

## Important judgements and Updates

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**Chetan Kothari** WMP Nos. 3954 & 3956 of 2020 Madras High Court In favour of Assessee

### Issues discussed and addressed:

Section 220 – Stay of Demand - AO must examine the existence of a prima facie case as well as call upon the assessee to demonstrate financial stringency, if any and arrive at the balance of convenience in the matter.

### Facts of the Case:

The petition for stay of collection was rejected by AO on the ground that mere filing of appeal before the CIT(A) was not a valid reason for stay of collection. The AO held that assessee's request for stay of demand will be considered only on payment of 20% of the tax demand, as per the CBDT's Instruction No. 1914 dated 21/03/1996, as modified by OM dated 29/02/2016 against which the assessee filed writ.

### Held by the Court:

The disposal of the request for stay by the petitioner leaves much to be desired. The AO ought to have taken note of the conditions precedent for the grant of stay as well as the Circulars issued by the CBDT and passed a speaking order. Of course the petition seeking stay filed by the petitioner was itself cryptic. However, as noted by the Supreme Court in the case of Commissioner of Income-tax v. Mahindra Mills [2008] 296 ITR 85 (Mad.) in the context of grant of depreciation, the Circular of the Central Board of Revenue (No. 14 (SL- 35) of 1955 dated April 11, 1955) requires the officers of the department 'to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs. .... Although, therefore, the responsibility for claiming refunds and reliefs rests with the assessee on whom it is imposed by law, officers should draw their attention to any refunds or reliefs to which they appear to be clearly entitled but which they have omitted to claim for some reason or other .....'. Thus, notwithstanding that the assessee may not have specifically invoked the three parameters for the grant of stay, it is incumbent upon the assessing officer to examine the existence of a prima facie case as well as call upon the assessee to demonstrate financial stringency, if any and arrive at the balance of convenience in the matter.

**Supertron Electronics (P) Ltd** I.T.A. Nos. 2290 & 2291/Kol/2018 Kolkata ITAT In favour of Assessee

### Issues discussed and addressed:

Section 147 – Reassessment - Invalid as no notice u/s 143(2) was issued.

### Facts of the Case:

A notice under section 143(2) was not issued/served on assessee after filing of a return of income in pursuance to a notice issued under section 148. Tribunal had, on last date of hearing, directed Department to produce or verify the assessment record for ascertaining the claim of assessee that statutory notice under

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section 143(2) was not issued to assessee for assessment years 2009-10 and 2010-11, before framing of assessment under section 143(3) r/w section 148. Assessee submitted that failure to issue statutory notice under section 143(2) would result in the entire proceedings, including any order of assessment being bad in law.

### Held by the ITAT:

The admitted fact was that no notice under section 143(2) was issued to the assessee for both the assessment years 2009-10 and 2010-11. Only a notice under section 148 and section 143(2)(1) was issued. Assessment orders for both the assessment years are bad in law and have to be quashed by following the judgement of High Court in the case of Pr. CIT v. Oberoi Hotels Pvt. Ltd. [ITAT No. 152 of 2015, GA No. 3671 of 2015 judgement dated 22-6-2018 : 2018 TaxPub(DT) 3621 (Cal-HC)]. Therefore, appeal of assessee was allowed.

**Kalya Awas Vikas (P). Ltd ITA Nos. 327, 328 and 329/JP/2019 Jaipur ITAT In favour of Assessee**

### Issues discussed and addressed:

Section 36(1)(iii) – Interest on Borrowed Capital – Disallowance of interest with respect to Interest-free advances granted to sister concerns is not justified when it is due to Business expediency.

### Facts of the Case:

AO noticed that assessee-company claimed expenditure on account of interest whereas corresponding receipts on account of interest were less than the said interest expenditure. In view of the AO, the excess interest over and above the receipts of interest was on account of interest-free advances given by the assessee to its sister concerns. Assessee submitted that the loans advanced to its sister concerns were on account of business expediency as it was having business stakes in their business concerns. However, the AO disallowed the interest paid over and above the interest received.

### Held by the ITAT:

It was found that assessee advanced loans to its sister concerns for conducting business. The said loans were advanced under development agreements, wherein the assessee was to act as a developer and was required to develop projects for its sister concerns. It was under such agreements that the assessee paid interest-free refundable security deposits to its sister concerns, who were the owners of the lands in lieu of the owners granting license for carrying out the development projects. Thus, the interest-free advances given by the assessee to its sister concerns were wholly and exclusively for the purposes of business. Hence, the AO was not justified in making any disallowance out of the interest expenditure claimed by the assessee.

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### Judgments Relied Upon by the ITAT:

- a. SA Builders Ltd. v. CIT (2007) 158 Taxman 74 (SC)
- b. Madhav Prasad Jatia v. CIT (1979) 118 ITR 200 (SC)
- c. CIT v. Sales Magnesite (P) Ltd. (1995) 214 ITR 1 (Bom)
- d. CIT v. Shahibag Entrepreneurs (P) Ltd. (1995) 215 ITR 810 (Guj)
- e. RB Bansilal Abirchand Spinning and Weaving Mills v. CIT (1971) 81 ITR 34 (Bom.) (FB)

### **Omkar Chadha** ITA No. 346/Del/2017 Delhi ITAT Against Assessee

#### Issues discussed and addressed:

Section 54F –Deduction for Purchase of Residential House - Not allowed for Investment in two distinctly identifiable residential properties at separate locations.

#### Facts of the Case:

Assessee sold a land and capital gain realized on such sale was invested in purchase of a residential flat and construction of a new residential house over and above his existing residential property. Accordingly, the assessee claimed exemption under section 54F on account investment in said two assets. AO restricted the exemption to investment in the flat only, and denied the exemption in respect of construction in the existing residential property taking a view that the exemption would be limited to investment in one residential property. Further, CIT(A) denied the deduction completely, for violation of requisite conditions stipulated in clause (a)(ii) to section 54F.

#### Held by the ITAT:

Assessee cited various cases to justify his claim. On going through such cases, it was found that in all such cases, deduction under section 54F was granted where multiple units were either adjacent or on the same floor or on the different floors or multiple units in the same residential complex owing to division of property. Whereas in instant case, there was no such division of property among the members and the investments were at different locations. Further, no case law had been brought by the assessee to the notice of the Tribunal wherein two distinctly placed properties had been allowed for claim of deduction under section 54F. Keeping in view, the geographical distances, the investment in two distinctly identifiable properties at separate locations could not be termed to be "a residential house" even after resorting to liberal interpretation of "a residential unit". Therefore, the AO was justified in restricting the exemption section 54F to investment in the flat only.

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### Other Updates

- a. The Central Board of Direct Taxes (CBDT), vide circular no. 09/2020 dated 22-04-2020, had issued clarification in form of 55 frequently asked questions (FAQs) on issues related to various provisions of the 'Direct Tax Vivad se Vishwas Act, 2020'. In continuance to earlier circular, the board has issued 34 more FAQs to further provide answers on its scope & eligibility.
  
- b. The Central Board of Direct Taxes (CBDT) has issued circular for deduction of tax at source from salaries. CBDT has explained the obligation of employers with regard to deduction of tax at source from salaries under section 192 of the Income-tax Act, 1961 for the Financial Year 2020-21 in a comprehensive manner.