Telco Construction Co. Ltd ITA No. 101 of 2016 Karnataka High Court Against Assessee

Issues discussed and addressed:

Issue No 1 Section 37(1) Royalty paid to acquire technical know-how to be used in manufacture is capital expenditure.

Facts of the case with respect to Issue No 1:

The assessee company was engaged in the business of manufacture, purchase and sale of hydraulic excavators, loaders, mechanical shovels, cranes and spare parts thereof. The assessee claimed deduction on account of payment of royalty made by it to M/s. Hitachi Construction Machinery Company Private Limited, Japan at the rate of 1% of the net factory selling price to the extent of Rs. 91,06,005/- under section 37(1) of the Act. The aforesaid amount was paid for use of technical know-how and grant of rights for manufacture of Hitachi licence products, which included intellectual property. It is the case of the assessee that the aforesaid amount has been used for the purposes of business of the assessee and therefore, the claim for deduction under section 37(1) of the Act is permissible. However, the Assessing Officer disallowed the said claim and inter alia concluded that the payment was made for acquiring a right, which provided enduring benefit and held that the same was a capital expenditure, which creates acquisition of right in the use of technical know-how and grant of rights for manufacture of licence, which include intellectual property.

Held by the Authorities with respect to Issue No 1:

The assessee is a joint venture company and under the agreement has been granted non-transferable licence to manufacture/assemble the Hitachi licence products within the territory using technical know-how furnished by Hitachi and to sell otherwise dispose of the Hitachi licence products. The products shall be sold only under the trade/brand name of Tata Hitachi. Under the agreement, the assessee has incurred an expenditure which gives him enduring benefit, therefore, the same has to be treated as capital expenditure.

GRK Reddy & Sons (HUF) T.C.A.NO.394 OF 2019 Madras High Court Against Assessee

Issues discussed and addressed:

Issue No 1 Section 2(14) – Agricultural Land - A land couldn't be treated as agricultural land merely because it categorised as agricultural land in revenue records

Facts of the case with respect to Issue No 1:

The case of the assessee was that the lands were shown as agricultural lands in the revenue record during the relevant period and therefore, would not fall within the purview of the definition of 'capital asset' under the Act.

Held by the Authorities with respect to Issue No 1:

The conduct of the assessee in selling the property within a short period of one year and the property being used to develop the SEZ ought to have taken note of by the Tribunal while deciding the character of the land, as mere classification of the land in the revenue record, as agricultural land, does not conclusively prove that the nature of the land is an agricultural land. As noted above, the lands were transferred to non-agriculturists for non-agricultural purpose and this would also be one of the relevant factors to test the case of the assessee. The Tribunal relied on the decision in the case of M.S. Srinivasa Naicker v. ITO [2008] 169 Taxman 255/[2007] 292 ITR 481 (Mad.), the said Judgment could not have been applied to the case on hand because in the said decision on examining the facts and as admitted by the revenue, on the date of sale, agricultural operations were carried on in the lands, which is not so in the case of the assessee.

Tata Teleservices (Maharashtra) Ltd. Writ Petition (ST) No. 95821 of 2020 Bombay High Court Remanded

Issues discussed and addressed:

Issue No 1 AO should assign reasons for grant of lower deduction certificate if assessee has applied for nil deduction certificate

Facts of the case with respect to Issue No 1:

Petitioner company was filing its returns of income regularly, it has accumulated tax losses. The petitioner filed an application for NIL Rate Certificate u/s 197 however the department was please to issue the certificate at the rates higher than NIL Rates.

Held by the Authorities with respect to Issue No 1:

Before issuance of certificates under section 197 of the Act, the same must be preceded by an order. That order must disclose reasons and is an order passed in exercise of quasi-judicial powers. Such an order can be assailed in revision under section 264 of the Act. Therefore, an order under section 197 of the Act must not only contain reasons but the same has also to be provided to the assessee who seeks a certificate under section 197. In the instant case, in absence of knowledge of reasons for not granting nil rate certificates to the petitioner under section 197 of the Act, hence matter is remanded back.

