VERENDRA KALRA & CO
CHARTERED ACCOUNTANTS

Communiqué

Direct Tax
November 2023

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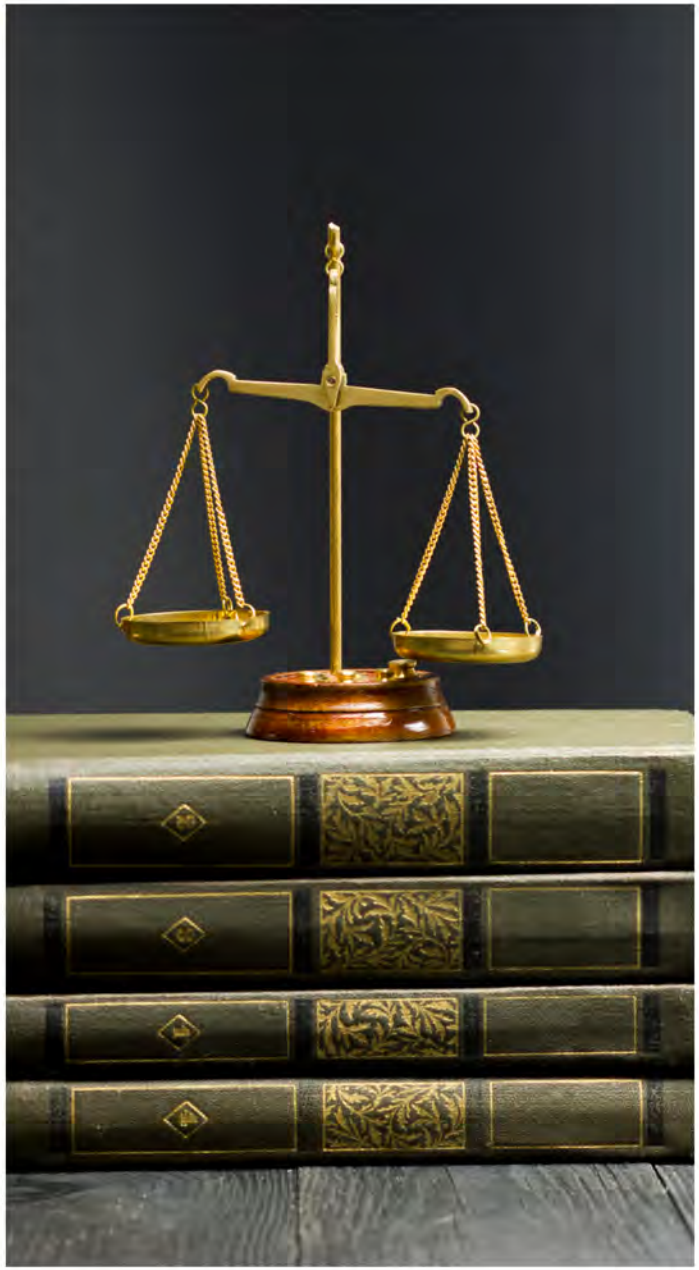

Facts

A search u/s 132 was conducted in the case of Venus Group at various premises during which, various documents were seized on analysis of which it was found that several documents contained information which related to the appellant. The proceedings u/s 153C were initiated by recording satisfaction and the appellant was required to file the return of income. Based on these search proceedings, assessment order was passed. The matter was carried in appeal before the CIT(A). After the order of the CIT(A), the issues traveled to the Tribunal.

As far as Category-1 issue is concerned, the Tribunal after considering the provisions held that jurisdiction u/s 153C prior to 01-06-15 could be invoked only if the material seized during the course of search in case of third parties "belongs to" some persons other than the searched person. Subsequent to 01-06-15, the information embedded in the document is sufficient for taking action u/s 153C. On appreciation of the satisfaction recorded by the AO of the searched person as well as of the present appellants, the Tribunal found that the satisfaction indicated that the AO nowhere observed that the documents belonged to the appellant. Therefore, the Tribunal held that since the search was prior to 01-06-15, the appeals of the appellants were allowed.

