

Important judgements and Updates

Allu Arvind Babu TCA No.522 of 2017 Madras High Court Against Assessee

Issues discussed and addressed:

Section 10(10D) – KIP – Benefit accruing to employee on surrender / encasement is not exempt u/s 10(10D) as character of the KIP does not get converted into ordinary Life Insurance Policy despite its assignment.

Facts of the Case:

The assessee was the Managing Director of A Ltd. During the F.Y 2004-05, A Ltd had taken two Key Man Insurance Policies each amounting to Rs. 100 lakh on the life of the assessee. Of which, one policy was assigned in favour of the assessee on 31-3-2006. The surrendered value of the policy amounting to Rs. 58,74,752/- was offered as income taxable as perquisite u/s. 17(3) of the Act in that year itself *i.e.* assessment year 2006-07. Subsequently, the assessee en-cashed the policy at Rs. 97,03,083/- on 29-6-2006. The AO has added the sum of Rs. 38,28,331 (Rs.97,03,083-Rs.58,74,752).

Held by the Court:

The Key Insurance Policy taken by a limited company in favour of its key employee, the Managing Director of the Company in the present case, even though it is Life Insurance Policy, is excluded from the ambit of exemption under section 10(10D) by specifically mentioning the same in clause (b) of the said exception of the provision. Therefore, any amount received under Keyman Insurance Policy is a taxable receipt in the hands of the employee concerned as perquisite.

In the present facts, the Keyman Insurance Policy was taken out by the Company and was assigned in favour of the Managing Director on 31-3-2006. To the extent of surrender value accrued as on 31-3-2006, namely Rs. 58,74,752/-, was offered for taxation as "perquisite" in the hands of the Assessee. The character of Insurance Policies does not change after assignment. The Assessee himself has never paid any premium on the said Keyman Insurance Policy from his own resources. Therefore, even if the assignment is endorsed by the Insurance Company as on 31-3-2006, the character of the Policy does not convert into an ordinary Life Insurance Policy in the hands of the Assessee. The Keyman Insurance Policy is a Life Insurance Policy taken by the employer company in favour of its employee Managing Director. Its character continues to be the same.

On the basis of Section 10(10D) of the Act, with its *Explanation 1*, the clear position of law which emerges is that the character of the Keyman Insurance Policy does not get converted into ordinary Life Insurance Policy despite its assignment and therefore, any benefit accruing to the employee upon its surrender or encashment will be taxable in the hands of the Employee as "perquisite".

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Nageshwar Enterprises R/TANo. 806 of 2019 Gujarat High Court In favour of Assessee

Issues discussed and addressed:

Section 69B – Merely on the basis of admission, the assessee cannot be subjected to additions unless and until some corroborative evidence is found in support of such admission.

Facts of the Case:

A search of the residential premises of the assessee was undertaken by the Directorate of Revenue Intelligence (DRI), Surat. In the course of the search, one of the partners of the firm, namely Shri Rajesh Gandhi, in his statement recorded on oath, admitted before the DRI as regards the undervaluation of the metallic yarn and jari/kasab to the extent of 60279.75 kgs., out of which 30405.00 kgs. pertains to the year under consideration. He admitted that the difference of the undervalued amount was paid in cash to the seller firm at China and Japan. In such circumstances, the case was selected for scrutiny. A.O. finalised the assessment under section 143(3) by making addition of Rs. 32,57,962/- on account of the peak unaccounted investment and addition of Rs. 35,13,067/- on the account of GP on unaccounted purchases.

Held by the Court:

The proposition of law as laid down is that the department cannot start with the confessional statement. The confessional statement has to be brought in aid of other materials on record. In the case on hand two authorities have concurrently recorded a finding of fact that, except the statement recorded under section 108 of the Customs Act there is no other evidence hence the decision of the tribunal does not required to be disturbed.

Judgments Relied Upon by the Court:

- a. Kailashben Manharlal Chokshi v. CIT. [2008] 174 Taxman 466/[2010] 328 ITR 411 (Guj.),

Exl Service.com (India) (P) Ltd. ITA Nos. 1482, 1708/Del/2016 Delhi ITAT In favour of Assessee

Issues discussed and addressed:

Section 40(a)(ia) – Disallowance for short deduction of TDS is not justified.

Facts of the Case:

AO disallowed expenses under section 40(a)(ia) incurred on facility management, advertisement and tour and travel on account of short deduction of tax @ 1%, instead of 2%.

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Held by the ITAT:

Undisputedly assessee had deducted tax at the rate of one per cent instead of 2% there was no failure of non-deduction of tax. If there was any offence or violation it was deduction of tax at lower rates compared to what was prescribed and in such situation no disallowance could be made under section 40(a)(ia).

Judgments Relied Upon by the ITAT:

- a. CIT v. SK Tekriwal (2013) 361 ITR 432 (Cal. HC)

Other Updates

- a. As per the decision of the Council of ICAI, UDIN has been made mandatory for all certificates, GST & Tax Audit reports and all other Audit, Assurance and Attestation functions in a phased manner. The Central Board of Direct Taxes (CBDT) has issued FAQs on UDIN.
- b. 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.
- c. 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.