Kandoi Transport Ltd IT Appeal No. 130 (CTK.) Of 2014 Bombay high Court Against Assessee

Issues discussed and addressed:

Additional Evidence Rule 46A

Facts of the Case:

The main controversy agitated by the appellant/revenue revolves around non-compliance of Rule 46A by the ld CIT(A) and this ground of the revenue is a legal ground, which can be agitated on the basis of material already available on record without any extraneous documents or exercise beyond the record. Compliance of rule 46A of I.T. Rules is a mandatory by the ld CIT(A) while admitting any new documents which were not submitted during the assessment proceedings before the AO. Further the additional ground seeks to raise purely a question of law viz., being challenging the order of the ld CIT(A) on account of non-compliance of rule 46A of I.T. Rules.

Held by the Authorities:

On careful consideration of rival submissions, undisputedly, on the request of ld counsel for the assessee, assessment records were called for and inspected by ld counsel before the Bench and he could not show us that the enclosures/documents listed at Sl. Nos. 1 to 8 at page 10 of the impugned order were submitted before the AO during assessment proceedings, which clearly presume that these documents/enclosures were not in the assessment records and these were furnished by the assessee during first appellate proceedings.

A bare perusal of the rule 46A of the I.T.Rules, 1962 clearly shows that the assessee is not entitled to produce fresh oral or documentary evidence, as a matter of right, in appeal. However, under certain circumstances as mentioned in clauses (a)(b), (c) and (d) of sub-rule 1 of rule 46A, additional evidence can be filed. Sub-rule (2) of rule 46A provides that no evidence shall be admitted under sub-rule (1) unless the authority admitting it records in writing the reasons for its admission. Sub-rule (2) casts a duty on the authority concerned to record reasons in writing for admission of the additional evidence. Under sub-rule (3), the further requirement is that the appellate authority shall not take into account any evidence produced under sub-rule (1) unless the assessing authority has been allowed a reasonable opportunity to examine the evidence or the document or to cross examine witnesses produced by the assessee or to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the assessee.

However, sub-rule(4) of rule 46A also provides that no bar is created by sub-rules (1), (2) & (3) or nothing contained in this rule 46A of the Rules shall effect the power of the first appellate authority to direct the production of any document to enable him to dispose the appeal. As we have observed above that from careful reading of relevant part of first appellate order, e clearly noted that the ld CIT(A) never issued any direction to the assessee to produce documents listed at Sl.Nos.1 to 8 at page 10 of the first appellate order under challenge and thus, sub-rule (4) cannot be pressed into service in favour of the assessee against legal ground of the appellant/revenue.

In the present case, as we have noted above that enclosures listed at Sl. Nos. 1 to 8 at page 10 of the CIT(A) order were submitted by the assessee for the first time before the ld CIT(A) on his own without any direction from the ld CIT(A), therefore, the requirement of sub-rule (1) & (2) of rule 46A has to be complied with and under sub-rule (3), the ld CIT(A) shall not take into account any evidence produced under sub-rule (1) unless the AO has been allowed a reasonable opportunity (a) to examine the evidence or document or to cross examine the witness produced by the appellant & (b) to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant.

Padmavathi Tax Case Appeal No.350 of 2020 High Court Of Madras

Issues discussed and addressed:

Revision u/s 263

Facts of the Case:

The Principal Commissioner of Income Tax, Madurai [for brevity 'PCIT'] invoked his power under section 263 of the Act, issued show cause notice dated 26-10-2018 to the assessee for the reason that the assessee had purchased the immovable property by a sale deed registered as document no. 7165 of 2013 on the file of Sub-Registrar, Thirumangalam for a consideration of Rs. 41,50,000/-, whereas, the guideline value fixed by the State Government was Rs. 77,19,000/- and there is a difference of Rs. 35,69,000/- which was not properly enquired into by the assessing officer and not considered during the course of assessment. For such reason, the assessing officer proposed to invoke his powers under section 263 of the Act.

