

Important judgements and Updates

Karnataka Industrial Area Development Board ITA No.205 of 2016 Karnataka High Court

Issues discussed and addressed:

Proviso to Section 2(15)- Charitable Purpose – The profit making being not the driving force or objective of the assessee and the assessee being engaged in the charitable activity through advancement of an object of general public utility, hence the Proviso to section 2(15) of the Act is not applicable to the case of the assessee and the assessee is entitled to benefit of Section 11.

Facts of the Case:

The assessee is a statutory body constituted under section 5 of the Karnataka Industrial Area Development Act, 1966. The AO, *inter alia* held that the assessee had earned a profit for the year ending 31-3-2009 which was 80% of the total income. It was held that the assessee had earned profits systematically over the last few years and the activity of the assessee amounts to commercial in nature as it was engaged in the sale of land and in providing services. It was further held that the Director of Income-tax has cancelled the registration granted under section 12A of the Act and therefore, the income of the assessee can be computed under the normal provisions of the Act. The AO denied the exemption to the assessee by invoking the provisions of Section 2(15) of the Act and concluded the assessment.

Held by the Court:

The main component of income of the assessee is derived in the form of interest and there is no profit element in earning income as interest. The income of the assessee comprises of repairs and maintenance, administrative expenses, water and electricity charges, special and other charges, depreciation. The assessee has been established to promote rapid and orderly development of industries in the State and to assist in implementation of the policy of the Government within the purview of the KIAD Act, to facilitate in establishing infrastructure projects and to function on 'No Profit-No Loss' basis. The State Government acquires the land for the scheme of the assessee and hand over the same to the assessee after the acquisition for the development of the industrial area. Further the profit making is not the driving force or objective of the assessee. Therefore the assessee is engaged in the charitable activity through advancement of an object of general public utility and hence the Proviso to section 2(15) of the Act is not applicable to the case of the assessee and the assessee is entitled to benefit of Section 11 of the Act. It has also been noticed that the AO has not disputed that the assessee fulfils the conditions, which is necessary for allowing the exemption of the deductions applicable under the Act except Proviso to Section 2(15) of the Act. Thus, the Tribunal has held that the Proviso to section 2(15) of the Act is not applicable to the case of the assessee.

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Prestige Estate Projects (P) Ltd I.T.A. No. 84/2010 Karnataka High Court

Issues discussed and addressed:

Issue No 1 Section 145 - Method of Accounting – Assessee being not contractor AS 7 is not Applicable.

Issue No 2 Head of Income - Income from House Property vs Income from Business and Profession

Facts of the Case:

Assessee, a private limited company was engaged in the business of real estate has filed return of income following 'Completed Contract Method' of accounting for all its real estate projects and had offered rental income received from Forum Mall and rental income received from fit outs as Income from house Property.

However, the AO finalised the assessment by computing income from real estate projects as per 'Percentage Completion Method' on the ground that as per the provisions of accounting standard AS-7, assessee was required to mandatorily follow the same. Further AO has also recorded a finding that rental income received from Forum Mall and rental income received from fit outs were 'income from business' and 'income from other sources' and not as income from house property. Accordingly, assessment order came to be passed with suitable additions.

Held by the Court with respect to Method of Accounting:

Assessee was in the activity of projects and was not a construction contractor. Thus, the revised AS-7 would be applicable to an enterprise undertaking construction activities on their own account as a venture of commercial nature. Whereas, the assessee undertakes construction activities for those persons to whom it intends to sell super built area along with undivided share of land in a project which it is developing as a developer. In fact, the revenue had accepted the method of accounting adopted by the assessee for the previous years and in the light of guidance note provided that AS-7 is applicable to real estate developers, assessee itself has changed the method of accounting and for the subsequent years, it has changed from Project Completion Method to Percentage Completion Method in the subsequent year and as such, there is revenue neutral in the assessment year in question.

Held by the Court with respect to Head of Income:

In view of High Court decision in the case of CIT v. Velankani Information Systems (P.) Ltd. (2014) 265 CTR 250 (Karnataka), if assessee is in the business of taking land, putting up commercial building thereon, letting out such building with all furniture as his profession or his business then notwithstanding the fact that he has constructed building and he has also provided other facilities and even if there are two separate rental deeds, it does not fall within the income from house property.

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Realtech Construction (P) Ltd I.T.A. No. 6569/Del/2016 Delhi ITAT

Issues discussed and addressed:

Section 153C- Assessment In Search Cases - Section 43(5) – Speculative Transactions – Loss incurred on foreign exchange derivative cannot be disallowed holding it to be a speculative loss. - Matter Remanded to examine as to whether the foreign exchange forward contract was undertaken in respect of capital items or revenue items.

Facts of the Case:

During the search operation in M/s. C Group, certain documents were retrieved by AO which related to assessee. The documents were in the nature of MOUs between promoters of assessee-company, namely, Y, P and R along with some working pertaining to Realtech Group. During the course of search proceedings, summons were issued to three promoter directors of assessee-company, out of which only Mr. Y appeared before the investigation Wing. It was observed by the Investigation wing that books of account were not produced to corroborate the various entries. Accordingly, a proceeding under section 153C was initiated in the case of the assessee company and notice was issued. Thereafter, survey operation was carried out in the case of Y by the Investigation Wing wherein various incriminating documents pertaining to assessee-company for the assessment year 2011-12 was seized. The said impounded document contained details of payment received by M/s. M Pvt. Ltd. from assessee as on 31-3-2010. Assessee submitted that, these documents did not belong to the assessee-company. However, AO held that in view of the provision of section 292C(1), the presumption was against the assessee. Accordingly, he made the addition.

