

## Important judgements and Updates

Update No 12/2021

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### Tata Teleservices (Maharashtra) Ltd Writ Petition (ST) No. 95821 of 2020

High Court of Bombay In favour of Assessee

#### Issues discussed and addressed:

**Issue No 1** Section 197 Order passed u/s 197 granting the certificate for TDS at rate much higher than nil rate as against request of NIL rate should contain the reasons for doing so.

#### Facts of the case with respect to Issue No 1:

Assessee filed application seeking issuance of nil rate tax withholding certificates under section 197. However, Dy.CIT issued lower rate tax certificates to assessee under section 197. Assessee by way of writ petition challenged this contending that no reasons were furnished by the respondents as to why, instead of nil tax withholding certificates under section 197, certificates at higher rates were issued to assessee.

#### Held by the Authorities with respect to Issue No 1:

Since respondent was required to pass an order under section 197 either rejecting application for such certificate or allowing such application resulting in issuance of certificates which might be at rates higher than nil rate sought for by assessee, such an order must be supported by reasons. Not only that, copy of such an order has to be furnished to concerned assessee who could challenge the same under section 264 if he felt aggrieved. Not passing an order to that effect or keeping such an order in file without communication vitiated the certificates. Therefore, impugned certificates were quashed and matter was remanded back to respondent for passing fresh order and issuing consequential certificates under section 197 by complying with the requirements of rule 28AA and after giving due opportunity of hearing to assessee.

### Dae Co-op. T&C Society ITA No. 3047/Chny/2019 Chennai ITAT In favour of Assessee

#### Issues discussed and addressed:

**Issue No 1** Section 80 P Claim u/s 80P cannot be denied on the ground that it has been made in the return of income filed in response to notice u/s 148 and no original return was filed.

#### Facts of the case with respect to Issue No 1:

Assessee, a credit co-operative society, claimed deduction under section 80P(2)(a)(i). AO disallowed deduction on the ground that assessee had not filed return of income under section 139(1) or section 139(4) but filed it in response to notice under section 148.

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### Held by the Authorities with respect to Issue No 1:

Nowhere in section 80P or in section 80A(5), it is mentioned that assessee is required to file its return of income within prescribed time provided under section 139(1) or 139(4). But, what is required to be seen is whether assessee has made a claim in the return of income filed for the relevant year or not, even though such return is not filed within due date. In the instant case, although assessee had not filed its return of income for the concerned assessment year under section 139 but such return of income was filed in response to notice issued under section 148 and in said return of income, assessee made a claim for deduction under section 80P(2)(a)(i). Such return could not be treated as non est in law and invalid for the purpose of deciding exemption under section 80P.

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

Chirakkal Service Co-Operative Bank Ltd. Kannur [2016] 68 taxmann.com 298 (Kerala)

### Sanjay Duggal ITAT Delhi In favour of Assessee

#### Issues discussed and addressed:

**Issue No 1** Section 153D JCIT had granted common approval for all AYs without referring to the seized material nor the appraisal report or other material at the time of granting approval. Therefore, approval has been granted without application of mind and is invalid, bad in Law and is liable to be quashed

#### Facts of the case with respect to Issue No 1:

The Assessee has challenged the validity of order on the technical ground being approval granted without application of mind.

#### Held by the Authorities with respect to Issue No 1:

The approving authority (JCIT) has to give approval for "each" assessment year after applying independent mind to the material on record to see whether the cases are un-abated or abated assessments and their effect. However, the JCIT has granted common approval for all AYs. Further, he did not have the seized material nor the appraisal report or other material at the time of granting approval. Therefore, the approval granted is merely technical approval just to complete the formality and without application of mind. The approval has been granted without application of mind and is invalid, bad in Law and is liable to be quashed