

Important judgements and Updates

Update No 77/ 2021

Bayer Vapi (P.) Ltd. R/SCA No. 19823 of 2019 Gujarat High Court Against Assessee

Issues discussed and addressed:

Issue No 1 Section 147 When the concerned material was not considered at the time of original assessment, the consideration of the same by the respondent could not be said to be a change of opinion or review of earlier order.

Facts of the case with respect to issue No 1:

The assessee-company had filed its return of income. Same was selected for scrutiny and an assessment order was passed under section 143(3). Subsequently, the Assessing Officer issued a reopening notice under section 148 upon the assessee on ground that the assessee had failed to deduct TDS on certain payment made by it and he was liable for payment of interest as contemplated under the provisions contained in the Act. He further passed a reassessment order making disallowance under section 40(a)(ia).

Held by the Authorities with respect to Issue No 1:

The Assessing Officer has power to reopen if there is tangible material to believe that there was an escapement of income from assessment and that when such material has a live link with the formation of the belief. In the instant case, the petitioner had not deducted the TDS as detailed in Form 3CD and, therefore, the same was not taken into consideration by the Assessing Officer while passing the order under section 143(3). When the said material was not considered at the time of original assessment, the consideration of the same by the respondent could not be said to be a change of opinion or review of earlier order.

Hindustan Unilever Ltd. Writ Petition No. 2791 of 2019 Bombay High Court In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 147 The duty of the assessee is to disclose fully and truly all primary relevant facts, it does not extend beyond this. Where the assessee has disclosed truly and fully all material facts necessary for computation of income, the assessment cannot be reopened on account of change of opinion of the Assessing Officer.

Facts of the case with respect to issue No 1:

The return of income of the Petitioner for Assessment Year 2012-13 was selected for scrutiny assessment under Section 143(3) of the Income Tax Act, 1961 ("the Act"). During the assessment, the Petitioner filed its final statement and computation of income wherein details regarding loss suffered on account of reduction of capital was disclosed. It was brought to the notice of AO that during the relevant year, the Petitioner

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received consideration on account of capital reduction by its subsidiary Ponds Exports Limited, wherein the face value of the shares of Ponds Exports Limited was reduced from Rs. 10/- to Re. 1/-. Since there was extinguishment of proportionate right in shares held by the company, the long term capital loss arising on account of capital reduction had been claimed. The assessment order was passed without making any addition on this issue. However the case was reopened on similar issue after four years which was challenge in a writ petition.

Held by the Authorities with respect to Issue No 1:

It is settled law that as per Section 147 of the Act and proviso thereto, where the assessment is sought to be reopened after the expiry of a period of four years from the end of the relevant assessment year, the Assessing Officer has to mention what was the tangible material to come to the conclusion that there is an escapement of income from assessment and that there has been a failure to truly and fully disclose material fact. He cannot exercise power to reopen unless he discloses what was the material fact which was not fully and truly disclosed by the assessee.

While the duty of the assessee is to disclose fully and truly all primary relevant facts, it does not extend beyond this. Thus, it can be said that the Petitioner assessee in the present case has by production before the Assessing Officer of account books and other evidence from which the material evidence could with due diligence have been discovered by the Assessing Officer does amount to disclosure within the meaning of proviso to Section 147 of the Act.

In view of above reopening was held as bad in law.

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

Calcutta Discount Co. Ltd (1961) 41 ITR 191 (SC)

Mantra Industries Ltd Writ Petition No.1625 of 2021 Bombay High Court In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 144B If assessment orders in violation of the procedure laid down under section 144B are continued to be passed, Court will be constrained to impose substantial costs on the concerned Assessing Officer to be recovered from his/her salary and also direct the department to place such judicial orders in the career records of such Assessing Officer.

Facts of the case with respect to issue No 1:

According to petitioner, the assessment order has been passed without following the principles of natural justice in as much as petitioner's request for an adjournment has not been considered, request for personal

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hearing has not been considered and most importantly the reply/objection filed in response to the show cause notice with the draft assessment order has not been considered.

Held by the Authorities with respect to Issue No 1:

Sub Section 9 of Section 144B of the Act provides that any assessment made shall be non-est if such assessment is not made in accordance with the procedure laid down under this section. Therefore, the order impugned being non-est, the Assessing Officer may take such steps as advised in accordance with law.

Direction is given to circulate this order right from the Revenue Secretary to everybody in the Finance Ministry, that if such orders are continued to be passed, this Court will be constrained to impose substantial costs on the concerned Assessing Officer to be recovered from his/her salary and also direct the department to place such judicial orders in the career records of such Assessing Officer.

Ceebros Hotels (P.) Ltd TCA No. 496 of 2021 Maras High Court In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 36(1)(iii) 36(1)(iii) would be applied to capital asset/income earning apparatus/facilitating the business activity and therefore, the Statute envisages the importance of such capital asset should be put to use in the business in contra distinction to the inventory of the assessee.

Facts of the case with respect to issue No 1:

The assessee borrowed a loan from IFCI Limited for the purpose of purchase of land in MRC Nagar and claimed interest paid on such loan as a deduction under Section 36(1)(iii). The Assessing Officer on the ground that the assessee, having not commenced the project in MRC Nagar and had not offered any income from the project, all the expenditures, which are specifically attributable to the project, have to be accounted as 'Work-in-Progress' and only when the income is generated and offered from the project, the expenditure can be claimed.

In this regard, the Assessing Officer has referred to the Form AS-16 issued by ICAI and the principles of Matching Concept of accounting to support his findings and according to the Assessing Officer, unless revenue is recognized from the project, corresponding expenditure cannot be allowed.

Held by the Authorities with respect to Issue No 1:

The loan which was obtained by the assessee from IFCI Limited is for the purpose of business of the assessee and having accepted the said fact, the deduction of interest was disallowed only on the ground that the

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asset purchased by the assessee in MRC Nagar was not put to use in the Assessment Year under consideration for the purpose of business of the assessee is factually incorrect.

The assessee furnished an Abstract of Expenses pertaining to MRC Nagar project and the expenses were in the nature of advertisement expenses, architect fees, CMDA charges, consultancy charges, electricity charges, legal fees, rent, security charges, site expenses, various labour charges and purchase of materials. This factual position would go to show that the land was put to use in the Assessment Year under consideration. On this issue, the Tribunal had rightly noted that the term “put to use” in the proviso in Section 36(1)(iii) would be applied to capital asset/income earning apparatus/facilitating the business activity and therefore, the Statute envisages the importance of such capital asset should be put to use in the business in contradistinction to the inventory of the assessee.

The inventory in the business/holding of inventory in the business by itself is a business activity in the normal course and in continuation of business of construction pursued by the assessee. Therefore, it held that the attempt to apply the proviso to the case of the assessee would lead to wrong interpretation of law and therefore, the reasons given by the Assessing Officer to disallow the interest expenditure by applying the provisions of Section 36(1)(iii) is not in accordance with law.

Important Updates

- a. The Govt has notified PM CARES for Children Scheme, 2021 effective from 06-10-2021. The upfront lumpsum consideration in the account shall become Rs. 10 lakh when the accountant holder attains the age of 18 years.
- b. In a matter before the Supreme Court, Additional Solicitor General submitted that department is having a second look on Faceless Appeal Scheme, 2020 and sought a period of three months as it may require change of law