

## Important judgements and Updates

Update No 15`/2022 (Previous Colander Year 100/ 2021)

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### **Rajkamal Healds And Reeds Pvt. Ltd R/SCA No. 1085 of 2022 Gujarat High Court In favour of Assessee**

#### **Issues discussed and addressed:**

Issue No 1      Section 115BAA      Assessee is at liberty to file an application u/s 119(2)(b) seeking permission for condonation of delay in filing of Form No. 10-IC electronically and holds that upon filing of such application, the CCIT should expedite it and may exercise discretion keeping in mind the object behind Section 119(2)(b) and also consider the hardships that Assessee will face if not permitted to file the Form No. 10-IC electronically.

#### **Facts of the case with respect to issue No 1:**

Assessee-Company filed its return of income for AY 2020-21 by resorting to concessional tax rate u/s 115BAA but failed to file Form No. 10-IC electronically, mandatory for availing the concession; Assessee's return was thus processed as regular return and a demand of Rs.1.05 Cr was raised.

#### **Held by the Authorities with respect to Issue No 1:**

The writ-applicants should at the earliest file an appropriate application in writing addressed to the Principal Chief Commissioner/ Chief Commissioner making a request to permit him to file the Form 10 IC electronically after condoning the delay in that regard so that the return of the writ-applicant can be re-processed or regular assessment can also be framed accordingly and the liability can be determined.

If any such application is filed then the Chief Commissioner shall look into it expeditiously and may exercise his discretion in accordance with law more particularly keeping in mind the object behind Section 119 (2)(b) of the Act. The Chief Commissioner/ Commissioner shall also consider the hardships that the writ-applicant may have to face in the event if he is not permitted to file the Form 10 IC electronically.

### **Tata Sons Limited Writ Petition No.2545 Of 2010 Bombay High Court In favour of Assessee**

#### **Issues discussed and addressed:**

Issue No 1      Section 147      if the reasons for re-opening the assessment is based on incorrect facts or conclusions, certainly the notice issued for re-opening cannot be sustained.

#### **Facts of the case with respect to issue No 1:**

Revenue, for AY 2005-06, issued notice u/s 148 to Assessee-Company alleging that income of Rs. 2,271 Cr from sale of TCS shares had escaped assessment which was to be taxed as business income and not long term capital gains.

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### Held by the Authorities with respect to Issue No 1:

The entire basis of forming an opinion that there has been an escapement of assessment is that, the sale of shares of TCS Division by Petitioner was nothing but 'business income' and therefore the profits arising out of the sale of shares held by Petitioner in the group companies would be treated as Petitioner's income from business, and not profits arising out of sale of investment. Therefore, according to revenue, it he had reason to believe that a sum of Rs.22,71,25,79,374/- has escaped assessment.

If the beak up given in the reasons is considered, the sale of shares of TCS Ltd. which according to revenue should be treated as 'business income' and not 'profits arising out of sale of sale of investment', is only Rs. 19,32,34,27,592/- (12,26,61,28,794 + 7,05,72,98,798) i.e. "Long terms capital gains:- Tata Consultancy Services Limited". If the reasons for re-opening the assessment is based on incorrect facts or conclusions, certainly the notice issued for re-opening cannot be sustained.

if only the approving authority under section 151 of the Act had considered the reasons properly, either he would have directed AO to re-work on the reasons or would not have granted the approval.

Further AO wants to re-open only on the basis of change of opinion which, as held time and again by various Courts, cannot be a ground for reopening. This is because in the assessment order dated 31st December, 2007 passed under section 143(3), the same point raised in the reasons for re-opening has been discussed and considered.

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

- a. Jainam Investments vs. Assistant Commissioner of Income Tax & Ors [2021] 323 CTR (Bom) 25.
- b. Commissioner of Income Tax V/s. Kelvinator of India Limited (2010) 320 ITR 561.SC

**Shri Raja Vikram** ITA No. 347/RPR/2014 Raipur ITAT In favour of Assessee

### Issues discussed and addressed:

Issue No 1      Additional Claim      Assessee in the course of proceedings before the appellate authorities is entitled to raise additional grounds not merely in terms of legal submissions, but also additional claims to wit claims not made in the return filed by it.

### Facts of the case with respect to issue No 1:

Assessee-Individual was subjected to reassessment proceedings for AY 2007-08 on failure to offer consideration from sale of urban land to tax. Revenue held that the land in question was not 'agricultural land' as contemplated under Section 2(14) and held the same exigible to tax, against which Assessee raised a

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claim for deduction under Section 54B on investments made in new agricultural land. Revenue observed that Assessee did not raise the claim for deduction under Section 54B in the original return, revised return or in the return filed in response to notice under Section 148, and denied the same, holding that the claim could not be raised on the basis of a simpliciter claim in the course of assessment proceedings.

### Held by the Authorities with respect to Issue No 1:

As per the settled position of law it is not permissible for an assessee to raise a fresh claim for deduction otherwise than by filing a revised return of income. However the limitation in entertaining a claim for deduction otherwise than by filing a revised return of income is limited to the power of the assessing authority and does not impinge on the powers of the Income-tax Appellate Tribunal.

Insofar the declining of the assessee's claim for deduction u/s 54B by the A.O is concerned, as the same was raised by the assessee on the basis of a simpliciter claim in the course of the assessment proceedings and not by filing of a revised return of income, therefore, no fault can be attributed to the A.O for refusing to entertain the said claim of deduction of the assessee. But then, the assessee remaining well within his rights had rightly raised the aforesaid claim for deduction u/s 54B before the CIT(Appeals), who remaining well within the realm of his jurisdiction had rightly entertained the assessee's claim for deduction u/s 54B of the Act, and finding the same in order had directed the A.O to allow the same.

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

It is not permissible for an assessee to raise a fresh claim for deduction otherwise than by filing a revised return of income

- a. Goetze (India) Ltd. v. CIT [2006] 284 ITR 323 (SC)

The limitation in entertaining a claim for deduction otherwise than by filing a revised return of income is limited to the power of the assessing authority only.

- b. CIT Vs. Pruthvi Brokers & Shareholders (P) Ltd. (2012) 349 ITR 336 (Bom)