Vaduganathan Talkies TCA Nos. 645, 646 & 647 of 2019 Madras high Court Against Assessee

Issues discussed and addressed:

Disallowance u/s 40A(3)

Facts of the Case:

It is an admitted case of the assessees that cash payments were effected by the assessees for the purpose of acquiring rights to screen movies in their theatres. The Assessing Officer referring to Section 40A(3) of the Act held that the cash payments exceeded Rs. 20,000/- and ran to several lakh of rupees and accordingly, disallowed the expenses under Section 40A(3) of the Act and completed the assessment under section 143(3) of the Act by order dated 30-6-2016.

Held by the Authorities:

It is the submission of the learned Senior Counsel for the appellants that only 25% of the payments effected by the assessees were by cash and the remaining 75% was through banking channels, that is, through cheque or demand draft. These factors will work against the assessees because the assessees are fully aware of the legal position that over and above Rs. 20,000/-, the assessees would not be entitled to effect payment in cash in a day. Thus, merely because the assessees were able to identify the payees, who were more than 20 in number, would not be a mitigating factor to grant relief to the assessees under the first proviso to Section 40A(3) of the Act.

On more aspect to be noted is that there has been periodical payments in cash. The explanation offered by the assessees is that due to compelling circumstances, they have to effect cash payments. The Revenue is right in their submission that the registered offices of the assessee-firm are in Chennai and therefore, it is not as if there were no banking facilities available in Chennai, nor any other exceptional circumstances, which compelled the assessees to make urgent cash payments. In the decisions referred to on either side, it is seen that in majority of the cases, it is a solitary payment or a few payments made under extraordinary circumstances. Therefore, the fact that the assessees had been regularly effecting payments in cash would be a circumstance which will work against the assessee.

Where assessee-company made cash payments for purpose of acquiring rights to screen movies in theatres to various parties, running into lakhs of rupees, though payees were identifiable, but since inspite of availability of banking facilities, assessee had been regularly effecting cash payments, said payments were to be disallowed in terms of section 40A(3), read with rule 6DD

Goldman Sachs Investments (Mauritius) Ltd IT APPEAL NO. 2201 (MUM.) OF 2017 Mumbai ITAT

Issues discussed and addressed:

Set off and Carry Forward of Losses

Facts of the Case:

The A.O was of the view that now when pursuant to the India-Mauritius tax treaty the "capital gains" arising to the assessee, a resident of Mauritius, was not chargeable to tax in India, therefore, the assessee was neither required to show income under that head in its return, nor entitled to file a return showing "capital losses" merely for the purpose of getting the same computed and carried forward to the subsequent years. Excluding the applicability of sub-section (1) of Sec. 74 to the case of the assessee before her, the A.O was of the view that the operation of the said statutory provision was confined to, *viz.* (*i*). a loss which arises as the net result of computation under the head "Capital Gains"; and (*ii*). to "income" which falls within the definition of "total income". However, as observed by the A.O, as both of the aforesaid conditions in the case of the assessee before her were absent, the provisions of Sec. 74 were thus rendered unworkable in its case. Apart from that, the A.O was of the view that in a case where set-off was not permissible or possible owing to income or profits of the subsequent year being from a non-taxable source, there would be no point in allowing the loss to be "carried forward". Also, it was observed by the A.O that as the claim of non-taxability of the capital gains derived by the assessee (a tax resident of Mauritius) from the transfer transactions carried out in India was pursuant to Sec. 90(2) of the Act, which allowed it to be governed by the provisions of the India-Mauritius tax treaty, therefore, it would not be permissible on its part to revert back to the provisions of the I.T Act, 1961 for the loss incurring capital gain transactions. Accordingly, in the backdrop of her aforesaid deliberations the A.O *vide* her draft assessment order passed under Sec. 143(3) r.w.s. 144C(1), dated 1-3-2016 declined the assessee's claim for carry forward of capital losses from transactions of transfer of securities in India which was partially confirmed by DRP.

