

Important judgements and Updates

Update No 3/2021

M.P. Warehousing & Logistics Corporation ITA No 491/ Ind/ 2019 Indore ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 194 I – Assessee cannot be charged for short deduction of TDS on Rent Paid to each partner of the partnership firm after deduction of TDS. Assessee had not deducted TDS when payment made to a particular partner did not exceed threshold limit.

Facts of the case with respect to Issue No 1:

Assessee was a State Government undertaking and engaged in the work of storage and maintenance of warehouse for food grains procured by Food Corporation of India and other local agencies. For the Financial Year 2010-11, the assessee had been treated as assessee in default for short deduction of tax from rent paid to M/s. Sadhana Enterprises. Assessee contended that under a 'Joint partnership agreement scheme' between assessee and Sadhana Enterprises (co-owners) rent of Rs. 32,61,989 was paid during the year. The payment was not made to Sadhana Enterprises since it was a name used by co-owners to enter into the agreement but actual rent was paid to each owner separately as per its ownership share in the immovable property. The joint partnership agreement specified responsibilities of parties to the agreement and also specified other amenities to be provided along with a space to the persons who would use this warehouse. This joint partnership agreement further specifies that warehousing charges received by them from the public shall be shared in the ratio of 35:65. Therefore, assessee was not paying any rent to Sadhana Enterprises (Co-owners) as it is not using the warehouse. The agreement was not a rent agreement but a joint partnership agreement and since assessee was not paying any rent to Sadhana Enterprises (Co-owners), therefore, section 194-I was not applicable and assessee was not an assessee in default.

Held by the Authorities with respect to Issue No 1:

As evident from records, assessee had paid amount to each of the co-owners as per their share and deducted. Tax at source on rent paid to co-owners where amount of rent exceeded the limit of Rs.1,80,000 and in two cases where the amount was below the limit of Rs.1,80,000 tax was not deducted. Accordingly, assessee should not have been treated as one in default for short deduction of tax on rent payment to M/s. Sadhana Enterprises since assessee had rightly deducted, collected and paid tax on share of rent paid to each of the co-owners.

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Prabir Das I.T.A. No. 395/Gau/2019 Gauhati ITAT

Issues discussed and addressed:

Issue No 1 Limited Scrutiny vs Complete Scrutiny – Prior approval of Principal Commissioner/Commissioner not taken by AO hence the order passed is bad in law.

Facts of the case with respect to Issue No 1:

Assessee contended that addition of Rs. 59,19,909, made by AO by invoking provisions of section 68 in proceedings initiated for limited scrutiny was without jurisdiction and bad in law. Case of assessee was that AO expanded assessment from 'Limited Scrutiny' to 'Complete Scrutiny' without following procedure as laid by the CBDT Circular No. 20/2015, dated 29-12-2015; and subsequent instruction on same, dated 14-7-2016 (para 4) and Circular, dated 30-11-2017. In this notice under section 143(2) of the Act, it was clearly stated that the assessee's case was selected by CASS only for 'Limited Scrutiny' regarding one issue only i.e. "whether stock has been valued correctly or not ?"

Held by the Authorities with respect to Issue No 1:

Perusal of order sheet did not indicate that AO took approval of Principal Commissioner/Commissioner for expanding assessment from Limited Scrutiny to Complete Scrutiny. No approval in writing was taken by AO for expanding scope of assessment so as to make addition under section 68. Since CBDT Circular issued under section 119 is binding on department/Assessing officer, AO was bound by it and without taking approval in writing from Principal Commissioner/Commissioner, AO could not enquire into other issues other than issue for which the assessment was selected for limited Scrutiny. AO without following procedure expanded his jurisdiction without approval which action of AO was without jurisdiction. Addition was null in eyes of law and, therefore, was deleted.

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

- a. Late Smt. Gurbachan Kaur v. Dy. CIT, ITA No. 692/JP/2019 Order, dated 5-12-2019 (Jp-Trib);
- b. M/s. Nitin Killawala v. ITO, ITA No. 1611/M/2013 Order, dated 16-9-2015 : 2018 (Mum-Trib);
- c. Shri Vijay Kumar v. ITO, ITA No. 434/Chd/2019 Order, dated 12-9-2019 : 2019 (Chd-Trib).

Mantri Developers (P) Ltd ITA No. 525/Bang/2018 Bangalore ITAT

Issues discussed and addressed:

Issue No 1 Section 32 – Ready to use vs Put to use – Depreciation is allowed once asset is ready to use.

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Facts of the case with respect to Issue No 1:

Assessee claimed depreciation on certain building. AO disallowed assessee's claim alleging that said building was not put to use by assessee in the concerned year. Assessee contended that Final Completion Certificate of the building was dated 24-9-2013 and the building was ready to use.

Held by the Authorities with respect to Issue No 1:

For interpretation of the term 'used for the purpose of business', it is enough if asset is ready for use and actual use is not a pre-condition, accordingly, AO should have allowed claim of depreciation on the basis that building was put to use for the purposes of business on 24-9-2013, i.e., date of completion.

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

- a. CIT v. Chamundeswari Sugar Limited, (2009) 309 ITR 326 (Kar.) : 2009 TaxPub(DT) 0942 (Karn-HC),
- b. CIT v. E. I. H. Ltd., (2011) 54 DTR 249 (Cal.) : 2011 TaxPub(DT) 0990 (Cal-HC),
- c. CIT v. Oswal Agro Mills (P) Ltd., (2012) 341 ITR 467 (Del.) : 2012 TaxPub(DT) 1198 (Del-HC),
- d. CIT v. Premier Industries (India) Ltd., (2010) 323 ITR 672 (M. P.) : 2010 TaxPub(DT) 0018 (MP-HC)

Jai Gopal Sondhi ITA Nos. 6305, 6306, 6307 & 6308/Del/2017 Delhi ITAT

Issues discussed and addressed:

Issue No 1 Section 271(1)(b) – Penalty can be imposed when order is passed u/s 143(3) and Section 144

Facts of the case with respect to Issue No 1:

Issue was as regards imposition of penalty under section 271(1)(b) for non-compliance by assessee with respect to statutory notices issued u/s 142(1), when assessment was completed u/s 143(3).

Held by the Authorities with respect to Issue No 1:

Where assessee did not comply with notice under section 142(1) but assessment order was passed under section 143(3) and not under section 144, that meant that subsequent compliance of assessment proceedings was considered as good compliance and defaults committed earlier were ignored by AO and, therefore, levy of penalty under section 271(1)(b) was not justified.

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

- a. Akhil Bhartiya Prathmik Shikshak Sangh Bhawan Trust v. ADIT (2008) 115 TTT 419 (Del)