In Category-2 issue pertaining to Section 153A, the Tribunal relying on the decision of the Delhi HC in CIT v. Kabul Chawla [380 ITR 573 (Del)], opined that simultaneous search was carried out at the premises of Venus Infrastructure and Ashok Sundardas Vaswani and if any incriminating material belonging to the appellant is found at the premises of some other person, then the assessment has to be made under the provisions of Section 153A. On due consideration, the Tribunal found that the additions made in the case of Rajesh Sundardas Vaswani were not sustainable because they were not based on seized material found during the course of search carried out at his premises.

High Court Judgements

With regard to Category-3 on the question whether the assessment completed u/s 153A are barred by limitation, the Tribunal held that in accordance with Section 153B, the orders were framed beyond the time limit prescribed inasmuch as, though the search was carried out on 10-03-15 and 12-03-15, the time limit for passing the assessment orders would expire on 31-03-17, whereas the assessment orders were framed in the month of December, 2017, beyond a period of two years and therefore, were barred by limitation.

As far as Category-4 is concerned, which concern the case of reassessment, the Tribunal on examining the validity of the assessment framed u/s 147/143(3) held that the 'reasons to believe' recorded were not reasons but only conclusions and a reproduction of the information received from the Director (Investigation). Hence, it is nothing but 'borrowed satisfaction'.

Ruling

Category-1: The order of the Tribunal in Appeal is dated 12-11-20. The date of the Tribunal order in MA was of 24-08-22 whereas the judgement of the SC in the case of Vikram Bhatia was dated 06-04-23 which was not available when the Tribunal decided the main appeals. The law on that date was governed by the decision in the case of Anil Kumar Gopi Krishna Agrawal which held the field. The SC decided the case of Vikram Bhatia on 06-04-23 which was beyond the cap of 6 months from the date of the Misc. Application order which would be 23-03-23 and therefore even otherwise the decision of the SC could be no ground in rectifying of the Order.

Category-2: We have duly considered the rival contentions and gone through the records carefully. It is settled position of law that power for rectification u/s 254(2) can be exercised only when mistake, which is sought to be rectified, is an obvious and patent mistake, which is apparent from the record and not a mistake, which is required to be established by arguments and long drawn process of reasoning on points, on which there may conceivably be two opinions. In this regard, an elaborate discussion has been made in previous paragraph of this order while adjudicating first set of MA's & Ors. In this regard, we note that the ITAT after elaborate discussion on the issue of assessment in case of search proceeding has taken a view that in the proceeding u/s 153A, the addition to total income can only be made on the basis of material found from the premises of the appellant. In holding so, the ITAT analyses the facts available on record, gives various reasoning and also refers several judicial precedents. As Such the Revenue in MA has not pointed out any specific mistake in the order which is apparent from the record. The issue raised by the Revenue in MA requires long drawn argument which is not allowed u/s 254(2). If the Revenue feels the order passed by the Revenue is erroneous on account of law or on fact then the only remedy available is to challenge the order at higher forum. In holding so we draw support and guidance from the judgment of Hon'ble SC in case of CIT vs. Reliance Telecom Ltd.

Category-3: It is also not out of place to mention that the Revenue against the order of the ITAT has already preferred an appeal before the Hon'ble HC which has been admitted. This argument of the ld. AR was not controverted by the ld. DR appearing on behalf of the Revenue. In view of the above, we hold that there is no apparent mistake in the order of ITAT as alleged by the Revenue in its miscellaneous application as discussed above. Therefore, we do not find any merit in the argument of Ld. Counsel for the Revenue. Hence, the MA filed by the Revenue is dismissed. In the result all the MA's in this segment filed by the Revenue are hereby dismissed.

High Court Judgements

Category-4: In the present case, a detailed order was passed by the ITAT when it passed an order on 06-09-13, by which the ITAT held in favour of the Revenue. Therefore, the said order could not have been recalled by the Tribunal in exercise of powers u/s 254(2). If the Appellant was of the opinion that the order passed by the ITAT was erroneous, either on facts or in law, in that case, the only remedy available to the Appellant was to prefer the appeal before the HC, which as such was already filed by the Appellant before the High Court, which the Appellant withdrew after the order passed by the ITAT dated 18-11-16 recalling its earlier order dated 06-09-13. Therefore, as such, the order passed by the ITAT recalling its earlier order which has been passed in exercise of powers u/s 254(2) is beyond the scope and ambit of the powers of the Tribunal conferred u/s 254(2). Therefore, the order passed by the ITAT dated 18-11-16 recalling its earlier order is unsustainable, which ought to have been set aside by the High Court.

