

Important judgements and Updates

S.M. Anand ITA No. 100056 of 2014 Karnataka High Court AY 2005-06

Issues discussed and addressed:

Disallowance of 30 % u/s 40(a)(ia) –Second proviso to Section 40(a)(ia)- Second proviso to Section 40(a)(ia) of the Act inserted by Finance Act, 2012 is clarificatory and retrospective in nature.

Facts of the Case:

Assessee made payments to the sub-contractors which were disallowed by AO on account of failure of Assessee to deduct tax at source ignoring the argument of the assessee that the respective sub-contractors have offered the same to tax in their respective returns of Income,

Held by the Court:

The second proviso of Section 40(a) (ia) of the Act is declaratory and curative in nature and should be given retrospective effect from 1st April 2005.

Judgments Relied Upon by the Court:

- a. CIT v. Calcutta Export Company [2018] 93 taxmann.com 51/255 Taxman 293/404 ITR 654 (SC)
- b. Hindustan Coca Cola Beverages (P.) Ltd. v. CIT [2007] 163 Taxman 355/293 ITR 226 (SC)
- c. CIT v. Vatika Township (P.) Ltd. [2014] 42 taxmann.com 249/227 Taxman 121/367 ITR 466 (SC)
- d. CIT v. Ansal Land Mark Township (P.) Ltd. [2015] 61 taxmann.com 45/234 Taxman 825/377 ITR 635 (Delhi)
- e. Pr. CIT v. Perfect Circle India (P.) Ltd. [IT Appeal No. 707 of 2016, dated 7-1-2019]
- f. CIT v. Shivpal Singh Chaudhary [2018] 409 ITR 87 (P&H)

Times VPL Ltd ITA No. 274 of 2013 Karnataka High Court AY 2007-08

Issues discussed and addressed:

Deduction of Tax at Source u/s 194C – Purchase of Advertisement Space with exclusive control - Provisions of section 194C would apply to a contract for work and not to a contract for sale.

Facts of the Case:

The assessee company is engaged in the business of printing and publishing newspapers. Expenditure incurred by it for purchased of bulk advertisement space in the daily newspaper 'The Times of India' on a principal-to-principal (P2P) basis by transfer of the rights therein was disallowed by AO on account of failure by the assessee to deduct tax at the source under section 194C.

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Held by the Court:

The main object in a contract of sale is the transfer of property and delivery of possession of the property, whereas the main object in a contract for work is not the transfer of the property, but it is one for work and labour. In the instant case, assessee company had entered into an agreement for bulk sale of advertising space with its' holding company on a principal to principal basis by transfer of rights therein. The assessee under the agreement makes purchase of advertisement space and exercises control over such space with the right to either sell it to other or retain it for itself. Thus, it is a transfer of advertising space to the assessee who in turn sells it to others. In the light of the Circular No. 13 of 2006 issued by the Central Board of Direct Taxes, it is axiomatic that provisions of section 194C would apply to a contract for work and not to a contract for sale. Thus provisions of Section 194C do not apply to the case of the assessee.

Circular Relied Upon by the Court:

Circular No. 13 of 2006, dated 13-12-2006

K.2058, Saravanampatti Primary Agricultural Co-operative Credit Society Ltd

W.P. Nos. 17, 20, 22, 23, 26, 29, 1107, 1118 of 2020 & Others Madras High Court

Issues discussed and addressed:

Deduction u/s 80P – Deduction of Interest Income on Statutory Despite in case of Co Operative Society – interest generated from statutory reserve would be operational income entitled to deduction under section 80P.

Facts of the Case:

Returns of income had been filed by the petitioners claiming exemption in terms of section 80P on the interest income received by the petitioner from deposits/investment of funds in banks which according to the Officer, was ineligible for deduction under section 80P, since it did not form part of the operational income of the petitioner/assessee and was liable to be taxed in terms of section 56 in view of the judgment of the Supreme Court in the case of Totgars Co-operative Sale Society Ltd. v. ITO [2010] 188 Taxman 282/322 ITR 283.

Held by the Court:

Statutory reserve would not fall within the ambit of 'surplus funds' and the judgment in the case of Totgars (supra) is inapplicable. The statutory reserve forms part of and is an essential feature of the operations and any interest generated therefrom would be operational income entitled to deduction under section 80P of the I.T. Act.

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Judgments Relied Upon by the Court:

CIT v. Nawanshahar Central Co-operative bank Ltd. [Civil Appeal Nos.2499, 2500 of 2005 8th April 2005] (SC)

IFCI Ltd ITA No. 2817 (Delhi) of 2013 & 2953 (Delhi) of 2014 & others Delhi ITAT

Issues discussed and addressed:

- Issue No 1** Deduction u/s 35D – Share Issue Expense – No deduction u/s 35D if assessee is not an industrial undertaking.
- Issue No 2** Depreciation u/s 32 – Depreciation on Assets Leased out by Assessee – Assessee is entitled to depreciation on leased out assets which were owned by it.
- Issue No 3** Deduction u/s 37 – Business Expenditure – Bond issue expenditure is allowed as deduction u/s 37.
- Issue No 4** Deduction u/s 37 – Business Expenditure – Expenditure incurred out of Benevolent Fund which did not lead to any sort of capital outlay are allowed as deduction u/s 37.
- Issue No 5** Reopening u/s 147 – Change of Opinion – Reopening being initiated on change of opinion without any availability of any fresh material is not justified.

