Penalty u/s 271AAA cannot be levied merely on the admission of the assessee in the absence of corroborate documentary evidence.

Facts of the case

The appellant company had voluntarily accepted an addition during the scrutiny assessment proceedings and paid due taxes thereon as detection of concealment of income borne out of seized material even in the absence of corroborate evidence. The AO levied the penalty u/s. 271AAA of the Act for the reason that assessee could not substantiate the manner of earning of income other than mere admission.

Decision of the Tribunal

- The paper seized from the premises of assessee on the basis of which voluntary disclosure was made by the assessee, nowhere mentioned the period of the transaction, does not mention the nature of the transaction and merely recorded some transactions in the cash and bank column. This paper clearly did not fall within the definition of books of accounts. Undisclosed income means "any income represented by any documents" found during the course of search, which are not recorded in the books of accounts of the assessee. On the basis of conjecture and surmises presumption cannot be drawn that this is income.
- The detailed working and calculation of the above undisclosed income was found to have been duly filed with the AO. The Tribunal, perusing the document submitted by the client found that the assessee with reference to the seized record had worked out total receipt and corresponding expenses and accordingly had offered the difference as undisclosed income. The AO also admitted that the assessee had filed a detailed working of disclosure with cash flow statement which was also verified.
- Each and every entry has been explained by the assessee with narrations stating the manner in which this income was earned by assessee. It is clear from the above that the undisclosed income was earned mainly by virtue of trading activities and income from other sources.
- Further, cash expenses and payments were included in the disclosure petition and the return filed after search and accordingly recorded in the books of accounts of the assessee.
- It is the Department on whom, onus of proving that expenditure recorded in the books is bogus or false based on documentary evidences found.
- In any case, no documentary evidences establishing the falsity of claim of transportation charges paid to the third party was found and penalty could not be levied merely on the admission of the assessee. There must be some conclusive evidence before the AO that entry made in the seized documents, represents undisclosed income of the assessee. The penalty thus stands deleted.

Source:

SPS Steel & Power Ltd. Vs. ACIT

ITAT, Kolkata, ITA Nos. 1391 & 1414/Kol/2011 dated 01-07-2015

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Advance received against Joint Development Agreement is not sale consideration against development rights

Facts of the case

The assessee in engaged in the business of developing land. During assessment proceedings, it was found that he had entered into an agreement with the some companies for development of land and in pursuance of the agreement; it had also advanced sums to certain Land Owning Companies.

Contention of the AO

The AO inferred that since the assessee was in the business of purchase and sale of development rights, it had sold development rights in the financial year in question. The AO was of the opinion that while development rights were actually sold the same did not reflect in the sales account- due to understated values in the Cash Flow Statement as compared to the Balance Sheet.

Decision of the Court

- The concurrent findings of fact of the CIT(A) and the ITAT affirmed that the LOCs had not acquired any development rights during the concerned assessment years. In such a situation, it is inconceivable as to how the assessee could have acquired such rights from the LOCs, let alone transferring them to M/s DLF Ltd. and CBDL.
- The assessee follows the accrual system of accounting. The accrual system of accounting takes into consideration all gains and losses pertaining to the accounting period for which income is being ascertained, irrespective of whether income has been actually received or whether expenses were paid out.
- Similarly, the assessee's submission that sale is deemed to have taken place when proper conveyance is executed, in the circumstances is sound.
- In the absence of any sale, the revenues attempt to bring to tax the advances received by the assessee must fail.

Source:

CIT vs M/S. DLF Commercial Project Corporation

High Court of Dehi, ITA627/2012 dated 15-07-2015

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Relinquishment of share in property under family arrangement is not transfer and no capital gains apply

Facts of the case

Assessee is an individual, who had inherited the property from her father-in-law. The property was devolved upon her after the death of her minor son. Other 2/3rd share belongs to her deceased husband's two brothers. Later on, under a family settlement agreement, she relinquished her 1/3rd share in favour of the deceased husband's brothers for a consideration of Rs. 35 lakhs. Being a money received under family arrangement, the said amount was not offered for tax under the head long-term-capital gain.

Contention of the AO

The Assessing Officer held that the amount has been received in lieu of relinquishment of rights in the property, therefore, it is a transfer of a capital asset, hence taxable under the head "capital gains".

Decision of the Court/Tribunal

- The family settlement agreement clearly states that the assessee shall ceased to have any rights, title, interest, claims in any of the properties. A release deed and a Gift deed were also executed.
- The said relinquishment of rights has to be seen from the angle, whether this would have created a possible litigation or may be harassment to the assessee, later on from the other family members of her deceased husband. Under a family arrangement, if a settlement is agreed, amongst the members then it cannot be held that it's a case of transfer of a capital asset.
- Such a family settlement or arrangement does not tantamount to any transfer of a title and not regarded as a transfer u/s 47(i). In case of a family settlement, there is no conveyance of a property or transfer of a property.
- Here it is not a transfer of a capital asset but an arrangement for settling the interest and rights of the family members. Accordingly, the sum received cannot be said to chargeable to tax under the head "capital gain".