Source: High Court, Gujarat in PCIT vs Hitesh Ashok Vaswani vide R/Special Civil Application No. 16389 of 2023 dated November 02, 2023

HC condones 79 days appeal-filing delay attributable to pursuing review before ITAT

Facts

The appellant was heard by the Tribunal but no further date was fixed; that on 26-05-19 on inquiry from Registry of the Tribunal qua status of the case, the applicant was informed on 19-06-19 over telephone from Registry that ITA No. 5068/Del/2013 was decided in favour of the applicant but ITA No. 1725/Del/2012 was decided against the applicant vide order dated 21-06-16; that promptly on 20-06-19, the applicant applied for certified copy of the order passed in June '16 and received the same on 02-07-19; that on 09-10-19, the appellant filed before the Tribunal an application seeking review of order dated 21-06-16, specifically pleading that the applicant had no notice or information about the outcome of the said appeal and also explaining the events mentioned hereinbefore; that accepting the said explanation, the Tribunal admitted the review application to be heard on merits; that on 10-10-22, the review application was disposed of by the Tribunal but knowledge of that order was acquired by the appellant only on 02-05-23, so immediately on 04-05-23 the appellant applied for certified copy of the order dated 10-10-22; and that on 21-07-23, the appellant filed the appeal though certified copy of order of dismissal of the review application was received by the applicant subsequently on 28-07-23.

Thence, after deducting the time spent in obtaining certified copies of the order impugned in the present appeal as well as the order passed in the review application, the present appeal got delayed by 79 days, for which the applicant has sought delay condonation, mainly on the grounds that the Director of the applicant who had argued the matter before the Tribunal resigned and got settled abroad while other Directors of the applicant are senior citizens and not much conversant with the process; that the portal of the Tribunal was not functioning effectively during the relevant period; and that it is only in May 2019 that during a meeting with the auditors, the issue of appeal filed before the Tribunal came to the knowledge of the Directors of the applicant, so a letter was sent seeking update and status of the appeal. It is further explained on behalf of the applicant that on the basis of telephonic information from the Tribunal, it promptly applied for certified copy of the impugned order, after perusal whereof it was revealed that the arguments and judicial precedents cited on behalf of the appellant had not been dealt with in the impugned order, so under a bonafide belief qua a mistake apparent on the face of record, the appellant preferred a review application and even the Tribunal without any objection from the present Revenue not just admitted the review application but also heard arguments on various dates before dismissing the review application vide order dated 10.10.2022, which date also was not informed to the applicant. Hence, the present application for condonation of delay in filing the appeal.

Ruling

In reply to the application under consideration, the Revenue pleaded that lack of diligence on the part of the appellant in this case would disentitle the applicant any discretionary relief. The Revenue pleaded that the actual delay in filing the appeal is of 1471 days and not 79 days, for which the appellant has failed to set up a sufficient cause. It was further pleaded on behalf of Revenue that it is difficult to believe that to check the status of the case, the appellant would have kept sitting silent for 1070 days after conclusion of the final arguments before the Tribunal and even after obtaining the certified copy of the impugned order, the applicant opted to seek review of the impugned order instead of promptly filing the appeal. The appellant being guilty of utmost laxity does not deserve condonation of delay in filing the appeal, as per revenue.

Broadly speaking, the appellant has explained that the delay in filing the appeal occurred because firstly, the applicant was never informed about the fate of its appeal before the Tribunal after conclusion of final arguments, till the appellant sent a written communication and secondly, the appellant under good faith initiated and continued to prosecute the review remedy but met failure in view of the judgement of the Supreme Court in the case of Reliance Telecom. On the other hand, the Revenue largely contended that the delay in filing the appeal was on account of extreme laxity on the part of the appellant.

In view of the aforesaid, quoting the expression of the Hon'ble Supreme Court in the case of Sheo Raj Singh, HC find the case set up by the applicant to be an "explanation" and not an "excuse". Most importantly, we would prefer in the facts and circumstances of this case to be guided by cardinal principle of justice that disputes should be decided on merits and not defaults, so the applicant having brought before us a cause with sufficient explanation concerning the delay, cannot be shown door.

