

Important judgements and Updates

Tamil Nadu State Marketing Corporation Ltd Civil Appeal No. 3821 of 2020 Supreme Court of India

In favour of Assessee

Issues discussed and addressed:

Article 226 - Challenge to the vires of Section 40(a)(iib) -The High Court has failed to exercise the powers vested in it under Article 226 of the Constitution of India by not deciding the writ petition on merits and not deciding the challenge to the vires of Section 40(a)(iib) of the Income-tax Act on merits.

Facts of the Case:

That the appellant writ petitioner filed the writ petition before the High Court challenging the validity of Section 40(a)(iib) of the Income-tax Act, 1961 which was dismissed the High Court without deciding the validity of Section 40(a)(iib) of the Income-tax Act by observing that the issue of raising a challenge to the vires of the provision at this stage need not be entertained as the matter was still sub judice before the Income-tax Authority, even though it is open to the aggrieved party to question the same at the appropriate moment.

Held by the Court:

When the vires of Section 40(a)(iib) of the Income-tax Act were challenged, which can be decided by the High Court alone in exercise of powers under Article 226 of the Constitution of India, the High Court ought to have decided the issue with regard to vires of Section 40(a)(iib) on merits, irrespective of the fact whether the matter was sub judice before the Income-tax Authority.

Express Infrastructures (P.) Ltd TCA No. 783 of 2018 Madras High Court Against Assessee

Issues discussed and addressed:

Section 56 – Interest on FDR Made during the Pre Operative Period

Facts of the Case:

The assessee company was engaged in the business of developing and maintenance of commercial complex. For the purpose of construction of a shopping mall and a commercial office complex, the assessee took financial assistance from several banks and made certain deposits with other banks and financial institutions from those funds and earned interest income of Rs. 62,77,671/- which was netted off against the project development expenditure pending for allocation. However the AO completed the assessment under section 143(3) after bringing to tax said the FDR interest income under the head 'Income from Other Sources' relying upon the decision of the Hon'ble Supreme Court in the case of Tuticorin Alkali Chemicals & Fertilizers Ltd. v. CIT [1997] 93 Taxman 502/227 ITR 172.

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Held by the Court:

The assessee has parked the loan amount in short term deposits with Banks and other financial institution and earned interest income, which has no direct nexus and the interest income is directly attributable to the deposits made out of funds generated by way of term loans. Hence tribunal made no error in treating said interest earned by the assessee on commercial principles and taxing under the head Income of assessee from other sources.

Padmini Products (P.) Ltd ITA No 154 OF 2014 Karnataka High Court In favour of Assessee

Issues discussed and addressed:

Section 32 – Depreciation on Intangible Assets valued at the time of succession – Successor company is eligible to claim depreciation on Intangible assets acquired under succession

Facts of the Case:

Assessee is a Private Limited Company engaged in the business of manufacturing, dealing and exporting of incense sticks and allied products. The assessee succeeded to, in the business of partnership firm viz., 'Padmini Products' with effect from 1-2-2005. The case of the assessee for the Assessment Year 2005-06 was reopened under section 147 of the Act on the ground that during the course of the proceeding for Assessment Year 2007-08, it was noticed by the AO that assessee had made claim of depreciation on intangible assets, which was not in accordance with Section 32(1) of the Act and hence he disallowed the claim of depreciation on following grounds;

- a. Intangible assets valued in the hands of the company at the time of succession, were valued as per assessee's own valuation and not for any actual consideration.
- b. Assessee neither purchased/acquired intangible assets from any third party nor incurred any actual cost.
- c. Since, assessee had not actually acquired or purchased assets for actual consideration, therefore, value of the assets par takes the nature of notional value and not the real value and depreciation under section 32(1)(ii) of the Act cannot be allowed.
- d. Depreciation is only allowable as per proviso (5) to section 32(1) of the Act, which was actually existing in the earlier concern viz., the partnership firm. Therefore, the original assets, which were added in the company at the time of succession cannot be considered for the purposes of depreciation. Accordingly, the claim for depreciation on intangible assets was disallowed.