Held by the Authorities:

We shall first deal with the grievance of the assessee that as to whether the A.O/DRP were right in law and the facts of the case, in concluding, that the short term and long term capital gains earned by the assessee from transfer of securities in India during the year under consideration i.e A.Y. 2013-14, were to be adjusted against the STCL brought forward by the assessee from the earlier years, and thus, only the balance amount of STCL was to be carried forward to the subsequent years. At this stage, we may herein observe that the assessee had claimed the short term and long term capital gains arising in its hands from transfer of securities during the year under consideration i.e A.Y. 2013-14, as exempt, under Article 13 of the India-

Mauritius Tax Treaty. As regards the claim of the assessee that the capital gains on transfer of securities in India was not exigible to tax in India as per Article 13 of the India-Mauritius tax treaty, we find, that the same is not in dispute. On a careful perusal of the observations of the DRP, we find that a direction has been given by the panel for adjustment of the brought forward STCL against the short term and long term capital gains earned by the assessee during the year under consideration. We are thus confronted with a direction of the DRP, wherein despite accepting that the short term and long term capital gains earned by the assessee from transfer of securities during the year under consideration were exempt from tax in India under Article 13 of the India-Mauritius tax treaty, the panel had directed that the brought forward STCL be first adjusted against such exempt short term and long term capital gains, and only the balance amount of brought forward STCL be carried forward to the subsequent years. In our considered view the aforesaid direction of the DRP is bereft of any reasoning and does not merit acceptance. We are unable to comprehend that now when admittedly the short term and long term capital gains earned by the assessee from transfer of securities during the year in question are exempt under Article 13 of the India-Mauritius Tax Treaty, where would there be any occasion for seeking adjustment of the brought forward STCL against such exempt income. Our aforesaid view is squarely covered by the order of the ITAT, Mumbai in the case of *Flagship Indian Investment Company (Mauritius) Ltd.* v. *ADIT* (I.T)-3(2), Mumbai [2010] 133 TTJ 792 (Mum).

Now coming to the claim of the revenue that as Sec. 45 of the Act, by virtue of India-Mauritius tax treaty was rendered unworkable in respect of "capital gains" derived by the assessee from transfer of securities in India, therefore, the "capital losses" would also not form part of the assessee's "total income", and thus, could not be computed under the Act, we are afraid does not find favour with us. Apropos the aforesaid observation of the A.O, we are of the considered view that the same had been arrived at by loosing sight of the fact that the "capital losses" in question had been brought forward from the earlier years and had been determined and allowed to be carried forward by the A.O while framing the assessment for A.Y 2012-13, *vide* his order passed u/s 143(3), date 19-3-2015, and had not arisen during the year under consideration i.e A.Y 2013-14. Accordingly, the claim of the A.O that the "capital losses" b/forward from the earlier years, pertaining to a source of income that was exempt from tax was thus not to be carried forward to the subsequent years, being devoid of any merit, is thus rejected. At this stage, we may herein observe that it is for the assessee to examine whether or not in the light of the applicable legal provisions and the precise factual position the provisions of the IT Act are beneficial to him or that of the applicable DTAA. In any case, the tax treaty cannot be thrust upon an assessee. In case the assessee during one year does not opt for the tax treaty, it would not be precluded from availing the benefits of the said treaty in the subsequent years.

Our aforesaid view is fortified by the order of the ITAT, Pune in *DCIT* v. *Patni Computer Systems Ltd.* [2008] 114 ITD 159 (Pune).

Popular Estate Management Ltd. I.T.A. No. 2703/Ahd/2017 Ahmedabad ITAT

Issues discussed and addressed:

Capital vs Revenue Receipt

Facts of the Case:

In the present case the assessee has received the compensation for relinquishment of right to sue from certain societies as there was the breach of contract by the societies. As such the assessee has entered into the development agreement along with preemptive purchase right with the societies for the lands owned by them. But, subsequently the societies terminated the agreement with the assessee after making the payment of the compensation. The amount of compensation received by the assessee was recorded as capital receipt not chargeable to tax under section 2(45) read with section 45 of the Act. However, the learned assessing officer held that the entire transaction/activities for the development of the land, termination of the development agreement and the subsequent sale of the lands to the parties and the amount of the compensation received by the assessee is nothing but a device used to escape from the tax liability. Accordingly the amount of compensation received by the assessee was treated as business income of the assessee. The learned Commissioner (Appeals) subsequently confirmed the order of the assessing officer.

