G.H. Reddy and Associates Special Leave Petition (Civil) Diary No. 20206 of 2019 Supreme Court of India

Issues discussed and addressed:

Reorganisation of Firm

Facts of the Case:

Assessee was partnership firm carrying on three major lines of businesses, viz., execution of civil contracts, real estate and computer education centres. During relevant year, partners of assessee-firm entered into a Memorandum of Understanding (MOU) deciding to reorganise their businesses whereby some partners were retired and fresh partners were inducted and re-constituted firm was permitted to carry on business in same name and style. Assessing Officer concluded that it was a case of dissolution of firm and, thus, by deeming distribution of assets among partners at time of dissolution, Assessing Officer invoked provisions of section 45(4) and computed long-term capital gains.

Held by the Authorities:

High Court noted that assets and liabilities relating to businesses remained with assessee firm and were not distributed among anybody and, there was no material to show that assets were revalued at time of re-constitution and, thus, it was held that there was no dissolution of assessee's firm rather it got itself reconstituted, and consequently, no capital gain arose under section 45(4).The SLP filed against the said decision has been dismissed.

Naroda Enviro Projects Ltd Tax Appeal No. 223 of 2020 Gujarat High Court

Issues discussed and addressed:

Exemption u/s 11

Facts of the Case:

The Assessing Officer while making assessment as provided under section 143(3) of the Act came to the conclusion that the respondent -assessee is a company registered under section 25 of the Companies Act, 1996 and is *inter alia* engaged in the activity of management of liquid and solid wastes in Naroda Industrial Area and thereby earned profit. The AO also came to the conclusion that the respondent -assessee was engaged in the activities which are not in the nature of charity but were of business as per proviso 1 and 2 of Section 2(15) r/w Section 13(8) of the Act. According to the AO, the exemption as provided under sections 11 and 12 were not available to the respondent -assessee and accordingly the AO made addition of Rs. 3,43,02,447 under section 11(1)(*a*) and Rs. 4,16,24,503/- under section 11(2) of the Act and assessing the income of the respondent -assessee in aggregate at Rs. 7,59,26,949/-.

Held by the Authorities:

We do not find any error in the impugned orders passed by the CIT(A) as well as Income-tax Appellate Tribunal and have concurrently held that taking on overall view, the dominant objects of the assessee are charitable in nature and dominant object is not only preservation of environment but one of general public utility and, therefore, the assessee is entitled to seek exemption under section 11 of the Act. Following the judgment of the Division Bench of this Court in the case of respondent -assessee for three assessment years and Division Bench has considered the order passed in relation to the AY 2009-10 as lead matter, we do not find any case to take a contrary view then the view taken by the CIT(A) as well as Income-tax Appellate Tribunal. We do not find that this is a fit case to interfere in appeal under section 260-A of the Act as the findings of fact are not perverse.

Kunal Structure (India) (P) Ltd. v. Dy. CIT Special Civil Application No. 13924 of 2018 Gujarat High Court

Issues discussed and addressed:

Validity of Notice issued u/s 143(2)

Facts of the Case:

Assessee filed return of income under sub-section (1) of section 139 on 10-9-2016. Since the return was defective, assessee was called upon to remove such defects, which came to be removed on 7-7-2017. AO thereafter issued notice under section 143(2) on 9-8-2018. Assessee challenged the notice as barred by limitation.

Held by the Authorities:

As defect was removed by assessee on 7-7-2017, i.e., within time allowed by AO, i.e., upto20-7-2017, on such defects being removed, return would relate back to date of filing original return, that is, 10-9-2016 and consequently, limitation for issuance of notice under sub-section (2) of section 143 would be 30-9-2017, viz. six months from the end of financial year in which return under sub-section (1) of section 139 came to be filed. It is an admitted position that impugned notice under sub-section (2) of section 143 had been issued on 9-8-2018, which is much beyond the period of limitation for issuance of such notice as envisaged under that sub-section, therefore, impugned notice, was clearly barred by limitation and could not be sustained.

Judgments Relied Upon by the Authorities:

Dhampur Sugar Mills v. CIT (1973) 90 ITR 236 (All.)

CIT v. Babubhai Ramanbhai Patel (2017) 249 Taxman 470 (Guj

Checkpoint Apparel Labelling Solutions (I) Ltd Tax Appeal No.307 of 2019 Madras High Court

Issues discussed and addressed:

Deemed Dividend

Facts of the Case:

The assessee is a limited company. The question, which would fall for consideration is as to whether the Assessing Officer was right in holding that the only exclusion provided by the Statute under section 2(22)(e) of the Act was in the case of money lending business and the payments that are made in the ordinary course of business, as, for doing money lending business, a person is required to obtain a licence from the Reserve Bank of India or whether it is a non banking financial company.

