VERENDRA KALRA & CO
CHARTERED ACCOUNTANTS

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DIRECT TAX REVIEW
JUNE 2020

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HIGH COURT RULINGS

Cost of land is to be considered while computing capital gains in hands of builder

Facts

The Assessee, purchased a property in 1977 for INR 3 lakhs and spent INR 0.4 lakhs as stamp duty and INR 9.92 lakhs spent for vacating the tenants. The market value of entire property as on 1-10-1987 was INR 69.38 lakhs. However, a portion of the property, valued at INR 66.29 lakhs, was converted into stock-in-trade on which multi-storied building was to be constructed. The tenanted property remained as a fixed asset valued at INR 2.86 lakhs and revaluation reserve was also credited. According to the assessee, tax liability u/s 45(2) would arise as and when the flats would be sold. In AY 1992-93, petitioner entered into agreements for sale of 14 flats and Capital gains was arrived at by determining difference between market value of land converted into stock-in-trade as on 1-10-1987 and cost incurred by petitioner which came to INR 55.87 lakhs. However, the AO was of the view that closing stock should have been valued at market price on close of each accounting year and not doing so resulted into under-valuation of closing stock and consequent reduction of profit. Even after construction of building and sale of flat, stock i.e., land was still under ownership of assessee, its value was wrongly reduced. The AO did not accept assessee's method of valuation and concluded that selling of flats did not amount to selling of proportionate quantity of land and though flats were sold, ownership of land continued to remain with the assesse. Therefore, capital gains would be chargeable to tax only in year when land would be sold or transferred to co-operative society formed by flat purchasers and not in year when individual flats were sold.

Ruling

The court held that cost incurred on stamp duty etc. together with cost incurred in carrying out eviction of tenants certainly added to value of asset and would, thus, amount to cost of improvement which would be an allowable deduction from full value of consideration received upon purchase of flat, purchaser certainly acquired right or interest in proportionate share of land but its realization was deferred till formation of co-operative society by flat owners and transfer of the entire property to co-operative society therefore, the cost of land was to be considered while computing capital gains in the hands of the builder and there was no fault in assessee's method of computing capital gains necessitating reopening of completed assessment.

Source: HC, Bombay in JS & MF Builders vs. AK Chauhan
App No. 788 of 2001, dated June 12, 2020

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ATMs are computers and are entitled to higher rate of depreciation

Facts

Assessee is engaged in the business of manufacture of automated teller machines (ATMs) and distribution of NCR book products and commissions in India. The assessee filed the return of income on declaring taxable income of INR 4.66 crs. The return was processed u/s 143(1) and was selected for scrutiny and notice u/s 143(2) of the Act was issued. The assessee had taken premises on lease for a period of 3 years and had claimed expenditure of INR 89.23 lakhs on account of leasehold improvements as revenue expenditure in the computation of income. The AO by an order inter alia held that

leasehold improvements expenditure is incurred towards purchase of workstations, improvement of interiors and electrical works, fee paid to the architect, cabling work for networking of computers in connection with setting up of office.

Thus, the expenditure was incurred to bring into existence an asset or an advantage for enduring benefit of business, his property is computable as capital expenditure. Accordingly, the leasehold improvement for an amount of INR 89.23 lakhs was disallowed and added back and depreciation towards furniture and fitting at the rate of 15% was allowed. The AO further held that the assessee has changed the revenue recognition method and therefore it is not possible to ascertain true and correct profit of the assessee for the accounting year in question.

It was further held that ATMs cannot be termed as computers and therefore are eligible for depreciation to the extent of 25%. Being aggrieved, the assessee preferred an appeal. The assessee assailed the order passed by the CIT (Appeals) before the Tribunal. The Tribunal by an order inter alia held that the expenditure incurred by the assesse for leasehold improvements has to be treated as revenue expenditure u/s 37 of the Act. It was further held that ATMs are computers and therefore, assessee is eligible to depreciation of 60%. It was further held that even though the assessee had changed the method of revenue recognition, however, he is entitled to change the method of accounting as the same has no impact on the revenue. Accordingly, the appeal preferred by the assessee was partly allowed. Being aggrieved by which the revenue filed an appeal.

