

Important judgements and Updates

Update No 52/ 2021

Vedanta Limited W.P.No.25529 of 2015 & M.P.No.1 of 2015 Mdras High Court Against Assessee

Issues discussed and addressed:

Issue No 1 Section 292 B Where the notice was communicated to an unknown person, alien to the Assessee, then Section 292B cannot help the Revenue but where the notice was intended to be issued to a person to whom it was to be issued and such person acknowledged the PAN and responded to correspondences then there was no reason to disbelieve the Revenue that the name mentioned wrongly is a mistake to be fit within the provisions of S 292B.

Facts of the case with respect to issue No 1:

Assessee (Vedanta Limited, formerly known as M/s.Sterlite Industries (India) Limited) preferred a writ petition against the reassessment for AY 2008-09 where the notice u/s 148 was issued to the "Principal Officer, M/s Sesa Sterlite Industries (India) Limited" i.e., company that was in existence during the relevant point of time and contended that notice and subsequent communication was in the name of a non-existing entity which invalidates all further proceedings and the reassessment order; Assessee also submitted that the Revenue was informed about the merger of Sterlite Industries (India) Limited with Sesa Goa Limited with effect from Aug 17, 2013 in terms of the scheme of amalgamation and yet the notice was issued in the name of the non-existing entity which is a substantive error not curable u/s 292B, relied upon SC ruling in Maruti Suzuki.

Held by the Authorities with respect to Issue No 1:

Prior to 2013, Assessee's name was Sterlite Industries (India) Limited and subsequently, it was merged with Sesa Sterlite Limited and on close reading find that it was originally Sterlite Industries (India) Limited and subsequently, became Sesa Goa Limited followed by Sesa Sterlite Limited and finally, Vedanta Limited whereas Revenue issued notice in the name of 'Sesa Sterlite Industries (India) Limited' instead of 'Sterlite Industries (India) Limited'. The subsequent name of 'Sesa' was added by mistake. Word 'Sesa' was not alien to the Assessee and its insertion could be construed to be a bonafide mistake committed, however, the PAN was one and the same which was accepted by the Assessee as it responded to all the letters and mistake was correct during the proceedings

Where the notice was communicated to an unknown person, alien to the Assessee, then Section 292B cannot help the Revenue but where the notice was intended to be issued to a person to whom it was to be issued and such person acknowledged the PAN and responded to correspondences then there was no reason to disbelieve the Revenue that the name mentioned wrongly is a mistake to be fit within the provisions of Section 292B

Important judgements and Updates

Update No 52/ 2021

Indian Institute of Science I.T.A. NO.277 OF 2015 Karnataka High Court Against Assessee

Issues discussed and addressed:

Issue No 1 Section 192 Entities owned or controlled by the Central Government cannot be treated at par with the Central Government and rules applicable on valuation of residential accommodation to the Central Government employees would not apply to the employees of such entity.

Facts of the case with respect to issue No 1:

Assessee-Trust, a premier research institution, imparts higher learning and conducts advanced research in science and technology and the service conditions of its employees are same as applicable to the Central Government employees; Revenue held Assessee to be an assessee-in-default u/s 201(1) and 201(1A) r.w.s. 192 for non-deduction / short deduction of tax at source due to incorrect determination of the value of residential accommodation provided to its employees under Rule 3 of IT Rules which was confirmed by CIT(A) and ITAT.

Held by the Authorities with respect to Issue No 1:

Assessee is a body owned and controlled by the Central Government, it may be an instrumentality of the State under Article 12 of the Constitution but the requirement of Rule 3 in the context of Central Government employees is "accommodation should be provided by the Central Government or State Government to the employees either holding office or post in connection with affairs of Union or of State or serving with any body undertaking under the control of such government from deputation" which cannot be expanded to include any body, undertaking merely because of the control exercised by the Central Government.

The Karnataka State Co-Operative Apex Bank Limited Karnataka High Court In favour of Assessee

I.T.A. NO.392 OF 2016

Issues discussed and addressed:

Issue No 1 Section 147 High Court directs AO to consider fresh claim of loss made by Assessee during the reassessment proceedings not made in the return of income as originally filed

Facts of the case with respect to issue No 1:

Assessee, an apex co-operative bank, filed a return declaring income of Rs.40.77 Cr. for AY 2007-08 which was processed u/s 143(1) and was subjected to reassessment proceedings u/s 148 in response to which

Important judgements and Updates

Update No 52/ 2021

Assessee filed a return of income making a fresh claim of loss on sale of securities of Rs.8.28 Cr. which was disallowed by the Revenue and was also disallowed in appeals.