Held by the Authorities:

Right to sue could not be termed as capital assets, within meaning of section 2(14) read with section 45 and, therefore, compensation received by assessee in lieu of filing sue in court of law against the society for termination of agreement, represented capital receipt not chargeable to tax.

Cynthia Ramona Chellappa ITA No. 2219/Chny/2019 Chennai ITAT

Issues discussed and addressed:

Income from Other Sources

Facts of the Case:

It was submitted by the learned Authorized Representative that the assessee is a Swiss individual married to an Indian and residing in India. The assessee had received a bequeathal through the Will of her God-Mother Eva Maria Schnelder-Boog an amount of 50,000 Swiss Francs through a Will executed on 26-8-2013. The learned Authorized Representative placed before us the copy of the proceedings of the Single-Judge Court, District Court of Meilen, wherein the testament has been clearly mentioned in respect of the last Will of Eva Maria Schnelder-Boog dated 15-9-2009 executed on 26-8-2013 that Ms. Cynthia Chellappa, the God-daughter residing in India is given the legacy of Swiss Francs of 50,000. The learned Authorized Representative also placed before us the copy of the Decree by Cantonal Tax Office Zurich in respect of the inheritance tax paid by the assessee Ms. Cynthia Chellappa in respect of the legacy received of 50,000 Swiss Francs. The inheritance tax under section 23f under the Inheritance Tax is at 7,200 Swiss Francs. It was a submission that the assessee had received the amount by way of Will and the assessing officer in the course of the assessment held that as per the provisions of section 56(2)(vii) of the Income Tax Act, 1961 read with the Proviso thereunder was to be interpreted that the beneficiary has to be related within the meaning of explanation (e) to be a "relative" and not otherwise. As the God-mother who had bequeathed the amount to the assessee, was not a relative, the assessing officer treated the said amount of 50,000 Swiss Francs received by the assessee as income from other sources.

Held by the Authorities:

A perusal of the provisions of section 56(2)(vii) shows that any amount received by an individual without consideration and the aggregate value exceeds 50,000, the whole of the aggregate value is liable to be treated as income under the head "income from other sources". The Fourth Proviso thereunder provides for the exemptions. Clause (a) talks of any amount received from a relative, Clause (c) talks of any amount under the Will or by way of inheritance. For the purpose of Clause (a) of the Fourth Proviso, "relative" has been defined in explanation (e) to the Proviso. A Will can be written by anybody. In a Will, anybody can be given a bequeathal. It need not be a relative alone. The fact that the Fourth Proviso refers to relative in Sub-clause (a), and refers to a Will or inheritance in Clause (c) clearly shows that the Will need not be a Will of a relative. Further, a Will is not given any restrictive meaning in the Explanation under the said Proviso either.

This being so, we are of the view that the amount received by the assessee as a legacy through the Will of Mrs. Eva Maria Schnelder-Boog of an amount of 50,000 Swiss Francs, under no circumstances, can be brought to tax under the head "income from other sources" as the same is exempted by Clause (c) of the Fourth Proviso to section 56(2)(vii) of the Income Tax Act, 1961.

Sant Motiram Maharaj Sahakari Pat Sanstha Ltd. ITA No. 826 (Pune) of 2019 Pune ITAT

Issues discussed and addressed:

Interest from Co Operative Bank

Facts of the Case:

The facts of the case are that the assessee is a Credit co-operative society providing credit facility to its members. A return was filed declaring Nil income. Assessment u/s 143(3) of the Act was completed determining total income at Rs. 89,700/-. The ld. Pr CIT observed from the records that the assessee society earned a sum of Rs. 22,34,270/- as interest on investments made with co-operative banks and claimed deduction u/s.80P(2) of the Act on the same. It was opined that such deduction was not available in respect of interest received from investments made with co-operative banks. In addition, the ld. Pr.CIT also noted that the assessee received a sum of Rs. 2,334/- as interest on income-tax refund u/s.244A of the Act, which was not disclosed in the return. When confronted, the assessee submitted on the first issue that it had claimed deduction u/s.80P(2)(*a*)(*i*) of the Act and no claim was made u/s.80P(2)(*d*). Detailed submissions were filed. After considering such submissions, the ld. Pr.CIT held the assessment order to be erroneous and prejudicial to the interest of the Revenue by observing that deduction u/s.80P(2)(*d*) could not be allowed on interest on investments made by a co-operative society with cooperative banks. As a co-operative bank is akin to a commercial bank, it does not fall under the purview of co-operative society. Interest income earned from it was held to be not eligible for deduction u/s.80P(2)(*d*). As regards interest u/s.244A of the Act, the ld. Pr.CIT held the assessment order to be amenable to revision inasmuch as such interest was not offered for taxation. Aggrieved thereby, the assessee is in appeal before the Tribunal.