NIIT Technologies Ltd. ITA Nos. 5491, 5492, 5524 and 5525 (Delhi) of 2013 Delhi ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1 One-time composite payment made in respect of 90 years lease is allowable over period of lease in equal proportion

Facts of the case with respect to Issue No 1:

The assessee had taken on lease a plot at IT Park situated in GNIDA, Gautam Buddhnagar (UP). The deed of lease was executed on 12/01/2007 for the purpose of construction of the project with integrated, ready to use office space and land and social infrastructure so as to develop IT industries and IT enabled services (i.e. SEZ) in Greater Noida. The assessee was obliged under the lease deed to complete the construction of the whole project and facilities within seven years from the date of the execution of the lease deed according to the layout in the building plan to be approved by the GNIDA. The lease term was of 90 years commencing from 12/01/2007 with the right of the GNIDA reserved. In accordance with the terms of lease agreement, the assessee had option to either pay (a) the advanced annual rent on yearly basis or (b) commuted one time lease for the period of the lease, and no lease rent would be payable by the assessee during the lease period as chargeable from the date of execution of the lease deed. The assessee opted second option and paid one-time lease premium of Rs. 2,83,56,515/- and commuted one time lease rent of Rs. 77,98,042/- and claimed commuted one time lease rent as revenue expenditure whereas one-time lease premium of Rs. 2,83,56,515/- was capitalised in books.

Held by the Authorities with respect to Issue No 1:

The assessee had the option to pay the lease rental on year-to-year basis or as a one-time expenditure. The assessee has substituted the revenue expenditure which was to be paid on year-to-year basis and the nature of the expenditure remained same though it has been paid as a composite payment. Thus, it is clear that the expenditure incurred by the assessee is not capital expenditure. The expenditure was to be incurred on year to year basis for the period of lease of 90 years. The lesser gave the assessee two option. The first option was to pay on year to year basis and claim the same as revenue expenditure. The second option was provided by the lessor was to pay a composite amount for the period of lease as onetime payment. The lessor provided some benefit for making onetime payment. The assessee has chosen the second option and paid the entire lease rent of 90 years as composite onetime payment. Thus, the liability of 90 years has been paid in one year only. In such circumstances, the liability of lease rent relatable to year under consideration would be 1/90th of the amount paid and balance amount would be pre-paid advance rent only. The assessee is entitled to claim 1/90th of the amount every year till the period of lease of 90 years as revenue expenditure. Even according to the matching principles of income and expenditure the entire expenditure is not justified for allowance in one year (*i.e.* the year under consideration) when the income corresponding to expenditure of subsequent years will be reflected in relevant year only. The expenditure not being relatable to the year under consideration cannot be allowed as revenue expenditure in the instant year. For the year

under consideration, only 1/90th of the amount of Rs. 77,98,042/- has been incurred wholly and exclusively for the purposes of the business for the year under consideration.

Krishnaping Alloys Ltd. I.T.A. No. 2261/Mum/2019 Mumbai ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 41(1) Conversion of trading liability into share application money does not tantamount to remission or cessation of trading liability

Facts of the case with respect to Issue No 1:

Assessee converted trading liability into share application money. AO treated this as remission or cessation of trading liability and accordingly made addition under section 41(1) on the ground of no response from certain creditors in response to section 133(6) notices.

Held by the Authorities with respect to Issue No 1:

Non-appearance or non-response of creditors could not be sole ground to draw an adverse inference against assessee, when assessee had filed necessary evidence to prove that liability was genuine in nature, which was subsequently paid back by converting said liability into share application money. None of the conditions prescribed under section 41(1) were fulfilled, in order to bring said liability within the ambit of provisions of section 41(1) because neither, liability was ceased to exist during the year, nor AO prove that it was a non-genuine trading liability. Accordingly, AO was not justified in making additions towards cessation or remission of liability under section 41(1).