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CHARTERED ACCOUNTANTS

Communiqué

Direct Tax
June 2023

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Reopening of assessment of a dead person is null and void in law; Notice u/s 148 & 148A(b) and order u/s 148A(d) were quashed and set aside

Facts

The Petitioner is the legal heir of the deceased petitioner who expired on 04-12-19 at Gandhinagar. The deceased petitioner had filed her return of income u/s 139(1) on 05-06-18 declaring her total income of INR 1.94 crores. The deceased and her family had applied for change of address in PAN as well as transfer of jurisdiction on account of shift in residence from Mumbai to Gandhinagar by her letter dated 09-01-19 addressed to (i) ACIT Mumbai (Respondent No. 1), (ii) Addtl./Jt. CIT (iii) PCIT (Respondent No. 2), (iv) CIT Gandhinagar and (v) DCIT Gandhinagar. The file of the deceased was not transferred whereas the files of other family members were transferred to Gandhinagar for the reasons best known to the Respondents. Upon death of the deceased, request for being registered as the legal heir was sent along with copy of death certificate, will, and PAN Card. On 20-07-20, as the legal heir of the deceased, the Petitioner, filed the return of income of the deceased petitioner for AY 2020-21 which was processed u/s 143(1) with 'no demand'.

Since the PAN of the deceased was not cancelled, emails were sent to the Respondent and a grievance was also filed on the portal on the same date intimating about the death of the deceased. The Respondents reverted on the portal seeking indemnity bond, original pan card to be deleted, legal heir documents and other relevant documents. Thus, the Respondents were aware of the death of the petitioner Late Smt. Usha B Sanghvi. The ld. counsel for the Petitioner submitted that in spite of being aware, the Respondent No. 1 issued notice u/s 148A(b) in the name of the deceased. He pointed out that though the notice was dated 19-03-19, it could be evinced that it was signed on 26-03-22 and the deceased petitioner was asked to reply by 28-03-22; consequently, less than seven days' time was given in contravention to the provisions of section 148A to which the Petitioner filed a reply on 27-03-22 giving all reasons and details to substantiate that there was no case to issue notice. On 31-03-22, the Respondent No. 1 passed an order disposing off the objections u/s 148A(d) with the prior approval of Respondent No. 2. On the same day, a notice u/s 148 was issued in the name of the deceased petitioner requiring her to file return of income within 30 days to which the Petitioner as the legal heir, filed the return of income under protest and also sought copy of the reasons recorded for reopening the assessment. The Respondent reverted reiterating the contents of the notice to which the Petitioner filed detailed objections. The Respondent submitted that the Petitioner having accepted and not challenging the intimation order in the name of the deceased petitioner, cannot complain about the reassessment proceedings in the name of the deceased.

Ruling

HC held that the facts are not in dispute. The impugned notice for reopening the assessment was issued on a dead person. There are several judgments of different High Courts holding that the notice issued on a dead person or reopening of assessment of a dead person is null and void in law and the requirement of issuing a notice to a correct person is not merely a procedural requirement but a condition precedent for a notice to be valid in law. A reference in this respect can be made to a decision of this court in Sumit Balkrishna Gupta vs ACIT, Mumbai and PCIT vs Maruti Suzuki India Ltd., wherein the Apex Court has held that the notice issued and the order passed in the name of an old entity is bad in law and that such error was not curable u/s 292B as the same constitutes a substantive illegality and not a mere procedural violation.

Further, HC also stated that keeping in mind, the averments in the reply, this Court is of the view that Respondent no. 1 would not have been wrong, keeping the settled law in mind, in abstaining from issuing a notice on the deceased petitioner. The Respondent no. 2 would also not have been wrong in not granting the sanction to the Respondent no. 1 for issuance of a notice on the deceased petitioner, since the department was aware of the demise of the petitioner and since the ITBA system is undergoing a change and being updated with new functionalities and modalities. In our view, if the concerned officers follow the settled law and abstain from issuing notices which are null and void, would not only help the citizenry but also the courts in the country who are already overburdened. In fact, it would be in tune with the Finance Act, 2021 which aims to achieve the ultimate object of simplifying the tax administration, ease compliance and reduce litigation. For the reasons stated above, this Court holds that the notice and all consequential proceedings in the name of a deceased petitioner are null and void and consequently, the impugned notice u/s 148 & u/s 148A(b) as well as the Order u/s 148A(d) are quashed and set aside.

