

Important judgements and Updates

Update No 12`/2022 (Previous Colander Year 100/ 2021)

Triveni Glass Ltd ITA Nos. 19 to 21 (Ald.) Of 2020 Allahabad High Court Against Assessee

Issues discussed and addressed:

Issue No 1 Section 32 The revenue has rightly denied the depreciation on the assets at manufacturing unit which was closed as the same were neither actually used for business nor the same were passively used for business as these assets were not even ready for use, and rather the assets were held to be sold to clear its financial liabilities.

Facts of the case with respect to issue No 1:

The assessee-company was engaged in manufacturing of glass. It had two manufacturing units. It had claimed depreciation under section 32 on its assets. The Assessing Officer observed that one of the two units was closed for several years and its fixed assets were also not put to use or business in year under consideration. Accordingly, the Assessing Officer disallowed said claim to 30 per cent of total depreciation claimed by the assessee in respect of assets of said closed unit.

Held by the Authorities with respect to Issue No 1:

Perusal of section 32(1) clearly stipulates that user of the assets for the purposes of business or profession is a mandatory requirement, before claiming depreciation under section 32. There is section 38(2) in statute, wherein even where the assets forms part of block of assets, and the same is not wholly and exclusively used for business, and is partly used for personal purposes, the depreciation shall be proportionately disallowed.

Conjoint reading of the factual status as stated by the assessee before the Bench that the one of its manufacturing unit was lying closed for several years with the in directors report, clearly reveals that the assets of said manufacturing unit were not being used during the year, both active user as well passive user were not there, rather the assessee was making efforts to sell the plant and machinery at manufacturing unit to clear its financial liabilities, as the assessee was registered as a sick company with BIFR. Thus, the revenue has rightly denied the depreciation on the assets at manufacturing unit which was closed as the same were neither actually used for business nor the same were passively used for business as these assets were not even ready for use, and rather the assets were held to be sold to clear its financial liabilities.

Cochin Malabar Estates & Industries Ltd I.T.A. No. 179 OF 2014 Kerala High Court In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 2 (14) Cutting and carrying away of rubber trees did not change classification of land from agricultural to non-agricultural, thus, profit arose on sale of such agricultural land was not chargeable to tax.

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Facts of the case with respect to issue No 1:

The assessee owner of an agricultural land entered into a memorandum of agreement (MoA) with one KSIDC for sale of said land. The assessee agreed to deliver the agricultural land to KSIDC after removing all the rubber trees on the land at his own expenses. The Assessing Officer noted with cutting and carrying away of rubber trees land became barren land and a barren land could not be treated as an agricultural land. Further, KSIDC, in due course of time, upon purchase from assessee, converted the schedule property into an industrial estate. Thus, profit derived from sale of said land was to be brought to tax as capital gain.

Held by the Authorities with respect to Issue No 1:

The assessee was the owner of agricultural/plantation land. The assessee agreed to sell the schedule property without the burden of rubber trees. The cutting and the carrying away of rubber trees do not change the classification of land from agricultural to non-agricultural land. The assessee continued to treat the schedule property as agricultural land for the financial year ending. The assessee cannot be expected to have control over the activities of his buyer once the transfer is completed. The incidence of exigibility of assessee/vendor is not dependent on an act of commission or omission of vendee. The vendor has no control on future use. What is very important is whether on the date of sale the land was agricultural land, both in record and use. The incidence to pay capital gains tax cannot be and ought not to be traced to an act of commission or omission by the transferee of the assessee.

In the case on hand, the assessee both factually and legally did not change the character of land from agriculture to non-agriculture. The assessee has demonstrated that the classification of land continued to be agricultural land in the revenue records even as on the date of sale. Though it is a peripheral, it is an important matter in appreciating the character of land sold by the assessee; namely, had the land been converted for the non-agricultural purpose/laid out in plots, then the stamp duty payable on registration would be on the nature of land sold at the relevant point of time. The schedule property was described as land in conveyance deed. The schedule property consists of vast extents of agricultural land, admittedly outside a notified area. There is no change of user at the instance of the assessee. The burden fastened on the assessee in the circumstances of the case has been discharged.

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

- a. Siddharth J. Desai [1982] 10 Taxman 1/[1983] 139 ITR 628 Gujarat High Court
- b. Ranchhodbhai Bhajibhai Patel v. CIT [1971] 81 ITR 446. Gujarat High Court
- c. Mansi Finance Chennai Ltd. [2016] 73 taxmann.com 312/388 ITR 514 (Mad.)

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Electra Paper and Board Pvt. Ltd ITA NO.222/Chd./2021 Chandigarh ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 56 Subsequent audit of Balance Sheet drawn on the date of valuation of shares, would be sufficient compliance of Rule 11U(b) provide there is no material change in the financials of the Balance Sheet after audit.