Held by the Authorities:

The assessee earned interest income, *inter alia*, on FDRs with State Bank of India and co-operative banks. The Assessing Officer (AO) examined this issue and came to hold that interest of Rs. 1,39,695/- on FDRs made with State Bank of India was not eligible for deduction u/s 80P. The assessee accepted that aspect and did not dispute it further. Now the ld. Pr. CIT has taken a view that interest income of Rs. 22,34,270/- earned from investments made with co-operative banks also does not qualify for deduction.

The case of the assessee before the authorities below *ab initio* has been that it was eligible for deduction on such interest u/s.80P(2)(*a*)(*i*) of the Act inasmuch as the assessee was engaged in providing credit facility to its members. At this juncture, it may be apposite to consider the mandate of clause (*a*)(*i*) of section 80P(2), which provides that: '(*a*) in the case of a co-operative society engaged in— (*i*) carrying on the business of banking or providing credit facilities to its members …., the whole of the amount of profits and gains of business attributable to any one or more of such activities' shall be allowed as deduction. The assessee is admittedly a co-operative society engaged in carrying on the business of providing credit facilities to its members. In such a situation, the whole of the amount of profits and gains of business attributable to providing credit facilities to its members becomes deductible u/s 80P(2) of the Act.

The term "profits and gains of business attributable to" providing credit facilities has a wider connotation. It encompasses not only the income derived strictly from providing credit facilities to its members but also any other income which is attributable to such business. So long as there exists a live link, not necessarily direct, between the income and carrying on of the business of providing credit facilities, the resultant income qualifies for deduction. If a particular amount is received by a co-operative society from its members as deposits and a part of the same has been provided as a credit facility to its members, the unspent amount for the time being not required by the members as loan, if utilised elsewhere, will nonetheless lead to generation of profits and gains of business of providing credit facilities to its members. The thread of link between income and business of providing credit facilities to the members will be broken if despite there being the members wanting to avail credit facilities, the cooperative society chooses to prefer making deposits with banks etc. rather than advancing sums to its members.

Right now we are confronted with a situation in which the assessee co-operative society has made deposits with co-operative banks and earned interest income, which is extantly the bone of contention. The stand of the assessee is that these are short term deposits of the money not required for the time being. The ld. Pr. CIT has not returned any contrary finding. In such a scenario, the entire interest income - not only the one derived from its members by providing credit facilities but also that earned by utilizing the surplus available funds for the time being at some places like investment in FDR etc. - also falls within the ambit of "profits and gains of business attributable to" providing credit facilities to its members.

The Pune Benches of the Tribunal in *Sureshdada Jain Nagari Sahakari Patsanstha Maryadit* v. *Pr. CIT* [ITA No. 713/PUN/2016] decided the question of availability of deduction u/s 80P on interest income by noticing that the Pune Bench in an earlier case of *Shri Laxmi Narayan Nagari Sahakari Pat Sanstha Maryadit* v. *ITO* [ITA No. 604/PN/2014] has allowed similar deduction. In the said case, the Tribunal discussed the contrary views expressed by the Hon'ble Karnataka High Court in *Tumkur Merchants Souharda Credit Cooperative Ltd*. v. *ITO* [2015] 230 Taxman 309 (Kar.) allowing deduction u/s. 80P on interest income and that of the Hon'ble Delhi High Court in *Mantola Cooperative Thrift Credit Society Ltd*. v. *CIT* [2014] 110 DTR 89 (Delhi) not allowing deduction u/s.80P on interest income earned from banks. Both the Hon'ble High Courts took into consideration the ratio laid down in the case of *Totgar's Cooperative Sale Society Ltd*. [2010] 322 ITR 283 (SC). There being no direct judgment from the Hon'ble jurisdictional High Court on the point, the Tribunal in *Shri Laxmi Narayan Nagari Sahakari Pat Sanstha Maryadit* (*supra*) preferred to go with the view in favour of the assessee by the Hon'ble Karnataka High Court in the case of *Tumkur Merchants Souharda Credit Cooperative Ltd*. (*supra*).

