SPL Infrastructure (P.) Ltd T.C.A.NO.766 OF 2017 Madras High Court

Issues discussed and addressed:

Disallowance of Sub Contract Expense

Facts of the Case:

The Respondent/Assessee is a Contractor, who carried out the work of road laying in the Thermal Power Plant, Rathnagiri, to the tune of Rs. 3300 lakhs. The learned Assessing Authority made an addition of Rs. 4,41,08,210/-in the hands of the Assessee on the ground that 14 of the Sub Contractors to whom the sub contracts were assigned by the Respondent/Assessee/Contractor were not produced before the Assessing Authority upon summons being issued to them and thereupon, disbelieving their existence and the sub contract work carried out by them, the entire payments made to them were disallowed by the Assessing Authority and they were added back to the income of the Assessee.

On appeal by the Assessee before the learned Commissioner of Income-tax (Appeals), the said addition was restricted to 10% of the total sum of Rs. 4,41,08,210/- on the agreement of the Assessee and thus, relief to the extent of 90% was granted by the Commissioner of Income-tax (Appeals), which order was upheld by the learned Tribunal.

Held by the Authorities:

A bare perusal of the compared results of the Gross Profit and Net Profit by the Assessee given in para 7 of the Tribunal's order clearly shows that the said Gross Profit at the rate of 14.21% and Net Profit at the rate of 3.83% declared by the Assessee, with the addition of 10% agreed by the Assessee before the learned Commissioner of Income-tax (Appeals), resulted in a much better result of profits declared by the Assessee in the present Assessment Year viz., A.Y.2010-11 as compared to the previous years. The Net Profit rate in the previous three years was less than 3%, whereas the Assessee himself declared the net profit at the rate of 3.83% before the aforesaid addition of 10% of Rs. 4,41,08,210/-. Therefore, the estimation of profit by the Appellate Authorities even on the premise taken by the Assessing Authority that some of the sub contractors could not be produced before the Assessing Authority, does not result in any perversity in the findings of the learned Commissioner of Income-tax (Appeals) as well as the learned Tribunal.

It is well known that where the books of accounts maintained by the contractors are not accepted by the Department, the estimation of profit made on the basis of history of Gross Profit rate and Net Profit rate of the Assessee in the previous years or comparable cases of contractors can be made. Once such profit rates

are compared, the additions on account of non confirmation or non production of the sub contractors, etc. is totally irrelevant and cannot be made.

In fact, the results declared by the Assessee of the net profit rate at the rate of 3.83% was much better as compared to previous three years and only marginally less than the previous two years of 2005-06 and 2006-07, which were at the rate of 4.20% and 3.94%. In these circumstances, no disallowance was called for. Still, if the Assessee agreed to such addition to apparently buy peace with the Department, we fail to understand as to why the Revenue has filed these Appeals to drag cases further in the High Court incurring the loss of man hours and cost of litigation. Such unnecessary litigation on the part of the Revenue Authorities deserves to be strongly deprecated, but, the Revenue Authorities do not seem to be seeing the sense behind this and keep on filing Appeals under section 260A of the Act, as a matter of routine.

Maruti Suzuki India Ltd ITA Nos. 2553, 2641 (Delhi) of 2013 Delhi ITAT

Issues discussed and addressed:

Interest on Income Tax Refund

Facts of the Case:

The assessee claimed refund of Rs. 201,37,93,163/-comprising of advance tax, TDS and self-assessment tax of Rs. 14,59,79,228/- and Rs. 186,78,13,935/-, the tax paid on different dates. The AO did not allow interest u/s 244A(1)(a) on the amount of Rs. 14.59 crores as the refund was less than 10% of the tax determined u/s 254 r.w.s. 143(3). The ld. CIT (A) confirmed the order of the AO on the grounds that, to give effect to the provisions of Section 244A(3), the assessee had to mandatorily cross the limitations imposed u/s 244A(1)(a).

Held by the Authorities:

Section 244A(1)(a) deals with interest where refund is out of TDS or by way of advance tax. The proviso under sub-Section (a) has to be read with regard to sub-Section (a) and applies to sub-Section (a) only. A bare reading of sub-Section (b) do not portray any such provision/condition which is applicable to Sub-Section (b). Hence, it has to be read that the provision restricts the interest on amount, if the refund is less than 10% of the tax as determined and is applicable only to the advance tax paid u/s 206 or FBT under 115WJ. For the purpose of embargo of 10% of the tax determined in accordance with the provisions of Section 244A(1)(a), it is clear from the provision of the Section that the self-assessment tax do not form a part of the embargo as self-assessment tax falls under sub-Section (b) of Section 244A(1).