Held by the Authorities with respect to Issue No 1:

There is no original assessment order in the present case as per Supreme Court ruling in Rajesh Jhaveri Stock Brokers and proceeding u/s 148 was the first assessment and it could have been done considering all the claims of the Assessee. Further Supreme Court ruling in Sun Engineering to be inapplicable to the present case even if it is assumed that intimation u/s 143(1) was an order since the original assessment would get effaced in the subsequent reassessment order. Thus, High Court remits the matter back for conducting a de novo proceeding to consider Assessee's claim of loss.

Jaya Educational Trust Tata Consultancy Services Ltd. Chennai ITAT In favour of Assessee

ITA Nos.: 2915, 3114, 3115/CHNY/2019 & 916/Chny/2020

Issues discussed and addressed:

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| Issue No 1 | Section 13 | In case of a violation of section 13(1)(c), MMR could be applied only on the income which violated the provisions and not the total income of the Trust. |
| Issue No 2 | Section 11 | if return of income is filed on or before due dates specified u/s.139 (4), then the same is considered as valid return filed u/s 139 and hence benefit of exemption can not be denied as exemption provisions are require to be interpreted liberally. |

Facts of the case with respect to issue No 1:

Assessee, public charitable trust, formed with object of imparting education runs several educational institutes, was assessed to tax for AY 2012-13, 2013-14, 2016-17 and 2017-18 at the maximum marginal rate for advancing interest free loans to its consultants in contravention to section 13(1)(c) which was also confirmed by CIT(A).

Held by the Authorities with respect to Issue No 1:

Consultants appointed by the Assessee were individuals with expertise in education sector and were appointed with a specific purpose and period for assisting the Assessee in setting up a Medical College and thus were not 'manager' in terms of section 13.

Thus the disqualification u/s 13 on loans given to two consultants would not get covered u/s 13(3)(cc) and thus, not resulting in any benefit directly or indirectly to interested persons so as to attract provisions of section 13(1)(c) of the Act.

Important judgements and Updates

Update No 52/ 2021

Even assuming there was a violation of section 13(1)(c), MMR could be applied only on the income which violated the provisions and not the total income of the Trust.

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

- a. Working Women Association [TS-5105-HC-2014(MADRAS)-O] Madras High Court
- b. Fr. Mullers Charitable Trust [TS-5130-HC-2014(KARNATAKA)-O] Karnataka High Court
- c. Sheth Mafatlal Gagalbai *Foundation Trust* [TS-5476-HC-2000(BOMBAY)-O] Bombay High Court

Facts of the case with respect to issue No 2:

For AY 2016-17 and 2017-18, AO had denied the benefit of exemption u/s 11 on one more premise, that Assessee had not furnished the return of income within the due date u/s 139(1).

Held by the Authorities with respect to Issue No 2:

It is well settled principles of law by the decisions of various Courts and Tribunals that for the purpose of exemption/ deduction provisions, if return of income is filed on or before due dates specified u/s.139 (4), then the same is considered as valid return filed u/s 139. It is also not in dispute that exemption provisions should be liberally construed to give the benefit to the Assessee.

Important Updates

- a. In view of difficulties faced by taxpayers in electronic filing of Forms 15CA/15CB on www.incometax.gov.in, the CBDT has decided that taxpayers can submit the aforesaid Forms in manual format to the authorized dealers till June 30, 2021. Said date was extended to July 15, 2021. Now, the board has given further relaxation and allowed manual filing of Forms till August 15, 2021.
- b. The Central Board of Direct Taxes (CBDT) has notified M/s Patanjali Research Foundation Trust, Haridwar under the category "Research Association" for Scientific Research for the purposes of section 35(1)(ii) of the Income-tax Act, 1961.
- c. The Govt. has announced issue price of Sovereign Gold Bond Scheme 2021-22- Series IV. The issue price of the Bond during the subscription period shall be Rs. 4,807/- per gram. The Government has also decided to allow discount of Rs 50 per gram from the issue price to those investors who apply online and the payment is made through digital mode.
- d. The Central Board of Direct Taxes (CBDT) has notified a new Rule 8AC which prescribes the manner for computation of short-term capital gains and written down value under section 50 if depreciation has been obtained by assessee.

Important judgements and Updates

Update No 52/2021

- e. The Central Board of Direct Taxes (CBDT) has notified a new Rule 8AB to the Income-tax Rules, 1962 to prescribe manner to compute attribution of income taxable under section 45(4) to the capital assets remaining with the specified entity for the purpose of section 48(iii). Specified entities are also required to furnish the details in Form no. 5C.