Ruling

Held that, computer is an integral part of ATM machine and on the basis of information processed by the computer in ATM machine only, the mechanical function of the dispensation of cash or deposit of cash is done. Therefore, it was held that ATMs are computers and

are entitled to higher rate of depreciation. Further, in every case of substitution of one method by another method it has been held that burden is on the department to prove that the method in vogue is not correct and distorts the profit of a particular year. From perusal of the order passed by the AO as well as CIT (Appeals), it is evident that revenue has failed to discharge the aforesaid burden. Therefore, the tribunal has rightly held that the assessee is entitled to change the method of accounting.

Therefore, the appeal was answered against the revenue and in favour of the assesse.

Source: HC, Karnataka in ACIT vs. M/s NCR Corporation Pvt. Ltd. App No. 242 of 2011, dated June 16, 2020

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A society registered u/s 12AA, filed an application seeking condonation of delay in filing return of Income, revenue authorities should dispose of the said application first and in meantime impugned notice of demand in respect of assessed income would remain in abeyance

Facts

Assessee, an Educational & Charitable Society was issued a certificate of registration u/s 12AA. However, on account of non-filing of return within the prescribed time, a notice was issued u/s 142(1) of the Act. Assessee, failed to file the return of income even within the time

granted in the said notice. Therefore, in such background, exemption u/s 11 was denied and a notice was issued in respect of income assessed. In response, the assessee filed an application seeking condonation of delay in view of Circular F.No. 197/55/2018 dated 22-05-2019.

Ruling

It was undisputed that Circular F.No 197/55/2018, dated 22-05-2019, provides an opportunity to assessee having registration u/s 12AA to seek condonation of delay in filing of return of income. Therefore, `condonation of delay in filing return by the assessee and, in meantime, impugned notice raising demand in respect of assessed income was to be kept in abeyance. The petition was disposed of in favour of the assesse.

Source: HC, Kerala in Sree Narayana Educational & Charitable Society vs. CIT (Exemptions)

App No. 8890 of 2020, dated June 01, 2020

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Claim found to be inadmissible is not same thing as furnishing inaccurate particulars of income as contemplated under Section 271(1)(C)

Facts

Assessee having status of resident company filed its return of income declaring a total loss, the case was selected for scrutiny assessment and it was found that the assessee had debited INR 62.47 lakhs u/h 'selling and distribution expenses' and claimed it as bad debt. Subsequently it was found that aforesaid amount was paid to a party as compensation for supply of inferior quality of goods which was also not incurred wholly and exclusively for the purposes of business. Thus, the AO held that the amount was not allowable as a deduction u/s 36(1)(vii). The AO further held that the claim was also not admissible even u/s 37(1), taking its view that the assessee had furnished inaccurate particulars of income and initiated penalty proceedings u/s 271(1)(c) of the Act. The AO stated that by making an improper and unsubstantiated claim of bad debt the assessee had willfully reduced its incidence of taxation, thereby concealing its income as well as furnishing inaccurate particulars of income. Therefore, invoking section 271(1)(c), the AO imposed penalty being 100% of tax which included penalty on another disallowance. The CIT(A) deleted penalty on other disallowance by holding that there was neither any concealment nor submission of inaccurate particulars by the assesse. Regarding penalty levied on bad debt, CIT(A) held that assessee had made a wrong claim by submitting inaccurate particulars of income by claiming bad debt which was not actually a debt and also not an expenditure allowable u/s 37(1), further penalty levied by AO was upheld. The Tribunal also had upheld the order of CIT (A).

Ruling

The two key expressions in Section 271(1)(c) are "concealment of particulars of income" and "furnishing inaccurate particulars of such income"**.** These two expressions comprise of two limbs for imposition of penalty u/s 271(1)(c). In the assessment proceedings, the assessee filed its return of income and disclosed that it had debited u/h 'selling and distribution expenses' and claimed it as bad debt in books of accounts. The assessee was exporting fabrics through the party and had raised quality claims from time to time, which was pressing assessee for settlement. As the assessee

was in need of funds, it could not settle claims, it was only during the AY under consideration that assessee had requisite funds and paid to the party as full and final settlement. The Assessee clarified that during the assessment proceedings the said amount was written off was actually not bad debt but in nature of rebate and discounts given to the party on account of quality claims made by it from time to time. However, the said explanation was not accepted by the AO and held that the payment would not be covered by Section 36(1)(vii) since amount claimed as bad debt was actually not a debt. While disallowing claim of the assessee, the AO took view that since assessee had furnished inaccurate particulars of income, penalty proceedings u/s 271(1)(c) was also initiated separately.

