

Important judgements and Updates

Update No 84/ 2021

Sainath Rajkumar Sarode Writ Petition (L) No. 4804 of 2020 Bombay High Court In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 194A The amount so payable is in the nature of a judgment debt or akin to a judgment debt, the payment of which cannot establish a debtor-creditor relationship between the parties. As such, the said sum or any part thereof cannot be liable to tax deducted at source under the relevant provisions of the IT Act.

Facts of the case with respect to issue No 1:

The builder failed to handover possession of flats on time. Thus, Real Estate Regulatory Authority directed builder to refund the advance amount paid by the assessee, along with compensatory interest for loss or injury suffered by the assessee. The builder paid the assessee an amount of Rs. 1.80 crore as part payment under the recovery warrant. Subsequently, in view of there being balance amounts due and payable by respondent under the recovery warrant, the assessee and builder entered into consent terms. By these consent terms, builder undertook, jointly and/or severally, to pay the assessee a sum of Rs. 2.75 crore with compensatory interest. Such sums were to be paid in the form of instalments. In pursuance of the schedule of payments and the consent terms builder made payments of the instalments from March 2021 till June 2021 to the satisfaction of the assessee. However, for the instalment due on 20-7-2021, builder deducted 10 per cent tax deductible at source (TDS) on the amount of interest. It was the case of the assessee that such amounts could not, in law, be deducted.

Held by the Authorities with respect to Issue No 1:

In present case, that the amounts payable being in effect a refund of the amounts paid by the assessee to the builder, along with compensatory interest thereon, is in nature of a judgment debt or akin to a judgment debt, payment of which cannot establish debtor-creditor relationship nor is the payment made by the builder to the petitioners one is discharge of any pre-existing obligation, so as to attract section 2(28A). In view of the above, builder was not obligated to deduct TDS and, thus, builder was directed to pay to the assessee the amount so deducted from the installment.

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

- a. *West Bengal Housing Infrastructure Development Corpn.* [\[2018\] 96 taxmann.com 610/257 Taxman 570/\[2019\] 413 ITR 82 \(Cal.\)](#)
- b. *Beacon Projects (P.) Ltd.* [\[2015\] 62 taxmann.com 177/234 Taxman 706/377 ITR 237 \(Ker.\)](#).
- c. *Central India Spg. & Wvg. & Mfg. Co. Ltd.* AIR 1958 SC 341

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Super Religare Laboratories Ltd ITA No.1628 of 2017 Bombay High Court In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 194H Assessee not liable for deduction of tax at source on amounts retained by third party collection centres before making payment to Assessee since it does not perform any act of paying, there is no obligation on the company to deduct tax at source.

Facts of the case with respect to issue No 1:

Assessee-Company was engaged in providing laboratory and testing services to customers through its own and third party collection centres, and allowed a discount to the third-party collection centres. Revenue held the difference between amount collected from the patient and charged to third party collection centres was in the nature of commission and Assessee was under obligation to deduct tax at source u/s 194H, and thus passed an order treating it as 'assessee-in-default' u/s 201(1) and 201(1A).

Held by the Authorities with respect to Issue No 1:

The collection centres collect money from the patient and pays a reduced amount to respondent and keeps the difference for itself as its margin. As the section is applicable only to a person who is responsible for paying to deduct tax at the time of credit to the account of the payee or at the time of payment and as assessee does not perform any act of paying, there is no obligation on the company to deduct tax at source.

Cochin Malabar Estates & Industries Ltd I TA NO. 179 OF 2014 Madras High Court In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 2(14) Mere cutting and carrying away the rubber plantation from the land as per the agreement to sell would not render the land as non-agricultural and treatment of the land as agricultural land by the buyer would not make Assessee exigible to capital gains. Also holds that "the vacant agricultural land available upon cutting and carrying away of trees, at best, can be called 'arable land': meaning, land used for any agricultural purpose"

Facts of the case with respect to issue No 1:

Assessee-Company engaged in cultivation, processing, trading in tea, rubber, aquaculture entered into a Memorandum of Agreement (MoA) with Kerala State Industrial Development Corporation (KSIDC) for sale of immovable property and was subjected to a scrutiny assessment for AY 1996-97 whereby Revenue found Rs.6.13 Cr credited to the P&L A/c; Revenue held that the Assessee converted the immovable property into a non-agricultural land for enabling the purchase by KSIDC, thus held the Assessee liable to capital gain on

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the transaction since the property was not an agricultural land in terms of Section 2(14) and raised a demand of Rs.3.28 Cr. which was confirmed by the CIT(A).

