

Important judgements and Updates

Update No 69/ 2021

Chander Arjandas Manwani Writ Petition No. 3195 Of 2021 Bombay High Court In favour of Assessee

Issues discussed and addressed:

Issue No 1 Faceless Assessment Assessment Order was quashed being without issue of Draft Assessment Order and without providing opportunity of personal hearing and thereby not in conformity with scheme.

Facts of the case with respect to issue No 1:

On Feb 1, 2021, Assessee received a fresh notice calling upon to show cause as to why assessment should not be completed as per the draft assessment order and calling for further documentary evidence which was followed by the assessment order on Mar 2, 2021 passed without considering Assessee's request for personal hearing, against which Assessee preferred a writ petition.

Held by the Authorities with respect to Issue No 1:

Honourable HC remarked that despite specific request made by Assessee for grant of personal hearing, the same was not granted nor the reason for non-granting of personal hearing specified in the assessment order.

HC noted that though stated in the assessment order that draft assessment order was provided with show cause notice dated Feb 1, 2021, from the affidavit in reply it appears that the draft assessment order was generated in ITBA system only on Feb 25, 2021. The notice dated January 18, 2021" was not a draft assessment order but a notice calling upon petitioner to provide further details and documentary evidences." and notice dated Feb 1, 2021 sought further documentary evidences and remarks that "*by no stretch of imagination can be even referred to as draft assessment order*".

As per the CBDT Order Dated. Aug 13, 2020, where a modification is proposed, NeAC shall provide an opportunity to Assessee by serving a notice calling upon him to show cause as to why the assessment should not be completed as per draft assessment order, and HC noted that in instant case, the same was not complied with and thus it was held that the assessment order is not in conformity with the requirements of Faceless Assessment Scheme, and thus non est and shall be deemed to have never been passed.

Mohmed Shakil Mohmed Shafi Mutawalli ITA No. 238/Ahd/2018 Ahmedabad ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 194C A technical defect would not attract Section 40(a)(ia)" and holds that for a technical lapse u/s 194C(7) it is not appropriate to disallow the claim of transportation expenses.

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Facts of the case with respect to issue No 1:

Assessee-Individual was assessed u/s 143(3) with a total income at Rs. 9.15 lacs. Subsequently, Pr. CIT passed order u/s 263 directing the Revenue to make a fresh assessment on the issue of non-deduction of tax at source on the freight payment of Rs.10.63 lacs and Revenue passed assessment u/s 143(3) disallowing claim of transport expenses of Rs.10.63 lacs. CIT(A) dismissed Assessee's appeal since Assessee failed to comply with provisions of Section 194C(7) which requires Assessee to furnish certain prescribed details for amounts on which tax deduction is not made at source.

Held by the Authorities with respect to Issue No 1:

Assessee had complied with Section 194C(6) and without considering the relevancy of the factual matrix, Pr. CIT set aside the issue for fresh assessment. During assessment proceedings pursuant to revisionary order, all details of transportation expenses was furnished and the genuineness was not disproved by the Revenue, and CIT(A) sustained the disallowance merely on technical basis that there had been failure to make compliance with Section 194C(7). If there is compliance with Section 194C(6), no disallowance u/s 40(a)(ia) is permissible even though there is violation of Section 194C(7)

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

- a. Soma Rani Ghosh Vs. DCIT 74 taxmann.com 90 (Kolkata ITAT)
- b. Shri Mrikamba Transport Co. 57 taxman.com 273 (Karnataka High Court)
- c. ACIT vs. Arihand Trading Co. 104 taxmann.com 336 (Jaipur ITAT)

Naina Saraf ITA No. 271/JP/2020 Jaipur ITAT In favour of Assessee

Issues discussed and addressed:

Issue No Section 56 (2)(vii)(b) Property's registration in the year after amendment of Section 56(2)(vii)(b) where purchase had taken place prior to the amendment, is not exigible to tax in terms of the amended provisions of Section 56(2)(vii)(b).