Source: High Court, Bombay in Dhirendra Bhupendra Sanghvi vs ACIT vide [2023] 151 taxmann.com 541 (Bombay) on June 27, 2023

Reopening of assessment was mere change of opinion about manner of computation of deduction u/s 80AI where entire issue with regard to interest income on funds collected as R&D and R&M funds was decided against the petitioner and was pending before Commissioner (Appeals), hence, not justified

Facts

Petitioner is a Government Corporation engaged in the business of generation of electricity from atomic energy. In its return of income filed, it declared total loss of INR 240.87 crores under normal provisions and Book Profit at INR 2911.18 crores u/s 115JB. The case was selected for scrutiny and by a notice u/s 142(1), the several details w.r.t. audited financials and business activities were sought from the Petitioner to which the Petitioner submitted an explanation on exclusion/deduction of certain items of income while computing Book Profits u/s 115JB. Thereafter, considering all material, the AO passed an order of assessment u/s 143(3). An appeal u/s 246A was filed by the Petitioner which is pending adjudication before CIT (Appeals).

Thereafter, the Respondent No. 1 issued a notice u/s 148 for re-assessment of income/loss and called upon the Petitioner to file return to which the Petitioner duly complied. Further, the Petitioner also sought the recorded 'reasons to believe' for issuance of the notice u/s 148. Thereafter, the recorded reasons for reopening were supplied which read as under:

- It has been observed that the income of undertakings eligible for 80IA deduction has been computed at INR 1225.95 crores after considering interest income on Renovation & Modernization and on Research and Development to the extent of INR 19.52 crores. The petitioner was obliged to adhere to Government Notification issued by Department of Atomic Energy effective from December 1988 and amended thereafter from March 2000, whereby the amount collected as Decommissioning levy, Research & Development levy and Renovation and Modernization levy was to be kept separately distinct from the funds of NPCIL to be used for specific purposes and was not to be construed as part of the general sales income derived from the business. The levy so collected was supposed to be earmarked and transferred to respective reserve funds for meeting the capital or revenue expenditure which was the sole responsibility of the DAE and any surplus of the funds so utilized was to be invested in specified securities and the uninvested amount would carry interest @ 12% return which would again form part of the reserve funds.
- Further, it was noticed that the interest income earned from the investments of the funds kept separately for meeting R&M and R&D cannot be construed to have been derived from the eligible business activity of the undertaking. There is no first-degree nexus between income and the business of the petitioner. Hence, the interest incomes are not eligible for deduction u/s 80IA therefore should have been disallowed.
- Furthermore, it was also observed that the petitioner had debited an amount of INR 4.89 crore in the statement of P&L account towards R&D expenditure and credited the said amount as transferred or withdrawn from the R&D Reserve Fund. While computing the book profit, petitioner claimed reduction of the aforesaid amount being withdrawn from the R&D Reserve Fund and the same was accepted while assessment. This was not in consonance with the provisions prescribed u/s 115JB since the said amount was never routed through P&L account and not considered for book profit.

The Petitioner submitted objections to the proposed action whereby all material facts and explanations, were reiterated in addition to the material were fully and truly disclosed in the original assessment. The objections were based inter alia on the grounds that reopening beyond four years was not based on any tangible material, there was no failure to disclose fully and truly material facts for the assessment, the action was based on change of opinion not supported by any tangible material, sanction was not in accordance with section 151, etc. The above objections were rejected therefore, the Petitioner has, filed the present Petition, challenging impugned the notice and order issued on the ground that the jurisdictional requirement for reopening had not been satisfied in the present case. Secondly, it was urged that there was no new tangible material with the AO, that would support his 'reason to believe'. It was stated that the reassessment proceedings were nothing but 'a change of opinion' as the entire issue with regard to the interest income on the funds collected as R&D and R&M funds to be treated as income under the normal provision and 115JB was decided against the Petitioner and is pending decision before the CIT (A) in an appeal filed.

