

Important judgements and Updates

Update No 21/ 2021

Jeet Construction Company SLP (Civil) Diary Nos. 16573 OF 2020 Supreme Court of India

SLP Filed against Order passed by the Allahabad High Court was dismissed. In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 115 BD The addition cannot be made under section 158 BD of the Act merely on presumption that assessee had earned undisclosed income and had incurred expenses outside the books of accounts.

Facts of the case with respect to issue No 1:

The assessee partnership firm was engaged in business of civil construction. It was subject to search under section 132 and hence Assessing Officer issued notice under section 158 BD of the Act on the assessee. The Assessing Officer found that assessee could not produce books of accounts and vouchers and thus, he reached to the conclusion that expenses debited by the assessee in trading and profit and loss account for various years of the block period could not be verified, thus, the books of accounts were rejected. Assessing Officer applied rate of 8% in order to ascertain the income for the block period and estimated the same at Rs. 51,44,968/-. This, however, was done by the Assessing Officer without giving credit to the income already returned by the assessee.

Held by the Authorities with respect to Issue No 1:

The Tribunal also recorded a categorical finding that Assessing Officer instead of working out undisclosed income, as per the provisions of section 158BD had totalled up amount mentioned in various annexures, which according to the assessee are part of the contract work done by him. No evidence was found to suggest that the assessee had been indulging in construction business outside books of account. Further, the Tribunal had recorded a finding that merely because ITAT remanded the matter to Assessing Officer, the total of all the entries whether recorded in regular books of accounts or without any date would constitute income of the assessee, that to undisclosed income. The Tribunal had remanded the matter with a direction to complete assessment under section 158BD based on seized material, but the Assessing Officer determined the taxable income of Rs. 4,82,66,276/- as against addition of Rs. 51,44,968/- has put the assessee in more adverse situation which is not permitted in law, and the addition cannot be made under section 158 BD of the Act merely on presumption that assessee had earned undisclosed income and had incurred expenses outside the books of accounts.

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Shriram Ownership Trust T.C.A. No. 242 of 2018 Madras High Court Against Assessee

Issues discussed and addressed:

Issue No 1 Section 56 Where a private discretionary trust, received corpus donation from six other group companies for the benefit of trustees who were identified as beneficiaries and thus, assessee was a representative assessee liable to be taxed as individual u/s 56(1) under head "Income from other sources", and not u/s 56(2)(vii) read with section 2(24)(xv).

Facts of the case with respect to issue No 1:

Assessee, a private discretionary trust, was formed for the benefit of certain senior long standing retired employees of the Shriram Group of Industries, Chennai. They were in receipt of Rs. 25 crores as corpus contribution from 6 other group companies of the Shriram Group. It was the case of the revenue that this receipt of corpus was nothing but a conduit on behalf of the beneficiaries thus was to be assessed as income from other sources under section 56(2)(vii) read with section 2(24)(xv) alleging that the assessee-trust should be read as an "individual" to the contextual reading as a representative assessee. Since the beneficiaries or their shares were indeterminate they should be assessed as an Association of Persons (AOP). Assessee's further plea was since section 56(2)(vii) in its further reading in third proviso which mentions certain gifts from "relatives", etc., being in the exclusion zone of the said section, the only reading which is possible is to tax under section 56(2)(vii). One needs to be an "individual" natural person. This did not meet the eye of the Commissioner (Appeals) who upheld the views of the AO and upheld the taxability of the alleged corpus contribution of Rs. 25 crores under section 56(2)(vii). On further appeal, the ITAT reversed the views of the AO and Commissioner (Appeals) holding that the assessee was to be read as an AOP and thus cannot be read as a representative assessee and section 56(2)(vii) also cannot be fastened on them since they were not a natural person.

Held by the Authorities with respect to Issue No 1:

The corpus contribution of Rs. 25 crores was held to be taxable under section 56(2)(vii) as a representative assessee in the hands of the assessee as it was supposedly received on behalf of its unnamed beneficiaries thereby such a playing around the "law" needs to be struck down. They are to be read as an individual to the extent of this provision to enable them to fall in the scope of section 56(2)(vii). The ITAT gave a wrong reading of the Trust as an AOP. The trust cannot be assessed as an AOP as neither was there a common intent to pursue a venture nor did the trustees or beneficiaries come together for a specific purpose. The plea of the assessee that the subsequent insertion of section 56(2)(x) with effect from 1-4-2017 to cover all

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persons under the scope of section 56(2) for amounts received without adequate consideration would also not advance their grounds.

Sigma Castings Ltd I.T.A. Nos. 510 to 518 & 526/Lkw/2019 ITA Lucknow ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1 Cross Examination Addition made by AO based on third party statement recorded by Investigation Wing without offering opportunity for cross examination is bad in law.

Facts of the case with respect to issue No 1:

Assessee was dealing in wholesale cloth trading business. AO based on third party statement recorded by Investigation Wing treated sales and purchases of assessee as bogus and made addition of unexplained cash credit to net profit under section 68 and charged income-tax under section 115BBE. Assessee challenged this. AO had not provided copy of such statement to assessee and thus, denied opportunity of cross-examination.

Held by the Authorities with respect to Issue No 1:

Right of cross-examination is an important right available to assessee and not providing opportunity to cross-examine would amount to violation of principles of natural justice. In the instant case, statements of third parties were not made available to assessee for cross-examination and on the other hand, assessee had recorded entries of sales and purchases in its books of account and had duly disclosed items of sales and purchases in profit and loss account and duly disclosed profit earned on trading in the profit and loss account and had offered the same as business income. Accordingly, assessee had prima facie discharged initial burden of substantiating purchases through cheques, VAT registration of sellers and their income-tax returns and, therefore, AO was not justified in making addition under section 68.