

## Important judgements and Updates

Update No 17 / 2021

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### Sri Haider Noman Kohrakiwala ITA No. 2367/Bang/2019 Bangalore ITAT In favour of Assessee

#### Issues discussed and addressed:

**Issue No 1** Section 54F Amount expended towards new asset within a period of three years though no deposit made in capital gain account scheme will qualify for the benefit of Section 54F.

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

Assessee claimed deduction section 54F on acquisition of a residential property. AO denied the said claim on the ground that assessee had not deposited capital gains amount in the Capital Gains Account Scheme before the date of furnishing return of income.

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

Assessee had expended the amount well within period of 3 years from the date of sale of original asset. Therefore, following the case of K. Ramachandra Rao (2015) 277 CTR (Kar) 522 : 2015 TaxPub(DT) 1933 (Karn-HC) though the assessee had not deposited capital gains amount in the capital gains account scheme within the prescribed time, since the impugned expenditure was incurred within a period of 3 years from the date of sale of original asset, the assessee was entitled to proportionate deduction under section 54F.

### Shhlok Enterprise ITA No. 2018/Ahd/2016 Ahmedabad ITAT In favour of Assessee

#### Issues discussed and addressed:

**Issue No 1** Section 68 Addition made based on Statement recorded during the survey is not justified. Statement recorded during survey has no evidentiary value.

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

During survey at premises of assessee-firm statement of one of the partners was recorded on oath. Partner of assessee admitted to have received accommodation entry in the form of unsecured loan. Based thereon, AO made addition of loan amount under section 68.

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

AO made addition merely on the basis of statement recorded during survey without any supporting evidence or any adverse material on record. It is settled legal position that statement recorded during the survey has no evidentiary value, moreover, survey party has no power to record the statement on oath. Accordingly, addition made by AO could not be sustained.

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

- a. CIT v. Kadar Khan (2012) 25 taxmann.com 413 SC
- b. Shardaben K. Modi [2013] 35 taxmann.com 264 (Gujarat)
- c. Golden Finance [2013] 40 taxmann.com 329 (Gujarat)

### Eagleton Property Holdings ITA No. 190/Bang/2017 Bangalore ITAT In favour of Assessee

#### Issues discussed and addressed:

**Issue No 1** Section 80 IB (10) Entire Claim u/s 80 IB(10) cannot be denied because built-up area of some of units exceeding 1,500 sq.ft. Assessee is entitled to proportionate deduction.

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

Assessee engaged in development of housing projects claimed deduction under section 80-IB(10). AO disallowed deduction on the ground that in respect of some of the units built-up area exceeded 1,500 sq.ft.

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

Assessee was entitled to benefit of deduction under section 80-IB(10) proportionately in respect of residential units having built-up area less than or equal to 1,500 sq.ft.

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

CIT v. Brigade Enterprises Ltd. I.T.A. No. 373 OF 2014 Judgment dated 22-10-2020 Karnataka High Court

### Amrapali Exports ITA No. 454/Jp/2019 Jaipur ITAT In favour of Assessee

#### Issues discussed and addressed:

**Issue No 1** Section 10AA Profits enhanced on account of addition under section 69C disallowing 25% of alleged unverifiable purchases will qualify for benefit u/s 10AA.

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

AO made addition under section 69C by disallowing 25% of alleged unverifiable purchases and denied deduction under section 10AA as regards the amount so added.

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

Expenditure to the extent of 25% of purchases held as non-genuine and disallowed by the AO related to the same business activity of manufacture and export in respect of which assessee was held eligible for deduction under section 10AA. Therefore, deduction under section 10AA was to be allowed on the enhanced profits in light of accepted legal position by *CBDT Circular No. 37/2016, dated 2-11-2016*.