Ruling

HC in its view, placed reliance on the decision in the case of M/s Consolidated Photo & Finvest Ltd. wherein an affidavit was unconscionable and misleading in as much as the full bench of the Delhi HC has dissented from the decision in the case of CIT v Usha International Ltd. where it was held that the principle of change of opinion cannot be a basis for reopening completed assessments where AO has applied his mind and taken a conscious decision on a particular matter in issue. Moreover, the decision of the AO u/s 143(3) is against the Petitioner who has filed an appeal therefrom that is pending adjudication before the CIT(A). Furthermore, a perusal of the reasons recorded by Respondent No. 1 indicates that the Respondent No. 1 has relied upon facts and figures available from the audited account. It appears that there was no tangible material available on record to conclude that income had escaped assessment. The ratio in the case of Ananta Landmark is clearly applicable to the facts of this case. For the aforesaid reasons, the AO has acted in excess of the limit of his jurisdiction to reopen the assessment in the exercise of powers under section 147 r.w.s 148. Accordingly, the Petitioner would be entitled to succeed in this proceeding. HC quashed and set aside the appeals. Further, ordered CIT (A) to decide the appeal preferably within 6 months of this order.

Source: High Court, Bombay in Nuclear Power Corporation of India Ltd. vs DCIT vide [2023] 151 taxmann.com 537 (Bombay) on June 27, 2023

Petitioner could not remove the defects in the return within the stipulated time as he was held back due to genuine hardship, namely, lock down during period between March, 2020 to April, 2020; Delay in filing rectification application was condoned

Facts

The petitioner is an individual engaged in providing professional services and also trading in shares. She filed her return u/s 44ADA, declaring total income of INR 12.61 lacs and total loss of INR 39.55 lacs. The CPC found the return defective and issued a notice u/s 139(9). The petitioner was asked to remove the defect in her return of income within 15 days from the receipt of the notice. The petitioner was unable to remove the defect within stipulated period given by the CPC and thereafter an order dated 07-07-20 came to be passed u/s 139(9) by treating the return filed by the petitioner as 'invalid'. The petitioner thereafter submitted an application on E-Nivaran Portal of CPC to remove the tag of invalid return from her original return and give a chance to file revised return of income. Per se the facts, the petitioner is not required to maintain Books of Accounts including Balance Sheet and P&L Account whereas she is only required to file the cash balance. The CPC replied to the application submitted by the petitioner by mentioning that since the defect was not removed, the return has been treated invalid and therefore petitioner was required to file revised return u/s 139(5) with correct details.

The petitioner filed another application to CPC in pursuant to the reply, wherein, she mentioned that while filing the revised return, there was an error shown on the portal that the acknowledgment number of the original return, which the petitioner has to mention in the revised return, is invalid. The petitioner again requested to remove the tag of invalid return from the original return filed by the petitioner so that the revised return can be uploaded. However, no response was received by the petitioner from the CPC. The petitioner, therefore, filed an application before the respondent and prayed that the delay in filing the return be condoned. Thereafter, PCIT-1, passed an order condoning the delay in filing the return of the petitioner treating the same as valid. However, PCIT-1 withdrew the said order by treating it as non-est for want of jurisdiction as the jurisdiction was with the present Respondent. Thereafter, now the present Respondent herein passed the impugned order, whereby, the application submitted by the petitioner for condonation of delay came to be dismissed. The petitioner has, therefore, preferred the present petition challenging the said order.

Ruling

HC is of the view that the petitioner has pointed out genuine hardship caused to her as a result of which the mistake committed in the return could not be rectified. At this stage, it is also pertinent to note that in the present case one of the authorities of Revenue i.e. PCIT-1 passed an order in favour of the petitioner. In the said order, it is specifically observed by the said authority that, 'in view of the genuine hardship faced due to lockdown in Ahmedabad city due to the corona pandemic, the petitioner could not comply with the notice issued by the CPC, Bangalore within the stipulated period' and by giving the said finding, the order was passed by the said authority in favour of the petitioner. However, as observed hereinabove, the said authority was not having jurisdiction to pass said order and therefore the same was withdrawn. Be that as it may, the fact remains the one of the authorities of the Revenue considered the case of the petitioner and thereby granted relief in favour of the petitioner. Hence, petition was allowed and the petitioner was permitted to file revised return of income for the AY 2019-20 by rectifying the errors, as suggested by the CPC.