In statutory SCN, the AO did not indicate as to whether penalty was sought to be imposed for concealment of income or for furnishing inaccurate particulars of income. Therefore, it was held that the concealment of particulars of income was not charge against assessee, charge being furnishing inaccurate particulars of income, it is trite that penalty cannot be imposed for alleged breach of one limb of Section 271(1)(c) while penalty proceedings were initiated for breach of other limb of Section 271(1)(c). It is quite evident that assessee had declared full facts, full factual matrix or facts were before the AO while passing the assessment order. It is another matter that the claim based on such facts was found to be inadmissible. This is not the same thing as furnishing inaccurate particulars of income as contemplated u/s 271(1)(c). Thus, the assessee's appeal was allowed.

Source: HC, Bombay in Venture Textile Ltd vs. CIT
App No. 958 of 2017, dated June 12, 2020

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ITAT RULINGS

In the business of telecommunication services, roaming charges would not fall under category of "fee for technical services" and thus the assessee is not required to deduct tax on such roaming charges u/s 194J

Facts

The assesse company is engaged in providing telecommunication services in various parts in India and had entered into roaming arrangements with other telecom operators according to which, they could enjoy service facility outside the territory. The AO took a view that the assessee was required to deduct tax at source u/s 194J in respect of roaming charges as it amounts to technical services.

Ruling

The Tribunal held that the services in respect of roaming charges availed by the company were standard automated services and required no human interaction or skill. Further, the services charges paid by the company was not paid for rendering any managerial, technical or consultancy services and, thus, did not fall under category of fee for technical services. Therefore, the assessee was not required to deduct tax at source u/s 194J in respect of roaming charges and the appeal of the assessee was allowed.

Source: ITAT, Cuttack in Vodafone Idea Ltd. vs. ACIT-TDS
App No. 306 to 309 of 2019, dated June 5, 2020

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Additions cannot be made on account of Sundry Creditors merely for want of PAN

Facts

During the scrutiny proceedings, the AO on perusal of the statement of accounts of the assessee for the year ended 31st March, 2014, noticed that the assessee had claimed sundry creditors to the tune of INR 6.48 crs. Therefore, the assessee was asked to furnish the names along with complete postal address of all the sundry creditors. In response, the assesse submitted a detailed list showing names and addresses of the sundry creditors. The AO, in order to ascertain the genuineness of claim of the assessee, issued notices u/s 133(6) of the Income Tax Act, 1961 to the sundry creditors with a request to furnish the ledger account in respect of the assesse along with their copy of PAN. Few of the creditors failed to furnish copy of PAN and the AO held that in absence of any evidence, the above transactions so reflected in the books of the assessee on account of sundry creditors, is nothing but assessee's own money which is introduced in the disguise of sundry creditors and added back an amount of INR 60.45 lakhs to the total income of the assessee. Aggrieved by the order of the AO, the assessee carried the matter in

appeal before the Ld. CIT(A) who has not adjudicated the assessee`s appeal on merits but dismissed the appeal of the assessee on account of non-prosecution. Therefore, the assessee filed an appeal before the Tribunal.

Ruling

Held that out of the total creditors of INR 60.45 lakhs which were alleged by the AO to be not genuine, as sum of INR 59.66 lakhs pertain to preceding PYs which have been verified by the AO in the preceding PYs, therefore genuineness of these creditors should not be doubted. All the creditors of the assessee are his regular vendors and transactions with them are genuine business transactions and the transactions had been undertaken wholly and exclusively for the purposes of the business activities. We note assessee's accounts are audited and not rejected by the AO therefore to estimate the separate profit in addition to profit shown in the audited books of accounts is not tenable without any tangible material or corroborative evidence. The Tribunal also took note that since the AY

under consideration is 2014-15 therefore furnishing of PAN is not mandatory as per Rule 115B of the Income Tax Rules, vide entry No. 18, which came into force w.e.f., 1st January, 2016. Based on the factual position, as narrated above, we are of the view that the assessee has proved the identity, creditworthiness and genuineness of the creditors, therefore we delete the addition of INR 60.45 lakhs. In the result, the appeal of the assessee was allowed.