Source:

Mrs Urmila Mahesh Nathani vs ITO

ITAT. Mumbai, ITA No. : 5921/Mum/2012 dated 10-07-2015

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Department's reluctance in rebutting evidence fends off presumption u/s 292C; addition u/s 68 deleted

Facts of the case

Search proceedings were carried out on the premises of a third party and loose papers pertaining to the assessee company were found along with details of transactions. After notice u/s 133(6), the case was re-opened after recording of reasons. The assessee consistently rejected having had any transactions with the third party. During the assessment proceedings, on request of the assessee, the AO issued notice u/s 133(6) of the Act to the third party requiring the said concern to furnish copy of the ledger account for the business carried out with the assessee. The notice was received back unserved with the remark "left".

Contention of the AO

In view of these facts, the AO considering that the entries on the pages which the assessee was required to explain and co-relate with its books of accounts remained unverifiable and unexplained, he concluded that in the absence of any verification the assessee company had relations with the third party and was dealing in business with it out of its books of account.

Decision of the Tribunal

- The denial of transactions with the third party by the assessee is on affidavit.

- The assessee has made all made efforts to trace the 3rd party like PAN details and jurisdiction of the AO where the third party was being assessed.
- The third party as per record was not a dummy entity but a functional thriving entity proceeding.
- A perusal of section 292C shows that a statutory presumption can be drawn where any documents is found in possession of a person in the course of a search or survey that it belongs to "such a person".
- A presumption is also drawn that the contents of such a document are true. The presumption having been drawn as per law is required to be confronted and the documents as per record have been confronted. However, the presumption is rebuttable.
- No efforts were made by the AO either in the assessment proceedings or Remand proceedings to obtain relevant information from the Assessing Officer of the third party.
- There is nothing in the seized documents or anywhere also on record to show that the assessee was dealing in undisclosed transaction with the third party.
- Accordingly in view of the above detailed the addition made on the basis of seized documents addressed not retable to the conclusion that the assessee had any undisclosed transaction with the third party.

Source:

DCIT vs. Delco India Pvt. Ltd

ITAT, New Delhi, I.T.A .No.-2453/Del/2013 dated 16-06-2015

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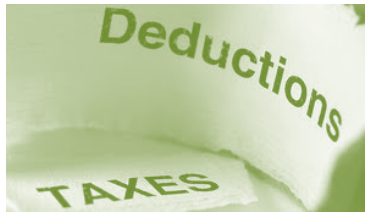
Entrepreneurial risk, not land ownership, relevant for Sec 80IB (10) deduction

Facts of the case



The assessee is engaged in the business of developing residential housing projects. The assessee claimed deduction u/s 80IB (10) for development of the housing projects.

Contention of the AO

Since the assessee did not own the land, the necessary approval of the project was taken by the land owners. The assessee merely acted as an agent and as a contractor as it entered into construction agreement with the landowners. Therefore, the assessee was not eligible for deduction under section 80IB (10) of the Act into Development Agreements with the owners of land to carry out work on behalf of the owners.

Decision of the Tribunal

- The perusal of the Development Agreements shows that the projects were built by the assessee, bearing all costs and the profit margin would be apportioned by the assessee, but at the very beginning of the JDA it has been mentioned that the owner of the land is not the Developer.
- The assessee had been appointed to develop by constructing properties along with the work of development of basic common infrastructure facilities.

- But all that is material is whether assessee is taking the entrepreneurship risk in execution of such project same. The assumption of such an entrepreneurship risk is not dependent on ownership of the land but merely because there is an improvisation in the business model or project does not vitiate fundamental character of the business activity as long as the risks and rewards of developing the housing project, in substance, remain with the assesse.
- It is not justified, conceptually or legally, to restrict eligibility of deduction under section 80IB(10).

Source:

Shri Umeya Corporation vs ITO

ITAT, Ahmedabad, I.T.A. No.: 211(Ahd) of 2010 dated 07-07-2015

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Stand of assessee for non-service of notice u/s 148 rejected as notice sent by post.

Facts of the case

On receipt of information from the Investigation Wing of the Department, New Delhi about bogus entry operations in which the assessee's name was from search conducted on the premises of a third party, proceedings u/s 148 were initiated. No compliance to the notice was made from the assessee and as contended by the assessee, the notice was not received by the assessee owing to incorrect address mentioned on the notice. Since assessee neither filed the return of income nor complied with the statutory obligations, the assessment was complete ex-parte.

Decision of the Tribunal

- Post issuance of notice u/s 148, adjournments to the case have been taken by the authorized representatives of the assessee. Further, from perusal of records, no compliance was made on adjourned dates as well. No grievance was raised during these adjournments about non-service of 148 notice.
- Further, the first notice was transmitted by AO through speed post which is not been disputed by the assessee after inspection.
- It is only at the fag end of the assessment by way of an afterthought that story about non-services of the notices u/s 148 was concocted.
- Further, a minor typographical error in the road or mentioning of E/F cannot make a significant difference and statutory notices got served on the assessee which is evident from the repeated appearances.
- Thus order of the ld. CIT (A) quashing the reassessment is reversed by this order.