Source: High Court, Gujarat in Vrushti Aulkumar Shah vs PCIT vide [2023] 152 taxmann.com 77 (Gujarat) on June 20, 2023

Reopening notice issued in name of erstwhile company which was amalgamated with petitioner - company was to be quashed when the given fact was previously intimated to the AO

Facts

The petitioner is a private limited company and its majority of the ultimate shareholders are the individuals, who are the citizens of India. This Court vide order dated 28-01-16, approved the scheme of amalgamation of one Panchdhara Agro Farms Pvt. Ltd. with the petitioner-Company, i.e Shantigram Estate Management Pvt. Ltd. with effect from 01-04-15, i.e. the appointed date. The petitioner informed the concerned AO about the same vide communication dated 31-03-16. It was averred that in spite of the above, the Respondent issued a notice, u/s 133(6). The petitioner replied to the same wherein, the details, with regard to the fact of merger having taken place, were given. Though, this was pointed out to the concerned AO, the notice, u/s 148, was still issued to the petitioner and the reasons for reopening were also supplied. The petitioner filed its objections to the same. Thereafter, the present petition was filed on the ground that the notice issued u/s 148, is bad and illegal and deserves to be quashed.

Ruling

High Court, Gujarat allowed the petitioner's appeal placing reliance on the facts of the present case and stated that there is a value which the court must abide by in promoting the interest of certainty in tax litigation. The view which has been taken by this Court in relation to the respondent for AY 2011-12 must, in our view be adopted in respect of the present appeal which relates to AY 2012-13. Not doing so will only result in uncertainty and displacement of settled expectations. There is a significant value which must attach to observing the requirement of consistency and certainty. Individual affairs are conducted and business decisions are made in the expectation of consistency, uniformity and certainty. To detract from those principles is neither expedient nor desirable. The Court has already decided issue involved in this petition, in similar facts in Special Civil Application No.935 of 2022 and allied matters. Thus, the petition here was allowed. The actions of the respondent - authority regarding issuance of notice u/s 148 deserves to be interfered with. The show-cause notices issued by the respondents are quashed and set aside with consequential reliefs. This could not in any manner preclude the respondents to initiate the action against the present petitioners in accordance with law.

Source: High Court, Gujarat in Adani Estate Management (P.) Ltd. vs Income Tax Officer, Ward 3(1)(1) vide [2023] 151 taxmann.com 387 (Gujarat) on June 20, 2023

Income earned from sale of RECs/ESCs (carbon credits) is a capital receipt and not business income

Facts

The petitioner-company is manufacturer of writing and printing paper, having factory premises at village Rupana situated at Muktsar Sahib. The petitioner-company has a co-generation captive power division also, in which electricity is generated from renewable source i.e. bio-fuel, re-include rice husk, unlike other companies which utilized fossil fuel i.e. coal and diesel and the same is consumed by the paper division. The generation of power from renewable energy resources helps in reduction of emission of carbon-I heat and gases in environment. During the financial year, the Ministry of New and Renewable Energy had issued transferable and saleable credit certificates under the Electricity Act 2003, which are generally referred to as Renewable Energy Certificates. Such RECs are issued, under the Central Electricity Regulatory Commission Regulations, 2010 issued pursuance to section 178(1) and section 66 r.w. clause (y) of section 178(2) of the Electricity Act, 2003. During the year, the petitioner earned by sale/transfer of REC/ESCs amounting to INR 17.77 crores. The petitioner claimed this amount u/s 115BBG and paid the tax @ 10% during filing of return u/s 139. During the assessment proceeding the petitioner amended its claim related to income earned from the sale/transfer of RECs/ESCs as capital receipt and recomputed the tax by claiming exemption of tax on said income. The ld. AO issued a draft assessment order by rejecting the same. The petitioner filed a petition before the Dispute Resolution Panel. As per the direction of DRP the said amount was taken as business income. During proceeding in DRP, the ld. DRP recommended for addition of commission amount of INR 4.57 crores u/s 69C. Being aggrieved petitioner filed an appeal before the Tribunal. During the appeal proceeding, the petitioner basically agitated three grievances;