Source: ITAT, Kolkata in Shri Bijan Kalita vs. DCIT-Circle 2
App No. 104 of 2019, dated June 8, 2020

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Deduction u/s 80IE is allowable on merits and the assessee should not be denied the deduction merely because the assessee had filed its return of income belatedly

Facts

The assessee was engaged in the manufacturing of Soya Chunks in its industrial undertaking. The AO notes that the assessee has started its manufacturing activities from 25-11-2012 and claimed deduction u/s. 80IE in the AY 2013-14. Thus, the AO acknowledges that this is the third year of assessee’s total of ten years eligibility claim u/s 80IE of

the Income-tax Act, 1961. The AO further notes that he has verified and examined the audit report in Form No. 10CCB and the net income from the business was reported at INR 18.44 lakhs and the entire amount was claimed as deduction u/s 80IE of the Act. The assessee produced its books of account/documents, which were test checked and examined by the AO with reference to the details furnished during course of assessment proceedings. However, the AO notes that the assessee had filed e-return of income for the AY 2015-16 belatedly on 25-01-2016, which is after the due date of filing of return of income u/s. 139(1) of the Act (i.e. 30-10-2015). Therefore, the AO, issued notice to the assessee show causing as to why the claim for deduction u/c VIA should not be allowed for not filing of return of income within due date as per section 139(1) of the Act.

Pursuant to the notice, the assessee replied that he was under serious domestic problems and, therefore, was disturbed mentally and could not file the return on time and prayed before him to consider his case sympathetically. However, the AO disallowed the claim and added an amount of INR 18.44 lakhs to the total income of assessee. Aggrieved by which the assesse preferred an appeal before the ld. CIT(A), who was pleased to confirm the order of the AO. According to the ld. CIT(A), it was incumbent upon an assessee to furnish its return of income before due date specified in section 139(1) of the Act, if he is claiming deduction u/s. 80IE of the Act. Therefore, he confirmed the order of the AO. Thus, the assessee filed an appeal against the aforesaid order of CIT(A).

Ruling

Held that both the AO & ld. CIT(A) could not point out any facts which could have dis-entitled the assessee's eligibility for deduction u/s 80IE of the Act and merely on delay of 2 ½ months it cannot be denied to it. A bare perusal of section 139 of the Act makes it clear that the Parliament in its wisdom has allowed the assessee to file return of income belatedly subject to fulfillment of conditions as prescribed in the said section 139 of the Act. Therefore, once those conditions are fulfilled by the assessee, the return filed should be considered being filed u/s. 139(1) of the Act. It is noted that the AO has accepted the claim of deduction u/s 80IE for the AY 2013-14, u/s 143(1) of the Act and for the second year for the AY 2014-15, u/s 143(3) of the Act. Since the deduction u/s 80IE of the Act was otherwise allowable on merits, the assessee should not be denied the deduction merely because the assessee had filed its return of income belatedly. Thus there is no reason to deny the claim of assessee on the ground of filing of the return of income belatedly. In the light of above facts, the assessee's claim for deduction u/s 80IE of the Act is allowed.

Source: ITAT, Kolkata in Manish Soni vs. ITO, Jorhat
App No. 230 of 2019, dated June 15, 2020

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Where Current Account is maintained between the parties, provisions of section 2(22)(e) of the Act, would not apply

Facts

The assessee company is engaged in the business of commission agent and property development. The A.O. completed assessment u/s 143(3) of the Act, after making an impugned addition u/s 2(22)(e) on account of deemed dividend. It was observed by the AO that during the year under consideration, the assesse company has received

loans and advances from M/s Exotica Housing and Infra Projects Pvt. Ltd., which was squared off. The assessee held 98% shares of M/s Exotica Housing and Infra Project Pvt. Ltd. Therefore, the AO had