The Assessing Officer held that the assessee was not one such company falling under anyone of the categories. Accordingly, the contention of the assessee was rejected and in doing so, the Assessing Officer relied upon the decision of the Delhi High Court in the case of *CIT* v. *National Travel Services* [reported in [2012] 347 ITR 305]. Further, the Assessing Officer took note of the payment made by the assessee to the tune of Rs. 43,29,603/- as interest to one M/s.OTA Systems Software India Private Limited against the loan received amounting to Rs. 42,50,00,000/-. This was considered as deemed dividend in the hands of the assessee and the interest paid was disallowed as an expenditure on the ground that there was no provision under the Act to allow interest charged on deemed dividend.

Held by the Authorities:

The said provision would stand attracted when a payment is made by a company, in which public are not substantial interested by way of advance or loan to a share holder, being a person who is the beneficial owner of the shares. Since assessee was not a shareholder in said company from whom it received loan, such loan amount could not be treated as deemed dividend under section 2(22)(e) in hands of assessee.

Judgments Relied Upon by the Authorities:

CIT v. M/s. T. Abdul Wahid & Co. [TCA.Nos.512 & 513 of 2018 dated 21-9-2020

I-Exceed Technology Solutions (P.) Ltd ITA No.1181 (Bang.) of 2018 Bangalore ITAT

Issues discussed and addressed:

Section 56 (2)(viib)

Facts of the Case:

The assessee company is engaged in the business of developing software products and providing consultancy services to customers in banking and financial services industry. The A.O. noticed that the assessee has issued 6,15,088 equity shares of Rs. 10/- each at a premium of Rs. 80/- per share to six persons. Accordingly, it has collected share premium of Rs. 4,92,07,040/- Out of the above said amount, the AO noticed that the share premium received from resident shareholders was Rs. 1,77,77,760/-. Accordingly, he proceeded to examine the collection of share premium in terms of sec. 56(2)(viib) of the Act.

The assessee furnished a valuation certificate dated 15-12-2012 obtained from a Chartered Accountant in support of the price at which the shares were issued. The A.O. noticed that the C.A. has adopted discounted cash flow method (DCF Method) for valuation of shares. In the valuation report, the accountant had arrived at the value per share at Rs. 87.56 per share. However, the assessee has issued shares @ Rs. 90/- per share including share premium of Rs. 80/- per share. Accordingly, the assessee justified the share premium collected by it.

The A.O. noticed that, under DCF method, the valuation has been arrived on the basis of projected figures. Further, it was noticed that the details of projected results have been furnished by the management only and the basis of projections was also not given. Accordingly, the AO rejected DCF method of valuation. The A.O. took the view that the share valuation has to be arrived on the basis of book value, i.e., Net Asset value (NAV) method. On the basis of assets and liabilities of the assessee, the AO worked out the value of per share @ Rs. 6.04. Accordingly, the A.O. the view the share premium collected by the assessee is not justified. Since share premium amount collected from resident persons could alone be assessed u/s. 56(2)(viib) of the Act, the AO assessed the share premium of Rs. 1,77,77,760/- as the share premium collected from resident shareholders.

Held by the Authorities:

The AO can scrutinize the valuation report and he can determine a fresh valuation either by himself or by calling a determination from an independent valuer to confront the assessee but the basis has to be DCF method and he cannot change the method of valuation which has been opted by the assessee.

For scrutinizing the valuation report, the facts and data available on the date of valuation only has to be considered and actual result of future cannot be a basis to decide about reliability of the projections. The primary onus to prove the correctness of the valuation Report is on the assessee as he has special

knowledge and he is privy to the facts of the company and only he has opted for this method. Hence, he has to satisfy about the correctness of the projections, Discounting factor and Terminal value etc. with the help of Empirical data or industry norm if any and/or Scientific Data, Scientific Method, Scientific study and applicable Guidelines regarding DCF Method of Valuation.

Thus to determine fair market value of shares under section 56(2)(viib), an assessee may adopt either Net Asset Value (NAV) method or Discounted Cash Flow (DCF) method; Assessing Officer can determine a fresh valuation but cannot change method of valuation which has been opted by assessee.

