

Important judgements and Updates

Update No 48/ 2021

Sasken Network Engineering Limited ITA No.547/Bang/2013 Bangalore ITAT Against Assessee

Issues discussed and addressed:

Issue No 1 Section 199 TDS Credit Credit for tax deducted at source and paid to the Central Government shall be given for the Assessment Year for which such income is assessable. In case the income is assessable over a number of years, credit for TDS shall be allowed across those years in the same proportionate in which the income is assessable to tax.

Facts of the case with respect to issue No 1:

Assessee's case was selected for scrutiny and during the course of assessment proceedings, Assessee filed certificates depicting TDS of Rs. 1.13 Cr., which were received after the due date of filing of return; Tax of Rs.1.13 Cr. was deducted by Nokia on placing of purchase orders with the Assessee for which income had not accrued to the Assessee and, thus was not offered to tax in the return of income; AO accepted the Assessee's plea with regards to income, however did not allow its claim of TDS credit and also rejected the rectification application on the grounds that the corresponding income was not offered to tax whereas CIT(A) allowed TDS credit on the grounds of unjust enrichment of the Revenue

Held by the Authorities with respect to Issue No 1:

ITAT observes that Rs. 20.32 Cr. being income corresponding to TDS was not accounted for by the Assessee due to differences in accounting policies of the Assessee and the deductor; ITAT notes that after amendment of section 199 by the Finance Act, 2008, "credit is to be given as per the provisions made in the Rules. In terms of section 199, Rule 37BA provides that credit for tax deducted at source and paid to the Central Government shall be given for the Assessment Year for which such income is assessable. In case the income is assessable over a number of years, credit for tax deducted at source shall be allowed across those years in the same proportionate in which the income is assessable to tax,"

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

Pardeep Kumar Dhir ITA NO. 798/CHD/2006 Chandigarh ITAT & Circular no. 2/2011, dated 27-4-2011

Shri Raj Veer Singh ITA No.3681/Del./2017 Delhi ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 234 E The order passed by CIT(A) confirming late fee levied u/s 234E to be legally unsustainable for delay prior to 2015 amendment in Section .200A(1)(c). ITAT also holds that in case of conflicting views, the view taken in favour of Assessee should be followed.

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Facts of the case with respect to issue No 1:

Assessee-Individual, a civil contractor, filed his TDS statements for the quarter ending Mar 31, 2015 on October 30, 2015; AO raised a demand u/s 234E for delay in filing the TDS statements; On appeal, CIT(A) confirmed the demand.

Held by the Authorities with respect to Issue No 1:

No fee can be levied u/s 234E in terms of section 200A where the date of filing of TDS statement and date of intimation are much prior to 01.06.2015.

Further the ITAT has also noted that Honourable Karnataka High Court has decided the issue in favour of assessee whereas Honourable Gujarat high Court has decided the issue against assessee. The ITAT after observing the same following the decision of Honourable Supreme Court in the case of Vegetable products Limited 88 ITR 192 (SC) has held that that when there are conflicting decisions, the view taken in favour of the assessee should be followed

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

- a. Supreme Brahmaputra (JV) vs. TDS CPC, Ghaziabad in ITA No.6706 to 6708/Del/2019 order dated 31.08.2020
- b. Prakash Industries Ltd. vs. DCIT, ITA Nos.5865 to 5869/Del/2016, order dated 29.07.2019
- c. M/s Ajvin Infotech Pvt. Ltd. vs. DCIT, ITA No.2305 & 2306/Del/2017, order dated 04.03.2020
- d. M/s D.D. Motors, Haryana vs. DCIT, ITA NO.956/Del/2017, order dated 18.10.2019
- e. District Health & Welfare Society vs. ITO, ITA No.7473/Del/2018, order dated 26.04.2019
- f. Fatehraj Singhvi & Ors. vs. UOI & Ors. 2016 (9) TMI 964 (Karnataka High Court)

Kind Attention:

The Honourable Gujarat high Court has decided this issue against the assessee in the case of Rajesh Kourani vs. UOI (2017) 83 taxmann.com 137 (Gujarat).