Judgments Relied upon by the Authorities:

CIT v. HEG 324 ITR 331 and CIT v. Chola Mandalam Investment and Finance Company 294 ITR 438.

Tata Motors Ltd. ITA Nos. 3424 /Mum/2019 Mumbai ITAT

Issues discussed and addressed:

Set off of Business Loss against Dividend Income

Facts of the Case with respect to Issue No 1:

The brief facts of the case are, assessee is a company engaged in the business of manufacturing of chassis and vehicles for transport of goods and passengers including motor car and parts thereof. The assessment was completed u/s. 143(3) r.w..s 144C(3) of the Act on 25.01.17 by determining the total loss of Rs. 36,96,63,03,000/- under normal provisions of the Act and book profit of Rs. 3,90,02,85,750/- u/s. 115JB of the Act. Subsequently, Ld. CIT invoked the provisions of section 263 of the Act and issued a notice with the observation that assessee has received dividend from specified foreign company as defined u/s. 115BBD of Rs. 14,21,97,83,025/-. Ld. CIT further observed that as per the provision of section 115BBD, the dividend amount needed to be taxed separately @ 15% which was not done by AO resulting in short levy of tax and corresponding interest u/s. 234B of the Act.

Held by the Authorities with respect to Issue No 1:

After careful reading of section 115BBD, we agree with the submission of Ld. AR that there is no provision in that section to eliminate the dividend income from specified foreign company before setting off of loss and similar to the provisions and specific direction present in section 115BBE. In our considered view that taxable income has to be determined as per the provisions of Income-tax Act i.e. first to compute the total income based on the Chapter-IV and then apply the Chapter-VI and VIA in order to compare the aggregation and set off of losses. After determining the taxable income by applying the above Chapters and if still there is profit, then such taxable profit has to be taxed according to the prevailing rates as per the various applicable provisions of the Act. Since assessee is having substantial loss and as per the provision of Chapter-VI, the taxable income has to be adjusted first before applying any other provisions contained in the Act particularly when there is no specific provision contained in section 115BBD wherein to impose restriction on carrying forward any loss similar to provision contained in section 115BBE and section 115BBDA.

Judgments Relied upon by the Authorities:

a. British Insulated Calenders' Ltd. (202 ITR 354) Bombay High Court
b. Industrial Investment Bank of India Limited v. DCTT (1416/Kol/2014)

Rajendra Shringi I.T.A. No. 1087 /Jaipur /2019

Issues discussed and addressed:

Penalty u/s 271(1)(c)

Facts of the Case:

The assessee is an individual and derives income from business and profession. There was a survey under section 133A of the IT Act on 4-3-2016 at the business premises of the assessee. During the course of survey, a diary was found and impounded which contains certain entries of advances given to various persons by the assessee to the tune of Rs. 3 crores. In the statement recorded under section 133A of the IT Act on 5-3-2016 the assessee admitted the above amount of Rs. 3 crores as his undisclosed income. The assessee thereafter filed his return of income on 17-10-2016 declaring total income of Rs. 3,16,85,480 including the income surrendered during the course of survey under section 133A of the Act. The assessment was completed under section 143(3) whereby the assessing officer has accepted the returned income except an addition on account of short rental income of Rs. 10,565 was made by the assessing officer. The assessing officer then initiated the proceedings for levy of penalty under section 271(1)(c) in respect of the income surrendered by the assessee of Rs. 3 crore as well as Rs. 10,565 the addition made during the course of assessment framed under section 143(3).

Held by the Authorities:

The applicability of Explanation 5A is exclusively in the case of search and seizure action under section 132 of the Act and the said deeming provision cannot be applied in the case of survey conducted under section 133A of the Act. When there is no difference in the returned income as well as the assessed income so far as the amount of Rs. 3 crore is concerned, then it would not amount to concealment of particulars of income or furnishing of inaccurate particulars of income in the return of income filed by the assessee. It is settled proposition of law that except in the case of search and seizure where the Explanation 5 or 5A to section 271(1)(c) are applicable, the concealment of particulars of income or furnishing inaccurate particulars has to be considered only in the context of the income declared and particulars furnished in the return of income filed by the assessee.

Even if some discrepancies were found during the survey resulting in surrender of income by the assessee, once the assessee has declared the said income in the return of income filed under section 139(1) of the Act, then the penalty cannot be levied on the surmises, conjectures and possibilities that the assessee would not have disclosed the income but for survey. As regards the penalty levied by the assessing officer in respect of

the addition of Rs. 10,565 on account of non disclosure of the rental income, since it is a clear case of concealment of particulars of his income, therefore, the penalty levied by the assessing officer to the extent of addition of Rs. 10,565 is upheld.