Judgments Relied Upon by the Authorities:

Flutura Business Solutions (P.) Ltd. v. ITO [2020] 117 taxmann.com 567

VBHC Value Homes (P.) Ltd. v. ITO [IT Appeal No. 2541 (Bang.) of 2019, dated 12-6-2020]

Vodafone M-Pesa Ltd. v. Pr. CIT [2018] 92 taxmann.com 73/256 Taxman 240

Universal Medicare (P.) Ltd. ITA No. 4418 (Mum) OF 2016 Mumbai ITAT

Issues discussed and addressed:

Slump Sale

Facts of the Case:

The assessee is a company engaged in manufacturing and trading of Pharmaceutical Products. The assessee filed its return of income for relevant Assessment Year on 28-11-2012 declaring total income of Rs. 495,49,42,070/-. During the assessment, the Assessing Officer noted that Universal Medicare Pvt. Ltd. (UMPL) 'assessee' has sold its marketing division to M/s Aventis Pharma Ltd. (APL), (now known as Sanofi) the assessee has shown total sale consideration against the sale of marketing division of Rs. 567.07 crore. However, in the computation of income, the assessee has shown Capital Gain of Rs. 477.30 crore only, on sale of marketing division, after deducting Rs. 89.73 crore. The assessee claimed that total sale consideration payable to the assessee amounts is Rs. 567.07 crore, out of which Rs. 89.49 crore is placed by the purchaser in a Escrow Account opened with Hongkong and Shanghai Banking Corporation Ltd. (HSBC), which will accrued to the assessee company in five annual equal instalment annually, subject to fulfilment of certain obligation being on the achievements of the performance targets every year. Further, out of Rs. 89.45 crore, the assessee has offered Rs. 17.89 crore being first instalment and remaining Rs. 71.56 crore was kept/shown/deposit in Escrow Account with HSBC Bank.

Held by the Authorities:

We have perused the various clauses which are referred and relied by respective parties of business purchase agreement dated 24-8-2011, supply agreement which is schedule to the business purchase agreement and Escrow Account agreement dated 28-10-2011. Perusal of aforesaid clauses of business purchase agreement, the clauses of supply agreement (annexure to BPA) and Escrow Agreement demonstrate that maintaining of Escrow Account was inconsequence of business purchase agreement. The conditions of supply agreement cannot be delinked from business purchase agreement dated 24-8-2011. The Escrow Agreement was executed on 28-10-2011. The Escrow account agreement was executed in furtherance of BPA. Further, the amount in Escrow Account would accrue to the assessee only on fulfilment of certain condition. Further, a joint reading of clause 7.3 and clause 7.4 shows that if the condition mentioned in clause 7.3 is not fulfilled, then business purchase agreement will be terminated. Thus, the deposit in Escrow Account is intrinsic and integral to the transfer of marketing division under business purchase agreement without it, the sale shall be incomplete. Further, clause 3.1 and clause 3.9 is prescribed that assessee and the purchaser shall enter into agreement for the supply by the seller of pharmaceutical product that is manufactured by assessee. A draft of supply agreement was also prepared as a part of business purchase agreement as a schedule to the agreement.

As we have noted above the ld. AR of the assessee vehemently submitted that Capital Gain is chargeable to tax only when income "accrues" to assessee. The contingent consideration accrued only upon compliance of condition in subsequent Assessment Years, the same was chargeable only in the years in which the said income accrued. The ld. AR also furnished the copy of income tax return and the income offered to tax a capital gain of Rs. 17.89 crore each in A.Ys. 2013-14, 2014-15, 2015-16 & 2016-17.

Judgments Relied Upon by the Authorities:

1. Mrs. Hemal Raju Seta [2016] 239 Taxman 176/68 taxmann.com 319 (Bom.)
2. CIT v. Balbir Singh Maini [2017] 398 ITR 531/86 taxmann.com 94/251 Taxman 202 (SC)
3. E.D. Sassoon & Co. Ltd. v. CIT AIR 1954 SC 470
4. CIT v. Excel Industries [2013] 38 taxmann.com/219 Taxman 379/358 ITR 395 (SC)
5. CIT v. Shoorji Vallabhdas and Co. [CIT v. Shoorji Vallabhdas and Co., [1962] 46 ITR 144 (SC)
6. Morvi Industries Ltd. v. CIT (Central) [1971] 82 ITR 835 (SC)
7. Pr. CIT v. Rohan Projects [2020] 113 taxmann.com 329/269 Taxman 212 (Bom.)
8. CIT v. Nagri Mills Co. Ltd. [1958] 33 ITR 681 (Bom.)

Important updates

a. The Central Board of Direct Taxes (CBDT) has amended Form 3CD, Form 3CEB & ITR 6 applicable for Assessment Year 2020-21. The changes are related to reporting of information about concessional tax regime opted by the person under sections 115BAA, 115BAB, 115BAC & 115BAD. The board has also notified Form 10-IF to exercise option under section 115BAD.

b. The CBDT has issued a press release to further clarify the doubts regarding applicability of provisions of section 206C(1H). It has clarified that TCS is required to be collected when yearly receipts exceeds Rs. 50 lakhs that too in respect of the amount received after 01-10-2020. Such amount shall be considered while determining the threshold of 50 lakhs only.

c. Considering the difficulties being faced by taxpayers due to the Covid-19 pandemic, the CBDT has further extended the due date for filing of revised and belated Income tax return for Assessment year 2019-20 from 30-09-2020 to 30-11-2020.