

## Important judgements and Updates

Update No 15/2021

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**Daawat Foods Ltd** ITA No. 4157/Del/2013 & ITA No. 4158/Del/2013 Delhi ITAT In favour of Assessee

### Issues discussed and addressed:

**Issue No 1** Section 40A(3) Disallowance of depreciation on account of purchase of fixed asset in case is not justified.

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

AO disallowed the depreciation on the capital expenditure of Rs. 5,35,468 which had been stated to have been incurred by the assessee in cash. Thus, one of the points in this appeal was on section 40A(3) wherein the AO disallowed depreciation on capital assets purchased in cash applying section 40A(3) which was upheld by the first appellate authority. On higher appeal, the assessee canvassed that the purchase of fixed assets in cash was not an allowable expenditure nor was it claimed as an expenditure, besides the fact that depreciation is not an expenditure but is a mandatory allowance under the Act.

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

capital expenditure of Rs. 5,35,468 was incurred in cash for acquiring various fixed assets and AO disallowed the depreciation on the same. He submitted that the expenditure towards the acquisition of capital assets has not been debited to the Profit and Loss account and thereby it has not been claimed as an expenditure. He submitted that the provisions of section 40A(3) can be invoked only in respect of expenditure which are otherwise allowable as deduction under section 28 to 37 of the Act. He further submitted that depreciation cannot be considered to be an expenditure but it is an allowance, therefore, section 40A(3) cannot be invoked to disallow depreciation arising out of fixed assets purchased in cash.

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

Saral Motors & General Finance Ltd. v. ACIT (2009) 121 ITD 50 (Del)

### Kind Attention :

As per the definition, cost of asset means: actual cost of asset as reduced by portion of the cost as met directly or indirectly by any other person or authority. Finance Act, 2017 with effect from 1<sup>st</sup> April, 2018 i.e A Y 2018-19 inserted second proviso to sub-section (1) of Section 43 which excludes expenditure incurred in acquisition of any asset or part thereof from actual cost of asset, if the payment in respect of such expenditure is made to a person in a day, exceeding Rs. 10,000 otherwise than by specified modes

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**Maria Fernandes Cheryl** ITA No. 4850/Mum/2019 Mumbai ITAT In favour of Assessee

### Issues discussed and addressed:

**Issue No 1** Section 50C Amendment increasing safe harbour limit to 10 % is retrospective being curative.

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

Assessee, a non-resident, sold her property and it was established that there was a 6.55% variation in the sale consideration to the stamp duty value which was brought to tax by the AO and upheld by the Commissioner (Appeals). On higher appeal, it was the case of the assessee that the variation being only marginal to the tune of 6.55% the safe harbour limit of 5% and 10% subsequently introduced by the third proviso in the subsequent years be applied retrospectively in their case from a beneficial reading.

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

Certain important legislative amendments were made by the Finance Act, 2018 and Finance Act, 2020. By Finance Act, 2018, the third proviso to section 50C(1) was inserted. Thus, a variation of 5% with effect from 1-4-2019 (10% with effect from 1-4-2021 as per Act No. 12 of 2020) is permissible in the sale consideration vis-a-vis valuation adopted by stamp valuation authorities. The mechanism under section 50C proceeds on the assumption that when the sale consideration is less than the stamp duty valuation, the sale consideration is to be treated as understated. This assumption is, however, laid to rest when the variations between the stated consideration and the stamp duty valuation figure are treated as explained. The insertion of the third proviso to section 50C(1) provides for this tolerance band with respect to a certain degree of variations between the stamp duty valuation and the stated consideration of an immovable property. In other words, as long as the variations are within the permissible limits, the anti-avoidance provisions of section 50C do not come into play. Amendment in the scheme of section 50C(1), was made by inserting the third proviso thereto and by enhancing the tolerance and for variations between the stated sale consideration vis-a-vis stamp duty valuation to 10%, are curative in nature, and, therefore, these provisions, even though stated to be prospective, must be held to relate back to the date when the related statutory provision of section 50C itself was introduced, i.e., 1-4-2003. The third proviso to section 50C is to be read retrospectively thus the safe harbour has to be applied from the time the section itself was introduced with effect from 1-4-2003. Since the variation to the stamp duty value was only 6.55%, there can be no additions sustained on the assessee.

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### A.P. Refinery (P) Ltd ITA No. 1279/Chd/2019 Chandigarh ITAT In favour of Assessee

#### Issues discussed and addressed:

**Issue No 1**      Section 68      Addition u/s 68 for cash found short during survey is not justified.

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

AO made addition on account of cash found short during search by invoking provisions of section 68 and also holding that same was to be taxed under section 115BBE. Assessee's case was that cash short, at most represented expenses/outgoings out of cash available with assessee not accounted for in books of assessee.

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

Cash short, at most represented expenses/outgoings out of cash available with assessee not accounted for in books of assessee. Such unaccounted expenses were sourced from cash available with assessee. How, therefore, could same be treated or deemed to be income of assessee under section 69/69B/69C when said sections deem investments/money, the source of which assessee offers no explanation about, as income of assessee. Accordingly, there was no case for making any addition on account of cash found short with assessee.