VERENDRA KALRA & CO
CHARTERED ACCOUNTANTS

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HC Sets Aside Criminal Proceedings Against Aditya Institute; Reasonable Cause Sufficient to Justify Belated Deposit of TDS

Facts

The Assessee was an educational institute, engaged in imparting Engineering and Management Education. During the assessment years 2014-15, 2015-16 and 2016-17, the assessee had deducted tax at source of INR 32.82 lakhs, INR 10.85 lakh and INR 10.85 lakhs respectively on contract payments, however, the same had not been credited into Central Government account within the stipulated time and had been deposited belatedly. Additionally, the interest under section 201(1)(a) had also been paid by the assessee belatedly.

The Revenue believed that the assessee had not shown sufficient cause for delay in depositing the TDS amounts, initiated the prosecution proceedings for violation of section 276B. The proceedings issued by the Commissioner of Income Tax under Section 279(1) of I.T. Act, dated 12.03.2018, would show that, if the Petitioners were able to establish a reasonable cause for failure to deposit the amount within the stipulated time, there cannot be any criminal prosecution.

Accordingly, a show cause notice was issued on 17.11.2016, however no compliance of the same was done by the assessee. A second notice was issued by the AO dated 19.12.2016, against which reply had been furnished but the assessee did not appear before the AO.

A final show cause notice had been issued which was attended by the assessee. The Revenue concluded that despite such opportunities the assessee had failed to show sufficient cause for not depositing the amounts timely.

Aggrieved, the assessee preferred the present criminal petitions under Section 482 of Code of Criminal Procedure, 1973 and accordingly, the revenue filed three private complaints on the file of the Court of the IV Additional Judge-cum-Special Economic Offences Court, Visakhapatnam against the assessee.

Ruling

The Hon'ble High Court ruled in favor of the assessee. It observed that before deciding to prosecute any person for violating the provisions under section 276B, the condition laid down in section 278AA must be fulfilled.

The Hon'ble Court held as follows,

"when the Petitioners are able to establish the reasonable cause for the delay in remittance of the amount to the Central Government Account though deducted the tax at the source. It is a case of appreciation of a point on factual aspect as to the satisfaction of the Authorities on the point of reasonable cause. In the present case, learned Commissioner for Income Tax conveniently ignored the material placed by the Petitioners to establish that there was a reasonable cause for their failure to remit the amount within a stipulated time In that view, this Court is of the considered view that the reason provided by the Petitioner for the delay in remitting the amount to the Central Government is sufficient to constitute "reasonable cause" in view of Section 278AA of the I.T. Act and hence criminal prosecution against the Petitioners is not warranted. There is no dispute that the Petitioners have paid the tax along with late payment interest. In view of the above discussion, this Court is of the view that there are no tenable grounds to continue the proceedings against the Petitioners in all the three cases and hence, the same are liable to be quashed."

Source: High Court, Andhra Pradesh in M/s. Aditya Institute of Technology and Management and Ors vs. the State of Andhra Pradesh and Ors vide Criminal Petition Nos. 1207, 1208, 1212 of 2020 dated June 21, 2024.

HC Holds Re-Assessment Invalid for AY's in Connection of which No Incriminating Material was Found During Search; Relies on SC Ruling Abhisar Buildwell

Facts

The assessees were various business units under the group of M/s. Sunny Jacob and were comprised of partnership firms, in which Mr. Sunny and his wife Mrs. Magi Sunny were partners. One of such firms was a proprietorship concern with Mrs. Magi as the sole proprietrix. All such units were engaged in the business of gold ornaments.

A search under section 132 of the Act was conducted at the various business premises of the group on 21.08.2007, pursuant to which notices were issued under section 153A of the Act. During this search, incriminating material pertaining to assessment year 2008-09 was unearthed, which was then used by the AO to reject the books of accounts of the assessee for all the assessment years from 2002-03 to 2008-09. The AO further proceeded to estimate the alleged escaped income for all of the above-mentioned assessment years on the basis of the estimation done for the assessment year 2008-09. The AO enhanced the income for all assessment years by 70% and disbelieved the gross profit ratio declared by the assessees

Aggrieved by the assessment orders passed under Section 153A read with Section 143(3) of the I.T. Act for the various assessment years, the assessees approached the Commissioner of Income Tax (Appeals), who allowed the appeals preferred by the appellants for the assessment years 2002-03 to 2007-08, but confirmed the demand of differential tax for the assessment year 2008-09.

