

Important judgements and Updates

V. Dwarakanathan SLP (Civil) Diary No(s). 2973 of 2020 Supreme Court of India Against Assessee

Issues discussed and addressed:

Section 49 - In the case of invalid gift, Section 49 not to apply to give benefit to the Assessee while computing the capital gains in respect of cost of acquisition of the previous owners.

Facts of the Case:

The case of the Assessee, Individual was reopened on the ground that in the original return filed by him u/s 139, he had not offered capital gain on sale of shares acquired by way of gift from his daughter. However in the return filed in response to the notice issued u/s 148, the assessee had claimed loss on sale of such shares by taking advantage of Section 49. Since the assessee did not co operated during the assessment proceedings, the AO having left with no other option, completed the assessment proceedings ex-parte under section 144 of the Act.

Held by the Court:

The Honourable Supreme Court has dismissed the SLP filed against the decision of Honourable Madras High Court confirming the decision of the Honourable Tribunal that as the assessee failed to establish that the captioned shares became his property by way of gift and hence the provisions of Section 49 did not apply, since the said provisions envisages only where the capital asset becomes the property of the assessee, then the cost of acquisition of the asset will have to be reckoned on the basis of cost of acquisition to the previous owner and not otherwise.

P. Mahalakshmi TCA Nos.324 & AND 325 OF 2020 High Court of Madras In favour of Assessee

Issues discussed and addressed:

Section 2(14) – Agricultural land - The Land though sold after its conversion for non-agricultural purpose is treated as Agricultural land as was used for agricultural activities by the assesses and their family members and was situated beyond prescribed number of Kms from concerned municipal limits.

Facts of the Case:

The assessment was reopened under section 147 of the Act on the basis of the information received by the AO that the assessee along with their family members had sold land to M/s A after obtaining approval from the Joint Director, Directorate of Town and Country Planning [for brevity 'DTCP'] for conversion of the land for non-agricultural purpose. Accordingly the AO finalised the assessment u/s 147 r.w.s 143(3) by treating the gain arising on sale of the said land as liable to Capital Gain u/s 45 as in his opinion on the date of sale,

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the lands sold were not agricultural lands and hence it was falling within the division of 'capital assets' u/s 2(14) of the Act.

Held by the Court:

The tribunal has committed no error in deciding the case in favour of assessee in view of following factual exercise after applying the test laid down by Hon'ble Supreme Court in Smt.Sarifabibi Mohmed Ibrahim [1993] 70 Taxman 301/204 ITR 631 (SC).

- a. There were standing banana crops as well as coconut trees etc moreover use of the said land for agricultural purpose by assessee and their family members was duly certified by concerned Village Administrative Officer as well the president of the concerned Panchayat and
- b. As per the revenue records, the said land was indeed agricultural land and was situated beyond prescribed Kms from concerned Municipalities.

Tiruchirapalli District Central Cooperative Bank Ltd TCA No.446 of 2018 High Court of Madras

In Assessee's favour of Assessee

Issues discussed and addressed:

Over Due Interest on NPA -Assessee acting under the directives of the RBI with regard to prudential norms set out and therefore, taxing interest on NPA could not be charged on the real income theory.

Facts of the Case:

The overdue interest on investment, which would become non performing as per the guidelines of the Reserve Bank of India (RBI) was not recognized by the assessee Co Operative bank , as there was no certainty with regard to receipt of such income. However the AO held that the exception available under section 43D of the Act was available only to public financial institutions and not to cooperative societies, as the cooperative societies came to be included only by the Finance Act, 2017 with effect from 1-4-2018. Accordingly, the Assessing Officer completed the assessment by rejecting the stand taken by the assessee,

Held by the Court:

The interest on principal loan amount which has been classified as NPA cannot be held to have "accrued" so as to tax them under the Act. The contention that the assessee cannot indirectly claim the benefit which would amount to a benefit similar to that under section 43D of the Act, therefore, does not merit acceptance.

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Judgments Relied Upon by the Court:

- a. Pr. CIT v. Ludhiana Central Cooperative Bank [2018] 99 taxmann.com 81 (P & H)
- b. CIT v. Jamnagar District Cooperative Bank Ltd. [2018] 256 Taxman 212 (SC)
- c. Pr. CIT v. Kutch District Cooperative Bank Ltd. [2018] 94 taxmann.com 298 (Guj)
- d. CIT v. Vasisth Chay Vyapar Ltd. [2011] 330 ITR 440 (Delhi),
- e. CIT v. Deogiri Nagar Sahakari Bank Ltd. [2015] 379 ITR 24/[2017] 79 taxmann.com 396 (Bom.)
- f. Pr. CIT v. Mahila Sewan Sahakari Bank Ltd. [2016] 72 taxmann.com 117 (Guj.)
- g. Bhind District Cooperative Central Bank Ltd. v. ITD [2019] 109 taxmann.com 396
- h. CIT v. Canfin Homes Ltd. [2012] 347 ITR 382/[2011] 201 Taxman 273/13 taxmann.com 43