

Important judgements and Updates

Update No 79/ 2021

Samanthapudi Lavanya Visakhapatnam ITAT In favour of Assessee

I.T.A. Nos. 704 to 727/Viz/2019, I.T.A. Nos. 73 to 75/Viz/2020

Issues discussed and addressed:

Issue No 1 Section 147 Assessment based on information gathered during course of statement recorded under section 132(4) from searched person by investigation wing is required to be made u/s 153C and not 147.

Facts of the case with respect to issue No 1:

AO reopened assessment under section 147 in assessee s case on the basis of concealment of income estimated by DDIT (Inv.) in the appraisal report and made the additions on the basis of joint receipt which was found and seized during the course of search and the statement was recorded under section 132(4) on 10-4-2014 from M. Vijaya Kumar, Managing Director of Navya Constructions who was under the search. Assessee contended that assessments was to be made under section 153C, but not under section 147.

Held by the Authorities with respect to Issue No 1:

There was no dispute that joint receipt was seized during the course of search as mentioned by AO in the assessment order as well as in remand report and assessment was made under section 147 on the basis of statement recorded under section 132(4), appraisal report and the joint receipt. All of them were directly related to the information found from the searched person consequent to the search under section 132. No fresh information was collected by AO or no information had come to the notice of AO in normal course, other than the information collected during the course of search from searched person. Therefore, as provided under sections 153A and 153C, search assessments was required to be made under section 153A or section 153C, but not under section 147.

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

- a. Alcargo Logistics Ltd. and others in 137 ITD 287 (Mumbai)

Admach Auto Ltd ITA No. 9543/Del/2019 Delhi ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 147 Objections not disposed of by AO through separate order which was contrary to the law and accordingly, the reassessment order was liable to be cancelled on that count.

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Facts of the case with respect to issue No 1:

AO issued notice under section 148 for reopening of assessment. In the reasons for reopening of assessment, the AO recorded that assessee-company obtained accommodation entry of Rs. 60 lakhs from 6 dummy/paper companies in the shape of share capital and share premium. Finally, he made addition of Rs. 50 lakhs under section 68 on account of accommodation entry obtained by the assessee. Assessee contended that the objections raised before the AO were not disposed of by him by a separate order and the same had been disposed of in a consolidated reassessment order, which was invalid.

Held by the Authorities with respect to Issue No 1:

It was found that the objections raised by assessee against reasons for reopening of assessment were not disposed of by AO through a separate order and the same had been disposed of in a consolidated reassessment order, which was contrary to the law and accordingly, the reassessment order was liable to be cancelled on that count. Further, in the reasons for reopening, the AO recorded that the assessee obtained accommodation entry of Rs. 60 lakhs in the name of 6 dummy/paper companies during the year under consideration, but finally made the addition of Rs. 50 lakhs under section 68 in the assessment order, which showed that the AO has not applied his mind before recording the reasons in issuing the notice under section 148. Therefore, the addition under section 68 was also liable to be cancelled. Hence, the reopening of the assessment was quashed and consequently, the addition under section 68 stood deleted.

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

- a. GKN Driveshaft (2003) 259 ITR 19 (SC)

Conwood Medip Harma (P) Ltd ITA No. 6460/Del/2015 Delhi ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 40(a)(ia) Professional charges not claimed in profit and loss account and same being capitalized does no deserve disallowance u/s 40(a)(ia).

Facts of the case with respect to issue No 1:

AO made addition under section 40(a)(ia) on account of non-deduction of tax at source on professional charges paid by assessee-company.

Held by the Authorities with respect to Issue No 1:

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Provisions of section 40(a)(ia) are attracted only if expenses are claimed in profit and loss account and not when the same are capitalized. In instant case, since assessee did not claim professional charges in its profit and loss account and capitalized the same under work -in- progress, i.e., Building under Construction in fixed assets schedule; the addition made under section 40(a)(ia) on account of non-deduction of tax at source on the professional charges paid by the assessee was accordingly, deleted.

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