Held by the Authorities:

The reading of the assessment order shows that the case was selected for limited scrutiny only on this aspect regarding the sale consideration paid by the assessee for purchase of the immovable property and the source of funds. The assessing officer has noted that the sale consideration paid by the assessee was Rs. 41,50,000/- and she has paid stamp duty and other expenses of Rs. 5,75,000/-. The source of funds was

verified and the assessing officer was satisfied with the same. The PCIT while invoking his power under section 263 of Act, faults the assessing officer on the ground that he did not make proper enquiry. It is not clear as to what in the opinion of the PCIT is 'proper enquiry'. By using such expression, it presupposes that the assessing officer did conduct an enquiry. However, in the opinion of the PCIT, the enquiry was not proper in absence of not clearly stating as to why in the opinion of PCIT, the enquiry was not proper, we have to necessarily hold that the invocation of the power under section 263 of the Act was not justified.

The only reason for setting aside the scrutiny assessment was on the ground that the guide line value of the property, at the relevant time, was higher than the sale consideration reflected in the registered document. The question would be as to what is the effect of the guideline value fixed by the State Government. There are long line of decisions of the Hon'ble Supreme Court holding that guideline value is only an indicator and the same is fixed by the State Government for the purposes of calculating stamp duty on a deal of conveyance. Therefore, merely because the guideline was higher than the sale consideration shown in the deed of conveyance, cannot be the sole reason for holding that the assessment is erroneous and prejudicial to the interest of revenue.

Vummudi Amarendran T.C.A.No.329 of 2020 Madras High Court

Issues discussed and addressed:

Amendment to Section 50C is retrospective

Facts of the Case:

The assessee had owned 44,462 sq.ft of land in Neelankarai Village and the property was sold by the Sale Deed dated 2-5-2013 registered on the file of the Sub Registrar, Neelangarai. The assessee had entered into an Agreement for Sale on 4-8-2012 agreeing to sell the property for a total sale consideration of Rs. 19 Crores and in terms of the conditions contained therein, the assessee had received a sum of Rs. 6 Crores as advance consideration and the same was effected by Cheque payment by the purchaser. The Assessing Officer found that on the date of execution and registration of the Sale Deed i.e., on 2-5-2013, the guideline value of the property as fixed by the State Government was Rs. 27 Crores. Thus, the Assessing Officer came to the conclusion that since the assessee had not parted with possession and had received only Rs. 6 Crores as advance which was not disclosed during the relevant financial year, held that the Agreement for Sale cannot be regarded as a transfer for the purpose of Section 2(47)(V) of the Act. The assessee while computing Capital Gain had taken the sale consideration for the property at Rs. 19 crores. This according to the Assessing Officer was not a full value of consideration because on the date when the property was sold, i.e., date on which the Deed of conveyance was executed and registered, the guideline value was much

higher than the agreed sale price and therefore, the said amount should be reckoned for all purposes as a full value of consideration and Capital Gain thereon ought to have been computed.

Held by the Authorities:

We need to point out that the Assessing Officer did not doubt the bonafides of the transaction done by the assessee, since the Assessing Officer accepted the fact that the assessee had entered into an Agreement for Sale of the property in question vide Agreement for Sale dated 4-8-2012, wherein agreed sale consideration was Rs. 19 Crores and the assessee had received Rs. 6 Crores by way of account payee cheque on the date of signing the Agreement. This fact was noted by the CIT(A) and held that the Agreement cannot be treated to be ante-dated as the assessee had received Rs. 6 crores as advance on the date of Agreement through banking channel. The only reason for the Assessing Officer to adopt higher value is based upon the guideline value fixed by the State Government. The question would be as to what is the effect of the guideline value fixed by the Government and the purpose behind fixing the same.

The guideline value fixed is not final but only a prima facie rate prevailing in an area to ascertain the true or correct market value. It is open to the Registering Authority as well as the person seeking registration to prove the actual market value of the property. The authorities cannot regard the guideline valuation as the last word on the subject of market value but only a factor to be taken note of, if at all available in respect of an area in which the property transferred lies. It was further pointed out that this position is made clear in the explanation to Rule 3 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968; this explanation also will have to be read in conjunction with explanation to Section 47(A) of the Indian Stamp Act (as amended by the Tamil Nadu Act 24/1967). It was further pointed out that undue emphasis on the guideline value without referred to the setting in which it is to be viewed will obscure the issue for consideration. Further it was held that in any event, if for the purpose of the Stamp Act, guideline value alone is not a factor to determine the value of the property, its worth will not be any higher in the context of assessing the true market value of the properties in question to ascertain whether the transaction has resulted in any offense so as to give a pecuniary advantage to one party or other.