The revenue preferred an appeal before the ITAT which set aside the orders of the First Appellate Authority and remanded the matter back to the Assessing Officer for a fresh consideration based on the observations of the Tribunal in the common order dated 16.11.2012.The said order of the Tribunal remanding the matter to the Assessing Officer was impugned before this Court and thereafter before the Supreme Court, but both the courts did not deem it necessary to interfere with the order of the Tribunal remanding the matter to the AO for a fresh consideration.

Thereafter, the AO passed fresh assessment orders for the assessment years 2002-03 to 2008-09 under Section 153A read with Section 254 of the I.T. Act. And virtually reiterated the stand that he had earlier taken in the matter. When the said assessment orders were impugned by the appellants herein before the C.I.T (Appeals), the First Appellate Authority also took the same stand as was taken by his predecessor in the earlier round of litigation, and allowed the appeals preferred by the appellants for the assessment years from 2002-03 to 2007-08.The ITAT allowed the appeals preferred by the Revenue, in consequence of which the matter has reached the Hon'ble High Court for adjudication.

Ruling

The Hon'ble High Court ruled in favor of the assessee. It referred to the judgment of the Hon'ble Supreme Court in Principal Commissioner of Income Tax, Central -3 vs. Abhisar Buildwell Pvt. Ltd. [(2024) 2 SCC 433] to conclude its decision. The Hon'ble Court held that the AO was only entitled to re open assessment with respect to the assessment year in connection with which the incriminating material had been found.

The Hon'ble Court opined as follows:

"In our view, the statutory provision gives a clear indication that, based on the material obtained during the search, the Assessing Officer who gets the jurisdiction to re-open the assessments, can do so in respect of the individual assessment years comprised in the block period of six years only if the material obtained during the search under Section 132 of the I.T. Act, or any part thereof, relates to the assessment year in question. In the appeals before us, since it is not in dispute that the materials obtained during the search conducted on 21.08.2007 pertain only to the assessment year 2008-09, and there was no incriminating material against the appellants/assessees pertaining to the assessment years 2002-03 to 2007-08, the finding of the Appellate Tribunal reversing the orders of the First Appellate Authority, cannot be legally sustained. In the result, we set aside the orders of the Appellate Tribunal, to the extent impugned herein, and answer the substantial questions of law raised by the appellants/assessees in favour of the assessees and against the Revenue. The appeals are disposed as above."

Source: High Court, Kerala in M/s. Sunny Jacob Jewellers vs. The CIT vide ITA No. 60 of 2019 dated June 19, 2024.

ITAT Allows 40(a)(i) Deduction to Assessee When Recipient Parties Had Already Declared Such Income in Their Respective Income Tax Returns

Facts

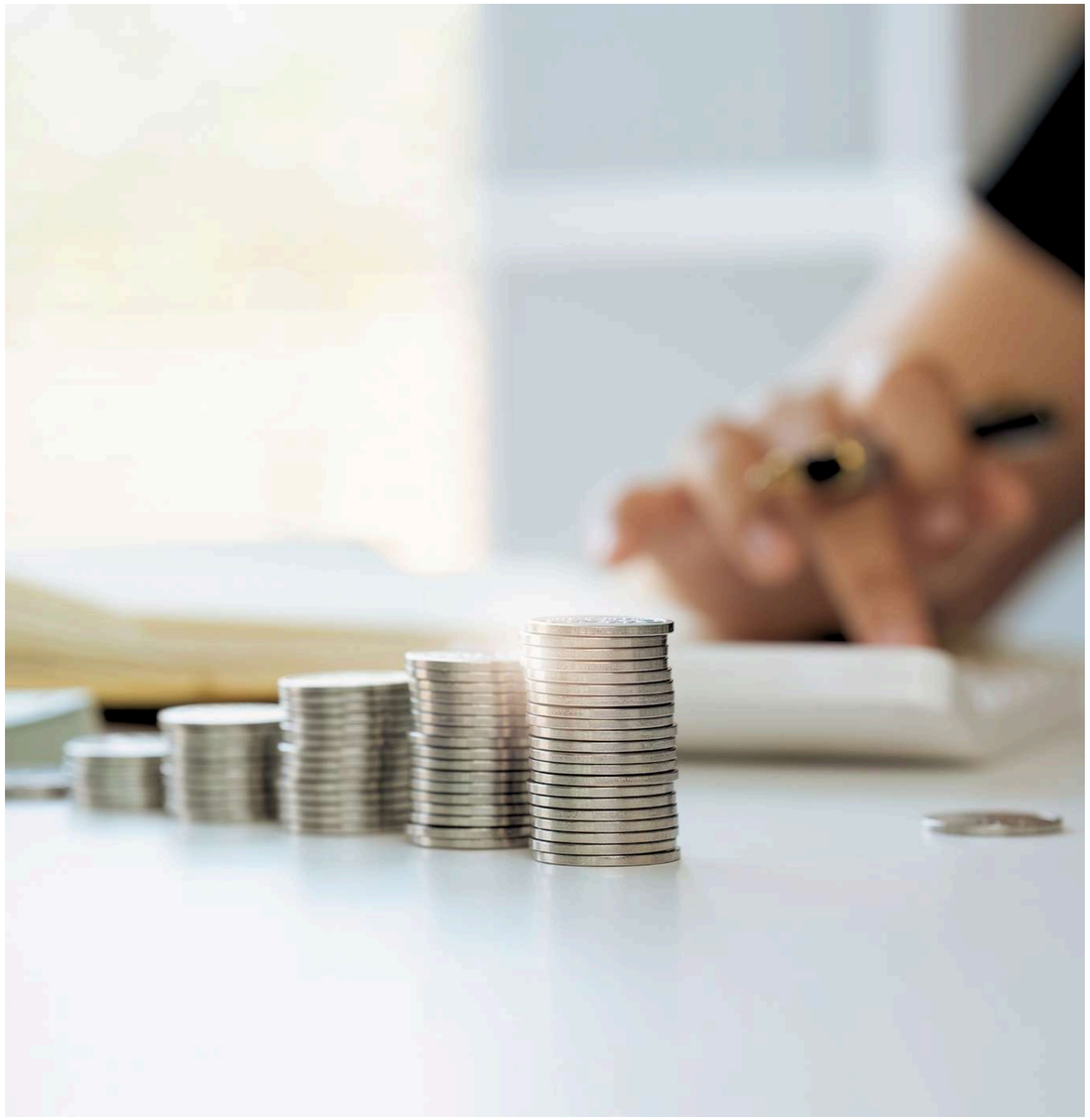
The assessee had filed its return of income for the relevant assessment year 2011-12 on 30.09.2011. The AO had disallowed a sum of INR 2.26 crores by invoking the provisions of section 40(a)(i) of the Act on account of payments made to non-resident claimed by assessee as expenses without deduction of TDS.

