court

Legend Developers & Constructions, 743/Hyd/18 & 752/Hyd/18 Hyderabad ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1 Survey Admissions or confessions made during a search or survey does not carry any evidentiary value.

Facts of the case with respect to issue No 1:

Assessee-Firm, engaged in the business of real estate, had purchased 12.24 acres of land to develop into residential house plots for sale and for AY 2014-15 the Assessee sold just 1 plot of land for Rs. 1.96 Lacs; In

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the course of a survey conducted by the Revenue at the Assessee's offices, a declaration was made by the managing partner wherein he admitted Rs.2.00 Cr as income of the firm. Based on the such statement revenue made an addition of Rs. 2.00 Cr to the Assessee's income on a substantive basis Assessee submits such declaration during survey proceedings cannot be considered as basis for making addition, further submits that the partner was under stress and the declaration was made at odd hours

Held by the Authorities with respect to Issue No 1:

The assessee(s) had made it clear that their admission was only based on rough estimation in order to avoid litigation and to purchase peace than in view of any material found/seized by the departmental authorities. The CIT(A) has already placed reliance on the CBDT circulars dated 18th December, 2014 that such admissions or confessions; as the case may be, made during the course of a search or survey does not carry any evidentiary value since it has to be only to the evidence collected only.

Jhonson Electric Company Limited I.T.A No.754/AHD/2017 Surat ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1 Capital Gain Assessee occupying the asset for more than qualifying period of 36 months (now 24 months for land and building) on assigning the right in property, gain earned certainly qualified as LTCG.

Facts of the case with respect to issue No 1:

Assessee, on 6-4-1993 entered into agreement for sale for purchase of a piece of land, wherein assessee was already tenant. Assessee was having exclusive possession of said property. As per agreement to sale dated 6-4-1993, assessee agreed to purchase property at the total consideration of Rs. 80 lakhs from two co-owners, i.e., at Rs. 40 lakhs each, out of which Rs.10 lakhs each was paid to both the owners by the assessee. In the agreement to sale deed 06-4-1993 seller admitted possession of assessee. The assessee sold the said property to M/s. 'J' on 8-5-2007. The purchaser M/s. 'J' desire to get the transfer of clear title in their favour. After prolong discussion original owner/lesser of property agreed to execute conveyance deed in favour of purchaser. Since assessee occupying the property and having agreement, signed the conveyance deed as a confirming party. Assessee also paid remaining sale consideration which was payable to original owner as per agreement dated 6-4-1993. The assessee being a confirming party received consideration of Rs. 2 Crores which was offered for taxation as long-term capital gain. AO held that possession could be said to be handed over only on payments of alleged balance payments as mentioned in conveyance deed and, therefore, profit was taxable as short term capital gain.

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Held by the Authorities with respect to Issue No 1:

Assessee was in possession of concerned property much prior to execution of agreement to sale. The fact that assessee was in possession of property was clearly mentioned in the agreement, though, it was possessed (occupied) as a tenant. Further, Conveyance deed dated 08-5-2007 nowhere stipulated that after the agreement dated 6-4-1993, assessee was occupying the property as a tenant. In clause 12 of Conveyance deed it was clearly mentioned that under lease dated 16-9-1975, assessee had constructed a Factory Building and started business activity. Further there was no averment in the Conveyance deed that assessee was making any periodical payments as a tenant or in default of the conditions of agreements, status of assessee was treated as tenant, once seller had accepted that assessee was holding possession of property, and there was no stipulation in the Conveyance deed that possession of property was ever surrendered to the owner, the possession could not be said to have handed over only on payments of alleged balance payments as mentioned in Conveyance deed. Accordingly, assessee possessed property since long and not from the date of making balance payment in the year 2005 and, therefore, assessee occupying the asset for more than qualifying period of 36 months on assigning the right in property, gain earned certainly qualified as LTCG.