

Important judgements and Updates

Update No 5/2021

Continuum Wind Energy (India) (P) Ltd. TCA No. 171 of 2019 Madras High Court Against Assessee

Issues discussed and addressed:

Issue No 1 Section 43A - Premium for hedging foreign exchange fluctuations as regards loan availed of for purchase of fixed asset has rightly been treated as Capital Expense by AO.

Facts of the case with respect to Issue No 1:

Assessee availed of loan for purchase of capital assets in India. The loan was availed of in Indian currency and pursuant to request made by assessee, by entering into a contract dt. 4-8-2011 with State Bank of India, the loan was converted into foreign currency loan with a view to save interest. This resulted in premium payable by assessee on forward contract. Revenue treated premium for hedging foreign exchange fluctuations as capital expenditure under section 43A.

Held by the Authorities with respect to Issue No 1:

It was the purpose for which loan was raised that was of prime significance. As purpose of the loan was to finance fixed asset, Exchange difference was required to be capitalized, as rightly done by AO.

Dr. Radhey Shyam Garg Jaipur ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 69 - No addition can be made on account error of a data entry operator

Facts of the case with respect to Issue No 1:

Assessee-individual was running a hospital. AO alleged that assessee deposited substantial cash amount in bank account on a particular date, whereas on same day, there was a negative cash balance in cash-book. AO therefore, made an addition under section 69 read with section 115BBE.

Held by the Authorities with respect to Issue No 1:

AO made addition on basis of copy of cash balance in the cash-book on a particular date. It was manifest from the assessment order that AO did not issue any show cause notice to the assessee or even asked the assessee to explain the source of cash deposit in the bank account. Thus, entries made in cash-book for relevant period were considered by CIT(A) and it was found that it was only a genuine mistake on the part of the data entry operator, who made erroneous entry with a prior date. Thus, there was no error in order of CIT(A) in deleting the addition made by AO.

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Jewels Emporium ITA Nos. 303, 234/JP/2019 Jaipur ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1 Addition of excess cash found during search based on statements recorded under section 132(4) –Statements recorded under section 132(4) cannot be made the sole basis for making additions unless it is supported by any documentary evidence.

Facts of the case with respect to Issue No 1:

Assessee was a partnership firm, engaged in manufacturing and trading (including export) of designer jewellery made of gold and silver studded with precious and semi-precious stones. Pursuant to a search operation under section 132, unexplained cash was found and based on statement recorded on oath under sections 132(4) and 131, addition was made.

Held by the Authorities with respect to Issue No 1:

As on date of search, books of account of assessee were incomplete and printouts of cash-book as taken by the search team did not reflect true and correct balance available which was made part of the seized papers. Cash balance as appearing in such incomplete books of account and taken as recorded cash balance as per books as on the date of search was wrong being not updated. Statements recorded under section 132(4) cannot be made the sole basis for making additions unless it is supported by any documentary evidence. CBDT has clarified by clarification dated 10-3-2003 (No. 286/2/2003-Income Tax) that while recording statement during the course of search and seizure and survey operations no attempt should be made to obtain confession as to the undisclosed income. Additions based on the alleged surrender obtained during the course of search are in contravention to the circular and instruction of the CBDT and therefore, the same deserved to be deleted. Sale was duly recorded in the books of accounts and after inclusion of the same in total sales, cash balance, profits and stocks were derived which were accepted by revenue. Further, addition by alleging the same as excess cash tantamount to taxation of an income twice-one in shape of sales and profits embedded therein and again by making addition by alleging the same as unexplained excess cash.

Judgments Relied Upon by the Authorities with respect to issue No 1:

V.M. Thakkar v. ACIT ITAT Ahmedabad Bench 07 Taxman 85

Laxmi Narayan Jewellery ITA No. 394/Ctk/2018 ITAT Cuttack In favour of Assessee

Issues discussed and addressed:

Issue No 1 Income declared in survey – year of taxability - Once statements had been accepted by survey team, tax should have been calculated for the relevant years accepted by assessee

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Facts of the case with respect to Issue No 1:

During survey conducted at business premises of assessee-firm some discrepancies were noticed which were offered for taxation by the partner for assessment year 2012-2013 which had been accepted by AO on conditional basis, i.e., for payment of self-assessment tax of Rs. 40,00,000 but assessee distracted from his commitment, therefore, AO treated it as undisclosed income for the assessment year 2013-2014 because the survey was conducted on 26-4-2012. As per assessee, AO should have made additions in the assessment year 2012-13 because at the time of survey assessee had declared income for assessment year 2012-2013.

Held by the Authorities with respect to Issue No 1:

Declaration was made by assessee only for assessment year 2012-2013 in which partner had undertaken payment of self-assessment tax of Rs. 40 lakhs in four instalments. Except the said declaration, there were nowhere in the statements recorded during the course of search, any other declaration by the partners. Once statements had been accepted by survey team, tax should have been calculated by them for the relevant years accepted by assessee. In view of above, declaration was to be added in A Y 12-13.

GSE Commerce (P) Ltd. Bangalore ITAT In favour of Assessee

ITA No. 335/Bang/2020, S.P. No. 91/Bang/2020 (Arising out of ITA No. 335/Bang/2020)

Issues discussed and addressed:

Issue No 1 Section 56(2)(viib) – AO could scrutinize the valuation report and he could determine fresh valuation either by himself or by calling a determination from an independent valuer to confront assessee but the basis has to be DCF method and he could not change the method of valuation opted for by assessee.

Facts of the case with respect to Issue No 1:

Assessee-company issued equity shares having face value of Rs. 10 each at premium of Rs. 5,682 per share to resident investors. In support of premium amount collected, assessee furnished valuation report issued by a Chartered Accountant under discounted cash flow method (DCF method). AO rejected valuation report and determined valuation of shares under net asset value book value method at Rs. 1,081 per share. Accordingly, AO determined excess share premium collected by assessee and assessed the same as income under section 56(2)(viib).

Held by the Authorities with respect to Issue No 1:

DCF method is one of the recognized methods under rule 11UA. Accordingly, AO was not justified in rejecting DCF method without examining valuation report furnished by assessee. AO could scrutinize the

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valuation report and he could determine fresh valuation either by himself or by calling a determination from an independent valuer to confront assessee but the basis has to be DCF method and he could not change the method of valuation opted for by assessee. Issue was restored to AO with direction for examining valuation report furnished by assessee under DCF method.

Judgments Relied Upon by the Authorities with respect to issue No 1:

- a. Vodafone M Pesa Ltd. v. PCIT (2018) 164 DTR 257 (Bom)
- b. Inovit Payment Sales (P) Ltd. v. ITO [ITA No. 1278/Bang/2018, dated 9-1-2019]
- c. Futura Business Solutions (P) Ltd. (ITA No. 3404 (Bang) 2018)