Source: High Court, Delhi in Resorts Consortium India Limited vs ITAT vide ITA 425/2023 dated November 07, 2023

HC allows prosecution as appellant failed to file ITR timely & willfully concealed income

Facts

The accused is an appellant on the file of the Respondent. During the search on 03-09-13, it was found that the appellant had several transactions which were not reported by him to indulge in large scale tax evasion. The appellant had purchased an immovable property for the value of INR 2.50 crores. During the search, it was also found that he had purchased the said property actually for a sum of INR 4.50 crores. However, the petitioner did not file his return of income for the AY 2012-13. Therefore, he was issued notice u/s 153A dt. 29-04-14 to file return of income tax within 30 days from the date of the said notice. But the petitioner did not file his return of income within the period of 30 days, but filed belatedly on 20-11-15 by admitting the total income of INR 2.30 crores. Therefore, the accused was issued SCN to show reason for not initiating prosecution. On receipt of the same, the accused replied that the delay was due to books of accounts and other materials were seized by the Income Tax Department. It is difficult for the accused to collect details with regard to 18 appellants in the group considering the fact that he is aged person and suffering from hypertension and diabetes. Therefore, he was unable to file his return of income. Without being satisfied with the reply submitted by the appellant, the respondent filed complaint.

The ld. counsel for the appellant had submitted his returns as provided u/s 139(1) on 18-04-13 itself, therefore, the question of non-filing of return does not arise. In fact, the respondent ought to have revealed the said fact that the appellant already submitted his return of income on 18-04-13. If it was disclosed, the sanction would not have been granted to initiate prosecution against the petitioner. Even after receipt of the notice u/s 153A, the petitioner could not able to file additional return within the stipulated time of 30 days only for the reason he fell ill. In fact, the additional return filed by the petitioner was duly accepted and order has been passed u/s 143(3), there is no mens rea for non-filing of income tax return for the AY 2012-13. As such, the criminal prosecution itself is non est in the eye of law.

The ld. counsel for the petitioner further submitted that the complaint itself is barred by limitation as contemplated u/s 468 of CPC. According to the respondent, the income tax return shall be filed within the period of 30 days from the date of receipt of the notice issued u/s 153A. It was served on the petitioner on 08-05-14 and as such, the period for non-filing of income tax return ended on 07-06-14. Whereas the sanction was granted for initiation of prosecution only on 27-09-17. The complaint was lodged in the month of October 2017. Therefore, the complaint was filed after period of three years from the date of the alleged occurrence and the complaint itself is barred by limitation.

The ld. counsel for the respondent relied upon the judgment of the Hon'ble SC of India in Sasi Enterprises Vs. ACIT (2014 (5) SCC 139), wherein it is held that Section 276CC is attracted once is a failure there to file the return. Once such failure is discovered and detected, the subsequent act of filing returns will not protect the defaulters from prosecution proceedings.

Ruling

No quarrel that once the assessment officer accepts the revised return filed u/s 153A, the original return filed u/s 139 abates and becomes non est. Therefore, no penalty can be levied u/s 271(1)(c). Whereas in the case on hand, there was concealment by the petitioner while filing his first return of income for the AY 2012-13. In fact, the levying of penalty was already dropped in view of the order passed by the tribunal. However, the petitioner is now facing prosecution u/s 276CC. That apart, the mens rea of the petitioner is clearly established by the respondent and as such, the above judgment is also not helpful to the case on hand. Further, already the prosecution examined before the trial court. Therefore, all the grounds raised by the petitioner can be agitated before the trial court to rebut the presumption. In view of the above discussion, this Court is not inclined to quash the impugned proceedings. As such, this criminal original petition is liable to be dismissed. Accordingly, this criminal original petition is dismissed. Consequently, connected miscellaneous petition is closed.

