

Important judgements and Updates

Update No 93/ 2021

Kuber Khadyan (P) Ltd. Delhi ITAT In favour of Assessee

ITA No. 4223/Del./2018, ITA No. 4225/Del./2018, ITA No. 4226/Del./2018

Issues discussed and addressed:

Issue No 1 Section 153A Statement of Mool Chand Malu under section 132(4) alone could not be considered as incriminating material unless any corroborating incriminating material was found during the course of search from premises of assessee.

Facts of the case with respect to issue No 1:

Search was conducted at premises of one Mool Chand Malu along with premises of assessee company. According to AO, Mool Chand Malu was the promoter of Kuber Group of companies, including the assessee company. Mool Chand Malu during the course of search action in statement, under section 132(4) offered undisclosed income of estimated Rs. 150 crores, including investment in unexplained share capital. Accordingly, AO made addition in assessee's hands, while framing search assessment under section 153A. Assessee contended that entire addition is based upon the admission/statement under section 132(4) of Mool Chand Malu, who was neither a director nor employee of assessee company.

Held by the Authorities with respect to Issue No 1:

The undisclosed income of an Assessee has to be computed on the basis of evidence and material found during search. The statement recorded under section 132(4) of the Act may also be used for making the assessment, but only to the extent it is relatable to the incriminating material unearthed or found during search. In other word, there must be a nexus between the statement recorded and the evidence/material found during search in order to for an assessment to be based on the statement recorded. Statement of Mool Chand Malu under section 132(4) alone could not be considered as incriminating material unless any corroborating incriminating material was found during the course of search from premises of assessee. As assessment for the year under consideration remained unabated as on date of search, therefore, addition made by AO, not based on incriminating material unearthed during search, could not be sustained.

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

- a. CIT v. Kabul Chawla, 381 ITR 570 (Del-HC)
- b. Pr. CIT v. Kurele Papers Mills (P) Ltd., (2016) 380 ITR 571 (Delhi)
- c. Pr. CIT v. Meeta Gutgutia, 395 ITR 526 (Delhi)
- d. CIT v. Harjeev Aggarwal (2016) 241 Taxman 199 (Delhi)
- e. Pr. CIT v. Best Infrastructure (India) (P) Ltd., (2017) 397 ITR 182 (Delhi.)

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Sanjay Mehta. ITA No. 1440/Kol/2018 Kolkata ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 68 Alleged loan being not received during AY under consideration, addition u/s 68 is not justified. Where addition made under section 68 as unexplained cash credit in respect of loan received by assessee, was deleted by Tribunal; the addition made under section 69C on account of interest paid on such loan was liable to be deleted.

Facts of the case with respect to issue No 1:

AO observed that assessee received a loan. However, the AO was not satisfied with submissions made by the assessee explaining identity and creditworthiness of creditor and genuineness of transaction, thus, he made addition of the same under section 68 on account of unexplained cash credit. CIT(A) confirmed the said addition. Assessee submitted that no such amount was received during the year and the alleged sum was received in preceding financial year and, therefore, no such addition was called for.

Facts of the case with respect to issue No 1:

It was found that alleged loan was received by assessee in preceding year. On perusal of books of account, it was found that there was no such transaction during the year. Further, other documentary evidence in form of bank statement had also been filed to prove that the alleged fund was not received during the assessment year under consideration. Thus, since the alleged loan was not received during the said assessment year, the addition made under section 68 on account of such loan was not called for during the assessment year under consideration and hence, the said addition was accordingly, deleted.

United Waterproofing Corporation ITA No. 495/M/2020 Mumbai ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1 Bogus Purchases Only profit element could be brought to tax, despite the purchases being bogus.

Facts of the case with respect to issue No 1:

AO found that assessee was a beneficiary of Hawala purchase entries, accordingly, he treated the purchases made by the assessee as non-genuine thereby, making an addition of 12.5% of the purchases. On appeal, CIT(A) dismissed the appeal of the assessee and further directed the AO to enhance rate @100% of bogus purchases on the ground that the assessee failed to prove genuineness of the purchases and consumption/utilization of materials purchased. Aggrieved, assessee was in appeal.

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Held by the Authorities with respect to Issue No 1:

CIT(A) enhanced the addition on account of bogus purchases to 100% as against 12.5% applied by AO. The only reason given by the CIT(A) was that the assessee failed to prove genuineness of purchases and consumption of material. In case of bogus purchases, entire purchases could not be brought to tax as held in a series of decisions of Co-ordinate Bench of Tribunal, wherein it had been held that only profit element could be brought to tax, despite the purchases being bogus. Thus, the CIT(A) wrongly enhanced the addition to 100% and the same could not be sustained. Accordingly, order of the CIT(A) was set aside and the order of the AO was restored.

Green Star Corporation ITA No. 2463/Kol/2017 Kolkata ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 41 No addition can be made u/s 41 to the income of the assessee as in the view of the assessing officer the outstanding liability in question is bogus and non-existent.

Facts of the case with respect to issue No 1:

AO made addition under section 41(1) towards outstanding liabilities expenses as appearing in the balance sheet as same were bogus and non-existent.

Held by the Authorities with respect to Issue No 1:

Only when there is a genuine liability and there is cessation of such liability or it is written off in the books of account, then section 41(1) can be applied. Therefore, question of cessation of non-existent and bogus liability did not arise and hence, section 41(1) could not be applied and, hence, addition was deleted.

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

- a. Nama Properties Ltd. v. Dy. CIT, Cir-2(1), Hyderabad, ITA No. 1831/Hyd/2017 for the AY 2012-13