

## Important judgements and Updates

Update No 24/2022 (Previous Calendar Year 100/2021)

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### Suraj Bhan Oil (P.) Ltd. ITA No.121 of 2021 Madhya Pradesh High Court Against Assessee

#### Issues discussed and addressed:

Issue No 1      Section 69B      Failure of the assessee to reconcile the difference in the quantity of the closing stock reported in bank statement and audit report has rightly resulted into the addition as income from undisclosed sources.

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

The assessee-company, during the period relevant to assessment year 2005-2006, was engaged in manufacturing and trading of edible oils and grains. It declared its total turnover of Rs. 30,64,07,764/- as against turnover of Rs. 16,56,31,644/-. The NP (Net Profit) for year under consideration was declared at Rs. 6,18,151/- as against NP of Rs. 13,92,831/- declared in the preceding year. The stock statement received from State Bank of India, Commercial Branch, Gwalior on 14/12/2007 was also examined. The Assessing Officer found difference in closing stock of raw material, stock-in-process and finished goods, as well as, in the quantity of stock.

The assessee-Company, despite opportunity afforded, could not either reconcile the difference or explain the reasons therefor. Consequently, the Assessing Officer found that the aforesaid difference amount, since was not shown in the books of account of the assessee-Company maintained for the year under consideration, therefore, the same was un-explained investment in stock from undisclosed sources. As a result, the same was added to the total income of the assessee-Company under section 69B of the Act.

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

The practice followed by Industrialists declaring larger than actual quantity of stock to the Bank for the purpose of getting higher loans or over-draft facility, in fact, is not recognized as conforming to the fiscal discipline by Courts, Authorities and Tribunals. Such a tendency tantamount to commercial immorality for obtaining unjustified gains in the form of higher credit facility or loans etc. by showing incorrect statement of stock position to the Bank. In any case, the burden lies upon the assessee to reconcile the difference of stock position presented to the bank with the stock position mentioned in the books of accounts/audit report.

Once the Assessing Officer finds that there was excess stock, in absence of explanation by the assessee, the conclusion is inescapable that the excess stock, if any, was from undisclosed sources.

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### Amit Intertrade (P.) Ltd ITA No 2259 / Ahd / 2016 Ahmedabad ITAT In favour of assessee

#### Issues discussed and addressed:

Issue No 1      Section 2(22)(e)      The provision of section 2(22)(e) of the Act can only be invoked in case of shareholder who is holding substantial interest. Entity/company who is not a shareholder holder in lender company but shareholder of such company holding substantial share in lender company can not be taxed u/s 2(22)(e).

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

The assessee company has during the year under consideration shown unsecured loan from M/s JP Iscon Ltd for Rs. 8,94,41,125/-. In the company of the assessee and M/s JP Iscon Ltd., there were common shareholders namely Shri Jateen Gupta and Amit Gupta holding more than 20 % shares in both the companies. However the AO treated the above unsecured loan as deemed dividend under the provision of section 2(22)(e) of the Act, by observing that both parties are closely held company and having common shareholders holding more than 20% share in each company i.e. the assessee company and JP Iscon Ltd.

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

The provision of section 2(22)(e) of the Act can only be invoked in case of shareholder who is holding substantial interest. The provision of section 2(22)(e) of the Act nowhere talks about taxing an entity/company who is not a shareholder holder in lender company but shareholder of such company holding substantial share in lender company. Admittedly the assessee company is not holding any shares or rights of M/s. JP Iscon Ltd. Thus considering the above discussion and judgment of Hon'ble jurisdictional court, the AO was not justified in invoking the provision of section 2(22)(e) of the Act in its case

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

- a. Mahavir Inductomelt (P.) Ltd. [Tax Appeal No. 891 of 2016, dated 12-1-2017 Gujarat High Court
- b. CIT v. Ankitech Pvt. Ltd. reported in 340 ITR 14 (Delhi)
- c. CIT v. Impact Containers Private Limited & ors rendered in I TA No. 114 of 2012 Bombay High Court

### Chheda Electricals and Electronics (P.) Ltd .ITA Nos. 400 & 668 (PUN.) of 2018 Pune ITAT

In favour of assessee

#### Issues discussed and addressed:

Issue No 1      MAT      For the purpose of calculation of tax liability under section 115JB of the Act, there is no scope for reducing book profit by the amount of deduction u/s.80IC.

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

The contention of the assessee is that in the computation of book profit u/s.115JB, it did not reduce the amount of deduction u/s.80IC at Rs.7.57 crore which ought to have been reduced in terms of sub-section (5) of section 115JB of the Act.

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

A careful circumspection of S 115JB(1) transpires that it opens with a non obstante clause and is also a deeming provision. It provides a mechanism for determination of income tax payable by a company at 18.5% of its book profit, if, the amount of income tax payable under the normal provisions is less than that.

For the purposes of this section, "book profit" means the profit as shown in the statement of profit and loss ...' as increased by items given in clauses (a) to (k) and as reduced by, items given in clauses (i) to (viii). The list of reductions does not include the amount of deduction u/s.80IC etc., though there is reference for reduction of the income u/s.10, 11 and 12 etc. under clause (ii).

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

- a. Trading & Agencies Ltd. V. DCIT – 119 taxman.com 129 (Karnataka)
- b. CIT Vs. Metal & Chromium Plater (P) Ltd. (2016) 76 taxman.com 229 (Madras).
- c. Neha Home Builders (2018) 54 CCH 0577 MumTrib