Judgments Relied upon by the Authorities:

AO v. Harbanslal Sethi ITA No. 455/JP/2017 and CIT v. SAS Pharmaceutical (2011) 335 ITR 259 (Del.)

Rashmikant V. Shah ITA Nos. 7409 /Mumbai /2018, Mumbai ITAT

Issues discussed and addressed:

Bogus Purchases

Facts of the Case:

The assessee is engaged in the business of Trading in Chemicals. The case of the assessee was reopened on the basis of an information received from the DGIT (In.) Mumbai in which it was conveyed that the assessee has taken the bogus purchase. Accordingly, AO made addition of entire purchases under section 69C.

Held by the Authorities:

There could be no sales without purchases. Facts of the case indicated that assessee had made purchases from grey market without proper billing or documentation so as to evade taxes. Accordingly, entire purchases could not be subjected to addition under section 69C and addition was restricted to 12.5% profit element embedded in alleged purchases.

Judgments Relied upon by the Authorities:

1. CIT v. Nikunj Eximp Enterprises (P.) Ltd. Baombay High Court
2. CIT v. Simit P. Sheth ITA No. 553 of 2012, Order, dt. 16-1-2013 Gujarat High Court
3. CIT v. Bholanath Poly Fab (P.) Ltd. ITA No. 63 of 2012, dt. 23-10-2012 Gujarat high Court

Aarti Colonizer Company IT(SS) A Nos. 178 to 180/Rpr/2014 Raipur Bench

Issues discussed and addressed:

Undisclosed Investment

Facts of the Case:

In the case of assessee, search under section 132 was conducted on 23-6-2010 and during the course of search, a pen drive was found containing some data as also some loose papers. On the basis of data

contained in the electronic media and the loose papers, the assessing officer inferred that the assessee has made undisclosed investment in purchase of land and accordingly, he has made additions in all the three years on account of undisclosed investment in land invoking section 69 which has been the subject-matter of dispute before the learned Commissioner (Appeals) who has granted relief to the assessee.

Held by the Authorities:

The learned counsel of the assessee submitted before us that in assessment year 2008-09, addition of Rs. 10,06,43,054 comprises of two additions, one of Rs. 7,32,98,821 and the other of Rs. 2,73,44,233. The facts relating to both the additions are different and therefore both these additions need to be adjudicated at length.

We observe that the addition of Rs. 7,32,98,821 has been made by the assessing officer on the basis of the screenshot of journal entry dt. 4-9-2007 taken from the tally data in the pen drive and the printout of the details of land which has been reproduced by the assessing officer on page Nos. 2 and 3 of the assessment order as table 1. Other than these two materials, there is no other basis for making addition, which is undisputed fact as per record also accepted by the learned Commissioner Departmental Representative. The assessing officer has made addition invoking section 69. The initial burden is on the Revenue to establish that there is any investment, which has not been recorded in books and in respect which the assessee is not able to give satisfactory explanation to the assessing officer. As rightly contended by learned Authorised Representative of the assessee, neither the journal entry nor the details of land were reproduced in table 1 on page Nos. 2 and 3 of the assessment order to establish that any investment was made by die assessee firm. The journal entry dt. 4-9-2007 is only an accounting entry passed for introducing the land as capital contribution by the partners who purchased the lands and therefore, this cannot be considered as evidence of investment. It is undisputed that neither during search nor during the assessment proceedings, any material was found to show that the amount contained in the journal entry was paid by the assessee firm to anyone at any time. Therefore, only on the basis of journal entry, section 69 could not have been invoked.

Next the addition of Rs. 2.73,44,233 comprised in the total addition of Rs. 10,06,43,054, we observe that the addition has been made by the assessing officer on the basis of printout of tally data found in the pen drive seized from the residence of Shri Kishore Atlani. The printout contains details of 32.68 acres of land and the details have been reproduced as table 2 in the assessment order, on page Nos. 4 and 5. We observe that apart from this printout found during search, no other corroborative material in the form of cash book ledger etc. was found during search. A perusal of the details shows that the lands were purchased over a period of three years, from different persons. It is not the case of assessing officer that details of payment of

individual lands were also found during search. What is to be noted is, apart from the chart found, no other corroborative evidence was found during search. It is not the case of assessing officer that any books of accounts and other details supporting the entries in the printout were found during search or brought on record during the assessment proceedings. It is not also the case of assessing officer that any other details in respect of different lands like details of payment to the persons etc. were found during search. Although it is stated that tally data was found in the pen drive, corresponding books of accounts in such tally data were not found as there is no reference of any such corroborative books in the assessment order.

Judgments Relied upon by the Authorities:

CIT v. Naresh Khattar (HUF) 61 ITR 664 (Del) and CIT v. Dinesh Jain HUF (2013) 352 ITR 629 (Del)