Now we advert to the second issue espoused by the ld. Pr. CIT about the interest income of Rs. 2,334/- received by the assessee on refunds u/s.244A of the Act. We find that this issue is fully and directly covered by the Special Bench order passed by the Mumbai benches of the Tribunal in the case of *Maharashtra State Cooperative Bank Ltd*. v. *ACIT* [2010] 129 TTJ 521 (SB) (Mumbai) holding that interest on income-tax refund u/s.244A is covered within the expression "profits and gains of business" occurring in section 80P(2)(*a*) and ergo eligible for deduction u/s.80P(2)(*a*)(*i*) of the Act. Albeit interest amounting to Rs. 2,334/-received u/s.244A of the Act is chargeable to tax but at the same time the same is also deductible in full u/s.80P(2)(*a*)(*i*) of the Act.

Important updates

a. The Central Board of Direct Taxes (CBDT) has amended Form 3CD, Form 3CEB & ITR 6 applicable for Assessment Year 2020-21. The changes are related to reporting of information about concessional tax regime opted by the person under sections 115BAA, 115BAB, 115BAC & 115BAD. The board has also notified Form 10-IF to exercise option under section 115BAD.

b. The CBDT has issued a press release to further clarify the doubts regarding applicability of provisions of section 206C(1H). It has clarified that TCS is required to be collected when yearly receipts exceeds Rs. 50 lakhs that too in respect of the amount received after 01-10-2020. Such amount shall be considered while determining the threshold of 50 lakhs only.

c. Considering the difficulties being faced by taxpayers due to the Covid-19 pandemic, the CBDT has further extended the due date for filing of revised and belated Income tax return for Assessment year 2019-20 from 30-09-2020 to 30-11-2020.

d. The Prime Minister of India, Shri Narendra Modi, while launching platform for 'Transparent Taxation – Honoring the Honest' had said that faceless appeal under the Income-tax Act will be available across the country from 25-09-2020 which has been notified now. The Central Board of Direct Taxes (CBDT) has notified the Income-tax authorities which shall exercise the powers and perform functions in order to facilitate the conduct of Faceless Appeal Proceedings. The board has also set up National Faceless Appellate Centre (NFAC) and Regional Faceless Appellate Centres (RFACs) for Faceless Appeal Scheme, 2020.

e. The CBDT has amended Rule 29B to include insurer for making application in Form 15C for grant of certificate to receive, any interest or other sum (other than dividends), without of tax under section 195(1). Earlier only banking company has been prescribed for making such application.

f. In exercise of powers conferred under section 143(2) read with rule 12E, the CBDT has authorised the Assistant Commissioner/Deputy Commissioner of Income-tax (National e-Assessment Centre) having his headquarters at Delhi, as the prescribed Income-tax authority for the purpose issuance of notice under section 143(2) for scrutiny assessment with effect from 13-08-2020.

g. The Finance Minister, Smt. Nirmala Sitharaman has introduced the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Bill, 2020 in the Lok Sabha. The bill seeks to amend various sections of the Income-tax Act.

h. The Central Board of Direct Taxes (CBDT) has laid down guidelines for compulsory selection of returns for scrutiny assessment during the Financial Year 2020-21. The guidelines have been prepared keeping in view of Faceless Assessment Scheme & difficulties being faced amid COVID-19 pandemic.

i. The Central Board of Direct Taxes (CBDT) has notified 'L&T Infra Debt Fund (PAN: AACCL4493R)' for the purposes of the section 10(47) of the Income-tax Act, 1961. Exemption shall be available if Infrastructure debt fund shall comply with the provisions of the Income-tax Act, 1961, rule 2F of the Income-tax Rules, 1962 and the conditions provided by the Reserve Bank of India.