Source: High Court, Madras in R. P. Darrmalingam vs ACIT vide CRL OP No. 28572 of 2018 and Crl. MP No. 16630 of 2018 dated November 09, 2023

Corpus specific voluntary contribution, 'capital receipt', non-taxable regardless of trust's registration

Facts

The appellant filed its return of income, which was selected for scrutiny and assessment was framed u/s 143(3). Assuming jurisdiction conferred upon him by provisions of section 263, the PCIT held that the assessment order is not only erroneous but also prejudicial to the interest of the Revenue and accordingly, set aside the assessment. Pursuant to the directions of the PCIT, assessment proceedings were once again initiated and, accordingly, statutory notices were issued and served upon the appellant. While scrutinizing the return of income, the AO noticed that the DIT, Exemption has rejected the application filed by the appellant for grant of registration u/s 12AA and exemption u/s 80G. The AO further found that the appellant has received corpus donation grant of INR 44.25 crores from another trust, namely, Bandhan-Konnagar, which is registered u/s 12A. The AO stated that since the appellant trust was not registered u/s 12A, therefore, it is not eligible for exemption u/s 11(1)(d) in respect of corpus donation received by it and, accordingly, treated INR 44.25 crores as income of the appellant.

The ld. CIT(A) observed that the impugned receipt is a capital receipt which is to be kept on permanent basis and only accretions are to be used. The utilization of the grant is governed by the directions of the donor and since grant was not in the form of a corpus donation but was a specified grant given for utilization as per the directions of the donor, hence was a capital receipt and, accordingly, directed the AO to delete the impugned addition.

Ruling

Reliance is placed on the decision of Hon'ble ITAT, Pune in ITO (Exemptions), Ward-2, Pune Vs. Serum Institute of India Research Foundation wherein it is held that corpus specific voluntary contribution being in nature of capital receipt, are outside scope of income u/s 2(24)(iia) and, thus same cannot be brought to tax even in case of trust not registered u/s 12A/12AA.

In view of the above and as the appellant got registered u/s 12AA and as the donations/voluntary contributions received of INR 3.33 crores by the appellant society are of Corpus and Capital nature, same are to be treated as exempt from tax liability, as the principles relating to judicial discipline assume significance and the priority. Accordingly, following the ratios of the judicial pronouncements viz. 9 ITA Nos. 558 /VIZ/2018 ITA No.286/VIZ/2019 (M/s. Hosanna Ministries), ITAT treated that the donations/voluntary contributions received by appellant society are outside the taxations, even for the period prior to its registration u/s 12AA. Hence, the AO was directed to delete the addition made of INR 3.33 crores. In view of the above, ITAT find no reason to interfere with the order passed by the ld. CIT(A). Thus, this appeal filed by the Revenue was dismissed.

Source: ITAT, Delhi in ACIT vs M/s Financial Inclusion Trust vide ITA No. 2001/DEL/2020 dated November 03, 2023

Generation of DIN subsequently prescribing it as 'exceptional circumstances' is unjustified; search assessment post conclusion was treated as invalid by ITAT

Facts

A search and seizure operation was carried out at the various premises of Bajaj Group and its associates, and the Directors wherein various documents books of accounts were found and seized and statements of various persons came to be recorded. An order of centralization passed by the concerned PCIT u/s 127. The AO of the searched persons recorded his 'satisfaction' that the documents do not belong to the searched persons, but they belong to the appellant's in these appeals. Pursuant to this, it was recorded that action u/s 153C is required to be taken and the 'satisfaction note' and relevant documents were handed over to the jurisdictional AO of the appellants, who are persons, other than the searched persons. Thereafter a notice u/s 153C was issued directing the Appellants to file their return of income. Thereafter, the appellants filed their returns and declared income of INR 2,99,950 (Smt. Sharda Devi Bajaj); INR 5,05,040 (Shri Sunder Lal Bajaj) and INR 2,56,020 (Sunder Lal Bajaj HUF). The AO, however, by separate assessment orders passed u/s 153C r.w.s. 143(3), assessed the income to be INR 17,99,950; INR 15,05,040 and INR 17,56,020 respectively pertaining to the AY 2015-16 of all the three appellants. Feeling aggrieved, the Appellants carried the matter in appeals before the ld. CIT(A) who dismissed the appeals of the appellant. Thereafter, the appellants preferred an appeal before Tribunal.

The appellants have now filed applications for introducing additional ground of appeal based on the CBDT Circular No. 19/2019 claiming therein that the additional ground raised is a pure question of law for which the foundational facts are already on record which was allowed.

