

Important judgements and Updates

Update No 38/ 2021

Ajay Kumar Singh Gaur ITA No. 379 (Agra) of 2018 Agra ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 195 Commission paid to agents outside India for procuring orders does not attract TDS u/s 195

Facts of the case with respect to issue No 1:

The assessee is an exporter involved in export of shoes. The Assessing Officer had also added disallowance on account of 40(a)(ia) to the tune of Rs. 9,63,954/-. The case of Assessing Officer was that the assessee failed to deduct TDS on the commission paid by the assessee to agents, who situated outside India. The assessee's case was that the commissions are paid outside India to his agent for procuring orders for the assessee.

Held by the Authorities with respect to Issue No 1:

Where commissions were paid outside India to assessee's agent for procuring orders for assessee and element of payment of commission was duly reflected in bills for that purpose, modus operandi of assessee was clear that assessee was recipient of income in India after deduction of commission by buyer made outside India. Thus, no income had been received or paid inside India, which attracted deduction of TDS in India and therefore, assessee would not be liable to deduct TDS in India.

Agile Electric Sub Assembly (P.) Ltd ITA No. 1203 (CHNY) of 2018 Chennai ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 32 Depreciation is allowed once P & M/c are ready to use.

Facts of the case with respect to issue No 1:

The assessee company was engaged in the business of manufacture of components, subassembly for motors and tools etc. The case was selected for scrutiny and assessment has been completed u/s. 143(3) of the Act and assessment was completed by making disallowance of depreciation claimed on plant and machinery on the ground that assets were not put to use in the business of the assessee for the relevant assessment year.

Held by the Authorities with respect to Issue No 1:

When machinery kept ready for use at any moment from which taxable profits are earned, machinery can be said to be used for business purpose of section 10(2)(vii), the second proviso and depreciation on such plant and machinery can be allowed.

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Batliboi Limited ITA No.6228/Mum/2017Mumbai ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1 Sale of Additional FSI Sale of Additional FSI being Capital Receipt not liable to Tax being wind fall gain by operation of law, and which had not costed the assessee any money. Moreover this being capital Receipt inception not liable for MAT as well.

Facts of the case with respect to issue No 1:

Assessee (engaged in manufacturing machine tools, textile machines, air conditioning and refrigeration work, casting and job work for air conditioning and humidification, air control equipment and trading in engineering) owned a constructed building on a plot of land in the city of Coimbatore. During the FY 2012-13 relevant to AY 2013-14, assessee proposed to sell the said land along with its super structure. The purchasers agreed on a total consideration of Rs.11.14 crores which was broken up as Rs.5.72 crores for the land, Rs.64.90 lakhs for the constructed building and Rs.4.76 crores for the additional FSI. The consideration on sale of FSI was claimed as Capital Receipt which was disputed by AO.

Held by the Authorities with respect to Issue No 1:

ITAT observed it was only pursuant to the change in DCR Rules in the city of Coimbatore that the assessee got vested with additional benefit of 0.8 by way of additional FSI. Clarifying that the assessee could not have preempted any change in the DCR Rules at the time of purchase or before the sale, ITAT stated that no cost was incurred by the assessee for getting such benefit by way of additional FSI. ITAT further explained that “the additional benefit derived by the assessee by way of getting vested with additional FSI on the land and building owned by the assessee is only a wind fall gain by operation of law, and which had not costed the assessee any money.” Thus can not be taxed being capital Receipt.

Regarding taxability u/s 115JB, ITAT considered the undisputed fact that such receipt is indeed a capital receipt and that the same does not form part of operational working results of the assessee company.

Judgments Relied upon by the Authorities with respect to Issue No 1:

- a. CIT Kailash Jyoti No.2 CHS Ltd., in Income Tax Appeal No.1607 of 2013 Bombay High Court