Held by the Delhi bench of ITAT:

From a bare perusal of the [satisfaction] note, it could be seen that the seized documents were mainly MOU's between promoters of Realtech group, namely, Y, P and R along with the some working of the Realtech Group. There was no reference in the assessment order or in the seized documents that these were in the nature of incriminating documents from where inference could be drawn that there was any undisclosed income or any other income which had escaped assessment. To acquire jurisdiction under section 153C, the seized documents must be incriminating and must relate to the assessment year whose assessment were sought to be reopened. Apart from that, assessee had disclosed a sum of Rs. 24.50 crores as additional income during survey owing to such real estate business of the assessee, and therefore, if at all there was any element of cash payment or cash income and the source of income of the business was the same and no further evidence had been found or investigated during the assessment proceedings, then no

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addition could be made again in this assessment year. Thus, the entire addition was held to be beyond the scope of section 153C and the same was to be deleted.

Judgments Relied Upon by the ITAT:

- a. PCIT v. Index Securities Pvt. Ltd (2017) 86 taxmann.com 84 (Del)
- b. CIT v. Singhad Technical Educational Society (2017) 84 taxmann.com 290
- c. RRJ Securities (2015) 66 Taxman.com 69 (Del)
- d. Pepsi Foods (P) Ltd. v. Asstt. CIT (2014) 270 CTR (Del) 459
- e. Green Range Farms (P) Ltd. v. DCIT 2018 TaxPub(DT) 5185 (Del-Trib)

Meenu Jain I.T.A. Nos. 1738 to 1741/Del/2018 Delhi ITAT Against Assessee

Issues discussed and addressed:

Section 68 – Cash Credits - Addition u/s 68 is justified whenre the gift received by assessee is beyond human probabilities and assessee could not substantiate the claim by producing relevant documents.

Facts of the Case:

The AO finalised the assessment by making addition u/s 68 with respect to gift received by the assessee from three persons on same day on account of following reasons;

- a. Donors were neither family members / relative of assessee nor there any occasion.
- b. On examining the gift deed so furnished it was noticed that all the three donors had deposed that gifts have been made out of their natural love and affection for the assessee.
- c. Moreover the AO observed that all the three donors had shown returned income which was slightly more than the maximum amount which is not taxable.
- d. To verify the genuineness of the donor the assessing officer issued summons under section 131 of the Act to the donors which were returned by the Postal Department with the remarks "No such address" / "Left without address" / "No such person" .

Held by the Delhi bench of ITAT:

The AO had given ample opportunities to produce the donors and file evidences supporting the claim of the assessee. But the assessee was unable to produce the donor and other relevant evidences for substantiating the claim. The credits appearing in the books of the assessee cannot be accepted as gift because this gift is

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against human probability for such large sum of money gifted to the strangers. The assessee was unable to produce evidences to counter the requirement and to prove the genuineness of the transaction. The document produced by the assessee that is bank statement, ITR, Gift deed, bank accounts established that the gift received by the assessee is not genuine and is only to circulate his own money in the garb of gift and to evade the tax which is highly unlikely and against the human probability. Therefore, the addition in dispute made by the assessing officer under section 68 of the Act is as per law and no interference is called for

Lalchand (P.) Dhariwal ITA No. 2623/Ahd/2016 Ahmedabad ITAT

Issues discussed and addressed:

Section 68 – Cash Credits - No addition can be made, if assessee has discharged the primary onus laid on him in terms of section 68.

Facts of the Case:

The AO finalised assessment by making addition u/s 68 as in his opinion the assessee could not prove the Identity, the genuineness of the transaction with respect to unsecured loans taken from three persons.

Held by the Ahmedabad bench of ITAT:

When the assessee has primarily discharged the initial onus laid on him in terms of section 68 by providing details to establish genuineness of transaction, identity and creditworthiness of depositors then the assessee is not expected to prove genuineness of cash deposited in bank account of those creditors because under the law the assessee can be asked to prove the source of credits in his books of accounts but not the source of source.

Where lenders of assessee are income-tax assesseees whose PAN have been disclosed, assessing officer cannot ask assessee to further prove genuineness of transactions without first verifying such fact from income-tax returns of lenders.

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Judgments Relied Upon by the ITAT:

- a. DCIT v. Rohini Builders (2002) 256 ITR 360 (Guj.)

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- b. CIT v. Ayachi Chandrasekhar Narsangji (2014) 42 taxmann.com 251 (Guj)
- c. CIT v. RanchhodJivabhaiNakhava (2012) 81 CCH 193 (Guj-HC)

Ramesh Raj Bohra I.T.A. No. 157/Jodh/2019 Jodhpur ITAT

Issues discussed and addressed:

Section 68 – Head of Income - The intention of assessee at the time of purchase of property and Time period of holding of property are relevant factors to determine the head of income.

Facts of the Case:

The assessee has sold his land and offered capita gain thereon after claiming deduction under section 54F of the Act. The case was selected for limited scrutiny for "Large deduction claimed under section 54B, 54C, 54D, 54G, 54GA". During the course of scrutiny assessment, the assessing officer rejecting explanation offered by assessee and held that all transaction of sale of property are in the nature of business and the assessee purchased all property under consideration with business intention.

Held by the Jodhpur bench of ITAT:

The assessee declared Long Term Capital Gain from sale of properties which were classified as Capital Investments in the Financial Statements. Intention of assessee at the time of purchase can be clearly discern from this, moreover, a general inference can be drawn from this that why assessee purchase land with the motive of business around 20 years back, when the main stream line of family business of assessee is granites manufacturing and trading since 1986. Moreover from the time of Purchase of land in the year 1995 till the conversion of the land for township, such land has been cultivated by the assessee and agricultural income from the same has been duly shown in the return of income filed by the assessee.