Source:

ITO vs. Ms. Shubhashri Panicker

ITAT, Jaipur, ITA No. 83/JP/2013, dated 26-06-2015

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Excess amount refunded by builder to former purchasers on cancelation of construction agreement not in nature of interest on deposits and not liable for TDS deduction.

Facts of the case

- The assessee company, a builder, entered into construction agreements with various customers.

  The JDA contained specific clauses like construction on behalf of purchaser, provisions for resuming possession in case of failure on the part of the purchasers to fulfil their obligations etc.
- On failure of some purchasers to fulfil their obligations, fresh agreements were entered with other prospective purchasers on higher prices.
- Accordingly, the amounts received from former purchasers were repaid back along with some additional amounts received from the fresh purchasers.
- These additional sums paid were credited to the PL as indirect expenses.

Contention of the AO

The additional amounts paid to the former purchasers were in nature of interest paid on deposits, liable for TDS deduction u/s 194A of the Income Tax Act, 1961.

Decision of the Hight Court

- Payments in the present case have not been made in discharge of any pre-existing obligations.
- Provisions of section 2(28A) are to be understood on literal construction and the term 'interest' as defined therein refers to the pre-existence of a debtor-creditor relationship between the parties.
- The amount refunded to the purchasers represents the consideration the purchasers paid towards the undivided shares in the property agreed to be purchased and also the cost of construction of the apartment, which work was entrusted to the appellant, being the builder.
- Therefore, the assessee did not have an obligation to deduct TDS on such additional amount paid and was not an assessee in default to be proceeded against u/s 201A.

Source:

M/s Beacon Projects Pvt. Ltd. vs CIT

High Court of Kerala, ITA.No. 258 of 2014 dated 23-06-2015

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Guideline for mode and generation of EVC released by CBDT

CBDT has issued a circular with the instructions on 13-07-2015 to verify return online after e-filing using an electronic verification code. EVC is an alpha numeric 10 digit code generated for the purpose of electronic verification of the return of income. As per the circular, EVC can be generated in the following manner:

- Through net banking, provided the account of the holder is linked with the PAN of the assessee.

- Through the Aadhar number, wherein an OTP generated will be sent to the registered mobile number (Registered with UIDAI) of the assessee.
- Through the ATM card, provided the card is linked to a PAN validated bank account and the bank is registered with the Income Tax Department for providing this service.
- Through an OTP generated on the registered mobile number and email id of the assessee registered on the income tax portal, provided there is no refund claim in the return of income and the total income is below Rs. 5 lacs.

Source:

CBDT Notification No. 2/2015 dated 13-07-2015

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Time limit for submission of ITR-V for returns furnished electronically for AY 2013-2014 to AY 2014-2015 extended

To mitigate the hardship and grievances of assessee who have been prevented by reasonable cause to file ITR-V in time, CBDT has extended the time limit for submitting ITR-V forms relating to Income Tax Returns filed for AY 2013-2014, AY 2014-2015 upto 31-10-2015 or 120 days from filing of the return, whichever is earlier. The notification also guides assessee to view the status of receipt of the ITR-V forms online on the income tax portal.

Source:

CBDT Notification No. 1/2015 dated 10-07-2015

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CBDT urges filing of appeals by Department on merit

CBDT vide its Instruction dated 3rd July, 2015, has instructed departmental officer to filing appeals and pursue legal recourse only in deserving cases. The instruction cites least four cases where the department has received severe flak from the courts and other judicial forums like the Income Tax Appellate Tribunal (ITAT) on account of the laid back attitude of the department in filing and following up on appeals filed:

- The appeals were filed in a routine manner which causes lot of inconvenience to the tax payers and such a practice should be deprecated.

- In case an appeal is preferred from the subsequent order, then the Memo of appeal must indicate the reasons as to why an appeal is being preferred in the later case when no appeal was preferred against the earlier order

- Disregard and disobedience of the orders of the higher judicial authorities in hierarchy amounts to the gross abuse of process of law and is an act which tends to lower down the authority of the higher courts.

Source:

CBDT D.O.No. 279/M-88/2014-ITI dated 03-07-2015

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Cost Inflation Index for Financial Year 2014-15 Notified

CBDT has notified the Cost Inflation Index(CII) for Financial Year 2014-15. For the Financial Year, a CII of **1081** has been notified.

The meaning of cost inflation index is given in section 48 of the Income Tax Act, 1961. As per provisions of the Act, for the purpose of Long term capital gains, Indexed cost of acquisition and indexed cost of improvement are deducted from Sale value consideration.

Source:

CBDT Notification No. 60/2015 dated 24-07-2015

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New Income Tax Return Forms Notified

CBDT has notified the revised Income Tax Return Forms, ITR 3, ITR-4, ITR-5, ITR-6 and ITR-7. The ITR Forms seek increased reporting requirements, like detailed information of foreign assets, details of income from sources outside India. In lie of the foreign trip details, the forms require the Passport Number of the assessee, if available. Further, the details of dormant accounts has been done away with. The new forms also provide for several changes in the schedule of capital gains. Further, expenditure on Corporate Social Responsibility needs to be separately disclosed. ***Source:***

CBDT Notification No. 60/2015 dated 24-07-2015

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