Facts of the Case with respect to Issue No 1:

Assessee Company is engaged in the business of leasing and finance. The AO finalized assessment by disallowing Rs. 2,39,97,000 in respect of share issue expenses claimed u/s 35D.

Held by the ITAT Delhi Bench with respect to Issue No 1:

Since assessee is not an industrial undertaking, is not eligible for deduction u/s 35D of the act.

Facts of the Case with respect to Issue No 2:

AO finalized the Order disallowing the depreciation on plant and machinery which was leased out by the assessee to various parties.

Held by the ITAT Delhi Bench with respect to Issue No 2:

Assessee was the owner of the leased assets. Assessee had shown lease rent as its income and leased assets as its assets in the balance sheet. Further lessees also confirmed that they have not claimed depreciation on those assets which were owned by the assessee, hence the assessee is entitled for depreciation on leased assets.

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Facts of the Case with respect to Issue No 3:

The Assessee had claimed bond issue expenditure incurred for borrowings from the market as allowable revenue expenditure on the ground that it being a financial institution and routinely borrowed funds in the furtherance of its business. However AO held the same to be capital expenditure stating that assessee has derived benefit of enduring nature by borrowing.

Held by the ITAT Delhi Bench with respect to Issue No 3:

The assessee claimed deduction in respect of expenses incurred on issue of bonds which pertained to raising of money which is stock in trade of the assessee and hence being revenue expenditure was held as allowable as deduction u/s 37.

Judgments Relied Upon by the ITAT:

- a. India Cements Ltd vs CIT (1966) 60 ITR 52(SC)
- b. Lakshmi Vilas Bank vs CIT (2006) 284 ITR 93 Madras High Court

Facts of the Case with respect to Issue No 4:

The assessee has established the benevolent reserve fund for meeting the cost of feasibility studies project reports etc. Actual expenditure incurred by the assessee is debited to that reserve which it claimed as allowable expenditure. However AO disallowed the same holding that as the expenditure incurred on the activities is not directly made from profit and loss account but from a reserve fund created out of profits transferred from the appropriation account from year to year. Therefore he stated that it is not allowable u/s 37 (1).

Held by the ITAT Delhi Bench with respect to Issue No 4:

The Assessee had created Benevolent Reserve Fund as per Section 32B of the IFCI Act, 1948, which was utilised to pay certain amount to Institute of Entrepreneurship Development, U.P, reimbursed certain amount to IDBBI towards sharing of costs of EDPs, reimbursed to UNI of Mumbai towards expenditure for IFCI Chair reimbursed NCAER towards salary & allowances for IFCI Chair and etc and thus It can be clearly seen that the funds were utilised towards purposes specified under regulatory provisions of the fund and further it did not lead to any sort of capital outlay. In view of this , the expenditure was held as allowable u/s 37.

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Facts of the Case with respect to Issue No 5:

The original assessment u/s 143 (3) was completed on 30th of March 2006. Subsequently the case was reopened on the ground of failure on the part of the assessee to fully and truly disclose all material facts which were necessary for assessment and notice u/s 148 was issued.

Held by the ITAT Delhi Bench with respect to Issue No 5:

During the original assessment the assessee had duly details of addition in unsecured loans and had disclosed the total amount of outstanding at the end of the accounting year along with the specific mention that Rs. 523 crores are received as a loan from government of India Under restructuring arrangement. In the computation of the total income also the assessee had submitted a note with regard to the liabilities taken over by the government of India amounting to Rs. 183 crores. The details of applicability of Section 43B as well as the amount of interest on the bonds of UTI and interest on such bonds of Fis were also disclosed as the amount reinvested as per the above restructuring package. Neither in the reasons recorded by the AO nor even in the assessment order itself there was no mention of any fresh tangible material coming into the possession of the AO.

The reopening had been initiated without any availability of any fresh material/tangible material coming to the knowledge of the learned assessing officer subsequent to the completion of the original assessment and assessing officer had merely changed his opinion after framing the original assessment proceedings and hence the same were quashed.

Judgments Relied Upon by the ITAT:

- a. ITO v. Lakhmani Mewal Das [1976] 103 ITR 437, (SC)
- b. ITO v. TechSpan India (P) Ltd. [2018] 92 taxmann.com 361/255 Taxman 152/404 ITR 10 (sc)
- c. CIT v. Usha International Ltd. [2012] 25 taxmann.com 200/210 Taxman 188/348 ITR 485 (Delhi) (FB)
- d. CIT, v. Kelvinator of India Ltd. [2002] 123 Taxman 433/256 ITR 1 (Delhi) (FB)