The appellant stated that CBDT vide aforesaid Circular has mandated generation, allotment & quoting of computer-generated DIN in the body of all communications, in the nature of notices/ summons/letters/correspondences as well as the orders passed. Para 3 of the Circular sets out, exceptional circumstances, in which such communications may be issued manually, with the rider that this shall be done only after recording reasons in writing in the file and with the prior written approval of the Chief Commissioner/Director of Income Tax. Para 4 of the Circular provides that any communication which is not in conformity with the requirement of Para 2 and Para 3 shall be treated as invalid and shall be deemed to have never been issued. In the present case, it is not in dispute and otherwise, it is a matter of record that the order of the AO does not bear any DIN.

Ruling

ITAT has placed reliance on the Hon'ble Bombay HC wherein it has been held that subsequent generation of the DIN will not be sufficient as the requirement of the CBDT Circular, is quoting of the DIN, in the body of such communication and/or order. On behalf of the Revenue, reliance was placed on the communication dated 17.9.2019 which pertains to the roll out of facility for System generated Document (i.e. Intimation Letter) containing Document Identification number (DIN) for documents issued outside the system but uploaded manually in Income Tax Business Application. ITAT stated that we are unable to see as to how the said communication can come to the aid of the Revenue. All that the communication state is about the provision of facility for generation of Intimation Letter containing Document Identification Number/Document Number for documents issued outside ITBA system but uploaded manually in Income Tax Business Application.

ITAT stated that it is clear that it pertains to the functionality to capture and uphold the letters, notices and orders issued manually and served on taxpayers by users due to any exceptional circumstances under Para 3 (i), (ii) and (iii) of the aforesaid Circular dated 14-08-19. It is not the case made out that there are any exceptional reasons recorded in these appeals as required by the Circular. Thus, in our opinion, the said communication cannot come to the aid of the Revenue in the present Appeals. In that view of the matter, the additional ground as raised has to succeed. In the result, the appeals of the appellant's were allowed and the assessment orders were set aside.

Source: ITAT, Delhi in Smt. Sharda Devi Bajaj, Shri Sunder Lal Bajaj and Sunderlal Bajaj HUF vs DCIT, Central Circle, New Delhi vide ITA No. 3006/DEL/2022, ITA No. 3008/DEL/2022 and ITA No. 3009/Del/2022 respectively dated November 15, 2023

ITAT allows Section 80P deduction on interest income since 'attributable to' co-op society's activities

Facts

The appellant, a Primary Agricultural Co-operative Credit Society engaged in the business of providing credit facilities, supply of agricultural inputs and consumer goods to its members filed its return of income for AY 2018-19, admitting "Nil" income, after claiming deduction of INR 2.91 crores u/s 80P(2). The return was processed u/s 143(1) and the total income was computed at INR 3.70 lacs. The increase in income was on account of disallowance of deduction claimed u/s 80P in respect of dividend. The appellant's case was selected for scrutiny under CASS to verify the deductions claimed under Chapter VI A and a notice u/s 143(2) was issued. In response, the appellant furnished details of receipts and the deduction claimed u/s 80P(2). The AO noticed that a part of the above income aggregating to INR 2.60 crores admitted to have been received from extending credit facilities to members was interest income. The AO was of the view that the investments with the above said banks were made from surplus funds which is not attributable to the activity of the appellant in providing credit facilities to its members. Therefore, the AO issued a show cause letter and a draft assessment order proposing to disallow the deduction to the extent of interest income received from institutions other than cooperative societies and the deduction u/s 80P towards dividend income u/s 56.

The AO completed the assessment u/s 143(3) by disallowing to the extent of INR 2.60 crores, the deduction claimed u/s 80P(2) towards interest income received from District Central Cooperative Bank, Andhra Bank, AP Cooperative bank and interest received on savings account and disallowance of dividend income of INR 3.70 lacs, aggregating to INR 2.63 crores and the tax payable was computed at INR 1.23 crores including the interests of INR 31.82 lacs u/s 234B and INR 0.04 lacs u/s 234C. Aggrieved by the order of the AO, the appellant preferred an appeal before the CIT(A) and the ld. CIT(A), relying on the decision of Hon'ble Supreme Court in the case of The Mavilayi Service Cooperative Bank Ltd. & Ors. Vs. CIT, Calicut & Ors, allowed the appeal of the appellant. Aggrieved by the order of the ld. CIT(A), revenue preferred an appeal before the Tribunal.