taken a view that case of the assesse has come within the purview of section 2(22)(e) of the Act and the amount received was to be considered as deemed dividend in the hands of the assessee. The AO issued SCN to the assessee as to why the amount in question should not be considered as deemed dividend accumulated profit of advance giving company is not to be considered as undisclosed income of the assessee. The assesse submitted before the AO that it has taken money from its subsidiary company which was repaid within a short span of time. The transaction between the assessee company and its subsidiary company are in the nature of current account transactions. Hence provisions of section 2(22)(e) is not applicable in the case of the assessee. The AO however, did not accept the contention of the assessee as the amount was taken to discharge its liability by the assessee and advance was not made in the ordinary course of business. The AO accordingly made the impugned addition to the extent of accumulated profit of advance giving company as deemed dividend in the hands of the assessee. The assessee challenged the addition before the Ld. CIT(A). The Ld. CIT(A), however, did not accept the contention of the assessee and distinguished all the decisions relied upon by the assessee and dismissed the appeal.

Ruling

Held that as the Revenue did not dispute the transactions in the current account between the assessee company and the subsidiary company in earlier as well as in subsequent year and the assessee company on most of the occasions have made payment to the subsidiary company, which have been returned by assessee company for business purposes, there was no reason to apply provisions of Section 2(22)(e) of the Act.

The rule of consistency should be followed by the Income Tax Authorities as the ledger accounts of the assessee company and the subsidiary company would clearly show the pattern of the similar transactions in nature which are purely temporarily financial accommodation for the business purposes. The assessee has pleaded before us that the assessee company and its subsidiary company are in the same business of real estate and money have been used in the ordinary course of business of the assessee company. Therefore, it being the current account maintained between the assessee company and its subsidiary company, deeming fiction should not have been applied against the assessee.

The above issue have been considered by the different benches of the ITAT as reproduced above in which various decisions of different High Courts have been considered and it was held that "when current account is maintained between the parties, provisions of Section 2(22)(e) would not apply." Thus, the orders of the authorities was set aside and the additions were deleted, allowing the appeal of the assessee.

Source: ITAT, Delhi in Exotica Housing & Infrastructure Company Pvt Ltd. vs. ITO

App No. 5188 of 2019, dated June 24, 2020

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CIRCULARS & NOTIFICATIONS

CG Notifies Cost Inflation Index (CII) for the FY 2020-21

In pursuance of section 48 of the Income Tax Act, 1961 and computation of Capital Gains, the Central Government vide its

powers notifies the **Cost Inflation Index for the FY 2020-21** as **"301"** and shall come into effect from April 1, 2021 and shall apply to AY 2021-22 and onwards.

Source: Notification No. 32/2020 dt. June 12, 2020.

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Central Government extends Time Limits under the Direct Taxation Laws

In exercise of the powers u/s 3(1) of the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020, CG has extended the following time limits:

SN	Particulars	Extended Time Limits
1	the end date of the period during which the time limit specified in, or prescribed or notified under, the specified Act falls for the completion or compliance of such action as specified under the said sub-section	**December 31, 2020**
2	the end date to which the time limit for completion or compliance of such action shall stand extended	**March 31, 2020**

Where the specified Act is the Income-tax Act, 1961, the following shall be the extended time limits:

1	Furnishing of return u/s 139 for the AY commencing on:	
I.	• April 1, 2019	**July 31, 2020**
II.	• April 1, 2020	**November 30, 2020**
2	TDS statement u/s 200(2A) or TCS statement u/s 206C(3A) for the month of February or March, 2020 or for the quarter ending, March 31, 2020	**July 15, 2020**
3	TDS statement u/s 200(3) or TCS statement u/s 206C(3) for the month of February or March, 2020 or for the quarter ending, March 31, 2020	**July 31, 2020**
4	Furnishing of certificate u/s 203 of deduction or payment of tax u/s 192 of the Act for the FY 2019-20	**August 15, 2020**
5	For the purposes of claiming exemption u/s 54 and its completion & compliance For the purposes of claiming exemption u/s 54G and its completion & compliance	**September 29, 2020** **September 30, 2020**
6	For claiming deductions under Chapter VI-A under the heading: '**B-Deductions in respect of certain payments**' and for its completion & compliance	**July 31, 2020**
7	Furnishing of Audit report for the AY commencing on April 1, 2020	**October 31, 2020**

8	Completion and compliance under the Direct Tax Vivaad se Vishwas Act, 2020	**December 31, 2020**

The said notification shall come into force from June 30, 2020.

Source: Notification No. 35/2020 dt. June 24, 2020.

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