- RECs/ESCs is income in capital in nature not in revenue in nature. And also, it is not attracted the provision u/s 115BBG as it is not come under the carbon credit. The said claim can be amended during the time of assessment by changing the revenue income into capital.
- The grievance related to addition of commission u/s 69C which was paid by the petitioner during the year amount to INR 4.57 crores. The matter was taken for adjudication accordingly.

Ruling

ITAT finally concluded that the petitioner should get benefit related REC & ESCs are capital receipt and not be the part of 115BBG. The catena of judgment is in favour of petitioner. The Tribunal stated that the ld. DR respectfully relied on the order of Hon'ble Orrisa High Court, but the claim is restricted before the ld. AO. Pursuing the order of the Hon'ble Apex Court in the case of Goetze (India) Ltd there is no impingement in power of section 254. It was further argued there is no basis for addition of commission. The revenue has acted beyond jurisdiction by contravening the Section 144C(8). ITAT heard the rival submission and considered the documents available in the record and held as under:

First, we consider the issue whether petitioner is eligible for the income from RECs and ESCs capital in nature and shall be considered as capital receipt or revenue receipt. First to ascertain the issue related technical nitty gritty of the REC & ESC's.

The second grievance is related to the amendment of claim in assessment stage. The transfer value of REC/ESCs amounting to INR 17.77 crores was duly claimed as capital receipt in assessment stage. The Tribunal respectfully relied on the order of Hon'ble Apex Court in the case of Goetze (India) Ltd & the order of the Hon'ble Calcutta High Court in the case of Ankit Metal & Power Ltd. Both the orders have not impinged the power of ITAT u/s 254 to allow the claim duly amended by petitioner after filing the return. Accordingly, the revised claim made by the petitioner during the time of assessment is duly accepted and the order of ld. CIT(A) was set aside. The commission paid by the petitioner amount to INR 4.57 crores was treated as bogus and added back u/s 69C. The addition was cropped up by the recommendation of the ld. DRP. The ld. DRP issued the SCN for enhancement, through e-mail, and thereafter the order making enhancement was passed by the DRP. The grievance of the petitioner is that the ld. DRP has acted beyond jurisdiction u/s 144C(8). The ld. AR placed the explanatory note of the Finance Bill 2021. After submission of requisite documents as evidence of transaction, the ld. DRP had not considered the same. Considering the submission of petitioner, the Tax Invoice, transaction through bank account and the TDS certificate are duly placed before the bench as proof of transaction with M/s Zylo International. The ld. DR has not made any objection about the petitioner's submission and not able to submit any contrary judgment against the petitioner. It is pertinent to mention the Revenue was not able to submit any transaction with M/s Rolmex International Prop. Jaswant Singh with the petitioner. The addition cannot be on basis of surmises and conjectures. We respectfully relied on the order of Hon'ble Apex Court Umacharan Shaw & Bros(supra). In our considered view the addition amount to INR 4.57 crores is quashed.

Source: ITAT, Amritsar Bench in Satia Industries Ltd. vs National Faceless Assessment Centre vide [2023] 151 taxmann.com 358 (Amritsar - Trib.) on June 13, 2023

Interest subsidy received under technology upgradation fund scheme, though credited in net off against interest expenditure in books of account was still capital in nature and therefore not chargeable to tax