Amit Vishnu Pashankar [ITA No.427/PUN/2019 Pune ITAT In favour of Assessee](#)

Issues discussed and addressed:

Issue No 1 Joint Development Agreement AO is not empowered to substitute the agreed value of consideration with the Fair Value except as envisaged u/s 50C.

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Facts of the case with respect to issue No 1:

Assessee-Individual, a trader, for AY 2015-16 filed his return of income declaring a total income of Rs. 1.83 Cr. whereas the AO assessed the income at Rs. 8.01 Cr by making addition on account of capital gains arising to the Assessee along with his family members by entering into Joint Development Agreement (JDA) with M/s Icon Realty w.r.t. a property. Under the terms of the JDA, the total sale consideration was fixed at Rs 8.76 Cr., out of which Rs. 3.75 Cr. was paid by way of cheques and the balance was to be settled by handing over a saleable constructed area of 60,000 sq. ft. (30,000 residential and 30,000 commercial) to all the three family members. Assessee's share was Rs. 1.25 Cr in the amount received by cheque, along with entitlement to constructed area of 20,000 sq. ft. The value of share of the constructed area was ascertained at Rs.1.70 Cr., and along with the amount received by cheque, the Assessee adopted the full value of consideration at Rs. 2.95 Cr. AO held that ready reckoner value of the saleable area should have been adopted as the consideration, to which the Assessee objected stating that saleable area includes value of land appurtenant to the land, and in the instant case, ownership of land appurtenant to 60,000 sq. ft. was always with the Assessee. However, AO disregarding the Assessee's argument adopted the ready reckoner value of the residential and commercial area at Rs.9.11 Cr. as the full value of consideration and calculated the capital gains at Rs.8.01 Cr. CIT(A) affirmed the assessment order.

Held by the Authorities with respect to Issue No 1:

The Assessing Officer is not empowered to substitute the agreed consideration by Fair Market Value except in situations envisaged u/s 50C of the Act. Whenever the Parliament intended to substitute the actual sale consideration by the Fair Market Value, it has done so, by enacting specific provisions for example the provisions of Section.45(4) etc.

Agreed consideration between the parties was Rs.8.76 Cr. whereas the stamp duty value was Rs. 5.90 Cr. thus, section 50C has no application here and there is no other enabling provision for substitution of actual consideration by the fair market value.

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

- a. Arjun Malhotra (2018) 403 ITR 354 Delhi high Court
- b. Ved Prakash Rakhra 370 ITR 762 Karnataka High Court
- c. Khivraj Motors Private Limited 380 ITR 215 Karnataka High Court

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- a. The Central Board of Direct Taxes (CBDT) has notified M/s Patanjali Research Foundation Trust, Haridwar under the category “Research Association” for Scientific Research for the purposes of section 35(1)(ii) of the Income-tax Act, 1961.
- b. The Govt. has announced issue price of Sovereign Gold Bond Scheme 2021-22- Series IV. The issue price of the Bond during the subscription period shall be Rs. 4,807/- per gram. The Government has also decided to allow discount of Rs 50 per gram from the issue price to those investors who apply online and the payment is made through digital mode.
- c. The Central Board of Direct Taxes (CBDT) has notified a new Rule 8AC which prescribes the manner for computation of short-term capital gains and written down value under section 50 if depreciation has been obtained by assessee.
- d. The Central Board of Direct Taxes (CBDT) has notified a new Rule 8AB to the Income-tax Rules, 1962 to prescribe manner to compute attribution of income taxable under section 45(4) to the capital assets remaining with the specified entity for the purpose of section 48(iii). Specified entities are also required to furnish the details in Form no. 5C.
- e. In view of difficulties faced by taxpayers in electronic filing of Income Tax Forms 15CA/15CB on the new e-filing portal www.incometax.gov.in, the CBDT has decided that taxpayers can submit the aforesaid Forms in manual format to the authorized dealers till June 30, 2021. Now, the board has given further relaxation and allowed manual filing of Forms till July 15, 2021.