The assessee had challenged the draft assessment order before DRP in consequence to which the final assessment order was passed by the AO under section 143(3) of the Act dated.16.02.2016. This final assessment order was challenged before the Tribunal which remanded the matter back to the file of the AO to examine the applicability of provisions of section 40(a)(i) of the Act, in view of the decision of Hon'ble Delhi High Court in the case of CIT vs. Ansal Land Mark Township (P) Ltd.377 ITR 635 (Del).

In consequent to the above order of Tribunal, the AO confirmed the disallowance. The assessee preferred an appeal before the CIT(A) which dismissed the appeal of assessee as infructuous.

Resultantly, the assessee preferred appeal before the Tribunal again and the vide order dated 21.07.2022 remanded the matter back to the file of the CIT(A) with direction to adjudicate the issue on merits. Accordingly, the CIT(A) confirmed the disallowance.

Therefore, the assessee filed an appeal before the Tribunal.



Source: Tribunal, Chennai in Ahlers India Pvt. Ltd. vs. The Deputy Commissioner of Income Tax vide ITA No. 524/Chny/2024 dated June 27, 2024.

Ruling

The Tribunal ruled in favor of the assessee. It was observed that the Tribunal had time and again remanded the matter to the file of the CIT(A) or AO but none of the assessing authorities looked into the details given regarding the fact that these parties have declared the income in their respective returns of income. It was further noted that once the assessee had provided the details in respect of the recipient parties with respect to the declaration of the respective income in their Returns of Incomes then no disallowance was sustainable.

The Tribunal referred to the judgement of the Hon'ble Delhi High Court in the case of Ansal Land Mark Township (P) Ltd. (supra) and held that no disallowance was to be made in view of the second proviso to section 40(a)(i) of the Act.

Moreover, the Tribunal also relied on the decision of Hon'ble Supreme Court in the case of CIT vs. Vegetable Products Ltd., [1973] 88 ITR 192 (SC).

Conclusively, the Tribunal declared as follows,

"In view of the above, we are of the view that the assessee is entitled for claim of deduction being amount paid to non-resident for expenses for the reason that the recipient parities have already declared the above receipts in their respective return of income and assessee has filed complete details before us and hence, the same cannot be disallowed by invoking the provisions of section 40(a)(i) of the Act. We reverse the order of CIT(A)-NFAC and allow the claim of assessee."

Let's Connect

+91.135.2743283, +91.135.2747084

3rd Floor, MJ Tower, 55, Rajpur Road, Dehradun - 248001

E: info@vkalra.com | W: vkalra.com

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