

Important judgements and Updates

Update No 75/ 2021

Priya Blue Industries (P.) Ltd. R/SCA No. 19564 OF 2019 Gujarat High Court Against Assessee

Issues discussed and addressed:

Issue No 1 Section 147 Looking to the scope of section 147 as also sections 148 to 152, even if scrutiny assessment has been undertaken, if substantial new material is found in the form of information on the basis of which the assessing authority can form a belief that the income of the petitioner has escaped assessment, it is always open for the assessing authority to reopen the assessment.

Facts of the case with respect to issue No 1:

The case of the petitioner was selected for the scrutiny assessment and at the relevant time, the petitioner had disclosed fully and truly, all material facts, necessary for the assessment. However, the respondent authority issued notice under section 148 seeking to reopen the case of the petitioner for the year under consideration on the count that the petitioner was the beneficiary of the accommodation entries to the tune of Rs. 1.06 crores.

Held by the Authorities with respect to Issue No 1:

In the instant case, the Assessing Officer, from the information received from the Investigation Wing has got the new information that the petitioner is the beneficiary of accommodation entries to the tune of Rs. 1,06,16,632/- and it is further found that the sales transactions are not genuine.

The reasons for the formation of the belief by the Assessing Officer in the instant case, appear to have a rational connection with or relevant bearing on the formation of belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. Accordingly, no interference is called for at the hands of this Court in this petition under article 226 of the Constitution of India.

Royal Western India Turf Club I.T.A. No.640/Mum/2021 Mumbai ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 263 PCIT's order u/s 263 stems from regular assessment order and not the reassessment order. Thus, limitation period would run from the regular assessment order.

Facts of the case with respect to issue No 1:

Assessee, engaged in the business of conducting horse races, turf club house and providing hospitality service to members and their guests was originally assessed u/s 143(3) at Rs.27.23 Cr. and was subjected to reassessment over information related to certain issues. Subsequently, Pr.CIT held the assessment order u/s

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143(3) r.w.s. 147 to be erroneous and prejudicial to the interest of Revenue since it did not examine the few issues and thus set it aside with directions for de novo assessment.

Held by the Authorities with respect to Issue No 1:

if at all, any order which can be considered to be erroneous and prejudicial to the interest of revenue for non consideration of the issues raised by learned PCIT, certainly, it has to be the original assessment order passed under section 143(3) of the Act and not the re-assessment order passed under section 143(3) r.w.s. 147 of the Act. Therefore, learned PCIT could have exercised her powers under section 263 of the Act only in respect of the original assessment order passed under section 143(3) of the Act.

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

- a. CIT Vs. Alagendran Finance Ltd., [2007] 293 ITR 1 (SC)
- b. Ashoka Buildcon Ltd. Vs. ACIT, [2010] 325 ITR 574 (Bom.)

Garima Polymers (P.) Ltd ITA No. 1302 (DELHI) OF 2020 Delhi ITAT

Issues discussed and addressed:

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| Issue No 1 | Section 68 | Addition with respect to Share Application Money is justified if assessee fails to prove creditworthiness of applicants. Against Assessee |
| Issue No 2 | Section 68 | A.O. should assist the assessee by exercising power to enable the assessee to produce the evidences. Otherwise, the entire assessment order would vitiate. Since the A.O. did not take any steps in the matter, therefore, no adverse inference could be drawn against the assessee in respect of the creditor. In favour of Assessee |

Facts of the case with respect to issue No 1:

A search and seizure action under section 132 of the Income-tax Act, 1961 was carried-out in the case of Shri Group on 21-5-2009. As the assessee failed to comply with the statutory notices, an ex-parte assessment order was passed under section 144 of the Income-tax Act, 1961, on the basis of material available on record and the A.O. made the following additions (1) Unexplained Share Application Money - Rs. 9,50,000/- (2) Unexplained Loan - Rs. 1,50,00,000/- (3) Administrative and Financial Expenses unverifiable - Rs. 29,063/-.

Held by the Authorities with respect to Issue No 1:

The assessee has received Rs. 3,50,000/- from Smt. Renu Rekhan and Rs. 6 lacs from Smt. Nisha Rekhan on account of share application money. The assessee has filed their confirmation and copy of the ITR, but, in the

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confirmation it is not mentioned whether share application money have been given in cash or through Bank account. No evidence of their creditworthiness have been filed. Thus, assessee failed to prove the genuineness of the share application money received from these two ladies. In the absence of adequate evidence, the authorities below were justified in making the addition.

Held by the Authorities with respect to Issue No 2:

The assessee has received unsecured loans from 05 parties. The assessee in respect of the 05 creditors has filed their confirmations which clearly show that assessee has received loans from them through banking channel. The assessee has also filed copy of the ITR and bank statement of first 04 creditors except in cases of Star Technosoft Pvt. Ltd. It would show that these 04 creditors are assessed to tax and their bank accounts clearly show they have sufficient bank balance to give loan to the assessee. These creditors have also confirmed giving loan to the assessee. In the case of Star Technosoft Pvt. Ltd., assessee had explained that the assessee is making efforts to get the bank statements and in case of urgency the same may be summoned from the concerned Bank of the creditors. The assessee also requested that this creditor may be summoned under section 131 of the Income-tax Act. However, the A.O. did not make any effort to summon this creditor for producing the bank statement and no effort is also made to call for the information from the concerned Bank of the creditor, despite the request made by the assessee.

Since the A.O. did not take any steps in the matter, therefore, no adverse inference could be drawn against the assessee in respect of the creditor Star Technosoft Pvt. Ltd. It may also be noted here that A.O. has found that income of the creditor is low as compared to the corresponding transaction, but, their bank statements clearly show they have sufficient means to give loan to the assessee and in case of two of the creditors even their income was higher as compared to the loan given to the assessee. Merely because low income is shown in the return of income by the creditor is no ground to make any addition against the assessee.

Judgments Relied upon by the Authorities with respect to Issue No 2:

A.O. should assist the assessee by exercising power to enable the assessee to produce the evidences. Otherwise, the entire assessment order would vitiate

- a. Munnalal Muralidhar v. CIT [1971] 79 ITR 540 Allahabad high Court
- b. CIT v. Vrindavan Farms (P.) Ltd. [IT Appeal No.71 of 2015, dated 12-8-2015] Delhi high Court

No adverse inference should be drawn if shareholders failed to respond to the notice by A.O

- c. CIT v. Divine Leasing & Finance Ltd. [2007] 158 Taxman 440/299 ITR 268

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Assessee need not to prove the source of the source

- d. Dy. CIT v. Rohini Builders [2003] 127 Taxman 523/[2002] 256 ITR 360 (Guj.)
- e. Zafa Ahmed & Co. v. CIT [2013] 30 taxmann.com 267/214 Taxman 440 (All.)

Important Updates

- a. The Govt has notified PM CARES for Children Scheme, 2021 effective from 06-10-2021. The upfront lumpsum consideration in the account shall become Rs. 10 lakh when the account holder attains the age of 18 years.
- b. In a matter before the Supreme Court, Additional Solicitor General submitted that department is having a second look on Faceless Appeal Scheme, 2020 and sought a period of three months as it may require change of law