The Ld. DR further contended that the AO is justified in making addition of INR 2.60 crores & INR 3.70 lacs towards disallowance of deduction claimed by the appellant u/s 80P(2)(a)(i) by relying on the decision of Hon'ble SC in the case of Totgars Co-operative Sale Society Ltd. Vs. ITO (2010) 311 ITR 283 (SC), holding that interest income earned by the appellant society from fixed deposits pertaining to reserve fund kept with nationalized (schedule) banks/cooperative banks is not eligible for deduction u/s 80(P)(2)(a) & 80P(2)(d). He, therefore, pleaded to quash the order passed by the ld. CIT(A) and uphold the addition made by the AO. Per contra, the ld. AR filed paper book before us and contended that the ld. CIT(A) is justified in deleting the addition made by the AO since the appellant society, being a cooperative society, make deposits in its regular course of business and accordingly the deposits were made in DCC bank as usual, but not with any intention to gain any benefit from other sources. The ld. AR further submitted that the facts relied on by the Revenue authorities in the case of M/s Totgars Cooperative Sale Society Ltd are entirely different from that of the instant case. The ld. AR also submitted that as per Para-11 of the judgment in the case of M/s Totgars Cooperative Sale Society Ltd it is clearly mentioned that "this judgment is confined to the facts of the present case" and therefore it cannot be applied in the appellant's case, hence, eligible for deduction u/s 80P. On the other hand, the ld. AR relied on by the revenue authorities in the case of M/s Totgars Cooperative Sale Society Ltd and stated that appellant is eligible for deduction u/s 80P.

Ruling

Respectfully following the decision of HC Andhra Pradesh in Vavveru Cooperative Rural Bank Ltd. and the ratio laid down by the coordinate bench of the Tribunal in the case of Kakateeya Mutually Aided Thrift and Credit Co-op Society Limited, we are inclined to uphold the order passed by the ld. CIT(A) and dismiss the appeal of the revenue. Hence, all the grounds raised by the revenue are dismissed. The cross objections filed by the appellant becomes infructuous, hence, dismissed.

Source: ITAT, Vishakapatnam in M/s Yendagandhi Large Sized Cooperative Society Ltd. vs ITO, Ward 1, Bhimavaram vide ITA No. 243/Viz/2022 dated November 22, 2023

ITAT deletes fresh addition made by CIT(A) surpassing ITAT's direction & without notice to appellant

Facts

The appellant company, during the relevant FY, had purchased immovable property at an auction from Kotak Mahindra Bank for a total consideration of INR 7.31 crores plus stamp charges of INR 43.86 lacs. The ld. AO passed an ex-parte order u/s 144 making an addition of INR 7.31 crores on account of unexplained source of this investment in the property. The same was before the ld. CIT(A) filing all the evidences which were not considered. Therefore, when the appellant approached this Tribunal, the order of the ld. CIT(A) was set aside with the direction to admit the additional evidences and decide the appeal afresh, after providing opportunity of being heard to the appellant. Subsequently, the impugned appellate order has been passed by the ld. CIT(A), wherein, after taking into consideration the evidences of the appellant, addition to the extent of INR 5.56 crores was deleted and the remaining addition of INR 1.75 crores was confirmed on the ground that the appellant had failed to prove the source of cash deposit in bank account used for repayment of the loan taken from M/s LMJ Logistics Ltd., for purchase of this property. Accordingly, both the appellant and the Revenue are in appeal before the Tribunal.

At the time of hearing, the ld. AR, bringing forth the facts of the case, submitted that while purchasing this property from Kotak Mahindra Bank, as the appellant was not having requisite funds, a loan was taken of INR 6.19 crores from Development Credit Bank, but, its disbursement was taking time, so, an unsecured loan was taken from M/s LMJ Logistics Ltd., and, subsequently, when the loan amount was disbursed in the Axis Bank account, the same was used to repay the unsecured loan from M/s LMJ Logistics Ltd.