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Held by the Court:

The business of manufacture and sale of incense sticks was built on an intangible experience of aroma which can rarely be secured in the form of trade name/trade mark. Further AO himself had found that the erstwhile partnership firm was the registered owner of various trade marks and valuation of the shares was made by the assessee as per the accounting standards 10 & 26. None of the authorities had either questioned the valuation of the intangible assets or had doubted the genuineness of the transactions. Thus, the intangible asset of the assessee had a real money value. The aforesaid trademark viz., the intangible assets were transferred to the assessee for a valuable consideration. Section 32(1) of the Act provides for depreciation in respect of trademarks owned wholly or partly by the assessee. In the instant case, the assessee succeeded to the business of the partnership firm, which had trademarks registered in its name. Therefore, the assessee under section 32(1) of the Act was entitled for depreciation. It is also pertinent to note that under section 47 of the Act, any transfer of capital asset or a intangible asset by a firm to a company as are result of succession of the firm by a company is a recognized mode of transfer. Admittedly, the assessee and the erstwhile partnership firm are different entities and there was transfer of intangible assets by the partnership firm to the assessee for a valuable consideration that is by way of allotment of shares. Thus, the aforesaid transaction is squarely covered under section 47(xiii) of the Act and therefore, the assessee under section 32(1) of the Act was entitled for depreciation with reference to actual cost incurred by it with reference to intangible assets.

Judgments Relied Upon by the Court:

- a. HCL Technologies Ltd. [2018] 93 taxmann.com 33/255 Taxman 313/404 ITR (SC),
- b. Bhor Industries Ltd. [1961] 42 ITR 57 (SC)
- c. GVK Industries Ltd. [2011] 10 taxmann.com 3/197 Taxman 337/332 ITR 130 (SC).

Smt. Savita Bhasin ITA No. 161 (Delhi) of 2020 Delhi ITAT In favour of Assessee

Issues discussed and addressed:

- Issue No 1** Section 2(47) – Transfer - transfer of property by assessee to his son vide Agreement to Sell which was followed by Sale Deed was valid
- Issue No 2** Section 54F – joint ownership of property is not considered as residential house in the context of proviso to Section 54F

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Facts of the Case:

AO denied exemption under section 54F on the ground that assessee on the date of transfer of land i.e original asset had more than one residential house which were jointly owned by assessee with his wife Smt. Savita Bhasin Moreover the Assessing Officer did not accept claim of the assessee that one house (which was given on rent) was sold to his son for certain consideration which was supported by execution of valid Agreement followed by the ultimate Sale Deed.

Held by the ITAT with respect to claim of Transfer of House to Son:

The AO has not brought any evidence on record that the Agreement to Sell was not acted upon by the parties and that the entire sale consideration have not been transferred along with possession. It is also not in dispute that the Agreement to Sell dated 1-11-2013 was ultimately culminated into Registered Transfer Deed dated 27-6-2018 and as such, there is no question to doubt the Agreement to Sell because the property in question was transferred through Agreement to Sell and later on fortified by the Registered Purchase Deed in which all the facts of the Agreement to Sell and the transaction between the parties along with transfer of share consideration have been mentioned. According to Section 49 of the Registration Act, 1908 - "A registered document shall operate from the time which it would have commenced to operate, if no registration thereof had been require or made and not from the time of its registration". Therefore, the Registered Purchase Deed shall operate legally from the date of agreement i.e., 1-11-2013. Thus, the conditions of Section 2(47)(vi) read with Section 269UA of the I.T. Act, 1961 are satisfied in the present case. The assessee, thus, complied with the conditions of Section 54F of the I.T. Act that he does not own more than one residential property at the time of claiming exemption under section 54F of the I.T. Act.

Judgments Relied Upon by the ITAT:

- a. Sulej Cotton Mills Ltd. v. CIT, West Bengal [1979] 116 ITR 1 (SC)
- A. Suresh Rao [2014] 41 taxmann.com 475/223 Taxman 228 (Kar.) (Mag.)
- b. Ashwin C. Jariwala [2017] 80 taxmann.com 364/164 ITD 255 (Mum.).
- c. Amitkumar Ambalal Shah [2015] 57 taxmann.com 118/68 SOT 251 (Ahd. - Trib.)
- d. Elegant Infracore (P.) Ltd [IT Appeal No. 4334 (Delhi) of 2018]

Held by the ITAT with respect to co jointly owning of residential house property:

AO is not justified in rejecting assessee's claim for deduction under section 54F on ground that at time of sale of capital asset, assessee was owner of more than one residential house properties, in view of fact that

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one residential property was co-jointly owned in name of assessee and his wife and he could not be treated as 'absolute owner' of said property, deduction under section 54F could not be denied to him.

Judgments Relied Upon by the ITAT:

- a. Amit Gupta [2017] 81 taxmann.com 445 (Delhi) (Trib.)
- b. Ashok G. Chauhan [2019] 105 taxmann.com 204
- c. Dawood Abdulhussain IT Appeal No. 3788 (Mum.) of 2016
- d. Dr. Smt. P.K. Vasanthi Rangrajan [2012] 23 taxmann.com 299 (Mad)