Facts of the case with respect to issue No 1:

Assessee-Company issued shares at a premium of Rs.10 each to the family members and related group companies on Mar 31, 2016. Revenue, for AY 2016-17, rejected FMV of shares determined by the Assessee on the basis of Average NAV as on Mar 31, 2015 and Mar 31, 2016 and recomputed the FMV based on audited Balance Sheet as on Mar 31, 2015. Revenue contended that since on the date of share valuation, the Balance Sheet as on Mar 31, 2016 was not audited, valuation should be based on last available audited Balance Sheet drawn on Mar 31, 2015.

Held by the Authorities with respect to Issue No 1:

A bare perusal of the definition of 'balance-sheet' above would show that for the purpose of determination of FMV under rule 11UA, the balance-sheet should be drawn on the date of valuation and the same should also be audited by the Auditor of the company and in case the balance-sheet on the date of valuation is not drawn, the balance-sheet drawn on a date immediately preceding the valuation date and audited by the auditors of the company should be considered.

The definition has two limbs: The first limb applies in a situation where the Balance sheet is drawn on the date of valuation and the second limb of definition applies in a situation where no Balance Sheet is drawn on the date of valuation.

In the instant case undisputedly on the date of allotment of shares i.e. 31.3.2016, a balance-sheet was drawn by the assessee albeit the said balance sheet was unaudited on that date. The FMV of the shares was determined on the basis of said balance-sheet. The said Balance-sheet was subsequently audited by the Auditors of the company and ostensibly, there was no difference in the financials of tentative balance-sheet drawn on 31.03.2016 after audit by the Auditors. Since, the balance sheet was drawn on the date of valuation the case of assessee is covered by first limb of the definition of 'Balance Sheet'. In so far as the condition that the Balance Sheet should be audited by the Auditor of the company, the said condition is also satisfied as the Balance sheet drawn on 31.3.2016 was subsequently audited with purportedly no change in financials.

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The emphasis is on drawing of balance sheet on the date of valuation. The rule does not mandate that the balance sheet should also be audited on the date of valuation. Even if the balance sheet is audited subsequently, it would be sufficient compliance of the provisions of Rule 11U(b). However, in spirit and purpose of the provisions of rule defining 'balance sheet', there should not be material change in the financials of the Balance Sheet after audit so that it may not lose the tenacity and relevance of 'balance sheet on the date of valuation'.

Tata Teleservices Ltd ITA Nos. 1685 & 1686 (DELHI) of 2011 Delhi ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 194H Discount on sale of recharge vouchers and SIM cards by telecommunication company to its distributors did not amount to commission in terms of section 194H.

Facts of the case with respect to issue No 1:

The assessee was a limited company engaged in the business of providing telecommunication services across the country. The AO held that the discount offered to the distributors/channel partners was in the nature of commission on which the assessee was liable to deduct tax at source under section 194H.

Held by the Authorities with respect to Issue No 1:

What is sold by the assessee service provider to the distributor is the right to service. Once the distributor pays for the service, and the service provider, delivers the Sim Card or Recharge Coupons, the distributor acquires a right to demand service. Once such a right is acquired the distributor may use it by himself.

It is a well-settled proposition that if the property in the goods is transferred and gets vested in the distributor at the time of the delivery then he is thereafter liable for the same and would be dealing with them in his own right as a principal and not as an agent.

The assessee may have fixed the MRP and the price at which they sell the products to the distributors but the products are sold and ownership vests and is transferred to the distributors. The discounted income accrues to distributor only when they sell this right to service and not when they purchase this right to service from assessee. As at the time of sale of prepaid card by the assessee to the distributor, income has not accrued or arisen to the distributor, there is no primary liability to tax on the Distributor. In the absence of primary liability on the distributor at such point of time, there is no liability on the assessee to deduct tax at source. Hence the provisions of section 194H were not applicable to the transaction of sale of starter kits and pre-paid SIMs to distributors on principal to principal basis.

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

Judgments Against Assessee which are considered.

- a. *CIT v. Idea Cellular Ltd.* [\[2010\] 189 Taxman 118/325 ITR 148](#) Delhi High Court
- b. *Vodafone Essar Cellular Ltd. v. Asstt. CIT* [\[2010\] 194 Taxman 518](#) Kerala High Court

Judgments Favouring Assessee

- c. *CIT v. Vegetable Products* [1973] 1 SCC 442 Supreme Court
- d. *Bharti Airtel Ltd. v. CIT* [\[2015\] 372 ITR 33](#) Karnataka High Court
- e. *CIT v. Vodafone Cellular Ltd* [IT Appeal No. 1152 of 2017, dated 27-1-2020] Bombay high COURT
- f. *Tata Teleservices Ltd. v. ITO* [\[2016\] 71 taxmann.com 285 \(J.P.\)](#)