The ld. AR submitted that the ld. CIT(A), however, has fallen in error in going beyond the directions of the Tribunal in finding a new source of addition by making allegation that when an amount was returned to M/s LMJ Logistics Ltd., there was cash deposit. She submitted that the addition by the AO was made on account of alleged undisclosed source of investment u/s 69 which was changed by the ld. CIT(A) to the addition u/s 68 to the extent of INR 1.75 crores. The ld. AR has relied on the High Court's judgements in CIT vs Sardari Lal & Co [IT Reference No. 227 of 1979]; Hon'ble ITAT in Hari Mohan Sharma Vs ACIT [ITA No. 2953/Del/2018]; and High Court in Gurinder Mohan Singh Vs CIT [ITA No. 322 of 2005] to submit that it is the settled proposition of law that CIT(A) cannot examine and make an addition upon an issue which does not arise from the order of assessment without actually show-causing.

The ld. DR has, however, opposed the aforesaid submissions and submitted that in both the proceedings, the ld. AO as well as the ld. CIT(A) were confronted with a situation about the source of investment in the property and in either way the CIT(A) was examining if the investment in the property was from a genuine source or it was the own money of the appellant.

Ruling

After giving thoughtful consideration to the matter on record and to the above submissions, ITAT is of the considered view that there is no dispute on the settled proposition of law that CIT(A) can make an enhancement only after show causing the appellant and at the same time question of taxability from new source cannot be determined by CIT(A) as first appellate authority and reliance for same is placed on the Hon'ble Supreme Court judgement in CIT vs Sardari Lal & Co. In the case in hand, the assessment order was with regard to questioning the source of investment in the property and before the ld. CIT(A), on behalf of the appellant, relevant additional evidences in the form of registered sale deed, loan sanction letter, account statements, unsecured loan confirmations from M/s LMJ Logistics Ltd. were filed and based upon them the ld. CIT(A) was satisfied that the investment was not from an undisclosed source. There is no reason to interfere in that too. However, the ld. CIT(A), being too intrigued, entered into the controversy on the basis of statement of bank account of the appellant with the Axis Bank that while making the repayment of the unsecured loan to M/s LMJ Logistics Ltd., there were certain repayments to M/s LMJ Logistics Ltd. and also EMI of the loan which were preceded by certain cash deposits and which were not explained.

ITAT further is of the considered view that the ld. CIT(A) being satisfied with the additional evidences filed establishing the genuine sources of investment in the hands of the appellant for purchase of property, travelled beyond the mandate of the Tribunal in the first round of litigation. The ld. CIT(A) was directed to adjudicate the appeal afresh after admitting the additional evidences of the appellant. Thus, the question restored to the files of the ld. CIT(A) was to examine if the additions made by the AO completing the assessment u/s 144 was not justified in the light of the evidences available with the appellant.

Consequent to the filing of evidences, if the CIT(A) intended to examine the issue further, then, at one hand same was beyond mandate of Tribunal order restoring issue to CIT(A) and otherwise that certainly required putting the appellant to notice. However, the ld. CIT(A) failed to put the appellant on notice and questioned the source of cash deposits in the Axis Bank account and considered the same as unexplained cash credits in the books of account for the year under consideration. Thus, addition made by ld. CIT(A) on a new source, in the form of source of sum credited in book of account is not sustainable.

There is no force in the contention of ld. DR that in any case the tax authorities were examining the source of investment in property, be that by way of investment or repayment of loans and that there was no change in the source of addition. ITAT is further of considered view that in the present case examining the investment in property from known source or disclosed income was a different exercise done by AO from the exercise done by CIT(A) in examining source of cash deposits in bank account. In former the issue was to examine the source as existed on the date of investment made and in later the issue was to examine the source on the date the sum was credited in the Books of Accounts. So, for all reasons discussed above the appellant was supposed to be put to notice which CIT(A) failed. Consequently, ITAT allowed the grounds of the appellant's appeal and find no substance in the grounds raised by the Revenue. The appeal of the appellant was allowed and Revenue's appeal was therefore dismissed.

Source: ITAT, Delhi in M/s Net Agri Company Pvt. Ltd. vs ITO, Ward 18(1), New Delhi vide ITA No. 4945/Del/2019 dated November 24, 2023

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For any further assistance contact our team at kmt@vkalra.com

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