Thus, the Assessing Officer could not have based his conclusion solely based on the guideline value which has been held to be only a prima facie rate prevailing in the area to ascertain the true or correct market value and it is not the last word on the subject of market value but only a factor to be taken note of. As pointed out earlier, the genuinity of the transaction done by the assessee was not doubted and the receipt of advance was through banking channel by way of a demand draft.

Reading of the proviso to section 50C(1) would show that the legislature took note of the fact that there are several occasions where the Agreements are entered into between a willing vendor and willing purchaser on an agreed sale consideration, the Agreement is reduced into writing and in many a cases a substantive portion of the sale consideration is given to the vendor as advance on the date of execution of the Agreement. There are other types of transaction where the vendor executes Power of Attorney in favour of the intending purchaser empowering him to sell the property at any time he proposes to do so. In fact this was also a subject matter of consideration, when the legislature though to introduce the amendment to Section 50C of the Act. There may be cases where the sale consideration will be taken as deferred payment subject to certain contingencies. However the case on hand is very straight forward case, where there is an Agreement for Sale, agreeing to sell the property at Rs. 19 Crores and a sum of Rs. 6 Crores has been received as advance sale consideration. The proviso to Section 50C(1) of the Act deals with cases where the date of the agreement, fixing the amount of consideration and the date of registration for the transfer of the capital assets are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer. Thus an amendment by insertion of proviso seeks to relieve the assessee from undue hardship.

Thus we have no hesitation to hold that the proviso to Section 50C(1) of the Act should be taken to be retrospective from the date when the proviso exists.

Judgments Relied Upon by the Authorities:

A. Commissioner of Income Tax, Kolkata v. Calcutta Export Company 2018 (404) ITR 654 (SC)
B. Allied Motors Private Limited v. CIT 1997 (224) ITR 677 (SC),
C. Whirlpool of India Limited v. CIT, New Delhi 2000 (245) ITR 3,
D. CIT v. Amrid Banaspati Company Limited 2002 (255) ITR 114
E. CIT v. Alom Enterprises 2009 (319) ITR 306

Hemant Shah IT Appeal no. 4566 (MUM.) Of 2017 Mumbai ITAT

Issues discussed and addressed:

Clubbing of Income and Exemption u/s Section 54F

Facts of the Case:

The assessee declared his total income at Rs. 43,19,257/- for relevant assessment year. In the computation of income the assessee computed long term capital gain on sale of shares of Rs. 3,17,86,086/- and a

residential house for Rs. 60,40,636/- and claimed exemption u/s 54 & 54F of Rs. 3,27,96,082/- and exemption of Rs. 50,00,000/- u/s 54EC. The case was selected for scrutiny. During the assessment the assessee was asked as to why exemption u/s 54F be not denied to the assessee as the assessee owned more than two residential houses on the date of sales of shares. The assessee filed its reply dated 9-10-2015. In the reply the assessee stated that he has purchased two flats in the year 2015 when living with his father at Sion and wanted to shift to a new premise. However, he could not shift to new premises as his father's health deteriorated and he could not leave him alone at Sion. The two flats purchased in 2015 were in the same compound which can be considered as one property. Both the flats were never occupied that intended to be occupied single unit and should be considered as a single unit for allowability of deduction u/s 54F. The assessee submissions of assessee was not accepted by AO and rejected claim of assessee u/s 54F of Rs. 2,66,82,526/-.