Facts of the case with respect to issue No 1:

Assessee-Individual's return for AY 2015-16 declaring total income at Rs.27.38 lakhs was assessed u/s 143(3). Subsequently, Pr.CIT observed Assessee jointly purchased immovable property for consideration of Rs.70.26 lakhs, having a stamp duty valuation of Rs.1.03 Cr and held that the difference of Rs.32.85 lakhs should be taxable as income from other sources u/s 56(2)(vii)(b), thus rendering assessment erroneous and prejudicial to the interest of Revenue. Assessee submitted that property was purchased in AY 2010-11 whereas

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registration took place in AY 2014-15, and it could not be made taxable as inadequate consideration, since amendment to Section 56(2)(vii)(b) by Finance Act 2013 was applicable with effect from Apr 1, 2014.

Held by the Authorities with respect to Issue No 1:

Assessee entered into a valid and lawful agreement in AY 2010-11 for purchase of property by way of allotment letter dated Mar 06, 2009 wherein the property was transferred and obligations discharged, however the purchase deed was registered on Dec 9, 2014; Thus holds that Pr. CIT erred in applying the amended provision in Assessee's case. Mere registration at later date would not cover a transaction already executed in the earlier years and substantial obligations have already been discharged.

Other Updates

- a. SC restores its order dated Mar 8, 2021, thereby lifting the extension in limitation period, states that the limitation period will start running from Oct 3, 2021, and in computing the limitation period for any suit, appeal, application or proceeding, the period from Mar 15, 2020 till Oct 2, 2021 shall stand excluded. in cases where the limitation period would have expired during the period between Mar 15, 2020 and Oct 2, 2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from Oct 3, 2021 and adds that in the event the actual balance period of limitation remaining w.e.f. Oct 3, 2021 is greater than 90 days, that longer period shall apply.
- b. The Central Board of Direct Taxes (CBDT) has extended the validity of provisions of Rule 10TD(1) & Rule 10(2A) till Assessment Year 2021-22. Rule 10TD prescribes list of eligible international transactions where transfer price declared by the assessee shall be required to be accepted by the Income-tax Authorities
- c. To addressing the hardships being faced by various stakeholders, the Central Government has extended the due dates of a few compliances. The last date to link PAN with Aadhaar has been extended to 31-03-2022. The due date for completion of penalty proceedings has also been extended from 30-09-21 to 31-03-22. Further, the time limit for issuance of notice and passing of order under the Prohibition of Benami Property Transactions Act, 1988 has also been extended to 31-03-22.

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- d. The Central Board of Direct Taxes (CBDT) has notified two more pension funds namely, the 2452991 Ontario Limited and the 276522 Ontario Limited for the purpose of exemption under section 10(23FE). The notified funds shall be eligible to claim exemption in respect of investment made in India on or before 31-03-2024 subject to prescribed conditions.
- e. On consideration of difficulties reported by the taxpayers and other stakeholders in filing of Income Tax Returns and various reports of audit for the Assessment Year 2021-22 under the Income-tax Act, 1961, the CBDT has decided to further extend the due dates for filing of Income Tax Returns and various reports of audit for the Assessment Year 2021-22.

Due Date for Return of Income	31 st December, 2021 (Non Audit Case)
Due Date of Furnishing Audit Report u/s 44AB	15 th January, 2022
Due Date of Furnishing Audit Report u/s 92E	31 st January, 2022
Due Date for Return of Income	15 th February, 2022 (44AB Audit Case)
Due Date for Return of Income	28 th February, 2022 (TP Audit Case)
Due Date of Belated Return	31 st March, 2022

- f. The CBDT has notified another exclusion to case where Assessment Order not to be passed under faceless assessment regime. The Board has notified that Assessment Orders in cases where pendency couldn't be created on ITBA because of technical reasons or cases not having a PAN shall not be passed by the National Faceless Assessment Centre under section 144B
- g. The Govt. has appointed, Shri G. S. Pannu, Vice-President, ITAT, New Delhi as Officiating President of ITAT with effect from 06-09-2021 till appointment of regular President or until further orders, whichever is earlier.
- h. The board has notified a new Rule 26D to provide that senior citizens are required submit Form 12BBA with specified bank in order to claim the benefit of section 194P. The board has also amended Form 16, Form 24Q, Form 26QC and Form 26QD to incorporate necessary changes related to provisions of section 194P.
- i. The Central Board of Direct Taxes (CBDT) has notified Board for Advance Rulings effective from 01-09-2021. The Board has specified Boards having its headquarters in Delhi and Mumbai.