

Important judgements and Updates

Update No 33/ 2021

Hirapanna Jewellers I.T.A.No.253/Viz/2020 Visakhapatnam Bench of ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 68 ITAT deletes addition u/s 68 made on sales recorded on November 8, 2016 owing to announcement of demonetisation, holds, once purchase/ sales matches with inflow/ outflow of stock, the transaction cannot be doubted

Facts of the case with respect to issue No 1:

Assessee-firm, engaged in the business of jewellery trade, deposited Rs.5.72 Cr., post demonetisation, in high denomination bank notes. Based on survey conducted in Assessee's premises u/s 133A, Revenue noticed that the deposit of aforementioned sum was made in high denominations of specified bank notes; Revenue rejected Assessee's contention that the increase in sales was driven by announcement of demonetisation and ban on the high denomination notes w.e.f. November 9, 2016 and contended that: (i) assessee could not furnish proper KYC documents of the buyers, (ii) average sales of the firm was not matching with peak and non-peak season, (iii) special occasions sales was an average of Rs. 2 Cr in comparison to one-day sales of 5.72 Cr. consisting of 270 bills within a period of 4 hours, and (iv) no details of the customers like phone number, address etc. and no signatures were obtained in sale acknowledgements of the ornaments; Revenue made addition of Rs. 4.71 Cr. u/s 68 r.w.s. 115BBE and taxed the same @ 60%

Held by the Authorities with respect to Issue No 1:

Assessee explained the source as sales, produced the sale bills and admitted the same as revenue receipt and that AO and DDIT(Inv) conducted surveys on different dates, independently and no difference was found in the stock register or the physical stock of the Assessee; Remarks, *"once there is no defect in the purchases and sales and the same are matching with inflow and the outflow of stock, there is no reason to disbelieve the sales...Suspicion however strong it may be, it should not be decided against the assessee without disproving the sales with tangible evidence"*;

ITAT finds force in the Assessee's submission that due to demonetisation, the public panicked as the cash available with them in old denomination notes became illegal from November 9, 2016 leading to investment in jewellery, notes contemporary newspaper clippings;

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

- a. Kailash Jewellery House ITA NO 613/2010 Delhi High Court
- b. Vishal Exports Overseas [TS-5938-HC-2012(GUJARAT)-O]

Important judgements and Updates

Update No 33/ 2021

Rajeshkumar Shantilal Patel I.T.A. No.3665 (AHD.) of 2015 Surant ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 50C The assessee is also entitled for the benefit enjoyed by other co-owner whose valuation of the same property at the same time as that of assessee was accepted by the Revenue.

Facts of the case with respect to issue No 1:

The AO reopened the case on the basis of information received from Sub-Registrar Office, Surat about determining the value of consideration for the purpose of payment of additional stamp duty, on the instrument of registration by Stamp Valuation Authority, in addition to sale consideration shown in sale deed. The AO made addition solely on the basis of information received from Sub-Registrar Office for charging the additional stamp value for transfer of land as per Jantri rate of Stamp Valuation Authority. The case of the assessee was that the Revenue accepted the STCG offered by his co-owner and hence no addition can be made in his case.

Held by the Authorities with respect to Issue No 1:

Once, the similar STCG offered by the co-owner has been accepted by the revenue, and the assessee is also entitled for similar relief. So far as the objection of learned DR for the Revenue is that the case of co owner, no scrutiny assessment was initiated, is concern, the tribunal held that this fact was brought by assessee at the earliest possible action. The Revenue has not taken any action for reopening the case of co-owner and thereby accepted the similar STCG on same transaction, therefore, the assessee cannot be treated indifferently for similar transaction.

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

- a. CIT Vs. Kumararani Smt. Meenakshi Achi reported in 292 ITR 624 Madras High Court
- b. Shri Chetanbhai Prahlad Gami vs. ITO, in ITA No.2082/AHD/2013 dated 19.07.2019
- c. Ramanbhai Ukabhai Patel (HUF) Vs ITO [2019] 102 taxmann.com 109 (Surat Tribunal)
- d. M. Ambalal Desai vs. ITO in ITA No.1870/AHD/2015 dated 07.01.2021.

Bardoli Vibhag Gram Vikas Co.Op. Credit Society Ltd. Surant ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 263 Where AO after making requisite inquiries on allowability of deduction under section 80P, had allowed said deduction to assessee, a cooperative society, in respect of gross interest received from cooperative bank and thus had taken a reasonable and

Important judgements and Updates

Update No 33/ 2021

possible view, order passed by AO cannot be said as erroneous and CIT was not justified in invoking his jurisdiction under section 263.

Issue No 2 Section 80 P for the purpose of section 80P(2)(d) a Co-operative Bank should be considered by a Co-operative Society and interest earned by Co-operative Society from Cooperative Bank would necessarily be deductible under section 80P(1) of the Act

Facts of the case with respect to issue No 1 and 2:

The assessment order was revised by Id. PCIT vide its order passed under section 263 on the ground that assessee earned interest of Rs.6.14 crore on deposits made with Co-operative and private banks, does not fall within the meaning of exemption under section 80P(2)(d) of the Act. The Id. PCIT further held that Clause (b) of Explanation 2 of section 263 is also applicable in the present case.

the assessee in reply stated that the assessee has claimed deduction under section 80P(2)(d) of the Act of Rs.7.03 crore being interest and dividend income from investment with Cooperative Societies. The assessee also stated that during the course of assessment proceedings, the AO examined the issue of deduction under section 80P(2)(d) in depth on application of fair and judicious mind and also considered the evidence passed the order under section 143(3) of the Act and allow deduction under section 80P(2)(d) of the Act.

Held by the Authorities with respect to Issue No 1:

For revising the assessment order, twin condition as provided under section 263 must be fulfilled simultaneously, that is the assessment order is erroneous and insofar as prejudicial to the interest of revenue. The order passed by assessing officer is not at all erroneous; the order is in accordance with the decision of various Tribunals and order passed by jurisdictional High Court on similar issue. It is settled law that once assessing officer made enquiry on a particular point and after deliberation allow deduction, on that very point, the proceeding under section 263 cannot exist to form a different view.

Held by the Authorities with respect to Issue No 1:

Even on merits the ITAT held that assessee co-operative society is eligible for deduction u/s 80P(2)(d) in respect of gross interest received from co-operative bank without adjusting interest paid to said bank.

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

- a. Aryan Arcade Ltd., vs PCIT (2019) 412 ITR 277 (Gujarat)
- b. CIT Vs Mepco Industries Ltd., (2007) 207 CTR 462 (Madras)

Important judgements and Updates

Update No 33/2021

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

- a. PCIT Vs. Totagars Cooperative Sales Society [2017] 78 taxman.com 169 (Karnataka)
- b. Surat Vankar Sahakari Sangh Ltd., vs. ACIT [2016] 72 taxmann.com 169 (Guj)