VVA Hotels (P.) Ltd TCA No. 670 of 2019 Madras High Court In favour of Assessee

Issues discussed and addressed:

Section 56(2)(viib) – Change in Method of Valuation – not justified in the absence of any material that such method was adopted to defraud the Revenue.

Facts of the Case:

The assessee, a Private Limited Company had issued 2,04,594 shares with a face value of Rs. 10/- and share premium of Rs. 1000/-per share. The assessee submitted that the value of shares were done by adopting the Discounted Free Cash Flow (DCF) method as per the report of the Chartered Accountant and accordingly, they allotted 1,16,278 shares to M/s.V and 88,316 shares to Mr. S, at Rs. 1010/- per share with a premium of Rs. 1000/- per share. However AO came to the conclusion that the assessee has made excessive projection of revenue without any reasonable basis. Accordingly, applied the provisions of Section 56(2)(viib) of the Act read with Rule 11UA(2) of the Income-tax Rules, 1957 (hereinafter referred to as "the Rules") and ultimately, he held the Net Asset Value (NAV) method as the appropriate method, which should have been adopted for valuation of the shares and accordingly, computed the value and assessed the same at Rs. 18,51,22,790/- as income from other sources as per Section 56(2)(viib.

Held by the Authorities:

Noting that the Assessing Officer had discarded the DCF method adopted by the assessee on the ground that the actual revenue varied from the projected revenue for four years, the Tribunal rightly noted that the projected value is an estimate and the variation in the estimate is marginal. Therefore, the Tribunal came to the conclusion that there was no material to hold that the assessee's projected sales revenues are fabricated or manipulated. The Tribunal was justified in allowing the appeal by holding that when the assessee has adopted a particular method of valuation as provided under the Act and Rules and in the absence of any material that such method was adopted to defraud the Revenue, merely because the Assessing Officer is of the view that NAV method alone has to be adopted is not a ground to reject the DCF method.

Ajai Kumar Singh Khaldelial Writ Tax No. 318 of 2016 Madras High Court Against Assessee

Issues discussed and addressed:

Section 40A(3) – Deposit of cash exceeding limit prescribed u/s 40A(3) in supplier's bank account attract disallowances in a case where assessee fails to demonstrates any business contingency or that the cash was deposited based on instructions of suppliers.

Facts of the case:

The petitioner was engaged in the business of retail trading of readymade and other clothes in the name of a proprietary concern. The reassessment proceedings were initiated on account of the fact that it was discovered that the assessee had misrepresented in his return with regard to the payments made to M/s J of Rs. 3,40,000/- in cash which were deposited in their bank account and such a transfer was not admissible in the light of provisions of section 40A(3) of the Act and rule 6DD of the Rules, 1962, and therefore, in the reassessment proceedings the said amount was added to the income of the assessee. The reassessment order was assailed by moving an application under section 264 of the Act, 1961 however the assessee could not get any relief and hence the writ petition was filed.

Held by the Authorities:

Transaction of depositing cash directly in the bank account of the beneficiary being not routed through any clearing house nor was the money sent through electronic mode and therefore such a transaction cannot be covered by rue 6DD(c)(v) of the Rules, 1962, and therefore benefit of the provision cannot be given to the petitioner. The petitioner also could not lead any evidence to show that he had deposited the amount on the instructions of supplier or due to any business exigency. In absence of such evidence, the assessing authority rightly denied the benefit of exemption to the petitioner.

Cyber Park Development & Constructions Ltd ITA No. 137 of 2014

Karnataka High Court In favour of Assessee

Issues discussed and addressed:

Section 263 - Not justified when AO has passed order allowing the claim of the assessee after due application of mind.

Facts of the case:

The Commissioner of Income-tax in exercise of powers under section 263 of the Act initiated proceedings on the ground that Revenue Audit Objection was raised in case of assessee with regard to depreciation of Rs. 75,27,156/- on the lease hold land as intangible asset under the Act at the rate of 25%. The Commissioner held that the order of assessment passed by the Assessing Officer was erroneous and was prejudicial to the interest of the revenue.

