

## Important judgements and Updates

Update No 49/ 2021

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**Rambhai Mafatlal Patel** R/SCA No. 17794 of 2018 Gujarat High Court In favour of Assessee

### Issues discussed and addressed:

Issue No 1 Section 148 Re\_assessment proceedings initiated pursuant to notice which wasn't received by assessee deserves to be quashed.

### Facts of the case with respect to issue No 1:

Assessee sold a land owned by it for sale consideration of certain amount but did not file its return of income. Accordingly, Assessing Officer issued reopening notice against assessee on ground that income in respect of capital gain from sale of land had escaped assessment and, accordingly, reassessment proceedings were initiated against assessee. Assessee contended that impugned notice was not received by it as Assessing Officer had dispatched impugned reopening notice to address at village where land sold was situated and not to residence of assessee.

### Held by the Authorities with respect to Issue No 1:

Since reopening notice issued against assessee had been despatched at a village where captioned land sold was situated and not to residence of assessee, impugned reopening proceedings initiated against assessee pursuant to said notice was to be quashed.

**N.S. Narendra** I.T.A. No.92 of 2015 Karnataka High Court In favour of Assessee

### Issues discussed and addressed:

Issue No 1 Section 2(22)(e) Loan or advance given to the assessee shareholder as a consequence of any further consideration which is beneficial to the company received from such shareholder, in such case the loan or advance cannot be said to be deemed dividend.

### Facts of the case with respect to issue No 1:

Assessee-Individual, managing director of a company, holding more than 10% of the voting power had provided his personal property as collateral to Banks and personal guarantee for the credit facility of over 200 Cr. availed by the company; The company advanced certain amount to the Assessee for purchasing an apartment in Bangalore in recognition of his contribution to the company's business however AO passed the assessment Order by making an addition of Rs. 5.39 Cr u/s 2(22)(e) holding that said amount of advance received by the Assessee was in the nature of deemed dividend.

### Facts of the case with respect to issue No 1:

In the instant case the company derived benefit from the Assessee and therefore granted the loan/ advance to Assessee. Since this loan or advance is given to the assessee shareholder as a consequence of any further

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consideration which is beneficial to the company received from such shareholder, in such case the loan or advance cannot be said to be deemed dividend under the Act.

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

- a. *Pradip Kumar Malhotra* [TS-432-HC-2011(CAL)]
- b. *Jamuna Vernekar* [TS-159-HC-2021(KAR)]
- c. *Bagmane Constructions* [TS-785-HC-2014(KAR)]
- d. *Creative Dyeing* [TS-45-HC-2009(DELHI)-O]

### Jitendra Patidar ITA No. 486/Ind/2019 Indore ITAT In favour of Assessee

#### Issues discussed and addressed:

Issue No 1      Section 54 B      Agricultural land purchased in the name of assessee's son and also in the name of his son's wife was eligible for deduction under section 54B

#### Facts of the case with respect to issue No 1:

Pr. CIT treated assessment order as erroneous and prejudicial to the interest of revenue on the ground of AO having allowed deduction under section 54B as regards agricultural land purchased by assessee in the name of assessee's son and daughter-in-law.

#### Held by the Authorities with respect to Issue No 1:

It was not in dispute that amount as invested in the name of assessee's son was also from the sale proceed of the land as received by assessee and purchased land was being used by assessee only for agricultural purpose. Even, it was not the case of AO that said and was being used exclusively by assessee's son. Accordingly, agricultural land purchased in the name of assessee's son and also in the name of his son's wife was eligible for deduction under section 54B and, therefore, assessment order could not be termed as erroneous and prejudicial to the interest of revenue.

### Special Land Acquisition Officer I.T.A. No. 1032/Kol/2016 Kolkata TAT In favour of Assessee

#### Issues discussed and addressed:

Issue No 1      Section 201      The Tax Deductor could not have been treated as an assessee in default until it is established by AO that the payee failed to pay such tax.

