Tally Solutions (P.) Ltd ITA Nos. 199, 951, 952 of 2017 Karnataka High Court In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 40(a)(ia) – Non-deduction of tax on purchase of asset doesn't deprive right to claim depreciation.

Facts of the case with respect to Issue No 1:

Assessee is engaged in business of software development and sale of software product licence, software maintenance and training in software. The Assessing Officer finalised the assessment by disallowing depreciation on purchase of intangible assets being software for non deduction of TDS.

Held by the Authorities with respect to Issue No 1:

from close scrutiny of Section 40(a)(i) of the Act, it is axiomatic that an amount payable towards interest, royalty, fee for technical services or other sums chargeable under this Act shall not be deducted while computing the income under the head profit and gain of business or profession on which tax is deductible at source; but such tax has not been deducted. The expression 'amount payable' which is otherwise an allowable deduction refers to the expenditure incurred for the purpose of business of the assessee and therefore, the said expenditure is a deductible claim. Thus, Section 40 refers to the outgoing amount chargeable under this At and subject to TDS under Chapter XVII-B. The deduction under section 32 is not in respect of the amount paid or payable which is subjected to TDS; but is a statutory deduction on an asset which is otherwise eligible for deduction of depreciation. Section 40(a)(1) and (ia) of the Act provides for disallowance only in respect of expenditure, which is revenue in nature, therefore, the provision does not apply to a case of the assessee whose claim is for depreciation, which is not in the nature of expenditure but an allowance.

Surbhi Jain ITA No. 3993/Del/2015 Delhi ITAT

Issues discussed and addressed:

Issue No 1 Section 2(22)(e) – Deemed Dividend – Amount advanced being returned on same day, the provisions of Section 2(22)(e) are not applicable.

Facts of the case with respect to Issue No 1:

Revenue challenged order of Tribunal holding that even though advances were made but on same date, there were transaction of receipt and payments itself by both parties, said transaction could not be construed as deemed dividend under section 2(22)(e).

Held by the Authorities with respect to Issue No 1:

When company got back its funds on same day, it could not fall into definition of the deemed dividend. It is settled that, where transaction entered into by two companies are business transactions; where both parties are engaged in similar trade and activities; then it is not hit by provisions of section 2(22)(e). The issue was similar wherein business transaction was between two parties and assessee had produced bank statements evidencing amount being advanced and received back on same date.

Judgments Relied Upon by the Authorities with respect to issue No 1:

a. CIT v. Pravin Bhimshi Chheda (2014) 48 taxmann.com 151 (Bombay)
b. Pravin Bhimshi Chheda Shivsadan v. DCIT (2012) 141 TTJ 58 (Mum)

Price Waterhouse & Co I.T.A. No. 1985/Kol/2018 Kolkata ITAT

Issues discussed and addressed:

Issue No 1 Section 1147 – Item being subject-matter of reopening being already disclosed in return filed under section 139(1), it was always possible for AO to issue notice u/s 143(2) hence simply because time limit under section 143(2) has expired, AO can not be allowed second inning.

Facts of the case with respect to Issue No 1:

AO issued notice under section 148 and reopened assessment on the reasoning that expenditure of Rs. 1 crore pertaining to legal expenses and external consultants fees was contingent in nature and hence not allowable and as such a revenue of Rs. 1 crore was chargeable to tax as escaped income. Assessee contended that the issue for which AO had reason to believe that income had escaped assessment, had already been disclosed by assessee in return of income filed by assessee under section 139, therefore, issue noted by AO was not tangible material to reopen assessment under section 147. AO rejected this on the ground that in assessee's case no assessment was carried out by AO under section 143(3) and only intimation had been issued under section 143(1).

Held by the Authorities with respect to Issue No 1:

Since item for which AO had reopened assessment had already been disclosed by assessee in return of income filed by him under section 139(1), AO had every power to issue notice under section 143(2) to do scrutiny assessment under section 143(3), which he has failed to do so in the assessee's case and for that assessee could not be penalized and AO having not carried out scrutiny assessment within prescribed statutory limit, could not be given another innings for no fault of assessee and as AO failed to point out any new tangible material to reopen assessment under section 147, reopening of assessment was void ab initio.

Judgments Relied Upon by the Authorities with respect to issue No 1:

a. CIT v. Kelvinator of India Ltd. (2010) 320 ITR 561 (SC)

b. Chhugamal Rajpal v. S. P. Chaliha & Ors., (1971) 79 ITR 603 (SC)

c. ACIT v. ICICI Securities Primary Dealership Ltd., (2012) 348 ITR 299 (SC) : 2012 TaxPub(DT) 2968 (SC).