Held by the Authorities with respect to Issue No 1:

There is no dispute on the proposition that whether the sale of an asset constitutes sale of a capital asset or agricultural land, and is case-specific and to be determined on a case-to-case basis.

If the land is recorded as agricultural land in the revenue records and if till the date of its sale it is used and exploited as agricultural land and if the owner of the land had not taken any steps which would indicate his intention to exploit the land thereafter as non-agricultural land, then such a piece of land will have to be regarded as agricultural, even though it is included within the municipal limits or is sold as arable land without actual agriculture.

Several tests have been evolved in the decisions of the Apex Court and various High Courts, but all of them are more in the nature of guidelines. The question has to be answered in each case having regard to the facts and circumstances of that case. There may be factors, both for and against, on a particular point of view. Therefore, the Court has to answer the question on a consideration of all of them, by a process of evaluation.

The argument of Revenue is that till the date of entering into MoA the schedule property, no doubt, was a plantation/agricultural land. The assessee through MoA agreed to cut and carry away the rubber plantation in the schedule property by the assessee. Therefore, with the cutting and carrying away of rubber trees the schedule property becomes barren land. The Revenue's argument that barren land cannot be treated as agricultural land suffers from basic infirmity, and that Assessee agreed to cut and carry the rubber trees on the said land did not alter the land from its original classification. Cutting of trees would at best make the property arable land and the use for agriculture is not denied by cutting of rubber trees; HC finds that Assessee agreed to sell the land without the rubber trees and holds that "The incidence of exigibility of assessee/vendor is not dependent on an act of commission or omission of vendee". HC observes Assessee demonstrated that the classification of land continued to be agricultural land in the revenue records even as on the date of sale and declines to interfere with the ITAT's findings

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

- a. Ms Srinivasa Naicker (2007) 292 ITR 481
- b. M/s. Mansi Finance Chennai Ltd 2017 (1) TMI 1209 - Madras High Court

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Blue Coast Infrastructure Development Ltd. Chandigarh ITAT In favour of Assessee

ITA No. 143 (CHD.) of 2019

Issues discussed and addressed:

Issue No 1 Section 37 Where the assessee company expands its existing business and claims expenses as pre-capitalization cost, the same is to be treated as revenue expenditure

Facts of the case with respect to issue No 1:

Assessee-company was engaged in business of real estate development and financing. During scrutiny proceedings it was noticed that the assessee had earned interest income of Rs. 4.46 Cr., against which it had debited finance cost of Rs. 4.66 lacs. It was further noticed that the assessee had debited Rs. 3.3 Cr under the head professional expenses. Accordingly, the AO asked the assessee to justify the claim of professional fees expenses against the interest income. It was contended on behalf of the assessee company that it had earned interest on inter deposit from companies and the companies have deducted the tax at source. So far as the professional expenses is concerned, it was contended that during the previous year lot of agreements were entered into with depositors for selling the area. It was further contended that it has planned to start a hotel chain in UK and the other expenses including professional expenses were connected with the same project. The AO rejected the contention of Assessee.

Held by the Authorities with respect to Issue No 1:

As observed by the Ld. CIT(A), AO has assessed the interest income as business income. Therefore, the only issue in dispute before the Ld. CIT was regarding the allowability of expenses claimed by the assessee - as revenue expenditure. The Ld. CIT(A) has decided the said issue in favour of the assessee by observing that in this case, the business is in existence, the expansion of the same is under consideration and expenses for the same have been incurred. There is no change in management and there is common and interlacing of funds and the genuineness of the expenses is not in doubt. The appellant is in the business of real estate development and financing of real estate and the expenses incurred are into the same line of business. Thus this being the expense on expansion of business are allowed as revenue expense.

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

- a. *SRF Ltd.* [\[2015\] 59 taxmann.com 180/232 Taxman 727/372 ITR 425](#)
- b. *Reliance Footprint Ltd. v. Asstt. CIT* [\[2014\] 41 taxmann.com 553/63 SOT 124 \(URO\)](#)
- c. *DSM Sinochem Pharmaceuticals India (P) Ltd. v. Dy. CIT* [\[2017\] 82 taxmann.com 316 \(CHD - Trib.\)](#)
- d. *HP Housing Board, Shimla* [\[2012\] 18 taxmann.com 129/205 Taxman 1/340 ITR 388 \(HP\)](#)

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- a. The CBDT has rolled out the new Annual Information Statement (AIS) on the Compliance Portal which provides a comprehensive view of information to a taxpayer with a facility to capture online feedback. The new AIS includes additional information relating to interest, dividend, securities transactions, mutual fund transactions, foreign remittance information etc. A facility has been also provided to submit online feedback by taxpayer.