Facts

The petitioner is a company engaged in diversified businesses such as garments, insulators, fertilizers, viz cost element young, financial services et cetera at a different units located across the country. It filed its return of income declaring a total income of INR 202.59 crores and book profit of INR 162.31 crores u/s 115JB. This was revised at a total income of INR 197.50 crores as per normal computation of total income and book profit was computed at INR 162.31 crores. The return of income was picked up for scrutiny. The learned AO passed an assessment order u/s 143(3) determining total income of the petitioner at INR 228.61 crores and book profit remains the same. Against this assessment order the petitioner preferred an appeal before the CIT (Appeals) which was disposed of. Against this, the petitioner preferred an appeal before the coordinate bench on which was also disposed. The coordinate bench restored certain issues to the file of the ld. AO against which the ld. AO framed the assessment once again u/s 143(3) r.w.s. 254 partly rejecting the claim of the petitioner. The impugned appellate order challenged by the revenue is passed against that assessment order. On appeal before the CIT(A), after considering the submission of the petitioner found that coordinate bench in ITA number 4220 and 4704/M/2015 dt. 24-02-20 in petitioner's own case has held that subsidy received by the appellant company under technology upgradation fund scheme is a capital receipt. This decision was arrived at by the coordinate bench after relying on the decision of **Hon'ble Rajasthan High Court in case of PCIT vs Nitin** appeal before the Tribunal. During the appeal proceeding, the petitioner basically agitated three grievances;

- RECs/ESCs is income in capital in nature not in revenue in nature. And also, it is not attracted the provision u/s 115BBG as it is not come under the carbon credit. The said claim can be amended during the time of assessment by changing the revenue income into capital.
- The grievance related to addition of commission u/s 69C which was paid by the petitioner during the year amount to INR 4.57 crores. The matter was taken for adjudication accordingly.

Ruling

wherein it has been held that interest subsidy received under technology upgradation fund scheme, though credited in the net off against the interest expenditure in the books of account is still capital in nature and therefore not chargeable to tax. Further the argument of the learned departmental representative has also been negated about the applicability of explanation 10 to section 43 (1) of the act by the decision of the coordinate bench in case of orbit exports (supra). In view of this both the grounds of appeal raised by the learned assessing officer are dismissed. Thus, in view of above judgements of Hon'ble High Courts, the ld. Tribunal see no infirmity in the findings of CIT(A). The grounds raised by the Department were therefore dismissed.

Source: ITAT, Mumbai in DCIT vs Grasim Industries Ltd. vide [2023] 151 taxmann.com 196 (Mumbai - Trib.) on June 12, 2023

AO cannot deny credit of TDS in petitioner's name when corresponding capital gain on said transaction was taxed in petitioner HUF's name

Facts

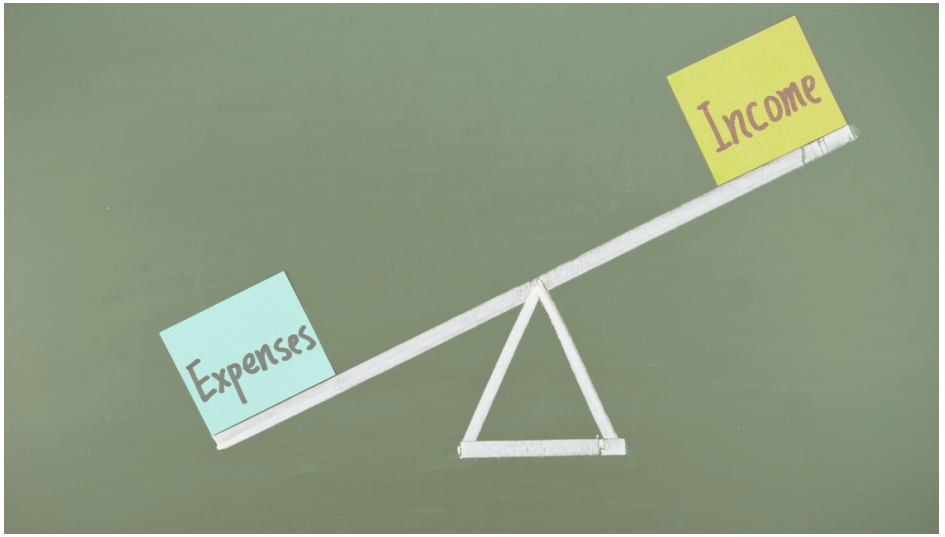
The petitioner is an HUF and had filed return of income declaring total income at INR 36.18 lacs. The petitioner's case was selected for limited scrutiny under the e-assessment scheme of 2019 on the issue of capital gains deduction claimed by the petitioner. The AO passed the assessment order u/s. 143(3) r.w.s. 143(3A) and 143(3B) where the return income of the petitioner was accepted but denied the TDS credit u/s. 194IA amounting to INR 15 lacs on sale of house property and had also levied interest u/s 234B and 234C amounting to INR 5.10 lacs in total. Aggrieved, the petitioner was in appeal before the ld. CIT(A) who had allowed the credit of TDS by remanding it back to the AO with a direction to the petitioner to follow the procedure prescribed u/R 37BA(2) for the purpose of allowing the credit of TDS. The petitioner is now in appeal before the ld. Tribunal, challenging the order of the ld. CIT(A). The ld. AR for the petitioner contended that the AO has accepted the return of income but had denied TDS credit in the computation sheet where the TDS is reflected in the individual name. The ld. AR further stated that the share of income from partition was assessed in the hands of Shri Anand Singhania in his individual capacity, which was subsequently shown as 'income' in the returns filed by Shri Anand Singhania, HUF the petitioner. The ld. AR for the petitioner stated that the sale of property belonging to HUF was shown in the books of HUF and capital gains on the said sale was offered to tax in the hands of the petitioner HUF but TDS deduction reflected in 26AS of Shri Anand Singhania as the buyer deducted tax in the name of Shri Anand Singhania for the reason that he was the registered owner of the properties. The ld. AR for the petitioner stated that all these details were furnished before the lower authorities but was not considered.