The AO further noted that income of two minor children was also clubbed with the assessee after claiming exemption u/s 54F for (long term capital gain) LTCG earned by them on sale of shares and mutual funds individually. The AO also issued show cause notice as to why the benefit u/s 54F should not be denied in the hands of minor. The assessee also filed his reply to the show cause on the denial of exemption u/s 54. In the reply, the assessee stated that income of the minors is to be clubbed after computing the same in accordance with law. Further capital gain is to be allowed as per chapter IV-E and minors are entitled for the benefits of section 54F. The assessee also relied on the decision of Kolkata Tribunal in Dy. CIT v. Rajeev Goyal [2012] 22 taxmann.com 34/52 SOT 335. The reply of the assessee was not accepted and AO disallowed exemption of Rs. 2,11,90,716/-

Held by the Authorities with respect to clubbing of Income:

During the assessment the AO clubbed the income/capital gain of both the minors with the assessee without considering the facts that the minors' income was invested in capital gain accounts scheme (CGAS). The ld CIT(A) affirmed the action of the AO by taking view that section 64(1A) of the Act states that while computing the income of any individual , there shall included all such income accrued or arise to his minor children. It was also held that the assessee is also not entitled for the benefits of section 54F; the same cannot be extended to the minors. We have noted that the lower authorities have not disputed the date of acquisition and sale of assets, nature of asset and the period of holding, at the hand on the minors. Further, there is no dispute that the gains earned by minors were invested in CGAS. We have further noted that after the investment made by minor children u/s 54F left no chargeable capital gain which could be clubbed u/s 64(1A) in hands of assessee.

he coordinate bench of Kolkata Tribunal in Rajeev Goyal (supra) held that in case of clubbing of income of minors child, deduction u/s 54EC is to be allowed on minors' income from LTCG separately and only net income is to be clubbed. Chandigarh bench of Tribunal also held that under section 45(1), any profits or gains arising from the transfer of a capital asset are chargeable to income-tax. Save as otherwise provided in various sections including section 54F. In other words, if section 54F is applied, only the amount of capital gains found taxable after application of above provisions can be charged to income-tax. Therefore, to find out whether there is any profit or gain chargeable to tax under section 45(1), the provisions of both the sections are to be read together. Section 54F cannot be read in isolation. Considering the aforesaid decisions of the Tribunal the AO/CIT(A) was not justified in denying the exemption of capital gain to the minors, which was invested in capital gain accounts scheme (CGAS).

Therefore, we direct the AO to allow exemption with regard to the capital gain earned and invested on behalf of both the minors in CGAS.

Judgments Relied Upon by the Authorities:

a. Dy. CIT v. Rajeev Goyal [2012] 22 taxmann.com 34/52 SOT 335
b. Asstt. CIT v. Madan Lal Bassi [2004] 88 ITD 557 (Chd.)

Held by the Authorities with respect to Section 54F:

The ld. AR of the assessee explained that the assessee purchased flat no. 1601 in Juniper on 15-10-2007 and flat no. 1601/1602 in Mayflower on 16-12-2007. The dates of occupation of certificate of all the flats are 22-7-2009. The flat no. 1601 was sold on 6-12-2012 and Mayflower flats were sold on 1-12-2012. The period of holding for all the flats were claimed for five years and the assessee claimed LTCG of Rs. 25,41,264/- and 34,99,372/- respectively. The entire benefit/gain earned by assessee was invested in CGAS. The assessee further claimed that neither the possession of the asset was given nor conveyance deed was executed. Thus, interest in the asset was transferred. We have noted that there is no clarity about the facts whether the assessee owned any other residential house or not, in the order of Assessing Officer as well as ld. CIT(A). Therefore, we deem it appropriate to restore this issue to the file of Assessing Officer to decide the issue afresh

Important updates

a. The Central Board of Direct Taxes (CBDT) has amended Form 3CD, Form 3CEB & ITR 6 applicable for Assessment Year 2020-21. The changes are related to reporting of information about concessional tax regime opted by the person under sections 115BAA, 115BAB, 115BAC & 115BAD. The board has also notified Form 10-IF to exercise option under section 115BAD.

b. The CBDT has issued a press release to further clarify the doubts regarding applicability of provisions of section 206C(1H). It has clarified that TCS is required to be collected when yearly receipts exceeds Rs. 50 lakhs that too in respect of the amount received after 01-10-2020. Such amount shall be considered while determining the threshold of 50 lakhs only.

c. Considering the difficulties being faced by taxpayers due to the Covid-19 pandemic, the CBDT has further extended the due date for filing of revised and belated Income tax return for Assessment year 2019-20 from 30-09-2020 to 30-11-2020.