Held by the Authorities:

From close scrutiny of section 263 it is evident that twin conditions are required to be satisfied for exercise of revisional jurisdiction under section 263 of the Act firstly, the order of the Assessing Officer is erroneous and secondly, that it is prejudicial to the interest of the revenue on account of error in the order of assessment. The phrase 'prejudicial to the interests of the revenue' has to be read in conjunction with an erroneous order passed by the Assessing Officer and every loss of revenue as a consequence of the order of the Assessing Officer cannot be treated as prejudicial to the interest of revenue. It was further held that where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, the order passed by the Assessing Officer cannot be treated as erroneous order prejudicial to the interest of the revenue.

In the backdrop of aforesaid well settled legal principles, the tribunal has rightly quashed the order passed by Commissioner as the AO after due application of mind and on proper consideration of the material available on record had allowed the claim for depreciation on lease hold rights and hence the order passed by the Assessing Officer can neither said to be erroneous nor prejudicial to the interest of the revenue.

Judgments Relied upon by the Authorities:

a. 'Malabar Industrial Co. Ltd. v. CIT' [2000] 109 Taxman 66/, 243 ITR 83
b. *CIT v. Max India Ltd.,' [2008] 166 Taxman 188/[2007] 295 ITR 282 (SC*
c. *'Ultratech Cement Ltd. v. State of Rajasthan [2020] 117 taxmann.com 807 (SC).*

Shetron Ltd ITA No. 515 of 2013 Karnataka High Court Against Assessee

Issues discussed and addressed:

Section 37 – Discount on Issue of Debentures – allowed as deduction in proportion to percentage of redemption.

Facts of the case:

The assessee, a public limited company engaged in the business of manufacture of metal package and cans had claimed deduction of Rs. 5 Crores, being the discount on the issue of debentures. However the AO had by placing reliance on decision of the Supreme Court in Madras Industrial Investment Corpn. Ltd. v. CIT [1997] 91 Taxman 340/225 ITR 802 held that discount on debentures was revenue expenditure but had to be allowed for a period of five years in proportion in which debentures were to be redeemed by the assessee.

Held by the Authorities:

The Supreme Court in Madras Industrial Investment Corpn. Ltd.'s case (supra) held that ordinarily, revenue expenditure which is incurred wholly and exclusively for the purpose of business must be allowed in its entirety in the year in which it is incurred and that it cannot be spread over a number of years even if the assessee had written it off in its books over a period of years, has however, carved out an exception to the aforesaid rule and held that discount on debentures if allowed to be deducted in entirety in one year might give a distorted picture of the profits of a particular year and therefore, the deduction should be allowed in accordance with the accounting treatment given by the assessee spreading out the discount on debentures and claiming deduction of a proportionate deduction over the life of the debentures was a proper accounting method.

Karnataka Power Transmission Corporation Ltd ITA No. 196 of 2013

Karnataka High Court In favour of Assessee

Issues discussed and addressed:

Real income - Income cannot be charged to tax if receipt is uncertain.

Facts of the case:

The Assessing Officer *vide his order inter alia* held that the assessee was following mercantile system of accounting. The Assessing Officer made an addition of Rs. 52.89 Crores on account of wheeling charges, as the same was not offered by the assessee in the relevant Assessment Year on the ground that it would recognize the revenue of wheeling charges only when the same is collected from the current Assessment Year onwards.

Held by the Authorities:

Since, there was uncertainty with regard to recovery/collection of the outstanding amount, the assessee for the Assessment Year in question decided not to recognize revenue of Rs. 52.89 Crores for wheeling charges. In the meeting held on 4-11-2000 and the same was approved by the board of the assessee. Thus, the aforesaid income never accrued to the assessee and was in fact, an hypothetical income and not a real income. Subsequently, on 16-3-2004 in 134th meeting of Southern Regional Electricity Board, the arrangement of cost sharing of wheeling charges by the constituent States itself was scrapped and on the date when the Assessing Officer passed an order *i.e.,* on 31-12-2008, the aforesaid decision was already in existence. Thus, from the aforesaid narration of facts, it is axiomatic that the income did not accrue to the assessee but was a hypothetical income, which could not have been subjected to tax and in view of Accounting Standard-9, the assessee rightly decided not to recognize the revenue of Rs. 52.89 Crores for wheeling charges for the relevant assessment year.