Ruling

The Tribunal held that the petitioner has shown LTCG of INR 13.58 crores from the sale of immovable property and is said to have invested INR 6.35 crores in the capital gain account and INR 50 lacs in NHA bond for which the petitioner is said to have claimed deduction u/s 54 and 54EC. The Tribunal also observed that the TDS has been deducted in the hands of the individual Shri Anand Singhania along with his PAN number. The ld. CIT(A) in his order has stated that the petitioner has mentioned the wrong PAN in the sale deed and has directed the petitioner to follow the procedure prescribed u/s. 37BA(2) for the purpose of getting the TDS credit. The petitioner has challenged the action of the ld. CIT(A) in directing the petitioner to follow the procedure prescribed u/s. 37BA(2) of the Act for the purpose of getting TDS credit.

The capital gain on sale of two properties was offered to tax in the petitioner's return of income and the petitioner has thus claimed the credit of tax deducted in its return of income. The petitioner submits that no credit was claimed in Shri Anand Singhania's individual return of income and to substantiate that TDS was not claimed twice, the petitioner is said to have filed TDS schedule ITR of Shri Anand Singhania to ensure that TDS of Rs.15 lacs was not claimed in the individual capacity. It is also pertinent to point out that the AO has charged capital gains in the hands of the petitioner HUF but had refused to give TDS credit for the same. It is observed that an affidavit of Shri Anand Singhania, HUF along with PAN number was filed before the first appellate Tribunal to substantiate that TDS was not claimed in Shri Anand Singhania's return of income. On the above facts of the case, it is evident that Shri Anand Singhania has not claimed the TDS in the in the individual's returns. The A.O. cannot deny the credit of TDS in the petitioner's name when the corresponding capital gain on the said transaction was taxed in the petitioner HUF's name and cannot take benefit of the mistake crept in, in the sale deed. It is also pertinent to point out that the provision of section 199(3) mandates that credit may be given to person other than those mentioned in sub-section (1) & (2), which allows deviation in giving credit in suitable cases. From the above observation, we are of the considered view that the petitioner is entitled to claim TDS for the impugned transaction and the A.O. is directed to allow the TDS credit in the hands of the petitioner HUF after verifying that the same was not claimed in the hands of the individual.

Source: ITAT, Mumbai Bench in Anant Singhania HUF vs Income Tax Officer, 17(1)(1) vide [2023] 151 taxmann.com 389 (Mumbai - Trib.) on June 07, 2023



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