

Important judgements and Updates

Update No 14/2021

Kunal Structure (India) (P.) Ltd Supreme Court of India In favour of Assessee

SLP (CIVIL) DIARY NOS. 15576/2020 (SLP filed against decision of Gujarat High Court is dismissed)

Issues discussed and addressed:

Issue No 1 Section 143(2) Time Limit for issue of notice u/s 143(2) is to be considered from the date of filing original return. Date of removal of defect u/s 139(9) is irrelevant provided only defect is sought to be removed in corrected return and no changes have been made with respect to other head of income or tax liability.

Facts of the case with respect to Issue No 1:

The petitioner is a company registered under the Companies Act, 2013. For assessment year 2016-17, the petitioner had filed its return of income under section 139(1) of the Act on 10.09.2016. Thereafter, the petitioner received an intimation of defective return under section 139(9) of the Act on 17.06.2017. The petitioner received a reminder on 05.07.2017 granting him an extension of fifteen days to comply with the notice issued under section 139(9) of the Act and accordingly, the time limit for removal of the defects under section 139(9) of the Act stood extended till 20.07.2017. The petitioner removed the defects on 07.07.2017 within the time granted. Subsequently, the return was processed under sub-section (1) of section 143 of the Act on 12.08.2017, wherein the date of original return is shown to be 10.09.2016. Thereafter, the impugned notice under section 143(2) of the Act came to be issued on 09.08.2018, informing the petitioner that the return of income filed by it for assessment year 2016-17 on 07.07.2017 has been selected for scrutiny calling upon the petitioner to produce any evidence on which it may rely in support of its return of income, which has given rise to the present petition.

Held by the Authorities with respect to Principle of Cross Examination:

The original return which was defective when it was filed is rectified upon removal of the defects under sub-section (9) of section 139 of the Act and becomes a valid return. Thus, the action of removal of the defects would relate back to the filing of the original return of income and accordingly, it is the date of filing of the original return which has been considered for the purpose of computing the period of limitation under sub-section (2) of section 143 of the Act and not the date on which the defects actually came to be removed.

Once a revised return is filed, the original return must be taken to have been withdrawn and substituted by a fresh return for the purpose of assessment. Thus, when a revised return is filed under section 139(5) of the Act, the original return gets substituted and it is the revised return which is to be considered as a return for the purpose of assessment. However, the court has clearly drawn a distinction between a revised return and

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a correction of return. Adverting to the facts of the present case, this case relates to correction of the return of income originally filed and not a revised return. Had it been a case of filing of a revised return of income, the original return of income would have stood substituted by the revised return, but when it comes to correction of a return of income, it is only the original return of income which gets corrected.

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

- a. Prime Securities Ltd. [2009] 182 Taxman 221/317 ITR 27 Bombay HC
- b. Atul Projects India (P.) Ltd. [Writ Petition No. 3501 of 2018, dated 24-1-2019] Bombay HC
- c. Bharat Nidhi Ltd. v. CIT [2007] 165 Taxman 314/306 ITR 230 Delhi HC

Shaw Wallace Distilleries Ltd ITA No. 502 of 2013 Karnataka High Court In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 36 TDS paid on behalf of Sales promoter which was written off in books of account being irrevocable is allowed as deduction.

Facts of the case with respect to Issue No 1:

The case of the revenue was since TDS payment made by the assessee on behalf of the sales promoters was not claimed in the original return and the assessing authority has not made any addition in this regard therefore, the tribunal ought to have remitted the matter to the assessing authority to consider the issue as the same was not adjudicated earlier. It is also urged that assessee has failed to show that such amounts charged to customers were paid by them at the time of raising the bids and such tax if at all to be recovered from the customers, does not have the character of income in terms of section 36(1)(vii) of the Act and the expenditure relating to prior period could not be claimed in the guise of bad debts.

Held by the Authorities with respect to Issue No 1:

The assessee had made TDS payments on behalf of sales promoters with whom the assessee had direct business transaction and therefore, the loss had incurred during the course of the business. The assessee realized that despite its efforts, it is unable to retreat the TDS payments made on behalf of its sales promoters. The debt was written off as irrecoverable in the accounts of the assessee. Therefore, the Tribunal has rightly placed reliance on the decision of the Supreme Court in *T.R.F. Ltd.* [2010] 190 Taxman 391/323 ITR 397 (SC).

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Jaya Hind Industries Ltd. ITA No. 2149 (Pune) of 2017 Pune ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 37 Replacing machinery part is revenue exp. if there was no increase in production capacity after such replacement.

Facts of the case with respect to Issue No 1:

The appellant company was engaged in the business of manufacturing of Pressure and Gravity Die Casting, H.T. Coils, Magnetos, Automotive Cultches, Brakes, Vehicles Bodies etc. The Assessing Officer made an addition of Rs. 24,47,767/- treating the expenditure incurred on Repairs and Maintenance as capital expenditure. The expenditure claimed under the repairs and maintenance represented the cost of replacement of machinery vis. Gripper which is part of high pressure die casting machines.

Held by the Authorities with respect to Issue No 1:

In the present case admittedly the claim for deduction was not u/s 31 but u/s 37 of the Act. Therefore, the test to be applied what is replaced is only part and the necessity of replacement had arisen on account of the part become old and there is no increase in productivity or capacity after the replacement. Admittedly, it is not the case of the Revenue that on account of replacement of this part of machinery in productivity or capacity of production had gone up and this machine can independently work and deliver the different output. In the circumstances, we hold that the expenditure can be allowed as revenue deduction.

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

- a. Elgi Equipments Ltd. v. JCIT 120 taxmann.com 142 Madras High Court
- b. CIT v. Ramaraju Surgical Cotton Mills 294 ITR 328 Supreme Court
- c. CIT v. McDowell and Co. Ltd. 314 ITR 177, CIT v. McDowell and Co. Ltd. 314 ITR 180
- d. CIT v. Udaipur Distillery Co. Ltd. 314 ITR 188
- e. Shreyans Industries Ltd. v. CIT 314 ITR 302