#### Facts of the case with respect to issue No 1:

AO during verification of case records of the office of Assessee-Special Land Acquisition Officer (SLAO) for AY 2011-12 noted that it had made payments to various persons to the tune of Rs.1.14 Cr. for acquisition of

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immovable property for a National Highway Project without deducting tax at source u/s 194LA, thus, proceeded u/s 201 by treating the assessee as 'assessee-in-default' in terms of section 201/ 201(1A), and passed an order directing Assessee to pay Rs.33.20 Lacs which was also confirmed by CIT(A).

### Held by the Authorities with respect to Issue No 1:

ITAT held that the condition precedent for invoking section 201(1) of the Act is that there could be a finding of fact that the recipient/payee has not made payment of taxes on the amount in question (except the receipt of payment for acquirement of agricultural land) and the onus is on the AO to demonstrate that this condition precedent is satisfied before he raises the demand in accordance to law and hence matter is restored back to the file of AO to make necessary verification.

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

- a. *Jagaran Prakashan Ltd. Vs. DCIT (2012) 21 taxmann.com 489(ALL)*
- b. *Ramakrishna Vedanta Math Vs. ITO, ITA No. 477-479/Kol/2012 dated 31.07.2012 Kolkata ITAT*

**Nilkanth Concast Pvt. Ltd ITA No. 5909/Del/2017 Delhi ITAT In favour of Assessee**

### Issues discussed and addressed:

Issue No 1      Section 36(1)(iii)      Interest Expense on capital borrowed for acquisition of plant, pertaining to the period from installation of the plant up to the commencement of commercial production is allowed as revenue expenditure.

### Facts of the case with respect to issue No 1:

Assessee-Company, engaged in manufacturing of sponge iron, MS Billets and TMT Bars, for AY 2010-11, claimed deduction of Rs.28.84 Lacs on account of interest on capital borrowed for acquisition of plant, pertaining to the period from installation of the plant up to the commencement of commercial production.

Assessee claimed that the plant had been used for trial run from the date of installation up to its commercial use, which fact was not in dispute. The AO, however, made the interest disallowance on the ground that interest for the period before the commercial production ought to be disallowed without considering the period for trial run.

### Held by the Authorities with respect to Issue No 1:

Interest expenses incurred by a company for business purposes is a deductible expense under section 37(1) of the Act which provides that "expenses laid out or expended wholly and exclusively for purposes of business shall be allowed in computing Profits and Gains from Business and Profession. Further, proviso to

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section 36(1)(iii) of the Act provides for “capitalization of interest paid for acquisition of an asset from the date on which funds were borrowed till the date such asset is put to use”. Furthermore, as per Explanation 8 to section 43(1), interest paid shall be added in the actual cost of the asset till the asset is first “put to use” for claiming depreciation. Thus in view of the above legal position the Interest of Rs. 28,84 ,000/- has to be treated as Revenue Expenditure and need not be Capitalized.

### Important Updates

- a. The Central Board of Direct Taxes (CBDT) has notified M/s Patanjali Research Foundation Trust, Haridwar under the category “Research Association” for Scientific Research for the purposes of section 35(1)(ii) of the Income-tax Act, 1961.
- b. The Govt. has announced issue price of Sovereign Gold Bond Scheme 2021-22- Series IV. The issue price of the Bond during the subscription period shall be Rs. 4,807/- per gram. The Government has also decided to allow discount of Rs 50 per gram from the issue price to those investors who apply online and the payment is made through digital mode.
- c. The Central Board of Direct Taxes (CBDT) has notified a new Rule 8AC which prescribes the manner for computation of short-term capital gains and written down value under section 50 if depreciation has been obtained by assessee.
- d. The Central Board of Direct Taxes (CBDT) has notified a new Rule 8AB to the Income-tax Rules, 1962 to prescribe manner to compute attribution of income taxable under section 45(4) to the capital assets remaining with the specified entity for the purpose of section 48(iii). Specified entities are also required to furnish the details in Form no. 5C.
- e. In view of difficulties faced by taxpayers in electronic filing of Income Tax Forms 15CA/15CB on the new e-filing portal [www.incometax.gov.in](http://www.incometax.gov.in), the CBDT has decided that taxpayers can submit the aforesaid Forms in manual format to the authorized dealers till June 30, 2021. Now, the board has given further relaxation and allowed manual filing of Forms till July 15, 2021.